CITY COMMISSION MEETING AGENDA

CITY COMMISSION  DAYTON, OHIO  DECEMBER 29, 2021

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).

    AVIATION
    A1.  Koorsen Fire and Security (inspection and servicing of fire
         extinguishers as needed through 12/31/22)  $40,000.00
1. (Cont’d):

**A2. M&R Electric Motor Service** (electrical motor repair, parts, supplies and related items as needed through 9/30/22) **$20,000.00**

**A3. Roby Services LTD** (janitorial supplies as needed through 12/31/24) **45,000.00**

**FIRE**

**B1. Genuine Parts Company dba NAPA Auto Parts** (automotive repair parts and related items as needed through 12/31/23) **60,000.00**

**PUBLIC WORKS**

**C1. IPS Group, Inc.** (monthly fees for approximately five hundred (500) credit card capable single space parking meters as needed through 12/31/25) **200,000.00**

**C2. ACME Springs, Inc.** (heavy-duty equipment suspension repair parts and services as needed through 12/31/22) **30,000.00**

**C3. Cintas Corporation No. 2 (P0220168)** (work uniforms rental and related services as needed through 10/31/26) **94,000.00**

**C4. Cintas Corporation No. 2 (P0220167)** (work uniforms rental and related services as needed through 10/31/26) **98,000.00**

**RECREATION**

**D1. Cintas Corporation No. 2 (P0220169)** (work uniforms rental and related services as needed through 10/31/26) **102,000.00**

**D2. Cubbie, Bradfor dba Stripes** (sports officials, scorekeepers and timekeepers services as needed through 5/30/23) **37,000.00**

**WATER**

**E1. American Leak Detection, Inc. dba American Leak Detection** (leak and locating services as needed through 10/31/24) **26,000.00**

**E2. Cintas Corporation No. 2 (P0220170)** (work uniforms rental and related services as needed through 10/31/26) **144,800.00**

**E3. Cintas Corporation No. 2 (P0220173)** (work uniforms rental and related services as needed through 10/31/26) **168,000.00**

**E4. Ethanol Products LLC dba Poet Pure** (carbon dioxide gas as needed through 12/31/25) **860,000.00**

**E5. Univar Solutions USA, Inc.** (hydrofluosilicic acid as needed through 12/31/22) **150,000.00**

**E6. Barrett Paving Materials Inc.** (sand, gravel, crushed stone and related materials as needed through 12/31/24) **459,000.00**
1. (Cont’d):

E7. CHWR, Inc. dba CHW Mechanical Services (heating, ventilation and air conditioning (HVAC) preventative maintenance and repairs as needed through 12/31/24)  
   90,000.00

E8. Cintas Corporation No. 2 (P0220176) (work uniforms rental and related services as needed through 10/31/26)  
   172,000.00

E9. Core & Main LP (water main pipes, fittings, valves and related items as needed through 12/31/22)  
   130,000.00

E10. Duke’s Root Control, Inc. (root control treatment chemicals and services as needed through 12/31/22)  
    80,000.00

E11. Everett J. Prescott, Inc. (water main pipes, fittings, valves and related items as needed through 12/31/22)  
    130,000.00

E12. Fairborn Cement Company LLC (Portland concrete as needed through 12/31/24)  
    60,000.00

E13. Ferguson Waterworks (water main pipes, fittings, valves and related items as needed through 12/31/22)  
    60,000.00

E14. Phillips Companies (sand, gravel, crushed stone and related materials as needed through 12/31/24)  
    31,500.00

E15. Pickrel Brothers, Inc. (water main pipes, fittings, valves and related items as needed through 12/31/22)  
    70,000.00

-Depts. of Aviation, Fire, Public Works, Recreation, and Water.

Total: $3,367,300.00

2. BI Incorporated – Service Agreement – automatic renewal agreement for electronic monitoring services rendered to the Court for the Electronic Home Detention Program – The Municipal Court.  
   $90,000.00 (Thru 12/31/22)

3. City of Riverside – Contract Modification – second amendment for technical and economic development services in association with the City of Dayton’s Multi-Jurisdictional Source Water Protection Program – Department of Water/Environmental Protection.  
   $191,441.00 (Thru 12/31/23)

4. County Corp – Service Agreement - for a CDBG Subrecipient Agreement to administer the Emergency Repair and Accessibility Program – Department of Planning, Neighborhoods and Development.  
   $100,000.00 (Thru 12/31/22)
5. **Harrison Township – Contract Modification** – first amendment for technical and economic development services in association with the City of Dayton’s Multi-Jurisdictional Source Water Protection Program – Department of Water/Environmental Protection. $168,834.00 (Thru 12/31/23)

6. **Moonlight Security – Service Agreement** – fifth amendment to service agreement for security guard services at City Hall, City Hall Garage, One Stop and the Recreation Center- Sport Division and Oregon Garage – Public Works/Property Management. $425,000.00 (Thru 12/31/22)

7. **Public Health-Dayton & Montgomery County – Contract Modification** – for technical, educational, and inspectional aspects of the City of Dayton’s Multi-Jurisdictional Source Water Protection Program efforts in protecting the region’s drinking water supply - Department of Water/Environmental Protection. $373,195.00 (Thru 12/31/23)

8. **Think Patented – Contract Modification** – third amendment and second renewal to continue providing information on the City of Dayton’s Multi-Jurisdictional Source Water Protection Program - Department of Water/Environmental Protection. $40,000.00 (Thru 12/31/22)

9. **Veolia Environmental Services, North America Operations, Inc. dba Veolia ES Technical Solutions LLC. – Contract Modification** – first Amendment and first renewal for management of various environmental waste streams - Department of Water/Environmental Protection. $75,000.00 (Thru 12/31/23)

C. **Revenue to City:**

10. **Avis Budget Car Rental, LLC dba Avis and Budget – Lease Agreement** – for non-exclusive rental car concession and lease agreement at the Dayton International Airport – Department of Aviation/AP Admin & Finance. $2,716,335.64 (Thru 12/31/24)
11. Avis Budget Car Rental, LLC dba Avis and Budget – Lease Agreement – for two (2) rental car service center lease agreements at the Dayton International Airport – Department of Aviation/AP Admin & Finance.
   $702,072.00
   (Thru 12/31/24)

12. Byers Car Rental, LLC dba Hertz and Dollar – Lease Agreement – for non-exclusive rental car concession and lease agreement at the Dayton International Airport - Department of Aviation/AP Admin & Finance.
   $1,293,332.64
   (Thru 12/31/24)

   $918,332.64
   (Thru 12/31/24)

   $1,890,306.64
   (Thru 12/31/24)

15. EAN Holdings, LLC dba National Car Rental – Lease Agreement – for non-exclusive rental car concession and lease agreement at the Dayton International Airport Department of Aviation/AP Admin & Finance.
   $1,620,068.64
   (Thru 12/31/24)

16. EAN Holdings, LLC dba National Car Rental – Lease Agreement – for rental car service center lease agreement at the Dayton International Airport Department of Aviation/AP Admin & Finance.
   $328,968.00
   (Thru 12/31/24)
17. EAN Holdings, LLC dba Alamo Rent-A-Car and Enterprise Rent-A-Car – Lease Agreement – rental car service center lease agreement at the Dayton International Airport Department of Aviation/AP Admin & Finance. $328,968.00 (Thru 12/31/24)

18. Electrada – Other – host agreement for electric vehicle chargers – The City Manager’s Office. $22,908.00 (In Revenue)

E. Other – Contributions, Etc.:

19. National Processing Solutions - Payment of Voucher – for payment of October, November and December invoices that were outside of initial encumbrance – The Municipal Court. $21,563.47 (Thru 12/31/21)

Ordinance – Second Reading

20. No. 31957-21 Enacting R.C.G.O. Section 137.20 Regarding the Ban on Fireworks in the City of Dayton on Account of the Passage of House Bill 172 into Law.

VI. MISCELLANEOUS:

ORDINANCE NO. 31959-21

RESOLUTION NO. 6629-21

IMPROVEMENT RESOLUTION NO. 3599-21

INFORMAL RESOLUTION NO. 994-21
City Manager’s Report

From 2730 – PMB/Procurement

Supplier, Vendor, Company, Individual

Name See Below
Address See Below

Date December 29, 2021
Expense Type Purchase Order
Total Amount $3,367,300.00

2022 Purchase Orders

Fund Source(s)  Fund Code(s)  Fund Amount(s)
See below        See below        See below

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

Description

AVIATION

(A1) P0220182 – KOORSEN FIRE AND SECURITY, VANDALIA, OH

- Inspection and servicing of fire extinguishers as needed through 12/31/2022.
- These goods and services are required to provide servicing of fire extinguishers for the Department of Aviation.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB N19015 with firm pricing through 7/31/2023.
- The Department of Aviation requests additional authority of $20,000.00 through 7/31/2023.
- The Department of Aviation recommends approval of this order.

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<th>Fund Amount(s)</th>
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Signatures/Approval

Melanie A. Wilson, CAE, NCACP
Division

Melanie A. Wilson, CAE, NCACP 12/31/21
Department

City Manager

FORM NO. MS-16

Approved by City Commission

Clerk

Date

Updated 06/2016
AVIATION (CONTINUED)

(A2) P0220149 – M & R ELECTRIC MOTOR SERVICE, DAYTON, OH
- Electrical motor repair, parts, supplies and related items as needed through 9/30/2022.
- These goods and services are required to repair motors that are a critical part of airport operations.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 15065N with original pricing extended through 9/30/2022.
- M & R Electric Motor Service qualifies as a Dayton local entity.
- The Department of Aviation recommends approval of this order.

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(A3) P0220181 – ROBY SERVICES LTD, DAYTON, OH
- Janitorial supplies as needed through 12/31/2022.
- These goods are required to replenish inventories used in daily operations.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 21007N with pricing through 4/30/2025.
- The Department of Aviation requests additional authority of $30,000.00 through 12/31/2024.
- Roby Services Ltd qualifies as a Dayton local entity.
- The Department of Aviation recommends approval of this order.

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FIRE

(B1) P0220148 – GENUINE PARTS COMPANY dba NAPA AUTO PARTS, DAYTON, OH
- Automotive repair parts and related items as needed through 12/31/2022.
- These goods are required to maintain and repair City-owned vehicles.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 20005D with pricing through 12/31/2023.
- The Department of Fire requests additional authority of $30,000.00 through 12/31/2023.
- Genuine Parts Co. dba NAPA Auto Parts qualifies as a Dayton local entity.
- The Department of Fire recommends approval of this order.

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PUBLIC WORKS – CIVIL ENGINEERING

(C1) P0220180 – IPS GROUP, INC., SAN DIEGO, CA
- Monthly fees for approximately five hundred (500) credit card capable single space parking meters.
- These fees are required to maintain and keep the parking meters operational.
- IPS Group, Inc. is recommended as the original equipment manufacturer (OEM); therefore, this purchase was negotiated.
- The Department of Public Works requests additional authority of $150,000.00 through 12/31/2025.
- The Department of Public Works recommends approval of this order.

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PUBLIC WORKS – FLEET MANAGEMENT

(C2) P0220164 – ACME SPRING, INC., DAYTON, OH
- Heavy-duty equipment suspension repair parts and services as needed through 12/31/2022.
- These goods and services are required to repair the City’s heavy-duty equipment.
- Acme Spring, Inc. is recommended based on geographic location and past proven performance; therefore, this purchase was negotiated.
- Acme Spring, Inc. qualifies as a Dayton local entity.
- The Department of Public Works recommends approval of this order.

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PUBLIC WORKS – STREET MAINTENANCE

(C3) **P0220168– CINTAS CORPORATION NO. 2, DAYTON, OH**

- Work uniforms rental and related services as needed through 12/31/2022.
- These services are required to provide proper and safe work uniforms.
- Two (2) possible vendors were solicited and one (1) response was received. This order establishes a price agreement per IFB N21032 with cooperative bid price agreements established by the Omnia Partners Contract #R-BB-19002 and State of Ohio Term Schedule Contract #RS900118, Index #GDC020, with firm pricing through 10/31/2026.
- Cintas Corporation No. 2 qualifies as a Dayton local entity.
- The Department of Public Works requests additional authority of $75,200.00 through 10/31/2026.
- The Department of Public Works recommends acceptance of the sole bid.

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PUBLIC WORKS – WASTE COLLECTION

(C4) **P0220167 – CINTAS CORPORATION NO. 2, DAYTON, OH**
- Work uniforms rental and related services as needed through 12/31/2022.
- These services are required to provide proper and safe work uniforms.
- Two (2) possible vendors were solicited and one (1) response was received. This order establishes a price agreement per IFB N21032 with cooperative bid price agreements established by the Omnia Partners Contract #R-BB-19002 and State of Ohio Term Schedule Contract #RS900118, Index #GDC020, with firm pricing through 10/31/2026.
- Cintas Corporation No. 2 qualifies as a Dayton local entity.
- The Department of Public Works requests additional authority of $80,000.00 through 10/31/2026.
- The Department of Public Works recommends acceptance of the sole bid.

<table>
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RECREATION- RECREATION AND YOUTH SERVICES

(D1) **P0220169 – CINTAS CORPORATION NO. 2, DAYTON, OH**
- Work uniforms rental and related services as needed through 12/31/2022.
- These services are required to provide proper and safe work uniforms.
- Two (2) possible vendors were solicited and one (1) response was received. This order establishes a price agreement per IFB N21032 with cooperative bid price agreements established by the Omnia Partners Contract #R-BB-19002 and State of Ohio Term Schedule Contract #RS900118, Index #GDC020, with firm pricing through 10/31/2026.
- Cintas Corporation No. 2 qualifies as a Dayton local entity.
- The Department of Recreation requests additional authority of $84,000.00 through 10/31/2026.
- The Department of Recreation recommends acceptance of the sole bid.

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RECREATION AND YOUTH SERVICES – SPORTS

(D2) P0220179 – CUBBIE, BRADFORD dba STRIPES, DAYTON, OH

- Sports officials, scorekeepers and timekeepers services as needed through 12/31/2022.
- These services are required by the Department of Recreation and Youth Services for various 2022 youth and adult sports.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB N20001 with pricing through 5/30/2023.
- The Department of Recreation requests additional authority of $15,000.00 through 5/30/2023.
- Cubbie, Bradford dba Stripes qualifies as a Dayton local entity.
- The Department of Recreation and Youth Services recommends approval of this order.

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WATER – WATER RECLAMATION

(E1) P0220165 – AMERICAN LEAK DETECTION, INC. dba AMERICAN LEAK DETECTION, PALM DESERT, CA

- Leak and locating services as needed through 12/31/2022.
- These services are required for underground utility leak and locating services.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB S20029 with pricing through 10/31/2024.
- The Department of Water requests additional authority of $24,000.00 through 10/31/2024.
- The Department of Water recommends approval of this order.

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(E2) P0220170 – CINTAS CORPORATION NO. 2, DAYTON, OH

- Work uniforms rental and related services as needed through 12/31/2022.
- Two (2) possible vendors were solicited and one (1) response was received. This order establishes a price agreement per IFB N21032 with cooperative bid price agreements established by the Omnia Partners Contract #R-BB-19002 and State of Ohio Term Schedule Contract #RS900118, Index #GDC020, with firm pricing through 10/31/2026.
- Cintas Corporation No. 2 qualifies as a Dayton local entity.
- The Department of Water requests additional authority of $120,000.00 through 10/31/2026.
- The Department of Water recommends acceptance of the sole bid.

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WATER – WATER SUPPLY & TREATMENT

(E3) P0220173 – CINTAS CORPORATION NO. 2, DAYTON, OH

- Work uniforms rental and related services as needed through 12/31/2022.
- These services are required to provide proper and safe work uniforms.
- Two (2) possible vendors were solicited and one (1) response was received. This order establishes a price agreement per IFB N21032 with cooperative bid price agreements established by the Omnia Partners Contract #R-BB-19002 and State of Ohio Term Schedule Contract #RS900118, Index #GDC020, with firm pricing through 10/31/2026.
- Cintas Corporation No. 2 qualifies as a Dayton local entity.
- The Department of Water requests additional authority of $140,000.00 through 10/31/2026.
- The Department of Water recommends acceptance of the sole bid.

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(E4) P0220152 – ETHANOL PRODUCTS LLC dba POET PURE, WICHITA, KS

- Carbon dioxide gas as needed through 12/31/2022.
- This good is required for the treatment of potable water at the Ottawa and Miami water treatment plants.
- Eight (8) possible bidders were solicited and one (1) response was received. This order establishes a price agreement per IFB 22013S with pricing through 12/31/2025.
- The Division of Water requests additional authority of $660,000.00 through 12/31/2025.
- The Division of Water recommends acceptance of the sole bid.

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(E5) P0220151 – UNIVAR SOLUTIONS USA, INC., CINCINNATI, OH

- Hydrofluosilicic acid as needed through 12/31/2022.
- This hydrofluosilicic acid is required to replenish inventories used in the fluoridation of potable water.
- Rates are in accordance with the City’s existing price agreement 18013JL with pricing extended through 12/31/2022.
- The Department of Water recommends approval of this order.

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## WATER – WATER UTILITY FIELD OPERATIONS

### (E6) P0220163 – BARRETT PAVING MATERIALS INC., HARRISON TOWNSHIP, OH
- Sand, gravel, crushed stone and related materials as needed through 12/31/2022.
- These goods are required for repairs of streets for water and sewer lines projects.
- Nineteen (19) possible bidders were solicited and two (2) bids were received. This order establishes a price agreement per IFB 22011D with firm pricing through 12/31/2024.
- The Department of Water requests additional authority of $306,000.00 through 12/31/2024.
- The Department of Water recommends acceptance of the lowest and best bid. Multiple suppliers are recommended for award to ensure supplies availability.

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### (E7) P0220177 – CHWR, INC. dba CHW MECHANICAL SERVICES, SPRING VALLEY, OH
- Heating, ventilation and air conditioning (HVAC) preventative maintenance and repairs.
- These goods and services are required to maintain units at Water Utility Field Operations.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 21026N with pricing through 4/30/2025.
- The Department of Water requests additional authority of $60,000.00 through 12/31/2024.
- The Department of Water recommends approval of this order.

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WATER – WATER UTILITY FIELD OPERATIONS (CONTINUED)

(E8) P0220176 – CINTAS CORPORATION NO. 2, DAYTON, OH

- Work uniforms rental and related services as needed through 12/31/2022.
- These services are required to provide proper and safe work uniforms.
- Two (2) possible vendors were solicited and one (1) response was received. This order establishes a price agreement per IFB N21032 with cooperative bid price agreements established by the Omnia Partners Contract #R-BB-19002 and State of Ohio Term Schedule Contract #RS900118, Index #GDC020, with firm pricing through 10/31/2026.
- Cintas Corporation No. 2 qualifies as a Dayton local entity.
- The Department of Water requests additional authority of $137,600.00 through 10/31/2026.
- The Department of Water recommends acceptance of sole bid.

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(E9) P0220175 – CORE & MAIN LP, TIPP CITY, OH

- Water main pipes, fittings, valves and related items as needed through 12/31/2022.
- These goods are required to maintain the City’s water distribution center.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 20006S with pricing through 12/31/2022.
- The Department of Water recommends acceptance of the low bid(s). Multiple awards are recommended to ensure ongoing competition and supply availability.

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WATER – WATER UTILITY FIELD OPERATIONS (CONTINUED)

(E10) **P0220150 – DUKE’S ROOT CONTROL, INC., SYRACUSE, NY**
- Root control treatment chemicals and services as needed through 12/31/2022.
- These goods and services are required to maintain free flowing sewer lines.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 17056S with pricing extended through 12/31/2022.
- The Department of Water recommends approval of this order.

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(E11) **P0220171 – EVERETT J PRESCOTT, INC., WEST CARROLTON, OH**
- Water main pipes, fittings, valves and related items as needed through 12/31/2022.
- These goods are required to maintain the City’s water distribution center.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 20006S with pricing through 12/31/2022.
- The Department of Water recommends approval of this order. Multiple awards are recommended to ensure ongoing competition and supply availability.

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(E12) **P0220138 – FAIRBORN CEMENT COMPANY LLC, XENIA, OH**
- Portland concrete as needed through 12/31/2022.
- These goods are required to repair water and sewer line excavations.
- Fairborn Cement Company LLC is recommended as the sole provider who responded to the City’s request; therefore, this purchase was negotiated.
- The Department of Water requests additional authority of $40,000.00 through 12/31/2024.
- The Department of Water recommends approval of this order.

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WATER – WATER UTILITY FIELD OPERATIONS (CONTINUED)

(E13) P0220174 – FERGUSON WATERWORKS, HARRISON TOWNSHIP, OH

- Water main pipes, fittings, valves and related items as needed through 12/31/2022.
- These goods are required to maintain the City’s water distribution center.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 20006S with pricing through 12/31/2022.
- The Department of Water recommends approval of this order. Multiple awards are recommended to ensure ongoing competition and supply availability.

<table>
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(E14) P0220162 – PHILLIPS COMPANIES, BEAVERCREEK, OH

- Sand, gravel, crushed stone and related materials as needed through 12/31/2022.
- These goods are required for repairs of streets for water and sewer lines projects.
- Nineteen (19) possible bidders were solicited and two (2) bids were received. This order establishes a price agreement per IFB 22011D with firm pricing through 12/31/2024.
- The Department of Water requests additional authority of $21,000.00 through 12/31/2024.
- The Department of Water recommends acceptance of low and best bid. Multiple suppliers are recommended for award to ensure supplies availability.

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(E15) P0220172 – PICKREL BROTHERS, INC., DAYTON, OH

- Water main pipes, fittings, valves and related items as needed through 12/31/2022.
- These goods are required to maintain the City’s water distribution center.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 20006S with pricing through 12/31/2022.
- Pickrel Brothers, Inc. qualifies as a Dayton local entity.
- The Department of Water recommends approval of this order. Multiple awards are recommended to ensure ongoing competition and supply availability.

<table>
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The aforementioned departments recommend approval of this order.
Automatic Renewal Agreement

The Dayton Municipal Court requests permission to enter into an Automatic Renewal Agreement with BI Incorporated in the amount of $90,000.00 for electronic monitoring services rendered to the Court for the Electronic Home Detention Program.

BI Incorporated supplies satellite tracking equipment used for the Electronic Home Detention Program. The equipment costs are reimbursed through a Consulting Services Agreement with the Montgomery County Board of Commissioners.

The Court has been under contract with BI Incorporated since 2010. The Court previously entered into a new Master Service Agreement with BI Incorporated in 2021. The Master Service Agreement was approved by City Commission on June 16, 2021. It provides for automatic renewal on the 1st day of January of each succeeding year unless the Agreement is terminated.

The automatic renewal term is from January 1, 2022 through December 31, 2022.

The Law Department has reviewed and approved the Agreement as to form and correctness. The Funding Source is Special Revenue Committed/ Electronic Home Detention Program.

A Certificate of Funds for $90,000.00 is attached and a copy of the original Master Service Agreement.

Approved by City Commission

Clerk

Date

Updated 8/2016
## SECTION I - to be completed by User Department

<table>
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<td>Expiration Date</td>
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### Required Documentation

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

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### Amount: $90,000.00

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### Amount: 

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<tbody>
<tr>
<td>Fund</td>
<td>Org</td>
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---

### Attach additional pages for more FOAPALs

- **Vendor Name:** BL Incorporated
- **Vendor Address:** 6400 Lookout Dr., Denver, CO 80301
- **Federal ID:** 84-0769926
- **Commodity Code:** 58008
- **Purpose:** To pay monthly monitoring invoices for calendar year 2022.

---

### Contact Person: Ann Marie Murray

### Municipal Court / Administration: 14-Dec-21

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

---

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

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

**Finance Director Signature:** [Signature]  
**Date:** 12/31/21

**CF Prepared by:** [Signature]  
**Date:** 12/31/21
MASTER AGENCY AGREEMENT
FOR ELECTRONIC MONITORING SERVICES

This MASTER AGENCY AGREEMENT FOR ELECTRONIC MONITORING SERVICES (the "Agreement"), is entered into between BI INCORPORATED ("BI"), a Colorado corporation with its principal place of business at 6265 Gunbarrel Avenue, Suite B, Boulder, Colorado 80301, and the CITY OF DAYTON (Agency) with its principal place of business at 101 West Third Street, Dayton, OH 45402. This Agreement incorporates by reference any and all Exhibits and Schedules attached hereto. The Agreement is effective upon full execution and is effective as of the date of the last signature, and supersedes any prior written or oral agreement and understandings with respect to the subject matter herein.

In consideration of the promises contained herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto, desiring to be legally bound, hereby agree as follows:

1. GENERAL SCOPE OF AGREEMENT

BI provides electronic monitoring devices and supporting Services for persons who are required to or opt to wear such Equipment. Agency desires to purchase and use such Equipment and the supporting Services as specified in this Agreement and the attached incorporated Exhibits.

1.1 Monitoring Service.

Specific Description. Pursuant to the terms of this Agreement and orders accepted by BI, Agency may purchase, and BI shall sell to Agency certain Monitoring Services as listed in the Schedule(s) in Exhibit A, attached hereto and incorporated herein:

LOC8 XT PER UNIT/PER ACTIVE DAY – TOTAL CHARGE OF $3.65

General Description. The “Monitoring Service” as set forth in Exhibit A may include Equipment or Units, Software Applications, and/or access to BI’s central host computer system running the Software Applications. Units are issued to the customers or placed on Clients by the Agency. The Units communicate with the Software Applications through cellular telephone service or the Client’s landline telephone service, which are subject to the telco terms and conditions.

1.2 System Maintenance.

Agency acknowledges that BI must perform periodic maintenance on the host computer systems. The system may be inaccessible during the performance of such maintenance. BI will exercise commercially reasonable efforts to notify Agency via e-mail or phone in advance of any such maintenance.
2. DEFINITIONS

Capitalized terms not otherwise defined in this Agreement are those as defined in the attached Exhibit(s). Should there be a conflict between the terms in this Agreement and those of any Exhibit, the terms in the Exhibit will prevail. Capitalized terms not defined in this Agreement shall have the meanings based on their context, as commonly used within the industry.

2.1 “Active Unit” means a Unit which is assigned to a Client and activated in TotalAccess.

2.2 “Active Day” means any day, or any portion thereof, in which there is an Active Unit.

2.3 “Authorized Personnel” means those persons selected by Agency who are authorized to enroll Clients and select or adjust notification options.

2.4 “Client” means a person subject to Agency’s electronic monitoring program.

2.5 “Confidential Information” means any information which is marked, or should be reasonably understood to be, confidential, proprietary, or trade secrets of BI.

2.6 “Documentation” means user guides, reference manuals, and other documentation provided by BI in connection with the Equipment, and Software Applications used under this Agreement. The Documentation is incorporated herein by this reference and will be provided upon execution of this Agreement.

2.7 “Equipment” or “Unit” means manufactured products and third party products provided by BI, including, but not limited to, GPS tracking devices, radio frequency monitoring devices, transmitters, Drive-BI Monitors, and alcohol monitoring devices.

2.8 “GPS” means a global positioning system.

2.9 “Software Application” means software applications made available by BI for use by Agency and/or Clients under this Agreement, including, but not limited to, BI TotalAccess®, BI Analytics™, and BI SmartLINK™.

2.10 “Supplies” means straps, latches, batteries, and similar items for the Equipment.

3. BI’s SERVICES

3.1 Access. BI shall provide Agency with access to and use of BI’s service. BI’s service permits the Agency to access the System using the licensed software in order to actively or passively monitor clients with equipment via the GPS network.

3.2 Initial Training. BI will provide an initial training session at no cost to Agency regarding the operation and use of the Monitoring Services elected. Agency is required to complete training prior to the commencement of marketing or selling the Monitoring Services under this Agreement. No login ID will be activated until and unless the assigned user has successfully completed training.
3.3 BI TotalAccess Training. All BI TotalAccess training sessions shall be conducted via a remote service such as web conferencing.

3.4 Additional Training. Additional training is available subject to applicable service fees.

3.5. Agency Support. BI will make reasonable efforts to provide Agency with answers to specific Agency support requests as related to the Equipment, Monitoring Services, and overall operation of the electronic monitoring program. BI will supply Agency with an address for e-mail and a 1-800 toll free number for questions and / or feedback.

3.6 Rental Maintenance. BI shall maintain the Equipment at its expense. Maintenance will be performed at BI’s facility. Notwithstanding such obligation, unless otherwise specified in Exhibit A, Agency shall be responsible for the replacement cost of lost or missing Equipment and/or the cost of required repairs necessitated by (i) Agency’s negligence or (ii) the damage or destruction of the Equipment by parties other than BI, including but not limited to Client’s mishandling of Equipment. Shipment shall be in accordance with BI’s Return Material Authorization (RMA) Policy.

3.7 Telecommunications Service. Certain BI products require wireless telecommunications service ("Telco Service") in order to transmit voice and/or data from the device. BI products requiring wireless telecommunications service include BI ExacuTrack One (commonly referred to as “ET1”), BI HomeGuard 206 (commonly referred to as “HG206”), BI TAD Plus Cellular (commonly referred to as “TAD Cellular”), and SL2 (commonly referred to as “SL2”). BI products requiring Telco Service may change from time to time. Agency is responsible for payment to BI of charges for Telco Service. Failure to pay these charges may result in suspension or termination of Telco Service, without which the device cannot transmit monitoring or tracking information to Agency.

3.8 Service Interruption. The Monitoring Services are made available to Clients when the Equipment is in operating range of the provider of such Monitoring Services. In addition, Monitoring Services may be temporarily interrupted, refused or limited at any time because of transmissions limitations caused by atmospheric and topographical factors outside of BI’s or service provider’s control, or equipment modifications, upgrades, repairs or similar other activities. Individual data transmissions may be involuntarily delayed for a variety of reasons, including the above, weak batteries, system over-capacity, and the Client’s movement outside of the service area.

4. EQUIPMENT AND UNITS

4.1 Supplied by BI. All orders for Units are subject to BI’s reasonable review and acceptance consistent with this Agreement. BI shall have no liability to Agency with respect to orders that are not accepted. Subject to availability of the Units, BI shall supply a sufficient quantity of Units to meet Agency’s need subject to notice from Agency of such need at least five (5) business days prior to shipment. Agency agrees that it shall assist BI in forecasting its Unit
needs. All Units or other Equipment supplied by BI hereunder shall be subject to all charges set forth in Exhibit A, as applicable. Agencies utilizing such BI supplied Equipment, and except as expressly set forth otherwise on Exhibit A, shall be entitled to receive, at no additional charge, a reasonable quantity of Supplies and tool kits (Unit activator, lead cutter, allen driver) to maintain Agency's electronic monitoring program in accordance with the prices set forth on Exhibit A.

4.2 Supplied by Agency. Agency may, subject to prior written approval by BI, supply its own equipment to be utilized in connection with the Monitoring Services. Any such equipment must be compatible with BI's host computer monitoring system. Equipment supplied by Agency will not be subject to the rental charges set forth in Section 6.1. All other charges as set forth in Section 6 are considered applicable and are payable by Agency in accordance with the terms and conditions set forth in Section 6. In no event is Agency entitled to Supplies for equipment owned or supplied by Agency.

4.3 Inspection of Equipment. Upon two (2) business days' prior notice, BI shall have the right to enter on the premises where the Equipment may be located during normal business hours for the purpose of inspecting and observing its use, or conducting an inventory count.

4.4 Freight. BI will pay for the cost to ship Units and other Equipment, Supplies and accessories to Agency and to ship Units and other Equipment from Agency pursuant to the RMA policy below. Agency may request shipping methods other than ground delivery, in which event Agency will pay for the full cost of such alternative shipping method.

4.5 Return Material Authorization (RMA) Policy. Freight charges to and from BI's facility for Equipment eligible for return hereunder shall be paid by BI when pre-authorized by a Return Material Authorization (RMA) number issued by BI's Customer Business Services Department and only when BI's pre-printed shipping labels are used. BI's pre-printed shipping labels provide Agency with ground delivery to BI's facility. Freight charges incurred by BI for Equipment which is returned in a manner which is inconsistent with BI's pre-printed shipping labels, without an RMA number, or not eligible for BI rental maintenance (e.g., Client or Agency damaged the Equipment) will be charged back to Agency. BI's Customer Business Services Department is available to the Agency Monday through Friday from 8:00 am to 5:00 PM Mountain Time by calling 1-800-241-5178.

5. AGENCY'S OBLIGATIONS

5.1 Agency represents and warrants during the Term that Agency shall:
(1) Retain complete authority and responsibility for Client selection, enrollment and alert management;
(2) Be responsible for all liaison work with the involved courts and/or agencies;
(3) Fulfill all Agency requirements to access and utilize the Monitoring Service;
(4) Perform or oversee orientation and Equipment guidelines in compliance with applicable BI policies;
(5) Ensure that applicable Equipment responsibility and use forms are acknowledged and signed by the Clients prior to receipt of Equipment;
(6) Be responsible for the proper use, management and supervision of Equipment; and
(7) Ensure that users have completed training in access and use of the Monitoring Service, including BI TotalAccess.

5.2 Agency represents and warrants during the Term that it shall:
(1) Notify its customers and Clients that Monitoring Services should only be used for the purposes and in the manner for which they were designed and supplied, and that warning notices should not be removed or obscured;
(2) Pass through all applicable Documentation provided by BI to its customers and Clients;
(3) Not remove or obscure any warning notices displayed on Equipment;
(4) Not breach any customer or Client agreement;
(5) Not mishandle or use the Monitoring Services in an unauthorized manner or authorize or promote a customer or Client to do so;
(6) Not use or promote the use of any Monitoring Services in combination with equipment, software, or other items not intended or authorized for use with the Equipment, or in an application or environment for which they were not designed, or authorize or promote a customer or Client to do so; and
(7) Not make any statements, claims, representations or warranties relating to Monitoring Services, other than as authorized or made by BI in writing.

6. COST OF SERVICES

6.1 Unit Rental Charge. If renting Units from BI, Agency shall pay to BI a daily rental rate for each Unit, or component thereof as applicable, provided by BI (the “Unit Rental Charge”). The Unit Rental Charge is as set forth on Exhibit A, and may be revised on a periodic basis upon reasonable prior written notice from BI to Agency and with prior written consent of Agency.

6.2 Service Charge. In addition to the Unit Rental Charge, every Active Unit is subject to a daily service charge for the active Monitoring Service as set forth in Exhibit A. For every Active Day, Agency shall pay to BI an amount based upon the daily service charge.

6.3 Payment Terms. BI will invoice Agency on a monthly basis for all charges incurred during the month. Payment shall be made by Agency to BI within thirty (30) days of electronic invoice date. Interest on any amount which is past due shall accrue at the rate of 1-1/2% per month, or if such rate exceeds the maximum rate allowed by law, then at such maximum rate, and shall be payable on demand.

6.4 Taxes. Except for BI’s net income, Agency will pay, as the same respectively come due, all taxes and governmental charges of any kind whatsoever together with any interest or penalties that may at any time be lawfully assessed or levied against or with respect to such item of equipment or services. In the event Agency is tax exempt, Agency agrees to supply BI with a tax exemption certificate.

6.5 Total remuneration under this Agreement for the term ending December 31, 2021 shall not exceed Ninety-Three Thousand Five Hundred Dollars and Zero Cents ($93,500.00).
7. TERM, TERMINATION, RENEWAL

7.1 Term. The term of this Agreement is for one (1) year (unless terminated as provided herein) from the effective date of this Agreement (collectively, the "Term"). This Agreement, its terms and conditions, and authorized amendments are renewed automatically for succeeding periods of one (1) year. The renewal period shall be based on the calendar year and the automatic renewal date shall be the first day of January of each succeeding year, unless the Agreement is terminated as provided below.

7.2 Termination for Convenience. This Agreement may be terminated for convenience by either party upon sixty (60) days prior written notification to the other party.

7.3 Notice. Except as otherwise expressly set forth in this Agreement, all notices with respect to this Agreement shall be in writing and signed by a duly authorized representative of the party. Notices shall be sent by certified mail, overnight international courier with tracking, or physically delivered by messenger.

7.4 Termination for Default. This Agreement may be terminated by a party upon prior written notice to the other party if the other party defaults on any responsibility and/or obligation under this Agreement, or is in breach of the Agreement, and does not remedy such default or breach within thirty (30) days following the date of receipt of such notice.

7.5 Return. Upon expiration or termination of this Agreement, Agency shall immediately return all BI property due to BI. In the event BI’s Units, unused supplies and other such property are not returned within thirty (30) days, Agency shall pay to BI ten dollars ($10.00) per Unit per day until BI has all such Units and other property in its possession. BI is entitled to full payment for services rendered and accepted by Agency whether during the Term or thereafter.

7.6 Survival. The following sections (and their subsections) shall survive the termination of this Agreement: 6, 7.3, 7.5, 7.6, 8 through 15, and all defined terms used within the foregoing.

8. LIMITATION OF LIABILITY

8.1 Agency Responsibility. Agency will be responsible for the proper use, management and supervision of the Equipment. Agency agrees that BI will not be liable for any damages caused by Agency’s failure to fulfill its responsibilities set forth in this Agreement.

8.2 Disclaimer of Warranty. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BI EXCLUDES ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, INCLUDING BUT NOT LIMITED TO THE MONITORING SERVICE, SOFTWARE APPLICATIONS OR EQUIPMENT. THE EXPRESS WARRANTIES IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED. BI EXPRESSLY DISCLAIMS THAT THE MONITORING SERVICE, SOFTWARE APPLICATIONS OR EQUIPMENT ARE IMPERVIOUS TO TAMPERING, COMPLETE, ACCURATE, RELIABLE, ERROR FREE OR FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS, THAT THE PRODUCTS AND SERVICES WILL BE
CONTINUOUSLY AVAILABLE, OR THAT DATA ENTERED ARE SECURE FROM UNAUTHORIZED ACCESS.

8.3 Limitation of Damages.
IN NO EVENT WILL BI BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF BI HAS KNOWLEDGE OF THE POSSIBILITY OF THE POTENTIAL LOSS OR DAMAGE, IN CONNECTION WITH OR ARISING OUT OF THE PROVIDING, PERFORMANCE, OR USE OF THE MONITORING SERVICE, SOFTWARE APPLICATIONS OR EQUIPMENT PROVIDED UNDER THIS AGREEMENT.

8.4 Acts.
IN NO EVENT DOES BI ASSUME ANY RESPONSIBILITY OR LIABILITY FOR ACTS THAT MAY BE COMMITTED BY PERSONS AND/OR CLIENTS THAT ARE SUBJECT TO AGENCY'S ELECTRONIC MONITORING PROGRAM.

8.5 Telecom. Agency recognizes and acknowledges that information is transmitted via third-party telecommunications service providers. BI makes no representations or warranties regarding carriage of information over any communications medium not directly controlled by BI, including, but not limited to, wireless and land-line telecommunications services. Further, BI shall not be liable for any interruption of service or non-transfer of information due to interruptions, temporary downage or other failure to any system that is not directly in BI's control. BI agrees to notify Agency as soon as is practicable in the event BI Equipment is not operational due to any such interruption.

9. INDEMNIFICATION

BI shall indemnify and defend the City of Dayton and its elected officials, officers, employees and agents (collectively, "Indemnites") from and against all third-party claims, losses, damages, and expenses (including reasonable attorneys' fees) for bodily injury or tangible personal property, to the extent that such claims, losses, damages, or expenses are caused by or arise out of the negligent acts or willful misconduct or fraud of BI and its agents, employees, contractors, sub-contractors and representatives in performing the Services; however, no indemnification will be required for any claims, losses, damages or expenses resulting from any negligence or willful misconduct of the City of Dayton or any of the other Indemnites. Agency agrees that it will promptly notify BI in writing of any claims, lawsuits, or other actions and agrees that BI is permitted to control fully the defense and settlement of any claim, suit, or action. Agency shall have the right, at its own expense, to appear through counsel of its own choosing. BI shall have no liability for any claim or suit based on any United States copyright or patent, or the trademark, trade secret, or unfair competition rights of a third party based on any modification done to the Licensed Software by the Agency.

This Article shall survive early termination or expiration of this Agreement.
10. OWNERSHIP AND CONFIDENTIALITY/NONDISCLOSURE OBLIGATIONS

10.1 Intellectual Property. As between the parties hereto, BI shall retain all ownership interests in all parts of the Monitoring Services. All rights owned by BI that are not granted by this Agreement, including the right to derivative works, are reserved to BI. All rights, powers and privileges which arise out of this Agreement are, and shall remain at all times, the sole and exclusive property of BI. Nothing contained in this Agreement shall be deemed to convey to Agency any title or ownership interest in the Equipment or Documentation.

10.2 Confidential Information. Agency agrees to hold in confidence and not disclose to any party, other than authorized employees under similar terms of confidentiality as set forth herein, the Documentation or any confidential information or trade secrets of BI.

All information provided by Agency in the course of BI’s performance of Services shall be deemed "confidential" information to the extent that it is classified as "private" under the laws of the State of Ohio or is not independently available to the general public. To the extent permitted by law, neither party shall disclose such confidential information to any third party without the other party’s written consent. Both parties shall also take all necessary steps to protect against the disclosure of confidential information disclosed by the other party. Nothing in this Section shall prohibit or limit either party’s disclosure of confidential information when such disclosure is required by an order of a Court or under state or federal law, or when such disclosure is authorized in writing by the disclosing party.

10.3 Access. BI will issue Agency a login ID and a password for use in accessing BI TotalAccess and the specific Client information for Agency. The confidentiality of the Monitoring Service and Client information is dependent upon Agency’s careful and secure control of the login ID and password. Agency agrees to maintain its password as private and confidential and to take all reasonable measures to maintain the careful control and security of the login ID and password. Agency agrees that each employee or contractor, to be authorized to work with or to have access in any way to the Documentation or trade secrets hereunder, shall agree to be bound by confidentiality, nondisclosure, use, and copying restrictions consistent with those of this Agreement. Agency agrees to notify BI immediately of the existence of any circumstances surrounding any unauthorized knowledge, possession, or use of the login ID and password or any part thereof by any person or entity. BI is not responsible for breaches in security resulting from third party access to Agency’s password or account.

10.4 Prohibited Use. Agency shall not itself and also shall not knowingly permit any of its employees, subcontractors, or sublicensees to alter, maintain, enhance, or otherwise modify any part of the Monitoring Service, other than strictly to input, access and update information relating to Clients, as permitted by this Agreement. Agency shall not reverse engineer, reverse compile, reverse assemble or do any other operation or analysis with the Monitoring Service or associated software, hardware, and technology that would reveal any of BI’s confidential information, trade secrets, or technology. Agency shall not, and shall take all reasonable actions to cause its employees, agents and subcontractors, if any, not to, during the Term or at any time thereafter, divulge, communicate or utilize, other than in the performance of Agency’s obligations under this Agreement, any Confidential Information which Agency’s or such person has acquired or
may acquire, whether technical or non-technical, relating to the business and affairs of BI, except as provided in Section 10.2 of this Agreement.

10.5 Restricted Access. Agency agrees not to make any attempt to gain any unauthorized access to any other user's account or to the systems, networks or databases of the Monitoring Service other than Agency's specific Client information as specifically permitted herein. Violations of the Monitoring Service security system are prohibited and are deemed a material breach of this Agreement and may be reported to applicable authorities. All access to Software Applications are subscription based, and the rights to access such services expire upon the expiration of the applicable order or upon Agency's failure to pay for such services (i.e., services are not perpetual).

11. INSURANCE

During the term of this Agreement and during the provision of on-site services, BI 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 $1,000,000 for each occurrence and $1,000,000 in the aggregate.
2. Automobile Liability Insurance, having a combined single limit of $1,000,000 for each person and $1,000,000 for each accident.
3. Employers' Liability Insurance, having a limit of $500,000 for each occurrence.
4. Professional Liability Insurance, having a limit of $1,000,000 annual aggregate.
5. BI shall maintain errors and omissions insurance in the amount of $1,000,000.

Current certificates of insurance for all policies and concurrent policies required to be maintained by BI pursuant to this Article shall be furnished to the Agency upon request. All such insurance policies, excluding Professional Liability Insurance, shall name the City of Dayton, its elected officials, officers, agents, employees, and volunteers as additional insureds, but only to the extent of the policy limits stated herein. BI shall endeavor to provide a minimum of thirty (30) days advance written notice to the Agency in the event of cancellation.

Agency represents, and BI acknowledges, that Agency is self-insured in an amount not less than $1,000,000. Upon request, the parties hereto shall furnish to the other a certificate of insurance or other evidence that the required insurance is in effect.

12. FORCE MAJEURE

Neither BI nor Agency 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 BI or Agency 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.

13. GENERAL

13.1 Entire Agreement. The entire agreement between the parties with respect to the subject matter hereof is contained in this Agreement. This Agreement shall be binding on and inure to the benefit of the parties hereto and their representatives, successors and assigns.

13.2 Limited in Scope. This Agreement is limited in its scope to its defined purpose. It in no way implies that either party has specific knowledge or bear responsibility for the business practices of the other party. All business practices and contract compliance outside the defined conditions of this Agreement and authorized amendments are the sole responsibility of each party.

13.3 Provisions Prohibited by Law. Any provision of this Agreement which is found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement. Preprinted terms and conditions of any purchase order or other instrument issued by Agency in connection with this Agreement which are in addition to or inconsistent with the terms and conditions of this Agreement will not be binding on BI and will not apply to this Agreement and are hereby rejected by BI. The entire agreement between the parties with respect to the subject matter hereof is contained in this Agreement and the referenced attachments hereto. No prior or contemporaneous negotiations, understandings, or agreements shall be valid unless in writing and signed by authorized representatives of each party. This Agreement shall be binding on and inure to the benefit of the parties hereto and their representatives, successors and assigns.

13.4 Execution. This Agreement may be executed in any number of and by the different parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

13.5 Independent Contractor. Nothing herein shall be construed to create a joint venture or partnership between the parties hereto or an employee/employer relationship. Agency shall be an independent contractor pursuant to this Agreement. Neither party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement or undertaking with any third party. Agency acknowledges that it has not paid a franchise fee of any kind to BI to enter into
this Agreement. The parties acknowledge that there is no community of interest between Agency and BI.

By executing this Agreement, BI acknowledges and agrees that it will be providing Services to the Agency as an “independent contractor.” As an independent contractor for the Agency, BI is prohibited from representing or allowing others to construe the parties’ relationship in a manner inconsistent with this Paragraph. BI shall have no authority to assume or create any obligation on behalf of, or in the name of the City of Dayton, without the express prior written approval of a duly authorized representative of the Agency.

BI, its employees, and any person retained or hired by BI to perform duties and responsibilities under this Agreement are not the City of Dayton employees, and therefore, such persons will not be entitled to, nor will they make a claim for, any of the emoluments of employment with the City of Dayton. Further, BI will be responsible to withhold and pay, or cause such agents, contractors and subcontractors to withhold and pay, all applicable local, state and federal taxes. BI further acknowledges and agrees that none of its employees are public employees for the purpose of membership and/or participation in the Ohio Public Employees Retirement System (OPERS).

13.6 Compliance with Law. Each party shall, at its sole cost and expense, comply with all applicable laws, rules, regulations, decrees, and other requirements (as each of the foregoing may be amended or modified from time to time) relating to or affecting this Agreement and Equipment.

14. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. In the event that a dispute arises with respect to any of the provisions herein contained or any other matter affecting the relationship between BI and Agency, the parties agree it shall be subject to the jurisdiction of the courts located in Montgomery County, Ohio.

15. ASSIGNMENT AND SUBCONTRACTING

This Agreement may not be transferred or assigned by Agency or by operation of law to any other person, persons, firms, or corporation without the express written consent of BI. BI shall have the right to subcontract any and all services set forth under this Agreement, so long as BI remains primarily responsible hereunder.

16. EQUAL EMPLOYMENT OPPORTUNITY

BI 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 Agency to terminate this Agreement at its option and may bar BI from receiving future
City of Dayton contracts.

17. WAIVER

A waiver by the Agency or BI 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.

18. AMENDMENT

The parties may mutually agree to amend this Agreement. However, no such amendment shall be
effective unless it is reduced to writing and references this Agreement, is executed by a duly
authorized representative of each party and, if applicable or required, is approved by the
Commission of the City of Dayton, Ohio.

[The remainder of this page intentionally left blank.]
IN WITNESS WHEREOF, by signing below Agency and BI have caused this Agreement to be effective as of the latest date set forth below.

THE CITY OF DAYTON, OHIO

By: ________________________
Printed Name: Shelley Dickstein
Printed Title: City Manager
Date: 6-25-21

BI INCORPORATED

By: ________________________
Printed Name: Danna Coapland
Printed Title: VP Finance
Date: 6/01/21

APPROVED AS TO FORM AND CORRECTNESS:

5/27/2021

X John Musto for
City Attorney

Signed by: Musto, John

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

June 16, 2021

Min. Bk. F 1 Pg. __________

Regina D Blackshear
Clerk of the Commission
EXHIBIT A

TO THE

MASTER AGENCY AGREEMENT
FOR ELECTRONIC MONITORING SERVICES
BETWEEN

BI INCORPORATED ("BI")

AND

THE CITY OF DAYTON, OHIO

Pursuant to the attached Agreement referenced above, the specific terms and costs for the BI LOC8 XT equipment and services are below and on attached Schedule A:

1. Terms and Conditions. Except as specifically set forth herein, this Agreement is subject to the terms and conditions of the Master Agreement and which is hereby incorporated herein.

2. Term and Renewal of Agreement. The term of this Agreement and authorized Amendments shall be from the Effective Date through December 31, 2021, and thereafter shall be for one (1) calendar year, unless terminated as provided herein or in the Master Agreement (collectively, the "Term"). Starting January 1, 2022, the term of this Agreement and Amendments shall be renewed automatically for succeeding periods of one (1) year (the Renewal period). The renewal period shall be based on the calendar year and the automatic renewal date shall be the first day of January of each succeeding year (unless the Agreement is terminated as provided in the Master Agreement).

3. Equipment and Services. BI shall provide equipment and services as set forth in the Master Agreement, unless Schedule A sets forth specific provisions for equipment and services.

4. Rates and Payment. Agency shall pay the rates set forth in Schedule A, which is attached hereto and hereby made a part of this Agreement. Payment shall be in accordance with the terms and conditions of the Master Agreement, unless Schedule A sets forth specific provisions.
SCHEDULE A

TO THE
ELECTRONIC MONITORING SERVICE AGREEMENT – US COMMUNITIES
Master Agency Agreement ("Agreement")
between
BI INCORPORATED ("BI")
and
THE CITY OF DAYTON OHIO ("Agency")

Pursuant to Master Agreement No. 00003588 (formerly 201844994), the cost to Agency for the services rendered by BI shall be as follows:

Service – Standard Automated

LOC8 XT SERVICE VOLUME PRICING AND ADDITIONAL SERVICES:

OPTION A: LOC8 XT WITH 1.30.W5.C0.ZX SERVICE:

LOC8 - GPS Collection Rate once 1 per minute, Data Transmission every 30 minutes, Wi-Fi Locate every 5 minutes (If GPS not found), no Cell Tower Locate (If GPS not found), with Data Transmission at Zone Crossing.

<table>
<thead>
<tr>
<th>Unit Quantity</th>
<th>Rental/Spare Charge Per Unit/Per Day</th>
<th>Monitoring Service Charge Per Unit/Per Active Day</th>
<th>Total Charge Per Unit/Per Active Day</th>
</tr>
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<tbody>
<tr>
<td>1 - 100</td>
<td>$2.30</td>
<td>$1.35</td>
<td>$3.65</td>
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<td>101 - 200</td>
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<tr>
<td>201 - 500</td>
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</tr>
<tr>
<td>501+</td>
<td>$2.15</td>
<td>$1.10</td>
<td>$3.25</td>
</tr>
</tbody>
</table>

OPTION B: LOC8 XT WITH 1.240.W5.C0.ZX SERVICE:

LOC8 - GPS Collection Rate once 1 per minute, Data Transmission every 240 minutes, Wi-Fi Locate every 5 minutes (If GPS not found), no Cell Tower Locate (If GPS not found), with Data Transmission at Zone Crossing.

<table>
<thead>
<tr>
<th>Unit Quantity</th>
<th>Rental/Spare Charge Per Unit/Per Day</th>
<th>Monitoring Service Charge Per Unit/Per Active Day</th>
<th>Total Charge Per Unit/Per Active Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 - 100</td>
<td>$2.30</td>
<td>$1.35</td>
<td>$3.65</td>
</tr>
<tr>
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<td>$3.45</td>
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<tr>
<td>201 - 500</td>
<td>$2.15</td>
<td>$1.10</td>
<td>$3.25</td>
</tr>
<tr>
<td>501+</td>
<td>$2.15</td>
<td>$1.10</td>
<td>$3.25</td>
</tr>
</tbody>
</table>
ADDITIONAL SERVICES:

Thirty Percent (30%) LOC8 XT Unit No-charge Spares: Each month during the term of the Agreement, Agency is entitled to keep a quantity of LOC8 XT units equal to, but not to exceed, 30% of that month’s average number of active Units per day in its possession at no charge (not subject to the Rental Charge while not in use). For any inactive LOC8 XT Units in excess of the 30% allowance, Agency will incur a spare charge per unit per day based on the applicable tier charge for Rental/Spare Charge per Unit/Per Day listed in the table above. Following execution of this Agreement, Agency will be granted a sixty (60) day ramp-up period before billing of spares will commence.

No LOC8 XT Unit Loss or Damage: Agency is not entitled to a loss or damage allowance. Agency will be responsible for all costs related to lost, stolen or damaged LOC8 XT Equipment.

Replacement costs: LOC8 XT Tracking – $1,950.00 each; LOC8 XT Beacon - $250.00 each.

GENERAL TERMS:

Freight. BI will pay for the cost of shipping Units and other Equipment, Supplies and accessories to and from Agency via ground delivery. Agency may request shipping methods other than ground delivery, in which event Agency will pay for the additional cost of such alternative shipping method.
From 3470 - Water/Environmental Protection
Supplier, Vendor, Company, Individual
Name City of Riverside
Address 5200 Springfield Street, Suite 100
Riverside, Ohio 45431

Date December 29, 2021
Expense Type Contract Modification
Total Amount $191,441,000.00 (thru 12/31/2023)

Fund Source(s) Fund Code(s) Fund Amount(s)
2022 Water Enterprise 53997-3470-1271-55 $94,773.00
2023 Water Enterprise 53997-3470-1271-55 $96,668.00

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

Description
CITY OF RIVERSIDE SOURCE WATER PROTECTION AGREEMENT
SECOND AMENDMENT

The Department of Water requests permission to enter into a Second Amendment to the Agreement for Professional Services with the City of Riverside, in the amount of $191,441.00 for technical and economic development services in association with the City of Dayton’s Multi-Jurisdictional Source Water Protection Program. These efforts are essential for the continued protection of the region’s drinking water supply.

The original Agreement was approved on January 29, 2020 in the amount of $184,008.00. The First Amendment was approved on February 3, 2021 and increased the contract amount to $271,008.00. This Second Amendment will increase the contract amount to $462,449.00, an increase of $191,441.00, and extend the term to December 31, 2023.

The Second Amendment is being funded using the 2022 and 2023 Wellfield Protection Funds as approved by the Source Water Protection Board. Any unused amount will remain in the Source Water Protection Fund.

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

A Certificate of Funds in the amount of $94,773.00 for 2022 and a copy of the Second Amendment are attached.

Signatures/Approval

Division

Department

City Manager
FORM NO. MS-16

Approved by City Commission

Clerk

Date

Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

New Contract

Renewal Contract

Change Order

Contract Start Date 1/29/2020
Expiration Date 12/31/2023
Original Commission Approval $462,449.00
Initial Encumbrance $271,008.00
Remaining Commission Approval $191,441.00

Original CT/CF CT20-2516, CT21-2516
Increase Encumbrance $94,773.00
Decrease Encumbrance $-
Remaining Commission Approval $96,668.00

Required Documentation

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

Amount: $94,773.00
Fund Code 53997 - 3470 - 1271 - 55

Amount: 
Fund Code 

Vendor Name: City of Riverside
Vendor Address: 5200 Springfield Street, Suite 100 Riverside OH 45431
Federal ID: 31-6007853
Commodity Code: 94-648
Purpose: Second Amendment to the Professional Services Agreement services to assist the City of Riverside with the technical and economic development of the Source Water Protection Area.

Contact Person: Lisa Burton-Yates
Water / Water Engineering Department/Division 12/17/2021 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: 
Date: 12/21/2021

CF Prepared by: 
Date: 12/21/2021

October 18, 2011
SECOND AMENDMENT TO THE AGREEMENT FOR SOURCE WATER PROTECTION

This Second Amendment is dated this ___ day of __________, 2021 between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio ("City") and the City of Riverside, Ohio ("Contractor").

WITNESSETH:

WHEREAS, On January 29, 2020, the Commission of the City of Dayton approved an Agreement for Source Water Protection Services, (CT20-2516), ("Agreement") between the City and the Contractor; and

WHEREAS, On February 3, 2021, the Commission of the City of Dayton approved a First Amendment to the Agreement for Source Water Protection Services, (CT21-2516), ("Agreement") between the City and the Contractor; and

WHEREAS, The City desires additional services to reduce the risk of ground water contamination within the Source Water Protection Area.

NOW THEREFORE, in consideration of the foregoing, the parties hereby agree to renew and amend the Agreement as follows:

The City and the Contractor agree to amend the Agreement as follows:

Section 1. Article 1- Term of Contract shall be deleted in its entirety and replaced with the following language:

ARTICLE 1 – TERM OF CONTRACT

This Agreement shall commence on January 1, 2022, and it shall terminate upon expenditure of all funds provided herein or on December 31, 2023, whichever date is earlier. The Contractor and the City shall have the option to renew the contract for one (1) additional 24-month period, contingent upon satisfaction with the work, availability of funds and mutual agreement of both parties.

Section 2. Article 2. Services To Be Performed By Contractor, shall be deleted in its entirety and replaced with the following language.

ARTICLE 2 – SERVICES TO BE PERFORMED BY CONTRACTOR

Contractor shall provide all professional services necessary to complete the Services that are described in Attachment A and A1 Scope of Services, which is attached hereto and incorporated by reference.
Section 3. Article 3. Compensation shall be deleted in its entirety and replaced with the following language.

ARTICLE 3 – COMPENSATION shall be amended to include the following:

The total remuneration in this Agreement shall not exceed FOUR HUNDRED SIXTY-TWO THOUSAND FOUR HUNDRED FORTY-NINE DOLLARS AND ZERO CENTS ($462,449.00). The total compensation for years 2022 and 2023 shall not exceed the amounts set forth in Attachment B1, which is attached hereto and incorporated herein.

1. The City and Contractor hereby agree that Attachment A1 and Attachment B1, which are attached hereto, shall be a part of the Agreement and incorporated as if fully rewritten therein.

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

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

CITY OF DAYTON, OHIO

________________________
City Manager

APPROVED AS TO FORM
AND CORRECTNESS:

11/23/2021

X
John Musto for
Dayton City Attorney

Signed by: Musto, John

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

________________________, 2021

Min./Bk. _________ Pg. _________

Clerk of the Commission

CITY OF RIVERSIDE, OHIO

By: _________________________________
Title: City Manager

APPROVED AS TO FORM AND CORRECTNESS:

Riverside Law Director
ATTACHMENT A1
TO
AGREEMENT FOR SOURCE WATER PROTECTION

City: City of Dayton, Ohio
Project: Source Water Protection Services
Contractor: City of Riverside, Ohio

SCOPE OF SERVICES

The City of Riverside will assist with the environmentally sound development of the Source Water Protection Area ("SWPA") and Water Resources Area ("WR") land within the City of Riverside through the administering of the Source Water Protection Program ("SWPP") requirements relating to but not limited to the following activities:

ECONOMIC DEVELOPMENT

1. Conduct retention and expansion visits with existing and new businesses in the SWPA and WR and ensure that businesses are knowledgeable with SWPP and Riverside requirements.
   a. Update the PHDMC and Fire Inspector within 30 days of an R&E site visits as necessary to ensure compliance with SWPP and Riverside requirements
   b. Include R&E visits in Annual report
2. Act as a liaison with, and educate, the commercial real estate community concerning the SWPP and financial incentives for groundwater friendly businesses in the SWPA and the WR. Distribute marketing, financial incentives, and informational materials aimed at retaining and recruiting new groundwater-friendly businesses in the SWPAs and the WR.
   a. Provide in annual report outlining who, what, when, where, and how the commercial real estate community was contacted and educated.
3. Attend and participate in at least one DEM / Board sponsored financial marketing event per year. For Board-funded projects in the SWPA and the WR, work with residents, businesses, contractors, PHDMC, DEM, and CityWide Development on the project to ensure all conditions on the funding are met. Make presentations as necessary.
   a. Include activates in annual report
4. Attend and participate in Multi-Jurisdictional Source Water Protection Program meetings.

ZONING & PERMITTING

5. Review permits to determine if a new business applicant is in the SWPA. Ensure compliance relative to zoning/occupancy permit requirements and with SWPP requirements, including but not limited to facilities who have received funding through the Risk Point Buy Down Program.
   a. Immediately inform PHDMC of new businesses so a SWPP inspection can be coordinated and scheduled.
b. Include list of new permitted businesses in annual report.

6. Attend Source Water Protection Board (Board) and Pre-Fund Board meetings. Work cooperatively with PHDMC to provide updates to the Board regarding the status of Board-funded projects in Riverside. Make presentations as necessary.
   a. Include in annual report.

7. Attend and participate in Multi-Jurisdictional meetings.

INSPECTION

8. Assist Public Health Dayton & Montgomery County (PHDMC) in identification of potential inventory sources in the new SWPAs and the WR once adopted by Riverside. Assist in identifying businesses and uses that are defined as prohibited with respect to the Zoning Ordinance. Maintain an active inventory of business sites and vacant sites located in the SWPA, including property owner and business owner. Inform PHDMC of any changes.
   a. Include changes in annual report

9. Riverside shall assist the PHDMC in taking steps to correct the non-compliance(s) found. Riverside will ensure that follow up documentation identifying deficiencies are sent to the non-compliant facility. Additional enforcement action will be pursued as necessary.
   a. Include any enforcement related correspondences/actions in annual report.

10. Inspect existing businesses in the SWPA to determine if businesses are non-compliant relative to zoning/occupancy permit requirements or with SWPP requirements, including but not limited to facilities who have received funding through the Risk Point Buy Down Program.

11. Conduct SWPP compliance visits with existing and new businesses in the SWPA and WR and ensure that businesses are knowledgeable with SWPP and Riverside requirements.
   a. Update PHDMC within 30 days of existing site visits and inform PHDMC immediately of new businesses so a SWPP inspection can be scheduled.

ADMINISTRATIVE

12. Assist Dayton, Division of Environmental Management (DEM) in obtaining access, including right-of-ways, to property outside the City of Dayton limits in order to install, maintain, and monitor Early Warning Monitoring Wells.
   a. Provide summary in annual report

13. Maintain an active inventory of business sites and vacant sites located in the SWPA, including property owner and business owner. Inform PHDMC of any changes.
   a. Provide changes of the list in annual report

14. Provide links to the County’s DRG and to DEM’s Blue-Gold Certification on Riverside’s website.
    a. Maintain Links on Website, Update links and/or add new links as required

15. Assist and participate in the annual Children's Groundwater Festival.
a. Will provide a minimum of one staff member

16. Attend and participate in meetings of the PROGRESS committee and publication of PROGRESS News. Compose an article for a minimum of one (1) issue of the PROGRESS News newsletter.

All the above activities require deliverables to PHDMC, and the Source Water Protection Board (Board), and DEM in the 2022 & 2023 Annual Report¹ (and Annual Summary). **Deliverables are in subsections a-b, above.** A Mid-Year Summary to update on the progress for all deliverables is to be submitted to Board as required in Work Program Deliverable below.

**WORK PROGRAM DELIVERABLES**

All the above activities require deliverables to PHDMC, and the Source Water Protection Board, and DEM **in the 2022 and 2023 Annual Reports¹ (and Annual Summaries) or in the following time frame:**

<table>
<thead>
<tr>
<th>DELIVERABLE</th>
<th>RESULTS INCLUDED IN REPORTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Summary report documenting consultation with Real Estate and/or Development Community and on distribution of marketing / financial incentive brochures, guides, and other informational materials</td>
<td>Annual Reports</td>
</tr>
<tr>
<td>2. Assist PHDMC in identifying businesses and prohibitions in the new WR and update Business List and Vacant Sites List</td>
<td>Update PHDMC as needed and incorporate into Annual reports</td>
</tr>
<tr>
<td>3. Update PHDMC regarding retention, expansion, and compliance visits to existing and new businesses</td>
<td>Update PHDMC within 30 days for existing and immediately of new. Incorporate list of companies into Annual Reports</td>
</tr>
<tr>
<td>4. Update efforts in assisting Dayton Dept. of Water in obtaining access for well installation, sampling, and maintenance</td>
<td>Quarterly and Annual Reports</td>
</tr>
<tr>
<td>5. List of non-compliant businesses and steps taken to mitigate issues</td>
<td>Include meetings, deficiency notices and compliance status in Annual Report</td>
</tr>
<tr>
<td>6. Summary of attendance and participation for Board, Financial Marketing Events, and Multi-Jurisdictional Meetings</td>
<td>Annual Reports</td>
</tr>
<tr>
<td>7. <strong>PROGRESS News</strong> articles</td>
<td>Include article in Annual Reports</td>
</tr>
<tr>
<td>8. Summary of participation in Children's Water Festival</td>
<td>Annual Reports</td>
</tr>
</tbody>
</table>
9. Provide links to the County’s DRG and to DEM’s Blue-Gold Certification on Riverside’s website | First Quarter 2022 and summarize activities in Annual Report. First Quarter 2023 and summarize activities in Annual Report.

10. Provide a mid-year update to Board regarding revision status of Zoning Code | Mid-year updates to Board and End of year summary in Annual Reports

*Draft Mid-Year Summaries, outlining activities performed through June of 2022 and June 2023 is due at the July Pre-Fund Board Meetings. The final Mid-Year Summaries are due at the 2022 and 2023 August Source Water Protection Board meetings.*

*Draft Annual Reports are due at the January 2023 and 2024 Pre-Fund Board meetings. The final Annual Reports are due at the February 2023 and 2024 Source Water Protection Board meetings.*
ATTACHMENT B1
TO
AGREEMENT FOR PROFESSIONAL SERVICES

City: City of Dayton, Ohio
Project: Source Water Protection Services
Contractor: City of Riverside

ESTIMATED BUDGET
2022 Source Water Protection Agreement

Year 23 – Calendar 2022

Personnel
Salary and Benefits $ 89,773.00

Operating Expenses
Mileage $ 2,000.00
Training $ 3,000.00

Total Amount for 2022 $ 94,773.00

ESTIMATED BUDGET
2023 Source Water Protection Agreement

Year 24 – Calendar 2023

Personnel
Salary and Benefits $ 91,668.00

Operating Expenses
Mileage $ 2,000.00
Supplies $ 3,000.00

Total Amount for 2023 $ 96,668.00

If the City and Contractor mutually agree to extend this Agreement for additional terms as described in ARTICLE I of this Agreement, a two (2) percent increase in compensation will be allowed for each year that that Agreement is extended.
# 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>1/29/2020</td>
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</tr>
<tr>
<td>Expiration Date</td>
<td>12/31/2021</td>
<td></td>
</tr>
<tr>
<td>Original Commission Approval</td>
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<tr>
<td>Initial Encumbrance</td>
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<td>Remaining Commission Approval</td>
<td>$92,915.00</td>
<td></td>
</tr>
</tbody>
</table>

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

### Amount Table

<table>
<thead>
<tr>
<th>Amount</th>
<th>Fund Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>$92,915.00</td>
<td>53997 - 3470 - 1271 - 55 -</td>
</tr>
</tbody>
</table>

### Vendor Information
- **Vendor Name:** City of Riverside
- **Vendor Address:** 5200 Springfield Street, Suite 100 Riverside OH 45431
- **Federal ID:** 31-6007853
- **Commodity Code:** 94-648
- **Purpose:** 2021 Encumbrance for the Professional Services Agreement services to assist the City of Riverside with the technical and economic development of the Source Water Protection Area.

### Contact Person
- **Lisa Burton-Yates**
- **Water / Water Engineering Department**
- **Date:** 4/12/2021

### Originating Department Director's Signature
- **Aaron S. Zonin**

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

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

**Finance Director Signature**
- **Date:** 4/14/2021

**CF Prepared by**
- **Date:** 4/14/2021
- **CF/CT Number:** CD21-2516

---

Finance Department

October 18, 2011
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

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<tr>
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<td>Required Documentation</td>
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<tr>
<td>1/29/2020</td>
<td>12/31/2021</td>
<td>X Initial City Manager's Report</td>
</tr>
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<td>Original Commission Approval</td>
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<td>$184,008.00</td>
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<tr>
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<td></td>
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<tr>
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</thead>
</table>

Attach additional pages for more FOAPALs

Vendor Name: City of Riverside

Vendor Address: 5200 Springfield Street, Suite 100 Riverside OH 45431

Federal ID: 31-6007853

Commodity Code: 94-648

Purpose:
First Amendment to the Professional Services Agreement services to assist the City of Riverside with the technical and economic development of the Source Water Protection Area.

Contact Person: Lisa Burton-Yates

Water / Water Engineering Department/Division Date: 1/22/2021

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: [Signature] Date: 1/24/21

CF Prepared by: [Signature] Date: 1/20/21

CF/CT Number: CT20-2518

Finance Department

October 18, 2011
City Manager's Report

From 3470 - Water/Environmental Protection
Supplier, Vendor, Company, Individual
Name City of Riverside
Address 5200 Springfield Street, Suite 100 Riverside, Ohio 45431

Date February 3, 2021
Expense Type Contract Modification
Total Amount $87,000.00 (thru 12/31/2021)

Fund Source(s) Fund Code(s) Fund Amount(s)
2021 Source Water Protection 53997-3470-1271-55 $87,000.00

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

Description

CITY OF RIVERSIDE SOURCE WATER PROTECTION AGREEMENT FIRST AMENDMENT

The Department of Water requests permission to enter into a First Amendment to the Agreement for Professional Services with the City of Riverside, in the amount of $87,000.00 for technical and economic development services in association with the City of Dayton's Multi-Jurisdictional Source Water Protection Program. These efforts are essential for the continued protection of the region's drinking water supply.

The original Agreement was approved on January 29, 2020 in the amount of $164,008.00. This First Amendment will increase the contract amount to $271,008.00.

The First Amendment has been reviewed by the Law Department as to form and correctness. Any unused amount will remain in the Source Water Protection Fund.

A Certificate of Funds and a copy of the First Amendment are attached.

Signatures/Approval

Division Michael Powell
Department City Manager
City Manager

Approved by City Commission
Rachelle Lavender
Clerk
February 3, 2021
Updated 8/2016
February 22, 2021

TO: City Commission Office
City Manager’s Office
Department of Finance

FROM: Michael Powell, Director
Department of Water

SUBJECT: Request for Signature – First Amendment to the Agreement for City of Riverside Source Water Protection

Attached please find four (4) copies of the First Amendment to the Agreement for the City of Riverside Source Water Protection referenced above with applicable consultant signatures. Authorization for execution of this Contract was granted by the City Commission on February 3, 2021 by City Manager’s Report #3. This Contract is ready for City of Dayton signatures.

Please return to Lisa Burton-Yates (x3729) in the Division of Water Engineering.

Enclosures (4)
FIRST AMENDMENT OF THE
AGREEMENT FOR SOURCE WATER PROTECTION

THIS FIRST AMENDMENT OF THE AGREEMENT FOR SOURCE WATER
PROTECTION is between the City of Dayton, Ohio, ("City") and the City of Riverside, Ohio
("Contractor").

WITNESSETH:

WHEREAS, On January 29, 2020, the Commission of the City of Dayton, Ohio, approved an
Agreement for Source Water Protection Services, CT20-2516, ("Agreement") between the City and the
Contractor; and,

WHEREAS, The City desires additional services and the Contractor is willing to perform such
services for additional compensation.

WHEREAS, The parties desire to amend the Agreement to amend the compensation amount on the
agreement to accommodate the City’s need for additional services.

NOW THEREFORE, the parties hereby agree to amend the Agreement as follows:

SECTION 1: Article 3, Compensation is deleted in its entirety and replaced with the following:

ARTICLE 3 - COMPENSATION
The total remuneration in this Agreement by the City shall not exceed TWO HUNDRED SEVENTY-ONE
THOUSAND EIGHT DOLLARS AND ZERO CENTS ($271,008.00). If the City and the Contractor
mutually agree to extend this Agreement for additional terms as described in ARTICLE 1 of this Agreement
is extended.

Contractor shall submit invoices for payment only for Services actually performed and/or provided.
Contractor’s invoices shall state the invoice period, total amount requested, and Services provided and/or
performed during the invoice period, as required by the Board.

SECTION 2. Except as amended by this First Amendment, all terms, covenants and conditions contained
within the Agreement remain in full force and effect.

(REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.)
IN WITNESS WHEREOF, the City and Contractor, each by a duly authorized representative and intending to be legally bound, have executed this First Amendment as of the date set forth below.

CITY OF DAYTON, OHIO

[Signature]
City Manager

CITY OF RIVERSIDE, OHIO

By C. Mark Carpenter
Title City Manager

APPROVED AS TO FORM AND CORRECTNESS:

11/25/2020

[Signature]
Amelia N. Blankenship for
City Attorney
Signed by: Blankenship, Amelia

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

February 3, 2020

[Signature]
Riverside Law Director

Min./BK. 1-16 Pg. 2/10

Clerk of the Commission
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>Contract Start Date</th>
<th>1/29/2020</th>
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<tbody>
<tr>
<td>Expiration Date</td>
<td>12/31/2021</td>
</tr>
<tr>
<td>Original Commission Approval</td>
<td>$184,008.00</td>
</tr>
<tr>
<td>Initial Encumbrance</td>
<td>$91,093.00</td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$92,915.00</td>
</tr>
</tbody>
</table>

| Original CT/CF | $ |
| Increase Encumbrance | $ |
| Decrease Encumbrance | $ |
| Remaining Commission Approval | $ |

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

| Amount: | $91,093.00 |
| Fund Code: | 53997 - 3470 - 1271 - 55 |

**Vendor Name:** City of Riverside

**Vendor Address:** 5200 Springfield Street, Suite 100 Riverside OH 45431

**Federal ID:** 31-6007863

**Commodity Code:** 94-648

**Purpose:** This Professional Services Agreement provides staff for services to assist the City of Riverside with the technical and economic development of the Source Water Protection Area.

**Contact Person:** Lisa Burton-Yates

**Department/Division:** Water / Water Engineering

**Date:** 1/18/2020

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

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

**Finance Director Signature:**

**Date:** 01/22/2020

**CF Prepared by:**

**Date:** 01/26/2020

**CF/CT Number:** C720-2514

Finance Department

October 18, 2011
CITY OF RIVERSIDE SOURCE WATER PROTECTION AGREEMENT

The Department of Water requests permission to enter into a Professional Services Contract with the City of Riverside, in the amount of $184,008.00 for technical and economic development services in association with the City of Dayton's Multi-Jurisdictional Source Water Protection Program. These efforts are essential for the continued protection of the region's drinking water supply.

The Professional Services Agreement is being funded using the Source Water Protection Funds as approved by the Source Water Protection Board on August 1, 2019.

The Agreement shall commence on January 29, 2020 and shall expire upon expenditure of all funds provided herein or on December 31, 2021. There is an option to renew for two (2) additional 24-month periods, contingent upon satisfaction with the work and availability of funds. Any unused amount will remain in the Source Water Protection Fund.

The Agreement has been reviewed by the Law Department as to form and correctness. A Certificate of Funds and a copy of the Agreement are attached.
AGREEMENT FOR SOURCE WATER PROTECTION

THIS AGREEMENT FOR SOURCE WATER PROTECTION ("Agreement") is between the City of Dayton, Ohio ("City"), a municipal corporation in and of the State of Ohio ("City") and the City of Riverside, Ohio ("Contractor").

WITNESSETH:

WHEREAS, The City has initiated the Source Water Protection Fund to reduce the risk of ground water contamination within the Source Water Protection Area and Water Resources Area; and,

WHEREAS, Contractor will assist with the environmentally sound development of Services of the Source Water Protection Area and Water Resources Area (WR) land within the City of Riverside; and,

WHEREAS, Contractor is qualified and available to provide the Services to the City

NOW THEREFORE, in consideration of the promises contained in this Agreement, the City and Contractor do mutually 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 December 31, 2021, whichever date is earlier. Upon the approval by the Multi-Jurisdictional Source Water Protection Board ("Board") and the availability of funds, the City and Contractor may mutually agree to extend this Agreement for two (2) additional terms of 24-months.

ARTICLE 2. SERVICES

A. Scope of Services
Contractor shall provide services to reduce the risk of ground water contamination within the Source Water Protection Area. The Contractor shall perform all services provided and outlined in Attachment A, Scope of Services ("Services"), which is attached hereto and incorporated herein.

B. Reporting Requirements
1. By July 27, 2020, Contractor shall submit to the City a summary of the Services provided under this Agreement.
3. By July 26, 2021, Contractor shall submit to the City a summary of Services provided under this Agreement.

ARTICLE 3. COMPENSATION
The total remuneration in this Agreement by the City shall not exceed ONE HUNDRED EIGHTY-FOUR THOUSAND AND EIGHT DOLLARS AND ZERO CENTS ($184,008.00). If the City and Contractor mutually agree to extend this Agreement for additional terms as described in ARTICLE 1 of this Agreement, a two (2) percent increase in compensation will be allowed for each year that that Agreement is extended.

The City will make payments in accordance with Attachment B, which is attached hereto and incorporated herein. Contractor shall submit invoices for payment only for Services actually performed
and/or provided. Contractor’s invoices shall state the invoice period, total amount requested, and Services provided and/or performed during the invoice period, as required by the Board.

ARTICLE 4. CITY’S RESPONSIBILITIES

The City will furnish to Contractor, at no cost or expense, all reports, records, data that might be necessary or useful to complete the Services required under this Agreement.

ARTICLE 5. STANDARD OF CARE

Contractor 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. Contractor shall have no liability for defects in the Services attributable to Contractor’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 Contractor’s failure to meet such standards and the City has notified Contractor in writing of any such error within that period, Contractor shall perform, at no additional cost to the City, such Services within the original Project as may be necessary to remedy such error.

ARTICLE 6. LIABILITY AND INDEMNIFICATION

The parties agree to release each other from any and all liability, which may be caused by or arise by the wrongful and/or negligent conduct of the parties’ respective employees and agents in the performance of the services, duties, and responsibilities in this Agreement. Notwithstanding, neither party waives any available immunities under law.

ARTICLE 7. INSURANCE

Contractor represents and warrants that it is a self-insured entity. As a result, Contractor shall be solely liable and responsible for any claims against it concerning or relating to the performance of any duties, obligations, or covenants or of this Agreement.

ARTICLE 8. OWNERSHIP OF DOCUMENTS & INTELLECTUAL PROPERTY

Document and reports prepared by Contractor as part of the Services shall become the sole and exclusive property of the City upon payment. However, Contractor shall have the unrestricted right to their use.

Contractor 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 Contractor.

ARTICLE 9. TERMINATION

In the event of substantial failure by Contractor in the performance of this Agreement, the City may terminate this Agreement by sending a written termination notice to Contractor. Contractor will have fifteen (15) calendar days from the date of the termination notice to cure or to submit a plan to cure that the City in its sole discretion finds acceptable.

The City may terminate or suspend performance of this Agreement for the City’s convenience upon thirty (30) days prior written notice to Contractor. In the event of termination by the City hereunder, the City will pay Contractor for Services actually provided up to the date of termination.
ARTICLE 10. RECORDS TO BE MAINTAINED

All costs and expenditures pertaining in whole or part to this Agreement for the work and Service performed under this Agreement shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other accounting documents, which shall be clearly identified and readily accessible to the City. At any time during normal business hours and as often as the City may deem necessary, Contractor shall make available to the City all of its records related to this Agreement. Contractor shall also permit the City to audit, examine, and make excerpts or transcripts from such records and to have audits made of all contracts, invoices, materials payrolls, personnel records, conditions of employment and other data pertaining in whole or part to matters covered by this Agreement.

ARTICLE 11. RETENTION OF RECORDS

Contractor shall retain all records pertinent to the expenditures incurred under this Agreement for a period of three (3) years after the termination of all work and services funded under this Agreement. Notwithstanding the above, if there is any action, including without limitation litigation, claims, audits, or negotiations that involves any of the records pertaining to this Agreement that commences prior to the expiration of the three-year period, then Contractor shall retain such records until completion of the action and resolution of all issues, or the expirations of the three-year period, whichever occurs later.

ARTICLE 12. STANDARD TERMS

A. DELAY IN PERFORMANCE

Neither the City nor Contractor 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, accesess, or services required to be provided by either the City or Contractor under this Agreement.

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

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.

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:

Contractor: City of Riverside
5200 Springfield Street, Suite 100
Riverside, Ohio 45431
Attention: Tamara Ennist

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

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

**D. 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, 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.

**E. WAIVER**

A waiver by the City or Contractor 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. 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.

**G. 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.

H. ASSIGNMENT

Contractor 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 Contractor 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 Contractor.

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.

The parties may mutually agree to extend the term of this Agreement to a later date. The Director of the Department of Water is authorized to extend the term of this Agreement for the City.

K. POLITICAL CONTRIBUTIONS

Contractor 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 Contractor. 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 THIS PAGE INTENTIONALLY LEFT BLANK.)
IN WITNESS WHEREOF, the City and Contractor, each by a duly authorized representative, have executed this Agreement on the date first written above.

CITY OF DAYTON, OHIO

[Signature]
City Manager

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]
City Attorney

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

January 29, 2019

[Signature]
Clerk of the Commission

CITY OF RIVERSIDE, OHIO

By: [Signature]
Title: City Manager

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]
Riverside Law Director
ATTACHMENT A
TO
AGREEMENT FOR PROFESSIONAL SERVICES

City: City of Dayton, Ohio
Project: Source Water Protection Services
Contractor: City of Riverside, Ohio

SCOPE OF SERVICES

The City of Riverside will assist with the environmentally sound development of the Source Water Protection Area ("SWPA") and Water Resources Area ("WR") land within the City of Riverside through the administering of the Source Water Protection Program ("SWPP") requirements relating to but not limited to the following activities:

ECONOMIC DEVELOPMENT

1. Conduct retention and expansion visits with existing and new businesses in the SWPA and WR and ensure that businesses are knowledgeable with SWPP and Riverside requirements.
   a. Update the PHDMC and Fire Inspector within 30 days of an R&E site visits as necessary to ensure compliance with SWPP and Riverside requirements
   b. Include R&E visits in Annual report

2. Act as a liaison with, and educate, the commercial real estate community concerning the SWPP and financial incentives for groundwater friendly businesses in the SWPA and the WR. Distribute marketing, financial incentives, and informational materials aimed at retaining and recruiting new groundwater-friendly businesses in the SWPAs and the WR.
   a. Provide in annual report outlining who, what, when, where, and how the commercial real estate community was contacted and educated.

3. Attend and participate in at least one DEM / Board sponsored financial marketing event per year. For Board-funded projects in the SWPA and the WR, work with residents, businesses, contractors, PHDMC, DEM, and CityWide Development on the project to ensure all conditions on the funding are met. Make presentations as necessary.
   a. Include activates in annual report

4. Attend and participate in Multi-Jurisdictional Source Water Protection Program meetings.

5. For 2020, support and work with PHDMC and DEM toward the development and enactment of an appropriate Zoning Code which reflects Dayton's Zoning Code, Water Ordinance and Resolution No. 6125-15.
   a. Have legislation approval of Riverside Council by November 2020 and include update to Board in Annual Report due to the Board in February 2021.

ZONING & PERMITTING

6. Review permits to determine if a new business applicant is in the SWPA. Ensure compliance relative to zoning/occupancy permit requirements and with SWPP requirements, including but not limited to facilities who have received funding through the Risk Point Buy Down Program.
   a. Immediately inform PHDMC of new businesses so a SWPP inspection can be coordinated and scheduled.
   b. Include list of new permitted businesses in annual report.
7. Attend Source Water Protection Board (Board) and Pre-Fund Board meetings. Work cooperatively with PHDMC to provide updates to the Board regarding the status of Board-funded projects in Riverside. Make presentations as necessary.
   a. Include in annual report.

8. Attend and participate in Multi-Jurisdictional meetings.

INSPECTION

9. Assist Public Health Dayton & Montgomery County (PHDMC) in identification of potential inventory sources in the new SWPAs and the WR once adopted by Riverside. Assist in identifying businesses and uses that are defined as prohibited with respect to the Zoning Ordinance. Maintain an active inventory of business sites and vacant sites located in the SWPA, including property owner and business owner. Inform PHDMC of any changes.
   a. Include changes in annual report

10. Riverside shall assist the PHDMC in taking steps to correct the non-compliance(s) found. Riverside will ensure that follow up documentation identifying deficiencies are sent to the non-compliant facility. Additional enforcement action will be pursued as necessary.
   a. Include any enforcement related correspondences/actions in annual report.

11. Inspect existing businesses in the SWPA to determine if businesses are non-compliant relative to zoning/occupancy permit requirements or with SWPP requirements, including but not limited to facilities who have received funding through the Risk Point Buy Down Program.

12. Conduct SWPP compliance visits with existing and new businesses in the SWPA and WR and ensure that businesses are knowledgeable with SWPP and Riverside requirements.
   a. Update PHDMC within 30 days of existing site visits and inform PHDMC immediately of new businesses so a SWPP inspection can be scheduled.

ADMINISTRATIVE

13. Assist Dayton, Division of Environmental Management (DEM) in obtaining access, including right-of-ways, to property outside the City of Dayton limits in order to install, maintain, and monitor Early Warning Monitoring Wells.
   a. Provide summary in annual report

14. Maintain an active inventory of business sites and vacant sites located in the SWPA, including property owner and business owner. Inform PHDMC of any changes.
   a. Provide changes of the list in annual report

15. Provide links to the County’s DRG and to DEM’s Blue-Gold Certification on Riverside’s website.
   a. Maintain Links on Website, Update links and/or add new links as required

16. Assist and participate in the annual Children’s Groundwater Festival.
   a. Will provide a minimum of one staff member

17. Attend and participate in meetings of the PROGRESS committee and publication of PROGRESS News. Compose an article for a minimum of one (1) issue of the PROGRESS News newsletter.

All the above activities require deliverables to PHDMC, and the Source Water Protection Board (Board), and DEM in the 2020 & 2021 Annual Report (and Annual Summary). Deliverables are in subsections a-b, above. A Mid-Year Summary to update on the progress for all deliverables is to be submitted to Board as required in Work Program Deliverable below.
WORK PROGRAM DELIVERABLES

All the above activities require deliverables to PHDMC, and the Source Water Protection Board, and DEM in the 2020 and 2021 Annual Reports¹ (and Annual Summaries) or in the following time frame:

<table>
<thead>
<tr>
<th>DELIVERABLE</th>
<th>RESULTS INCLUDED IN REPORTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Summary report documenting consultation with Real Estate and/or Development Community and on distribution of marketing / financial incentive brochures, guides, and other informational materials</td>
<td>Annual Reports</td>
</tr>
<tr>
<td>2. Assist PHDMC in identifying businesses and prohibitions in the new WR and update Business List and Vacant Sites List</td>
<td>Update PHDMC as needed and incorporate into Annual reports</td>
</tr>
<tr>
<td>3. Update PHDMC regarding retention, expansion, and compliance visits to existing and new businesses</td>
<td>Update PHDMC within 30 days for existing and immediately of new. Incorporate list of companies into Annual Reports</td>
</tr>
<tr>
<td>4. Update efforts in assisting Dayton Dept. of Water in obtaining access for well installation, sampling, and maintenance</td>
<td>Quarterly and Annual Reports</td>
</tr>
<tr>
<td>5. List of non-compliant businesses and steps taken to mitigate issues</td>
<td>Include meetings, deficiency notices and compliance status in Annual Report</td>
</tr>
<tr>
<td>6. Summary of attendance and participation for Board, Financial Marketing Events, and Multi-Jurisdictional Meetings</td>
<td>Annual Reports</td>
</tr>
<tr>
<td>7. PROGRESS News articles</td>
<td>Include article in Annual Reports</td>
</tr>
<tr>
<td>8. Summary of participation in Children’s Water Festival</td>
<td>Annual Reports</td>
</tr>
<tr>
<td>9. Provide links to the County’s DRG and to DEM’s Blue-Gold Certification on Riverside’s website</td>
<td>First Quarter 2020 and summarize activities in Annual Report. First Quarter 2021 and summarize activities in Annual Report.</td>
</tr>
<tr>
<td>10. Provide a mid-year update to Board regarding revision status of Zoning Code</td>
<td>Mid-year updates to Board and End of year summary in Annual Reports</td>
</tr>
</tbody>
</table>

¹Draft Mid-Year Summaries, outlining activities performed through June of 2020 and June 2021 is due at the July Pre-Fund Board Meetings. The final Mid-Year Summaries are due at the 2020 and 2021 August Source Water Protection Board meetings.

Draft Annual Reports are due at the January 2021 and 2022 Pre-Fund Board meetings. The final Annual Reports are due at the February 2021 and 2022 Source Water Protection Board meetings.
ATTACHMENT B
TO
AGREEMENT FOR PROFESSIONAL SERVICES

City: City of Dayton, Ohio
Project: Source Water Protection Services
Contractor: City of Riverside

ESTIMATED BUDGET
2020 Source Water Protection Agreement

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Operating Expenses

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Total Amount for 2018 $ 91,093.00

ESTIMATED BUDGET
2021 Source Water Protection Agreement

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Total Amount for 2019 $ 92,915.00

*If the City and Contractor mutually agree to extend this Agreement for additional terms as described in ARTICLE 1 of this Agreement, a two (2) percent increase in compensation will be allowed for each year that that Agreement is extended.*
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

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Fund Code: 53997 - 3470 - 1271 - 55 -

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Vendor Name: City of Riverside
Vendor Address: 5200 Springfield Street, Suite 100 Riverside OH 45431
Federal ID: 31-8007853
Commodity Code: 94-648
Purpose: First Amendment to the Professional Services Agreement services to assist the City of Riverside with the technical and economic development of the Source Water Protection Area.

Contact Person: Lisa Burton-Yates
Water / Water Engineering Department/Division 1/22/2021
Originating Department Director's Signature: Michael Powell

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: 1/24/21
Finance Department
CF Prepared by: [Signature] Date: 1/29/21 CF/CT Number: CT21-2516

October 10, 2021
COMMUNITY DEVELOPMENT BLOCK GRANT SUBRECIPIENT AGREEMENT COUNTY CORP

The Department of Planning, Neighborhoods and Development requests approval to enter into an Agreement with County Corp in the amount of $100,000.00, to administer the Emergency Repair and Accessibility Program. These funds will provide home repairs and accessibility modifications for homeowners in the City of Dayton. Home repairs will include the repair or replacement of a housing component that poses a threat to the health and safety of the household or structure. Accessibility modifications or improvements will include housing modifications that eliminate barriers for an occupant who demonstrates mobility impairments.

This agreement shall commence upon execution by the City and it shall expire December 31, 2022. This agreement is funded with 2016 and 2021 Community Development Block Grant (CDBG) funding.

This agreement has been reviewed by the Law Department as to form and correctness.

A Certificate of Funds and a copy of the Agreement are attached.
"2021 CM Report- County Corp Emergency Home Repair Accessibility Program" History

- Document created by Ashley Hatton (ashley.hatton@daytonohio.gov)
  2021-12-17 - 1:46:42 PM GMT - IP address: 198.30.33.2

- Document emailed to Chris Lipson (chris.lipson@daytonohio.gov) for signature
  2021-12-17 - 1:47:06 PM GMT

- Email viewed by Chris Lipson (chris.lipson@daytonohio.gov)
  2021-12-17 - 1:49:02 PM GMT - IP address: 198.30.33.2

- Document e-signed by Chris Lipson (chris.lipson@daytonohio.gov)
  Signature Date: 2021-12-17 - 1:50:04 PM GMT - Time Source: server - IP address: 198.30.33.2

- Document emailed to Todd Kinskey (todd.kinskey@daytonohio.gov) for signature
  2021-12-17 - 1:50:05 PM GMT

- Email viewed by Todd Kinskey (todd.kinskey@daytonohio.gov)
  2021-12-17 - 1:58:19 PM GMT - IP address: 74.83.54.61

- Document e-signed by Todd Kinskey (todd.kinskey@daytonohio.gov)
  Signature Date: 2021-12-17 - 1:58:44 PM GMT - Time Source: server - IP address: 74.83.54.61

- Agreement completed.
  2021-12-17 - 1:58:44 PM GMT
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

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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

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Attach additional pages for more FOAPALS

Vendor Name: County Corp
Vendor Address: 130 W. Second Street, Suite 1420 Dayton OH 45402
Federal ID: 310978908
Commodity Code: 96199
Purpose: County Corp will administer the Emergency Repair and Accessibility Program to provide home repairs and accessibility modifications for LMI homeowners in the City of Dayton.
Contact Person: Ashley Hatton X3696 Planning, Neighborhoods & Developmer Department/Division 12/16/2021 Date
Originating Department Director's Signature:

SECTION II - to be completed by the Finance Department

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

Finance Director Signature 12/24/2021
CF Prepared by 12/17/2021
"2021 CDBG County Corp-Emergency Home Repair Accessibility Program" History

Document created by Ashley Hatton (ashley.hatton@daytonohio.gov)
2021-12-17 - 1:43:44 PM GMT - IP address: 198.30.33.2

Document emailed to Todd Kinskey (todd.kinskey@daytonohio.gov) for signature
2021-12-17 - 1:44:06 PM GMT

Email viewed by Todd Kinskey (todd.kinskey@daytonohio.gov)
2021-12-17 - 1:48:01 PM GMT - IP address: 74.83.54.61

Document e-signed by Todd Kinskey (todd.kinskey@daytonohio.gov)
Signature Date: 2021-12-17 - 1:48:17 PM GMT - Time Source: server - IP address: 74.83.54.61

Agreement completed.
2021-12-17 - 1:48:17 PM GMT
CDBG SUBRECIPIENT AGREEMENT
COUNTY CORP
EMERGENCY REPAIR AND ACCESSIBILITY PROGRAM
CFDA 14.218

THIS AGREEMENT, entered into this _____ day of _____________, 2021, is between the
CITY OF DAYTON, a municipal corporation in and of the State of Ohio (hereinafter called “City”) and
COUNTY CORP, a not-for-profit corporation organized under the laws of the State of Ohio (hereinafter
called “Subrecipient”).

WITNESSETH, THAT:

WHEREAS, the City is a grantee of funds from the United States Department of Housing and
Urban Development, hereinafter referred to as “HUD,” under Title I of the Housing and Community
Development Act of 1974, as amended, Public Law 93-383, responsible for the development,
implementation, administration, and evaluation of HUD’s Community Development Block Grant,
hereinafter referred to as “CDBG,” Program in Dayton; and

WHEREAS, the City has delegated to the Subrecipient the responsibility of rendering housing
repair and accessibility modification services through the provisions of the CDBG program; and,

WHEREAS, the program set forth herein will meet one of the Community Development Block
Grant (hereinafter referred to as “CDBG”) program’s national objectives, as defined in 24 Code of
Federal Regulations (“CFR”), Part 570.208, which include 1) to benefit low/moderate income persons; 2)
to aid in the prevention or elimination of slum and blight; and 3) to meet community development needs
having a particular urgency; and

WHEREAS, the parties desire to enter into this Agreement to assist the Subrecipient with funds
to render housing repair and accessibility modification services for CDBG eligible households; and

WHEREAS, the Subrecipient possesses statutory authority and management capability necessary
to assist the City in the execution of its responsibilities as a CDBG grantee and has been determined by
the City to be the most appropriate party to assume the primary administration of an activity described as
“Emergency Repair and Accessibility Program” under the CDBG program in the 2016 and 2021 Action
Plans for the City of Dayton and Dayton-Kettering HOME Consortium, Grant Numbers B-16-MC-39-

NOW, THEREFORE, for the consideration of the mutual promises hereinafter set forth, City
and Subrecipient agree as follows:

ARTICLE 1. DEFINITIONS

A. “Program Funds” shall mean any funds disbursed to the Subrecipient by the City from the CDBG
Program under this agreement.
B. “Program Income” is income received by the Subrecipient directly generated from the use of
CDBG funds.
C. “CDBG Program Funds” shall mean funding received by the City from HUD under the City of
Dayton’s CDBG Program.
D. “Contract Period” shall mean the effective date of this agreement and time given for performance.
E. “Project Activity” shall mean the activity therein described in Exhibit A – Scope of Services - of
this Agreement.
F. “Moderate, Low, and Very Low Income” shall mean 80% or less, 50% or less, and 30% or less — respectively — of the area median income as defined by HUD for the current Agreement period.

ARTICLE 2. PURPOSE
The purpose of this Agreement is to provide funding for project activities approved by the City under the CDBG Program for Program Years 2016 and 2021 as described in Exhibit A – Scope of Services. Project accomplishments will be reported in the 2021 and 2022 Consolidated Annual Performance Evaluation Reports (CAPERS). Project activities, tasks, and budget are included in Exhibits B – Program Budget, C – CDBG Program Monitoring Schedule, and D – Quarterly and Cumulative Reports.

All activities authorized by this Agreement will be performed in accordance with the services set forth in Exhibit A, the budget set forth in Exhibit B, the program monitoring schedule set forth in Exhibit C, and the conditions, assurances, and requirements set forth in the HUD CDBG Program regulations as detailed in Exhibit A. Subrecipient further agrees that it will notify the City prior to undertaking any activity or authorizing any expenditure that is not clearly consistent with the terms of this Agreement and its appendices and/or with the conditions, assurances, and requirements of the HUD CDBG Program and that no such activity or expenditure of a questionable nature shall be authorized without prior approval of the City.

ARTICLE 3. SCOPE OF SERVICES
Subrecipient shall provide the work and services, in a manner satisfactory to the City and consistent with any standards required as a condition of providing these funds. Subrecipient hereby agrees to use CDBG funds made available to the Emergency Repair and Accessibility Program (“Program”) for the purpose of home repairs and accessibility modifications to low-income homeowners as more fully described in Exhibit A - Scope of Services, which is attached hereto and incorporated herein.

ARTICLE 4. TERM OF CONTRACT
This Agreement shall commence upon execution by the City, and shall be undertaken and completed in such sequence as to assure its expeditious completion in light of the purposes of this Agreement; but in any event, all of the work and services required herein shall be completed and this Agreement shall terminate on December 31, 2022.

ARTICLE 5. GRANT OF FUNDS AND PAYMENT
The City shall make available to Subrecipient the City’s 2016 and 2018 funds, in the amount of ONE HUNDRED THOUSAND DOLLARS AND ZERO CENTS ($100,000.00) for the work and services to be provided by subrecipient for the Program, pursuant to this Agreement. Draws for the payment of eligible expenses shall be made against the line item budgets specified in Exhibit B – Program Budget, which is attached hereto and incorporated herein, and in accordance with performance. Expenses for general administration shall also be paid against the line item budget specified in Exhibit B and in accordance with performance. Any indirect costs charged must be consistent with the conditions of Article 8 (C) (2) - of this Agreement. Any amendments to the budget must be approved in writing by both the City and Subrecipient.

Expenditures between execution of this agreement and December 31, 2022, are eligible for reimbursement. Payments may be contingent upon certification of Subrecipient’s financial management system in accordance with the standards specified in 2 CFR Part 200, Subparts D & E.

ARTICLE 6. GENERAL CONDITIONS

A. Compliance
1. Subrecipient agrees that the HUD regulations set forth in 24 CFR Part 570 and 2 CFR Part 200 are applicable to the grant funds it receives pursuant to this Agreement.

2. Subrecipient agrees that the work and services authorized by this Agreement shall be performed in accordance with any and all applicable local, state, and federal regulations, directives, or guidelines.

3. Subrecipient agrees to prohibit the use of federal funds for lobbying in compliance with the following:

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

   (b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal agreement, grant, loan or cooperative agreement, subrecipient shall notify the City, and complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

4. Subrecipient shall include the requirements of this Subsection A in award documents for all sub-awards at all times (including sub-contracts, sub-grants, and Agreements) and require that all sub-award recipients disclose the same accordingly.

B. "Independent Contractor"

By executing this Agreement, Subrecipient acknowledges and agrees that it will be providing services to the City as an "independent contractor." As an independent contractor for the City, Subrecipient shall be prohibited from representing or allowing others to construe the parties’ relationship in a manner inconsistent with this provision. Subrecipient shall have no authority to assume or create any obligations 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 person retained or hired by Consultant to perform duties and responsibilities under this Agreement are not the City employees, and therefore, such persons will not be entitled to, nor will they make a claim for, any of the emoluments of employment with the City of Dayton. Further, Consultant will 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 further acknowledges and agrees that none of his employees are public employee for the purpose of membership and/or participation in the Ohio Public Employees Retirement System (OPERS).

C. Indemnification
Subrecipient agrees to defend, indemnify and hold harmless the City, its elected officials, officers, employees and agents from and against legal liability for all claims, losses, damages, and expenses (including reasonable attorneys' fees) 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 Subrecipient or its employees, agents, Subrecipient(s), subcontractor(s), and representatives. Further, in the event that Subrecipient violates any CDBG rule, regulation, grant requirement or law governing the use and expenditure of CDBG funds, Subrecipient shall assume full and complete responsibility for said violation(s), including payment of the penalty imposed or re-payment of improperly expended funds, and shall defend, indemnify and hold harmless the City, its elected officials, officers, agents, and employees.

D. Workers' Compensation

Subrecipient shall provide Workers' Compensation Insurance Coverage for all its employees' invoices in the performance of this Agreement.

E. Insurance and Bonding

Subrecipient shall carry sufficient insurance coverage to protect Agreement assets from loss due to theft, fraud and/or undue physical damage, and, at a minimum, shall purchase a blanket fidelity bond covering all employees in an amount equal to at least ONE HUNDRED THOUSAND DOLLARS AND ZERO CENTS ($100,000.00). Subrecipient shall comply with the bonding and insurance requirements of 2 CFR Part 200, Subpart D.

F. Grantor Recognition

Subrecipient shall ensure recognition of the grantors, the City and the CDBG program, in providing services through this Agreement. All activities, facilities, and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, Subrecipient will include a reference to the support provided in all publications made possible with funds furnished under this Agreement.

G. Amendments

The City or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, are executed in writing, signed by a duly authorized representative for each party, approved by City's Director of the Department of Planning, Neighborhoods and Development or designee, and, if applicable or required, approved by the City Manager and the Commission of the City of Dayton. Such amendments shall not invalidate this Agreement, nor relieve or release the City or Subrecipient from its obligations under this Agreement.

The City may, in its discretion, amend this Agreement to conform with federal, state, or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both the City and Subrecipient.

H. Suspension or Termination
In accordance with 2 CFR 200.338-200.342, the City may suspend or terminate this Agreement if Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to,) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;

2. Failure, for any reason, of Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;

3. Ineffective or improper use of funds provided under this Agreement;

4. Submission by Subrecipient to the City reports that are incorrect or incomplete in any material respect.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the City or Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the City determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the City may terminate the award in its entirety.

I. Political Contributions

Subrecipient affirms and certifies that it is in compliance with Ohio Revised Code §3517.13 limiting political contributions.

**ARTICLE 7. CONTACTS**
All communications or notices required or permitted under this Agreement, including invoices for payment, shall be sufficient if sent to the City or Subrecipient addressed as follows:

**To City:**
City of Dayton, Ohio
Department of Planning, Neighborhoods & Development
101 West Third Street
Dayton, Ohio 45402
Attn: Ashley Hatton
(937) 333-3696
ashley.hatton@daytonohio.gov

**To Subrecipient:**
County Corp
130 W. Second Street, Suite 1420
Dayton, OH 45402
Attn: Kimetta Parker
(937) 531-7050
kparker@countycorp.com

Nothing contained in this subsection shall be construed to restrict the transmission of routine communications between representatives of the City and Subrecipient.
ARTICLE 8. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

Subrecipient agrees to comply with 2 CFR Part 200 Subparts, D and E, as applicable, and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

Subrecipient shall administer its program in conformance with 2 CFR Part 200 Subparts, D and E, as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

3. Financial Records

a. The City may require quarterly reports of all cash receipts, including Program Income, from all sources and disposition thereof, and such other financial statements, as the City deems appropriate. Quarterly reports and financial statements may continue to be required after termination of this Agreement until the collected Program Income has been expended.

b. All costs and expenditures shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement and shall be clearly identified and readily accessible to the City.

B. Documentation and Record Keeping

1. Records to be Maintained

Subrecipient shall maintain all records required by the federal regulations specified in 2 CFR Part 200 and 24 CFR 570.506, which are pertinent to the services and activities to be funded under this Agreement. Such records shall include, but not be limited to:

a. Records providing a full description of each activity undertaken;

b. Records providing a full description and reporting of all accomplishments by County Corp between execution of this agreement and December 31, 2022, regardless of program.

c. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;

d. Records required to determine the eligibility of activities;
e. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;

f. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;

g. Financial records are required by 24 CFR 570.502, and 2 CFR Part 200; and

h. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

2. Client Data
Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to City monitors or their designees for review upon request.

3. Retention of Records and Documentation
The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the submission of the City’s Annual Performance and Evaluation Report to HUD in which the activities assisted under the Agreement are reported on for the final time.

Within thirty (30) days of the expiration or conclusion of the Agreement, the Subrecipient shall provide the City with full and complete copies of all program files and records associated with the Agreement. Additionally, copies of all files and records pertaining to federal funding contracted through the City shall be provided to the City should the Subrecipient cease operations.

Notwithstanding the above, if there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

4. Disclosure
Subrecipient understands that applicant information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of City's or Subrecipient's responsibilities with respect to work or services to be provided under this Agreement, is prohibited by federal law, unless written consent is obtained from such person receiving service, and in the case of a minor, that of a responsible parent/guardian or otherwise required by law or court order.

5. Close-Outs
Subrecipient's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, Program Income balances, and accounts receivable to City), and determining the custodianship of records. Notwithstanding the
foregoing, the terms of this Agreement shall remain in effect during any period that Subrecipient has control over CDBG funds, including Program Income.

6. Audits, Monitoring, and Evaluation
All Subrecipient records with respect to any matters covered by this Agreement shall be made available to City or the Federal Government, or their designees or agents, at any time during normal business hours, as often as City or Federal Government deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data and records. Any deficiencies noted in audit reports must be fully cleared by Subrecipient within thirty (30) days after notice thereof. Failure of Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. Subrecipient hereby agrees to have an annual audit conducted in accordance with current City policy concerning subrecipient audits. Subrecipient shall also comply with 2 CFR Part 200, Subpart F. Upon completion, such audits shall be made available for public inspection.

Subrecipient shall allow City to conduct on-site monitoring, tests, and inspections at such time as proposed in a written notification requesting a monitoring visit. Subrecipient shall provide to City such statements, records, reports, and other information as City may request at the time of scheduled monitoring visits and in such format and detail, as City shall specify.

7. Property Records
Subrecipient shall maintain, as may be applicable, real property inventory records, which clearly identify properties purchased, improved, or sold. Properties retained shall continue to meet eligibility criteria and shall conform to the “changes in use” restrictions specified in 24 CFR 560.503 (b) (8) and 2 CFR Part 200, as applicable.

C. Reporting Procedures

1. Program Income
Subrecipient shall report no less than monthly all “Program Income,” as defined at 24 CFR Part 570.500(a), generated by activities carried out with CDBG funds made available under this Agreement. The use of Program Income by Subrecipient shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, Subrecipient may use such Program Income during the Agreement term for activities permitted under this Agreement, and shall reduce requests for additional funds by the amount of any such Program Income balance on-hand. All unused Program Income shall be returned to City at the end of the term of this Agreement. Any interest earned on cash advances from the City or from funds maintained in revolving loan accounts are not Program Income and shall be remitted promptly to City.

2. Indirect Costs
If indirect costs are charged, subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient’s share of administrative cost in accordance with 2 CFR Part 200 and shall submit such plan to the City for approval, in a form specified by the City.

3. Payment Procedures
The City will pay to Subrecipient funds available under this Agreement based upon information submitted by Subrecipient and consistent with any approved budget and City
policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the City in accordance with advance fund and Program Income balances available in Subrecipient accounts. In addition, the City reserves the right to liquidate funds available under this contract for costs incurred by the City on behalf of Subrecipient.

4. Progress Reports
Subrecipient shall submit regular Progress Reports to City in the form, content, and frequency, as required by City and specified in Exhibit A – Scope of Services.

D. Procurement

1. Compliance
Subrecipient shall comply with current City policies concerning the purchase of equipment, goods, services, and shall maintain inventory records of all non-expendable personal property, as defined by such City policies as may be procured with the CDBG funds provided herein. All program assets (unexpended Program Income, property, equipment, etc.) shall revert to City upon termination or expiration of this Agreement.

Subrecipient shall procure all materials, property, or services in accordance with the requirements of 2 CFR 200, Subpart D, Procurement, and shall subsequently follow Property Management Standards as modified by 2 CFR 200, Subpart D, covering utilization and disposal of property.

2. OMB Standards
Unless specified otherwise within this agreement, Subrecipient shall procure all materials, property, or services in accordance with the requirements of 2 CFR 200.317-200.326.

3. Travel
Subrecipient shall obtain written approval from the City for any travel outside the metropolitan area with funds provided under this Agreement.

E. Use and Reversion of Assets
The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, 570.504, and 570.505, as applicable, which include but are not limited to the following:

1. Subrecipient shall transfer to the City any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.

2. Real property under Subrecipient’s control that was acquired or improved, in whole or in part, with funds under this Agreement shall be used to meet one of the CDBG National Objectives pursuant to 2 CFR 200.310-200.316 until five (5) years after expiration of this Agreement. If Subrecipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, Subrecipient shall pay the City an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute
Program Income to the City. Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five (5) year period.

3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be Program Income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by subrecipient for activities under this Agreement shall be (a) transferred to the City for the CDBG program or (b) retained after compensating the City an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment.

ARTICLE 9. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance
Subrecipient agrees to comply with all local and state civil rights statues, rules, regulations and ordinances, and with Title VI of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968, as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974, as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246, as amended by Executive Orders 11375, 11478, 12107, and 12086.

2. Nondiscrimination
Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 270.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

Subrecipient 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 determination, 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, Ohio, constitutes a material condition of this Agreement as fully as if specifically rewritten herein and that failure of Subrecipient to comply therewith shall constitute a breach of this Agreement entitling City, at its option, to terminate this Agreement.

3. Land Covenants
This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City and the United States are beneficiaries of and
entitled to enforce such covenants. Subrecipient, in undertaking its obligation to carry out
the program assisted hereunder, agrees to take such measures as are necessary to enforce
such covenant, and will not itself so discriminate.

4. **Section 504**
Subrecipient shall comply with any federal regulations or orders issued pursuant to
compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which
prohibits discrimination against the disabled in any federally assisted program. The City
shall provide Subrecipient with any guidelines necessary for compliance with that portion
of the regulations in force during the term of this Agreement.

B. **Affirmative Action**

1. **Approved Plan**
Subrecipient agrees that it shall be committed to carry out, pursuant to the City's
specifications, an Affirmative Action Program keeping with the principles provided in the
President's Executive Order 11246 of September 24, 1966. The City shall provide
Affirmative Action guidelines to Subrecipient to assist in the formulation of such
program. Subrecipient shall submit a plan for an Affirmative Action Program for
approval prior to the award of funds. Subrecipient must also submit the proper letter of
certification from the Dayton Human Relations Council, which will serve as
documentation for their Affirmative Action Plan.

2. **Women and Minority-Owned Businesses**
Subrecipient will use its best efforts to afford small businesses, minority business
enterprises, and women’s business enterprises the maximum practicable opportunity to
participate in the performance of this Agreement. As used in this Agreement, the terms
“small business” means a business that meets the criteria set forth in Section 3(a) of the
Small Business Act, as amended (15 U.S.C. 632), and “minority and women's business
enterprise” means a business at least fifty-one (51) percent owned and controlled by
minority group members or women. For the purpose of this definition, “minority group
members” are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-
heritage Americans, Asian-Americans, and American Indians. Subrecipient may rely on
written representations by businesses regarding their status as minority and female
business enterprises in lieu of an independent investigation.

3. **Access to Records**
Subrecipient shall furnish and cause each of its own contractors or subcontractors to
furnish all information and reports required hereunder and will permit access to its books,
records, and accounts by City, HUD or its agent, or other authorized federal officials for
purposes of investigation to ascertain compliance with the rules, regulations and
provisions stated herein.

4. **Notifications**
Subrecipient will send to each labor union or representative of workers with which it has
a collective bargaining agreement or other contract of understanding, a notice, to be
provided by the agency contracting officer, advising the labor union or worker's
representative of Subrecipient's commitments hereunder, and shall post copies of the
notice in conspicuous places available to employees and applicants for employment.

Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

6. **Subcontract Provisions**
Subrecipient will include the provisions of this Paragraph’s Section A, Civil Rights, and Section B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subcontractors.

C. **Employment Restrictions**

1. **Prohibited Activity**
Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities, sectarian or inherently religious activities, lobbying, political patronage, or nepotism activities.

2. **Labor Standards**
Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. Subrecipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request.

Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of **TWO THOUSAND DOLLARS AND NO CENTS ($2,000.00)** for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve subrecipient of its obligation, if any, to require payment of the higher wage. Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

3. **“Section 3” Clause**
   a. **Compliance**
Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the federal financial assistance provided under this contract and binding upon the City, Subrecipient and any of Subrecipient’s subrecipients and subcontractors. Failure to fulfill these requirements shall subject the City, Subrecipient and any of Subrecipient’s subrecipients and
subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which federal assistance is provided. Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

Subrecipient agrees to comply with the “Section 3” requirements set forth above, and shall include the following language in all subcontracts executed for the program:

“The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this contract agree to comply with HUD’s regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

The contractor agrees to send to each labor organization or representative or workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the contractor’s commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent
the contractor’s obligations under 24 CFR Part 135.

Noncompliance with HUD’s regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract are subject to the provisions of Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).”

b. **HUD Section 3 Participation Goals**
   Developer agrees that the aspiration sub-contracting goals for certified HUD Section 3 certified business sub-contracting and hiring goals will be:

   Employment: Thirty percent (30%) of the aggregate number of new hires during a one year period of the project. (Example: A construction contractor hires 10 new workers. Three of the new workers should be Section 3 eligible persons.)

   Contracting: (a) At least 10 percent (10%) of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, construction, and other public construction with federal funds; and (b) At least three percent (3%) of the total dollar amount of all other, including professional services, covered Section 3 contracts to eligible Section 3 business concerns. HUD Section 3 companies can be found at [http://daytonhrc.org/business-technical-assistance/certification/](http://daytonhrc.org/business-technical-assistance/certification/)

c. **Notifications**
   Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

d. **Subcontracts**
   Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by City. Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135, and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. **Conduct**
1. **Assignability**
Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of City therefor; provided, however, that claims for money due or to become due to Subrecipient from City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to City.

2. **Subcontracts**
   a. **Approvals**

   Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the written consent of City prior to the execution of such agreement.

   b. **Monitoring**

   Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Evidence of noncompliance shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

   c. **Content**

   Subrecipient shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

   d. **Selection Process**

   Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to City along with documentation concerning the selection process.

3. **Hatch Act**
Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

4. **Conflict of Interest**
Subrecipient agrees to abide by the provisions of 24 CFR 84.42, 24 CFR 85.36, and 570.611, which include (but are not limited to) the following:

   a. Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by federal funds.
b. No employee, officer, or agent of subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.

c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a “covered person” includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, subrecipient, or any designated public agency.

5. **Lobbying**

Subrecipient hereby certifies that:

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

b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions; and

c. It will require that the language of Paragraph (d) of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly.

d. **Lobbying Certification**

This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, U.S.C. and 2 CFR 200.450. Any person who fails to file the required certification shall be subject to a civil penalty of not less than **TEN THOUSAND DOLLARS AND ZERO CENTS ($10,000.00)** and not more than **ONE HUNDRED THOUSAND DOLLARS AND ZERO CENTS ($100,000.00)** for each such failure.
6. Copyright
   If this contract results in any copyrightable material or inventions, the City and/or HUD reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. Religious Activities
   Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

ARTICLE 10. ENVIRONMENTAL CONDITIONS

A. Air and Water
   Subrecipient shall comply with the following requirements insofar as they apply to the performance of this Agreement:

   2. Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
   3. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR, Part 50, as amended.

B. Environmental Review
   Subrecipient shall comply with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, et seq.) as it is applied at 24 CFR Part 58, including any requirements that may be imposed by the City as a result of its responsibility for environmental review, decision-making, and action under NEPA Home. Subrecipient will submit a copy of an Environmental Review & Assessment for each project address to the City as required in 24 CFR Part 58.

   Work on a specific project address may not commence until the City of Dayton has given written notice to proceed. Requests for environmental review shall be submitted to the appropriate personnel as described in Exhibit C – Program Monitoring Schedule.

C. Flood Disaster Protection
   In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4001), Subrecipient shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the national flood insurance program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

D. Lead-Based Paint
   Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR,
Part 570.608 and 24 CFR, Part 35. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken.

ARTICLE 11. HISTORIC PRESERVATION
Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement. In general, this requires concurrence from the City and/or State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list. The City and/or State must take into account the effect of a project on any district, site, building, structure, or object listed in or found by the Secretary of the Interior, pursuant to 35 CFR Part 800, to be eligible for inclusion in the National Register of Historic Places, maintained by the National Park Service of the U. S. Department of the Interior, and must make every effort to eliminate or minimize any adverse effect on a historic property.

ARTICLE 12. SEVERABILITY
If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

ARTICLE 12. GOVERNING LAW & 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 suit regarding this Agreement must be brought in a court of competent jurisdiction in Montgomery County, Ohio.

ARTICLE 13. SECTION HEADINGS AND SUBHEADINGS
The section heading and subheading contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

ARTICLE 14. WAIVER
The City’s failure to act with respect to a breach by subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the City to exercise or enforce any right or provision shall not constitute a waiver or such right or provision.

ARTICLE 15. ENTIRE AGREEMENT
This Agreement constitutes the entire agreement between the City and subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the City and subrecipient with respect to this Agreement.
ARTICLE 16. REFERENCES TO LAW
All references to federal, state or local laws, regulations, 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.

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

CITY OF DAYTON, OHIO

________________________________________
City Manager

________________________________________
Date

COUNTY CORP

By: ____________________________________

Title: President

Date: Dec 17, 2021

APPROVED AS TO FORM AND CORRECTNESS:

12/16/2021

X John Musto for

City Attorney

Signed by: Musto, John

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

________________________________________, 2021

Min./Bk. _______ Page _____

_____________________________
Clerk of the Commission
EXHIBIT A
SCOPE OF SERVICES
COUNTY CORP EMERGENCY REPAIR AND ACCESSIBILITY PROGRAM

1. PROGRAM DESCRIPTION

Subrecipient will use all funds granted hereunder to operate the “Emergency Repair and Accessibility Program,” through December 31, 2022. The program will result in the repair of up to 10 households within the City of Dayton corporate limits who are at or below fifty percent (50%) of the Area Median Income (AMI).

County Corp will provide home repairs and accessibility modifications for homeowners in the City of Dayton. The home repair grants, with a maximum contribution of $10,000.00 per unit, will provide for the repair or replacement of a housing component that poses a threat to the health and safety of the household or structure. The accessibility grants, with a maximum contribution of $10,000.00 per unit, will provide housing modifications that eliminate barriers for an occupant who demonstrates mobility impairments.

Program Definitions
The services offered through the Home Repair and Accessibility Modification Program will include home repairs and accessibility modifications. The maximum cost per unit will be calculated by the direct costs associated with each unit, including materials, labor, and work by subcontractors, and the administrative costs added together. Below is a description of such repairs.

Home repairs are defined as improvements made to homes necessary to safeguard against danger to human life, health or safety, or to protect property from further structural damage. These repairs will bring the subject items up to local codes and standards. Home repair items include, but are not limited to, such items as: furnace/heating components; air conditioning when medically necessary; damaged or inoperable plumbing; damaged or inoperable hot water heater/tank; severely deteriorated, damaged, or leaking roof; deteriorated drain/waste/vent lines; inoperable or hazardous gas service or distribution lines; damaged or inoperable water service or distribution lines; inoperable or severely damaged windows and doors; hazardous or inoperable electrical systems and components; and damaged or hazardous stairs and stairways.

Accessibility modifications are defined as improvements made to homes of persons with disabilities to make the home more accessible. Improvements are designed to remove material and architectural barriers that restrict the mobility and accessibility of elderly and/or disabled persons. Accessibility modification items include, but are not limited to, such items as: installing grab bars/handrails; widening doorways, ramps, and showers; modifying commodes and vanities; and hazardous stairs or ramp replacement/repair.

2. COMMUNITY DEVELOPMENT OBJECTIVES

Subrecipient certifies that the activity (ies) carried out under this Agreement are allowable expenses under HCDA Section 105 (a) (4) and 24 CFR 570.202, and that the activity (ies) are a provision of homeowner rehabilitation, CDBG Matrix Code 14A (Rehab; Single-Unit Residential), benefitting low- and moderate-income (LMI) persons under the National Objective of Low/Mod Housing (LMH) Benefit. The program will maintain the supply and availability of safe, decent, and affordable housing for low- and moderate-income residents, improve the general interior and exterior conditions of the housing stock in the City, provide housing rehabilitation opportunities for low- and moderate-income residents of the City, increase the percentage of neighborhood residents who rate their neighborhood desirable, reduce the number of homeowners forced from their homes due to deteriorated housing and substandard living conditions, and
encourage private investment in the neighborhoods. The provision of homeowner rehabilitation is considered to address the LMH National Objective per 24 CFR 570.208 (a) (3).

3. **PROGRAM GUIDELINES**

The Subrecipient shall use the City of Dayton CDBG funds for implementation of a Homeowner Rehabilitation Program as articulated below, not to exceed **ONE HUNDRED THOUSAND DOLLARS AND ZERO CENTS ($100,000.00)**. The period will be through December 31, 2022 as contemplated in this agreement.

A. **Homeowner Rehabilitation Program**

1. The program provides the funding, labor, and materials necessary to correct substandard, unsanitary, and deteriorated conditions of low- and moderate-income owner-occupied residences as described in Exhibit A Section 1.

2. Only owner-occupied single family (one unit) residential structures are eligible to participate in the program.

3. Properties purchased by land contract are not eligible under this program unless the land contract documents have been properly recorded by the Montgomery County Recorder’s Office.

4. Properties in foreclosure are not eligible for funding under this program.

5. Property taxes must be current, or if not current, a payment plan must be in place with the Montgomery County Treasurer’s Office.

6. Eligible geographic areas for the program include the entire municipal corporation limits of the City of Dayton only.

7. Eligible beneficiaries of this program are homeowners within the City of Dayton.

8. Eligible beneficiaries of this program are households earning no more than fifty percent (50%) or less of median income for the area as determined annually by HUD with adjustments for family size, as illustrated below. New income limits will replace the limits listed below when issued, and will be made available by the City for the Subrecipient annually.

<table>
<thead>
<tr>
<th>Household Size</th>
<th>Moderate (50%) Income Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$26,500</td>
</tr>
<tr>
<td>2</td>
<td>$30,300</td>
</tr>
<tr>
<td>3</td>
<td>$34,100</td>
</tr>
<tr>
<td>4</td>
<td>$37,850</td>
</tr>
<tr>
<td>5</td>
<td>$40,900</td>
</tr>
<tr>
<td>6</td>
<td>$43,950</td>
</tr>
<tr>
<td>7</td>
<td>$46,950</td>
</tr>
<tr>
<td>8</td>
<td>$50,000</td>
</tr>
</tbody>
</table>

4. **OUTCOME MEASUREMENTS: PERFORMANCE AND OUTCOME MEASURES**
In accordance with U.S. Department of Housing and Urban Development (HUD) requirements, the City has implemented a performance measurement system that is based on an outcomes-based approach to funding projects. The City requires recipients of federal funds to assess the productivity and impact of their programs. This Performance and Outcome Measurement System will help to quantify the effectiveness of programs and establish clearly defined outcomes.

The City shall report outcomes-based accomplishments to HUD. The City therefore requires subrecipient to submit timely and consistent performance measurement reports that focus on establishing clearly articulated objectives, performance measures, outputs, and program outcomes (desired end results). The City shall review the reports to track progress, provide feedback, and when necessary, provide technical assistance. Program performance is also considered in the decision-making process for fund allocation. The Subrecipient agrees to submit the reports detailed in Section 10, Reporting Procedures.

5. **SUBRECIPIENT RESPONSIBILITIES**

The Subrecipient will be responsible for determination of household eligibility based on income, identification of target households, marketing the program, application intake and processing, development of rehabilitation/repair work specifications, preconstruction conferences, coordination of services for the completion of the repairs, inspection of rehabilitation work, compliance with all CDBG regulations, final inspection of repairs completed, client satisfaction survey, and preparation of reports to City as detailed in Section 10, Reporting Procedures and a displayed in Exhibit D - Quarterly and Cumulative Reports. Subrecipient will respond to all complaints regarding repairs performed by Subrecipient for one year from date of completion, and client satisfaction survey.

Funds will be used to address code violations, health and safety items, and incipient repair items as identified by Subrecipient. All repairs must be performed in accordance with local building code standards.

6. **BUDGET**

The program budget is attached to this document as Exhibit B – Program Budget.

7. **STAFFING**

Subrecipient shall assign the following staff as Key Personnel to the “Emergency Repair and Accessibility Program”:

<table>
<thead>
<tr>
<th>Staff Member Title</th>
<th>General Program Duties</th>
<th>Average Time Allocation</th>
</tr>
</thead>
</table>
| Kimetta Parker, Contract Development and Compliance Manager | This position manages the program budget and compliance, including:  
  - Application Intake and Qualifying applicants
  - Updating budget status
  - Reporting to City | 7 hours/week                                                  |
| Ben Deacon, Construction Manager         | This position oversees projects and determines scope of work, including:  
  - Performs inspections | 20 hours/week                                                 |
<table>
<thead>
<tr>
<th>Name</th>
<th>Responsibilities</th>
<th>Hours/week</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mike Brennaman</td>
<td>Writes specs&lt;br&gt;Manages bid process and oversees all job site activities</td>
<td>10</td>
</tr>
<tr>
<td>Courtney Schneider, Housing Program Manager</td>
<td>This position oversees projects and determines the scope of work, including:&lt;br&gt;• Performs inspections&lt;br&gt;• Writes specs&lt;br&gt;• Manages bid process and oversees all job site activities</td>
<td>5</td>
</tr>
<tr>
<td>David Falkner, Accounting Manager</td>
<td>This position assists with outreach and the application process, including:&lt;br&gt;• Client Outreach&lt;br&gt;• Application Intake&lt;br&gt;• Qualifying applicants</td>
<td>3</td>
</tr>
<tr>
<td>Oxana Makbrayd, Accounting Clerk</td>
<td>This position manages accounting duties, including:&lt;br&gt;• Invoicing&lt;br&gt;• Submitting supporting documents for invoices to the funder&lt;br&gt;• Other Accounting related tasks</td>
<td>3</td>
</tr>
<tr>
<td>Tracy Schultz, Controller</td>
<td>This position oversees all invoicing and accounting functions:&lt;br&gt;• Invoicing funder&lt;br&gt;• Submitting supporting documents for invoices to the funder&lt;br&gt;• Other Accounting related tasks</td>
<td>3</td>
</tr>
<tr>
<td>Casey Laughter, Housing Program Assistant</td>
<td>This position oversees Client Outreach and responsible for:&lt;br&gt;• Application Intake&lt;br&gt;• Qualifying applicants&lt;br&gt;• Assisting Construction Manager</td>
<td>10</td>
</tr>
</tbody>
</table>
This position is responsible for:

- Paying approved contractor invoices
- Managing Contractor Documents & Certifications
- Qualifying applicants as necessary

Any changes in the Key Personnel assigned, their general responsibilities, or their average time allocation under this project are subject to the prior approval of the City.

8. PAYMENT PROCEDURES

The City will reimburse Subrecipient for expenditures for the program and in accordance with the line-item budget set forth in Exhibit B – Program Budget. Subrecipient shall submit all invoices and supporting documentation to the City’s Department of Planning, Neighborhoods and Development. Subrecipient shall comply with the following requirements for the submission of requests for reimbursement:

A. Invoice Information

Subrecipient’s invoice shall contain the following:

1. City Contract Number
2. Invoice Number
3. Period Covered
4. Work Done/Accomplishments Summary, etc.
5. Written documentation verifying that weekly payroll reports were reviewed and comply with approved wage determination.
6. Total Amount Requested
7. List of Enclosed Documents
8. Agreement Funding Balance
9. Other information Subrecipient wishes to communicate to the City
10. Signature of Subrecipient’s Chief Financial Officer

B. Supporting Documentation

Subrecipient shall collect, maintain, and submit the following documentation and information with invoices for payment. For Project administration invoicing, the Subrecipient will include the number of hours worked on the program/project funded, and a summary of work performed by employee during the time for which payment was made. For supplies and materials invoicing, the documentation and
information shall include an invoice from vendor or company detailing the item(s)/services purchased and a copy of Contractor’s check showing that Subrecipient paid the vendor for goods/services.

Unless disputed or the City determines that there is insufficient documentation to substantiate the invoice, the City will tender payment to Subrecipient in a timely manner.

9. DOCUMENTATION AND RECORD KEEPING

In order to ensure that program participants and activities meet the program eligibility criteria, subrecipient must record the name, address, sex and age of homeowner, the number of people in the household, total household income, racial and ethnic data of household members, a description of work and services to be performed for homeowner, a signed agreement with homeowner, work specifications, and proof of payment to contractor(s).

The following financial records related to the payment of salaries and fringes for operational staff should be included in the program file if applicable:

A. Accounting journals and ledgers
B. Source documentation that costs were eligible and paid (invoices, purchase orders, cancelled checks, etc.)
C. Bank account records
D. Time sheets for personnel
E. Payroll records and reports
F. Documentation of other administrative costs charged
G. Financial reports
H. Audit files
I. Financial correspondence

Subrecipient will maintain case files, including the above information for a period of not less than four years after completion of the program and all affordability requirements. Subrecipient will maintain these and other documents and financial records in accordance with the requirements for record retention specified in Article 8 of the Agreement.

10. REPORTING PROCEDURES

The City will require timely and consistent reports to ensure that the program is proceeding according to the work program and in accordance with federal regulations. Reporting shall continue until expiration or termination of this Agreement. All reports shall be submitted to the Project Manager and will be retained for 5 years beyond the terms of the contract. The Sub-recipient agrees to submit the following reports.

A. Quarterly Progress Reports
Subrecipient agrees to submit on the fifteenth (15th) day of each quarter, beginning with one month after execution of this agreement, a written progress report covering the agreed upon objectives, activities, and expenditures of the previous quarter. The Quarterly Progress Report must detail, at a minimum, the following information per reporting period:

1. The number of repairs/modifications completed;
2. A brief summary of the repairs/modifications completed and the number of individuals served;
3. Total number of housing units improved, including the number improved through emergency repairs, for accessibility, with energy efficiency improvements, and newly constructed units;
4. The addresses of housing units improved;
5. The race/ethnicity and age for each household assisted;
6. The number of female-headed households;
7. The income level for each household assisted;
8. Lead paint status and remediation data.
9. Additional funding sources leveraged.

A copy of the Quarterly Report is included in Exhibit D – Quarterly and Cumulative Reports.

B. Cumulative Reports

The Subrecipient shall submit an annual Cumulative Report detailing the activities of the Subrecipient to the City no later than January 15, 2021 and January 15, 2022. A copy of the Cumulative Report is included in Exhibit D – Quarterly and Cumulative Reports.

Within 60 days after expiration or termination of this Agreement or within 60 days of submitting the final invoice, whichever comes first, Subrecipient shall submit an additional cumulative report to the City. This report shall be in a format approved by the City, and it shall detail all sources and uses of funds and describe Subrecipient’s activities and outcomes of the services provided throughout the course of the Agreement. This exhibit shall survive termination or expiration of this Agreement.

11. COMMUNICATIONS

All notices and correspondence regarding this Agreement and the program shall be submitted to the parties as specified in Article 7 of the Agreement.
## EXHIBIT B
### PROGRAM BUDGET

<table>
<thead>
<tr>
<th>County Corp Emergency Repair &amp; Accessibility Program</th>
<th>City CDBG</th>
<th>Private</th>
<th>Federal</th>
<th>State</th>
<th>Local</th>
<th>County</th>
<th>In-Kind</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hard Costs – Construction/Rehab Costs</td>
<td>$90,000</td>
<td>-</td>
<td>-</td>
<td>$270,000</td>
<td>$50,000</td>
<td>-</td>
<td>-</td>
<td>$410,000</td>
</tr>
<tr>
<td>Personnel Costs</td>
<td>$9,000</td>
<td>-</td>
<td>-</td>
<td>$30,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$39,000</td>
</tr>
<tr>
<td>Other Operating Expenses (specify)</td>
<td>$500</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$500</td>
</tr>
<tr>
<td>Postage/Mailing</td>
<td>$500</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$100,000</strong></td>
<td>-</td>
<td>-</td>
<td><strong>$300,000</strong></td>
<td><strong>$50,000</strong></td>
<td>-</td>
<td>-</td>
<td><strong>$450,000</strong></td>
</tr>
</tbody>
</table>

Requests for payment of eligible expenses will be associated with the line items as stated above. Expenses for eligible costs incurred after contract execution date may be invoiced and shall be paid upon execution of this agreement.

This budget may only be modified through formal written amendment approved by the City and Subrecipient.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]
EXHIBIT C
CDBG PROGRAM MONITORING SCHEDULE

**Grantee:** City of Dayton Department of Planning, Neighborhoods and Development

**Subrecipient:** County Corp

**Project/Program:** Emergency Repair and Accessibility Program

<table>
<thead>
<tr>
<th>Monitoring Subject Area</th>
<th>Date of Review</th>
<th>City Representative</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Section I. Required Monitoring for ALL CDBG Subrecipient Agreements</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financial and Program Eligibility</td>
<td>Upon submission of invoice(s)</td>
<td>Sarah Geist or designated staff</td>
</tr>
<tr>
<td>Program Performance and Records Management</td>
<td>Ongoing on a quarterly basis until termination of Agreement</td>
<td>Sarah Geist or designated staff</td>
</tr>
<tr>
<td>Environmental Review</td>
<td>As specific activities warrant</td>
<td>Pete Thornburgh or designated staff</td>
</tr>
<tr>
<td>Historic Properties Protection Review</td>
<td>As specific activities warrant</td>
<td>Designated staff</td>
</tr>
<tr>
<td>On-Site Monitoring Visit</td>
<td>As warranted by Annual Risk Assessment</td>
<td>Sarah Geist or designated staff</td>
</tr>
<tr>
<td><strong>Section II. Specific Monitoring Areas based on Project Type</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Construction Activities (Prevailing Wage Compliance and Record Keeping, Bidding and Procurement Process)</td>
<td>As specific activities warrant</td>
<td>Project Manager or designated staff</td>
</tr>
<tr>
<td>Acquisition and Relocation Compliance</td>
<td>Not Applicable</td>
<td></td>
</tr>
<tr>
<td>Housing Rehabilitation Guidelines</td>
<td>As specific activities warrant</td>
<td>Sarah Geist or designated staff</td>
</tr>
<tr>
<td>Economic Development Guidelines</td>
<td>Not Applicable</td>
<td></td>
</tr>
</tbody>
</table>

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]
EXHIBIT D
QUARTERLY AND CUMULATIVE REPORTS

Quarterly Report

Project Name: Emergency Repair and Accessibility Program
Subrecipient: County Corp
Action Plan Year: 2021

1. Provide a description of all activities and accomplishments occurring during this reporting period. Quantify all accomplishments and identify the location of physical improvements with an address or boundary. (Attach additional documentation, if necessary.)

2. Was the project completed during the current reporting period? ______ YES ______ NO

   2a. If YES, indicate completion date. ______________________

   2b. If NO, please provide a brief description of the Subrecipient’s plan to complete the project and an estimated timeframe for completion.

3. Total number of housing units improved: ____________________

4. Total number of housing units improved through emergency repair(s): ____________________

5. Total number of housing units modified to be accessible: ____________________

6. Total number of newly constructed affordable, accessible housing units: ____________________
7. Addresses of housing units improved (including ZIP)  
*Add additional rows as necessary*

1. 
2. 
3. 
4. 
5. 

8. Race/Ethnicity  
*Total must match #3*

<table>
<thead>
<tr>
<th>Race</th>
<th>Total</th>
<th>Hispanic/Latino</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black/African-American</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asian</td>
<td></td>
<td></td>
</tr>
<tr>
<td>American Indian/Alaskan Native</td>
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<td></td>
<td></td>
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<tr>
<td>Asian &amp; White</td>
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</tr>
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<td>American Indian/Alaskan Native &amp; Black/African-American</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other multi-racial</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

9. Female-Headed Households: 

10. Income Levels

<table>
<thead>
<tr>
<th>Income Level</th>
<th>Number Households</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extremely Low - 0-30%</td>
<td></td>
</tr>
<tr>
<td>Low - 30-50%</td>
<td></td>
</tr>
<tr>
<td>Moderate - 50-80%</td>
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</tr>
<tr>
<td>Non-Low/Moderate</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
</tr>
<tr>
<td>Percent Low/Mod</td>
<td>%</td>
</tr>
</tbody>
</table>

30
11. Applicable Lead Paint Requirement

<table>
<thead>
<tr>
<th>Housing Constructed before 1978</th>
<th># Housing Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exempt: housing constructed 1978 or later</td>
<td></td>
</tr>
<tr>
<td>Exempt: No paint disturbed</td>
<td></td>
</tr>
<tr>
<td>Otherwise exempt:</td>
<td></td>
</tr>
<tr>
<td>0 bedroom</td>
<td></td>
</tr>
<tr>
<td>Elderly/Disabled with no children under 6</td>
<td>6</td>
</tr>
<tr>
<td>Lead-based paint free</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
</tr>
</tbody>
</table>

12. Lead Hazard Remediation Actions:

<table>
<thead>
<tr>
<th>Lead Safe Work Practices (24 CFR 35.930(b)) (Hard costs $\leq 5k)</th>
<th># Housing Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interim Controls for Standard Practices (24 CFR 35.930(c)) (Hard costs $5k-$25k)</td>
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13. Homeowner Rehab Units:

<table>
<thead>
<tr>
<th>Units Occupied by Elderly</th>
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<tr>
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<tr>
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<td></td>
</tr>
<tr>
<td>Units Brought into Compliance with Lead Safety Rules (24 CFR Part 35)</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
</tr>
</tbody>
</table>
Annual Cumulative Report & Post Agreement Report

Project Name: Emergency Repair and Accessibility Program
Subrecipient: County Corp
Action Plan Year: 2021
Reporting Period: January 1 – December 31, 2021

1. Does the project generate program income (PI)? _____ YES _____ NO
   *PI is defined as the proceeds from the sale of real estate purchased through CDBG, income generate from fees or charges assessed for a CDBG-funded service, or loan repayments from a revolving loan program funded with CDBG dollars*

   1a. If YES, how much PI was received during reporting period?  $_________

   1b. Program Income balance as of report date:  $_________

2. Does the project utilize any funding other than the CDBG allocation? _____ YES _____ NO

2a. If YES, indicate the source, type (Federal, State, Local, or Private), and the amount.

<table>
<thead>
<tr>
<th>Source</th>
<th>Type</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3. Provide a description of all activities and accomplishments occurring during this reporting period. Quantify all accomplishments and identify the location of physical improvements with an address or boundary. (Attach additional documentation, if necessary.)


4. Was the project completed during the current reporting period? _____ YES _____ NO

4a. If YES, indicate completion date. __________________________
4b. If NO, please provide a brief description of the Subrecipient’s plan to complete the project and an estimated timeframe for completion.

5. Total number of housing units improved: ________________

6. Total number of housing units improved through emergency repair(s): ________________

7. Total number of housing units modified to be accessible: ________________

8. Total number of newly constructed affordable, accessible housing units: ________________

9. Addresses of housing units improved (including ZIP)  
   *Add additional rows as necessary*
   
   1. __________________________________________________
   
   2. __________________________________________________
   
   3. __________________________________________________
   
   4. __________________________________________________
   
   5. __________________________________________________

10. Race/Ethnicity  
    *Total must match #3*

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<td></td>
</tr>
<tr>
<td>Other multi-racial</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| TOTAL                                      |       |                 |

11. Female-Headed Households: __________
12. Income Levels

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<th>Income Level</th>
<th>Number Households</th>
</tr>
</thead>
<tbody>
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<td>Extremely Low - 0-30%</td>
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<tr>
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<td></td>
</tr>
<tr>
<td>Non-Low/Moderate</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
</tr>
<tr>
<td>Percent Low/Mod</td>
<td><strong>%</strong></td>
</tr>
</tbody>
</table>

13. Applicable Lead Paint Requirement

<table>
<thead>
<tr>
<th></th>
<th># Housing Units</th>
</tr>
</thead>
<tbody>
<tr>
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<tr>
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</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
</tr>
</tbody>
</table>

14. Lead Hazard Remediation Actions:

<table>
<thead>
<tr>
<th></th>
<th># Housing Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lead Safe Work Practices (24 CFR 35.930(b)) (Hard costs &lt;= $5k)</td>
<td></td>
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<td>Interim Controls for Standard Practices (24 CFR 35.930(c)) (Hard costs $5k-$25k)</td>
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15. Homeowner Rehab Units:

<table>
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<tr>
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<th># Housing Units</th>
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<tbody>
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<tr>
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</tr>
<tr>
<td>Units Brought into Compliance with Lead Safety Rules (24 CFR Part 35)</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT E
CDBG SAMPLE TIMESHEET AND ACTIVITY LOG

For Personnel Funded 100% through this agreement, please use this certification:

Certification & Support for Personnel Invoicing

2 CFR 225, APPENDIX B §8(h)(4-5) states that employees paid by Federal and non-Federal sources need to complete time and effort certifications at least monthly, which reflect the individual’s total work time and identify the portion of time spent on federal projects. The certification must be signed by the employee and their supervisor. When multiple funding sources contribute to an employee’s salary, the certification must be supported with documentation of actual effort (i.e. timesheets). Paycor is the official timekeeping record for County Corp – Emergency Home Repair Accessibility Program and serves as documentation of actual effort for grant-funded employees.

Pay Dates Included in this Certification:

<table>
<thead>
<tr>
<th>Name</th>
<th>Total Hours Worked</th>
<th>Pay Rate</th>
<th>Total Wages</th>
<th>Fringe Benefits Percentage (If Applicable)</th>
<th>Total Amount Billed for Personnel</th>
</tr>
</thead>
</table>

Summary of Work Performed:
The above wages and benefits are for..........insert a paragraph explaining the work accomplished during this period by the personnel identified above.

I, ___________ (print name) certify that 100% of my time reported during this reporting period was spent performing the activities described above. I hereby this report is an after-the-fact determination of the total activity and actual effort expended for the period indicated, and I have full knowledge of 100% of these activities.

_____________________________  ________________
Employee Signature                Date

_____________________________  ________________
Supervisor Signature              Date
For personnel charging a percentage of their time LESS THAN 100% to toward this agreement, please use this timesheet and activity log. The activity log MUST provide adequate information detailing activities, events, processes, etc. billed toward the agreement so that the Project Manager can determine cost allocability and cost allowability per 2 CFR 200 requirements.

**County Corp - Emergency Home Repair**  
**Accessibility Program**  
**MONTHLY TIMESHEET**

<table>
<thead>
<tr>
<th>Name</th>
<th>John Smith</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date</td>
<td>September 1-30, 2021</td>
</tr>
</tbody>
</table>

**FY 2021**

<table>
<thead>
<tr>
<th>Code</th>
<th>Project</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Sun</td>
</tr>
<tr>
<td>1</td>
<td>Market cashier</td>
<td>4.00</td>
</tr>
<tr>
<td>2</td>
<td>Training Program</td>
<td>3.00</td>
</tr>
</tbody>
</table>

| Total Hours Worked | 7.00 | 7.00 | 7.00 |
County Corp – Emergency Home Repair Accessibility Program
MONTHLY ACTIVITY LOG

County Corp – Emergency Home Repair Accessibility Program
Employee Name
Month & Year

Activity Log – June 2021

June 1, 2021
8:00 AM/PM – 5:00 AM/PM
  • Mobile Market – cashier – checking out customers, organizing stock, providing accounting of
drawer
  • Training Program – seminar on workforce etiquette, training on using raised garden beds

June 2, 2021
7:30 AM/PM – 4:30 AM/PM
  • Training Program – Carpentry – making raised garden beds;
  • Training Program – Proper techniques for harvesting peppers;
  • Training Program – Operation of Gettysburg hoop house

June 3, 2021
8:00 AM/PM – 5:00 AM/PM
  • Mobile Market – Setup at 2nd Street Market; Stocking and replenishment for market stand;
  transportation of signage and produce from XYZ Garden to 2nd Street Market
  • XYZ Garden – volunteer training;
  • XYZ Garden – harvesting tomatoes and preparing fertilizer
"Updated - FOR SIGNATURE 2021 CDBG County Corp Emergency Home Repair Accessibility Program elh (002)" History

- Document created by Ashley Hatton (ashley.hatton@daytonohio.gov)
  2021-12-17 - 12:15:34 PM GMT

- Document emailed to Steve Naas (snaas@countycorp.com) for signature
  2021-12-17 - 12:16:21 PM GMT

- Email viewed by Steve Naas (snaas@countycorp.com)
  2021-12-17 - 1:28:07 PM GMT - IP address: 174.207.168.29

- Document e-signed by Steve Naas (snaas@countycorp.com)
  Signature Date: 2021-12-17 - 1:31:19 PM GMT - Time Source: server - IP address: 174.207.168.29

- Agreement completed.
  2021-12-17 - 1:31:19 PM GMT
City Manager's Report

From 3470 - Water/Environmental Protection
Supplier, Vendor, Company, Individual
Name Harrison Township
Address 5845 N. Dixie Dr.
Dayton, Ohio 45414

Date December 29, 2021
Expense Type Contract Modification
Total Amount $168,834.00 (thru 12/31/2023)

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2022 Water Enterprise</td>
<td>53997-3470-1271-55</td>
<td>$83,581.00</td>
</tr>
<tr>
<td>2023 Water Enterprise</td>
<td>53997-3470-1271-55</td>
<td>$85,253.00</td>
</tr>
</tbody>
</table>

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

Description

HARRISON TOWNSHIP SOURCE WATER PROTECTION AGREEMENT
FIRST AMENDMENT

The Department of Water requests permission to enter into a First Amendment to the Agreement for Professional Services Agreement with Harrison Township, in the amount of $168,834.00 for technical and economic development services in association with the City of Dayton's Multi-Jurisdictional Source Water Protection Program. These efforts are essential for the continued protection of the region's drinking water supply.

The Agreement was approved on April 8, 2020 in the amount of $162,277.00. The First Amendment will increase the contract amount to $331,111.00. There is an option to renew the First Amendment for an additional 24-month period, contingent upon satisfaction with the work and availability of funds.

The First Amendment is being funded using the 2022 and 2023 Wellfield Protection Funds as approved by the Source Water Protection Board.

The First Amendment shall commence on January 1, 2022 and shall expire upon expenditure of all funds provided herein or on December 31, 2023. Any unused amount will remain in the Source Water Protection Fund.

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

A Certificate of Funds in the amount of $83,581.00 for 2022, and a copy of the First Amendment 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></th>
<th>New Contract</th>
<th>Renewal Contract</th>
<th>Change Order</th>
</tr>
</thead>
<tbody>
<tr>
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<td>Expiration Date</td>
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<td>Original Commission Approval</td>
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<td>Initial Encumbrance</td>
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<td>$ 162,277.00</td>
<td></td>
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<tr>
<td>Remaining Commission Approval</td>
<td></td>
<td>$ 168,834.00</td>
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<td>Original CT/CF</td>
<td>CT20-2547, CT21-2928</td>
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<tr>
<td>Increase Encumbrance</td>
<td></td>
<td>$ 83,581.00</td>
<td></td>
</tr>
<tr>
<td>Decrease Encumbrance</td>
<td></td>
<td>$ -</td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td></td>
<td>$ 85,253.00</td>
<td></td>
</tr>
</tbody>
</table>

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

**Amount:** $83,581.00  
**Fund Code:** 53987 - 3470 - 1271 - 55 -  
**Fund Code:**  

**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:** 12/21/2021  
**CF Prepared by:** [Signature]  
**Date:** 12/21/2021  
**CF/CT Number:** CT22-2929
FIRST AMENDMENT TO THE
AGREEMENT FOR SOURCE WATER PROTECTION

This First Amendment is dated this __ day of __________, 2021 between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio ("City") and Harrison Township – Montgomery County, Ohio, a civil township in and of the State of Ohio ("Contractor").

WITNESSETH:

WHEREAS, On April 8, 2020, the Commission of the City of Dayton approved an Agreement for Source Water Protection Services, (CT20-2547) ("Agreement") between the City and Contractor; and

WHEREAS, The City desires additional services to reduce the risk of ground water contamination within the Source Water Protection Area.

NOW THEREFORE, in consideration of the foregoing, the parties hereby agree to renew and amend the Agreement as follows:

The City and the Contractor agree to amend the Agreement as follows:

Article 1. Term of Contract shall be deleted in its entirety and replaced with the following language.

ARTICLE 1 – TERM OF CONTRACT

This Agreement shall commence on January 1, 2022, and it shall terminate upon expenditure of all funds provided herein or on December 31, 2023, whichever date is earlier. The Contractor and the City have the option of entering into (1) additional 24-month period, contingent upon satisfaction with the work, availability of funds and mutual agreement of both parties.

The City and the Contractor agree to amend the Agreement as follows:

Article 2. Services To Be Performed By Contractor, shall be deleted in its entirety and replaced with the following language.

ARTICLE 2 – SERVICES TO BE PERFORMED BY CONTRACTOR

Contractor shall provide all professional services necessary to complete the Services that are described in Attachment A and A1 Scope of Services, which is attached hereto and incorporated by reference.

Article 3. Compensation shall be deleted in its entirety and replaced with the following language.

ARTICLE 3 – COMPENSATION shall be amended to include the following:

The total remuneration in this Agreement shall not exceed THREE HUNDRED THIRTY-ONE THOUSAND ONE HUNDRED ELEVEN DOLLARS AND ZERO CENTS ($331,111.00). The City payment for years 2022 and 2023 shall not exceed the amounts contained in Attachment B1, which is attached hereto and incorporated herein.

1. The City and Contractor hereby agree that Attachment A1 and Attachment B1, which
are attached hereto, shall be a part of the Agreement and incorporated as if fully rewritten therein.

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

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

CITY OF DAYTON, OHIO

City Manager

APPROVED AS TO FORM AND CORRECTNESS:

11/23/2021

X  John Musto for

City Attorney

Signed by: Musto, John

HARRISON TOWNSHIP, OHIO

By

Title: Administrator

APPROVED BY THE HARRISON TOWNSHIP TRUSTEES ON:

12/14/2021

Craig Jones

Fiscal Officer

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

_____________________________, 2021

Min./Bk. ________________ Pg.________

Clerk of the Commission
ATTACHMENT A1
TO
AGREEMENT FOR SOURCE WATER PROTECTION

City: City of Dayton, Ohio
Project: Source Water Protection Services
Contractor: Harrison Township

SCOPE OF SERVICES

Harrison Township ("Township") will assist with the environmentally sound development of the Source Water Protection Area ("SWPA") and Water Resources Area ("WR") land within the Township through the administering of the Source Water Protection Program ("SWPP"). Township shall administer requirements relating to but not limited to the following activities:

1. Township shall act as a liaison with, and educate, the commercial real estate community concerning the SWPP and financial incentives for groundwater friendly businesses in the SWPA and WR. Township shall distribute marketing, financial incentives, and informational materials aimed at retaining and recruiting new groundwater-friendly businesses in the SWPA and WR. Township shall include SWPP information on the Township's website.

2. Township shall assist Public Health Dayton & Montgomery County ("PHDMC") in identification of potential inventory sources in the WR. Further, Township shall assist in identifying businesses and uses that are defined as prohibited with respect to the Zoning Ordinance. Township shall maintain an active inventory of business sites and vacant sites located in the SWPA, including property owner and business owner. Township shall inform PHDMC of any changes.

3. Township shall conduct retention, expansion, and SWPP compliance visits with existing and new businesses in the SWPA and WR and ensure that businesses are knowledgeable with the SWPP and Harrison Township requirements. Update PHDMC within 30 days of existing site visits and inform PHDMC immediately of new businesses so a SWPP inspection can be scheduled.

4. Township shall assist the City of Dayton, Division of Environmental Management ("DEM") in obtaining access, including right-of-ways, to property outside the City of Dayton limits in order to install, maintain, and monitor Early Warning Monitoring Wells.

5. If a business is determined to be non-compliant relative to zoning/occupancy permit requirements or with SWPP requirements, including but not limited to facilities who have received funding through the Risk Point Buy Down Program, Township shall take steps to correct the non-compliance(s). Township shall ensure that follow up documentation identifying deficiencies are sent to the non-compliant facility. Township shall pursue additional enforcement actions in necessary. Township shall include any enforcement related correspondences/actions in annual report.

6. Township shall attend Source Water Protection Board (Board) and Pre-Fund Board meetings. For Board-funded projects in the SWPA and the WR, Township shall work with residents, businesses, contractors, PHDMC, DEM, and CityWide Development on any Board-funded project in the SWPA and the WR to ensure all conditions on the funding are met. Township shall work cooperatively with PHDMC to provide annual updates to the Board regarding the status of Board-funded projects within Harrison Township Jurisdiction and include in annual
report. Township shall make presentations as necessary. Township shall attend and participate in at least one DEM / Board sponsored financial marketing event per year. Also, Township shall attend and participate in Multi-Jurisdictional meetings.

7. Township shall attend and participate in meetings of the PROGRESS committee and publication of PROGRESS News. Township shall compose at least 1 short article for 1 issue for every two years of the PROGRESS News.

8. Township shall assist and participate in the annual Children's Groundwater Festival.

9. Township shall assist DEM and PHDMC in promoting sustainable practices and groundwater protection measures for businesses in the SWPA and the WR. Provide links to the County’s DRG3 and to DEM’s Blue-Gold Certification on Harrison Township’s website.

10. Township may be required to conduct additional services, as required by the City, to satisfy the intent of the Agreement for Professional Services.

WORK PROGRAM DELIVERABLES

All the above activities require deliverables to PHDMC, and the Source Water Protection Board, and DEM in the 2022 and 2023 Annual Reports’ (and Annual Summaries) or in the following time frame:

<table>
<thead>
<tr>
<th>DELIVERABLE</th>
<th>RESULTS INCLUDED IN REPORTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Summary report documenting consultation with Real Estate and/or Development Community and on distribution of marketing / financial incentive brochures, guides, and other informational materials</td>
<td>Annual Reports</td>
</tr>
<tr>
<td>2. Assist PHDMC in identifying businesses and prohibitions in the new WR and update Business List and Vacant Sites List</td>
<td>Update PHDMC as needed and incorporate into Annual reports</td>
</tr>
<tr>
<td>3. Update PHDMC regarding retention, expansion, and compliance visits to existing and new businesses</td>
<td>Update PHDMC within 30 days for existing and immediately of new. Incorporate list of companies into Annual Reports</td>
</tr>
<tr>
<td>4. Update efforts in assisting Dayton Dept. of Water in obtaining access for well installation, sampling, and maintenance</td>
<td>Mid-year and Annual Reports</td>
</tr>
<tr>
<td>5. List of non-compliant businesses and steps taken to mitigate issues</td>
<td>Include meetings, deficiency notices and compliance status in Annual Report</td>
</tr>
<tr>
<td>6. Summary of attendance and participation for Board, Financial Marketing Events, and Multi-Jurisdictional Meetings</td>
<td>Annual Reports</td>
</tr>
<tr>
<td>7. PROGRESS News articles</td>
<td>Include article in Annual Reports</td>
</tr>
<tr>
<td>8. Summary of participation in Children's Water Festival</td>
<td>Annual Reports</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>10.</td>
<td>Provide a mid-year update to Board regarding revision status of Zoning Code</td>
</tr>
</tbody>
</table>

'Draft Annual Summaries (Mid-year Report), outlining activities performed through June of 2022 and June 2023 is due at the July Pre-Fund Board Meetings. The final Annual Summaries are due at the 2022 and 2023 August Source Water Protection Board meetings.

Draft Annual Reports are due at the January 2023 and 2024 Pre-Fund Board meetings. The final Annual Reports are due at the February 2023 and 2024 Source Water Protection Board meetings.'
ATTACHMENT B1
TO
AGREEMENT FOR SOURCE WATER PROTECTION

City: City of Dayton, Ohio
Project: Source Water Protection Services
Contractor: Harrison Township

ESTIMATED BUDGET
2022 Source Water Protection Agreement

Year 23 – Calendar 2022

Personnel
Salary and Benefits $ 80,281.00

Operating Expenses
Mileage $ 1,800.00
Supplies $ 1,500.00

Total Amount for 2022 $ 83,581.00

ESTIMATED BUDGET
2023 Source Water Protection Agreement

Year 24 – Calendar 2023

Personnel
Salary and Benefits $ 81,953.00

Operating Expenses
Mileage $ 1,800.00
Supplies $ 1,500.00

Total Amount for 2023 $ 85,253.00

*If the City and Contractor mutually agree to extend this Agreement for additional terms as described in ARTICLE 1 of this Agreement, a two (2) percent increase in compensation will be allowed for each year that this Agreement is extended.*
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>New Contract</th>
<th>Renewal Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Start Date</td>
<td>3/25/2020</td>
</tr>
<tr>
<td>Expiration Date</td>
<td>12/31/2021</td>
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<tr>
<td>Original Commission Approval</td>
<td>$162,277.00</td>
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<tr>
<td>Initial Encumbrance</td>
<td>$80,335.00</td>
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<tr>
<td>Remaining Commission Approval</td>
<td>$81,942.00</td>
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<td>Original CT/CF</td>
<td>CT20-2547</td>
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<tr>
<td>Increase Encumbrance</td>
<td>$81,942.00</td>
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<tr>
<td>Decrease Encumbrance</td>
<td>$-</td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$-</td>
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</tbody>
</table>

| Amount: | $81,942.00 |
| Fund Code | 53997 - 3470 - 1271 - 55 - |
| Fund | Org | Acct | Prog | Act | Loc |

| Amount: |
| Fund Code | 53997 - 3470 - 1271 - 55 - |
| Fund | Org | Acct | Prog | Act | Loc |

NO DRAFT DOCUMENTS PERMITTED

X Change Orders

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

Attach additional pages for more FOAPALs

Vendor Name: Harrison Township
Vendor Address: 5945 N. Dixie Drive Dayton OH 45414
Federal ID: 31-8000578
Commodity Code: 94-848
Purpose: Year 2 of 2 - Professional Agreement provides staff for services to assist Harrison Township with the technical and economic development of the Source Water Protection Area.

Contact Person: Lisa Burton-Yates
Water / Water Engineering Department/Division 1/25/2021

Originating Department Director’s Signature: Aaron S. Zoni

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: 2-9-2021

CF Prepared by: [Signature]
Date: 2-8-2021

Finance Department

October 16, 2011
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

- X New Contract
- Renewal Contract

Contract Start Date: Upon Execution
Expiration Date: 12/31/2021

Original Commission Approval: $162,277.00
Initial Encumbrance: $80,335.00
Remaining Commission Approval: $81,942.00

Original CT/CF:
Increase Encumbrance:
Decrease Encumbrance: $-
Remaining Commission Approval:

NO DRAFT DOCUMENTS PERMITTED

Change Orders

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

| Amount: | $80,335.00 |
| Fund Code | 53997 - 3470 - 1271 - 55 - |
| Fund | Org | Acct | Prog | Act | Loc |
| Amount: | |
| Fund Code | |

Attach additional pages for more FOAPALs

Vendor Name: Harrison Township
Vendor Address: 5945 N. Dixie Drive Dayton OH 45414
Street City State Zipcode + 4

Federal ID: 31-6000578
Commodity Code: 84-648

Purpose: This Professional Agreement provides staff for services to assist Harrison Township with the technical and economic development of the Source Water Protection Area.

Contact Person: Lisa Burton-Yates
Water / Water Engineering Department/Division Date: 3/13/2020

Originating Department Director's Signature:

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: 03/17/2020
Date

CF Prepared by: 03/16/2020
Date

Finance Department

October 18, 2011
HARRISON TOWNSHIP SOURCE WATER PROTECTION AGREEMENT

The Department of Water requests permission to enter into a Professional Services Agreement with Harrison Township, in the amount of $182,277.00 for technical and economic development services in association with the City of Dayton's Multi-Jurisdictional Source Water Protection Program. These efforts are essential for the continued protection of the region's drinking water supply.

The Professional Services Agreement is being funded using the Source Water Protection Funds as approved by the Source Water Protection Board on August 1, 2019.

The Agreement shall commence upon approval and shall expire upon expenditure of all funds provided herein or on December 31, 2021. There is an option to renew for two (2) additional 24-month periods, contingent upon satisfaction with the work and availability of funds. Any unused amount will remain in the Source Water Protection Fund.

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

A Certificate of Funds and a copy of the Agreement are attached.
AGREEMENT FOR SOURCE WATER PROTECTION

This AGREEMENT FOR SOURCE WATER PROTECTION ("Agreement") is between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio ("City") and Harrison Township - Montgomery County, Ohio, a civil township in and of the State of Ohio ("Contractor").

WITNESSETH:

WHEREAS, The City has initiated the Source Water Protection Fund to reduce the risk of ground water contamination within the Source Water Protection Area; and,

WHEREAS, Contractor will assist with the environmentally sound development of Services of the Source Water Protection Area and Water Resources Area (WR) land within the township; and,

WHEREAS, Contractor is qualified and available to provide the Services to the City

NOW THEREFORE, in consideration of the promises contained in this Agreement, the City and Contractor do mutually agree as follows:

ARTICLE 1. TERM

The Agreement shall commence January 1, 2020 and shall terminate upon expenditure of all funds provided herein or on December 31, 2021, whichever date is earlier. Upon the approval by the Multi-Jurisdictional Source Water Protection Board ("Board") and the availability of funds, the City and Contractor may mutually agree to extend this Agreement for two (2) additional terms of 24-months.

ARTICLE 2. SERVICES

A. Scope of Services
Contractor shall provide services to reduce the risk of ground water contamination within the Source Water Protection Area. The Contractor shall perform all service provided and outlined in Attachment A, Scope of Services ("Services"), which is attached hereto and incorporated herein.

B. Reporting Requirements
1. By July 27, 2020, Contractor shall submit to the City a summary of the Services provided under this Agreement.
3. By July 26, 2021, Contractor shall submit to the City a summary of Services provided under this Agreement.

ARTICLE 3. COMPENSATION

The total remuneration in this Agreement by the City shall not exceed ONE HUNDRED SIXTY TWO THOUSAND TWO HUNDRED SEVENTY SEVEN DOLLARS AND ZERO CENTS ($162,277.00). If the City and Contractor mutually agree to extend this Agreement for additional terms as described in ARTICLE 1 of this Agreement, a two (2) percent increase in compensation will be allowed for each year that that Agreement is extended.
The City will make payments in accordance with Attachment B, which is attached hereto and incorporated herein. Contractor shall submit invoices for payment only for Services actually performed and/or provided. Contractor’s invoices shall state the invoice period, total amount requested, and Services provided and/or performed during the invoice period, as required by the Board.

ARTICLE 4. CITY’S RESPONSIBILITIES

The City will furnish to Contractor, at no cost or expense, all reports, records, data that might be necessary or useful to complete the Services required under this Agreement.

ARTICLE 5. STANDARD OF CARE

Contractor 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. Contractor shall have no liability for defects in the Services attributable to Contractor’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 Contractor’s failure to meet such standards and the City has notified Contractor in writing of any such error within that period, then the Contractor shall perform, at no additional cost to the City, the Services necessary to remedy such error.

ARTICLE 6. LIABILITY AND INDEMNIFICATION

The parties agree to release each other from any and all liability, which may be caused by or arise by the wrongful and/or negligent conduct of parties’ respective employees and agents in the performance of the services, duties, and responsibilities in this Agreement. Notwithstanding, neither party waives any available immunities under the law.

ARTICLE 7. INSURANCE

Contractor represents and warrants that it is a self-insured entity. As a result, Contractor shall be solely liable and responsible for any claims against it concerning or relating to the performance of any duties, obligations, or covenants or of this Agreement.

ARTICLE 8. OWNERSHIP OF DOCUMENTS & INTELLECTUAL PROPERTY

Documents and reports prepared by Contractor as part of the Services shall become the sole and exclusive property of the City upon payment. However, Contractor shall have the unrestricted right to their use.

Contractor 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 Contractor.

ARTICLE 9. TERMINATION

In the event of substantial failure by Contractor in the performance of this Agreement, the City may terminate this Agreement by sending a written termination notice to Contractor. Contractor shall have fifteen (15) calendar days from the date of the termination notice to cure or to submit a plan to cure that the City in its sole discretion finds acceptable.
The City may terminate or suspend performance of this Agreement for the City's convenience upon thirty (30) days prior written notice to Contractor. In the event of termination by the City hereunder, the City will pay Contractor for Services actually provided up to the date of termination.

Any termination, alteration, or modification of this Agreement shall not relieve the Contractor of any liability to the City of damages sustained by any breach by the Contractor. The City will be under no further monetary obligation or commitment to the Contractor. The Cities may, in its sole discretion, terminate this Agreement at any time upon providing thirty (30) days written notice to the Contractor.

ARTICLE 10. RECORDS TO BE MAINTAINED

All costs and expenditures pertaining in whole or part to this Agreement for the work and Service performed under this Agreement shall be supported by the properly executed payrolls, time records, invoices, contracts, vouchers, or other accounting documents, which shall be clearly identified and readily accessible to the City. At any time during normal business hours and as often as the City may deem necessary, Contractor shall make available to the City all of its records related to this Agreement. Contractor shall also permit the City to audit, examine, and make excerpts or transcripts from such records and to have audits made of all contracts, invoices, materials, payrolls, personnel records, conditions of employment and other data pertaining in whole or part to matters covered by this Agreement.

ARTICLE 11. RETENTION OF RECORDS

Contractor shall retain all records pertinent to the expenditures incurred under this Agreement for a period of three (3) years after the termination of all work and services funded under this Agreement. Notwithstanding the above, if there any action, including without limitation litigation, claims, audits, or negotiations that involves any of the records pertaining to this Agreement that commences prior to the expiration of the three-year period, the Contractor shall retain such records until completion of the action and resolution of all issues, or the expiations of the three-year period, whichever occurs later.

ARTICLE 12. STANDARD TERMS

A. DELAY IN PERFORMANCE

Neither the City nor Contractor 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 Contractor under this Agreement.

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

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 the performance of this Agreement 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:

Contractor: Harrison Township  
5945 N. Dixie Drive  
Dayton, Ohio 45414  
Attention: Justin Olszewski

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

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

D. 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, 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.

E. WAIVER

A waiver by the City or Contractor 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. 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.
G. 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 that its employees and any other persons retained or hired by the Contractor are not the City’s public employees. City shall not be responsible for any payment or other duties required by the Ohio Public Employees Retirement System (“OPERS”) for Contractor’s employees or persons retained or hired by Contractor. Contractor shall be solely responsible for any contributions or obligations concerning OPERS that arise from the performance of this Agreement.

H. ASSIGNMENT

Contractor 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 Contractor 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 Contractor.

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.

The parties may mutually agree to extend the term of this Agreement to a later date. The Director of the Department of Water is authorized to extend the term of this Agreement for the City.

K. POLITICAL CONTRIBUTIONS

Contractor 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 Contractor. This Agreement supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the City and Contractor, each by a duly authorized representative, have executed this Agreement on the date first written above.

CITY OF DAYTON, OHIO

[Signature]
City Manager

APPROVED AS TO FORM
AND CORRECTNESS:

[Signature]
City Attorney

HARRISON TOWNSHIP, OHIO

By: [Signature]
Title: ADMINISTRATOR

APPROVED BY THE HARRISON
TOWNSHIP TRUSTEES ON:

[Signature]
Clerk of the Township Trustees

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

April 8, 2019

Min. /Bk. File Page 01/68

Clerk of the Commission
ATTACHMENT A
TO
AGREEMENT FOR SOURCE WATER PROTECTION

City: City of Dayton, Ohio
Project: Source Water Protection Services
Contractor: Harrison Township

SCOPE OF SERVICES

Harrison Township ("Township") will assist with the environmentally sound development of the Source Water Protection Area ("SWPA") and Water Resources Area ("WR") land within the Township through the administering of the Source Water Protection Program ("SWPP"). Township shall administer requirements relating to but not limited to the following activities:

1. Township shall act as a liaison with, and educate, the commercial real estate community concerning the SWPP and financial incentives for groundwater friendly businesses in the SWPA and WR. Township shall distribute marketing, financial incentives, and informational materials aimed at retaining and recruiting new groundwater-friendly businesses in the SWPA and WR. Township shall include SWPP information on the Township's website.

2. Township shall assist Public Health Dayton & Montgomery County ("PHDMC") in identification of potential inventory sources in the WR. Further, Township shall assist in identifying businesses and uses that are defined as prohibited with respect to the Zoning Ordinance. Township shall maintain an active inventory of business sites and vacant sites located in the SWPA, including property owner and business owner. Township shall inform PHDMC of any changes.

3. Township shall conduct retention, expansion, and SWPP compliance visits with existing and new businesses in the SWPA and WR and ensure that businesses are knowledgeable with the SWPP and Harrison Township requirements. Update PHDMC within 30 days of existing site visits and inform PHDMC immediately of new businesses so a SWPP inspection can be scheduled.

4. Township shall assist the City of Dayton, Division of Environmental Management ("DEM") in obtaining access, including right-of-ways, to property outside the City of Dayton limits in order to install, maintain, and monitor Early Warning Monitoring Wells.

5. If a business is determined to be non-compliant relative to zoning/occupancy permit requirements or with SWPP requirements, including but not limited to facilities who have received funding through the Risk Point Buy Down Program, Township shall take steps to correct the non-compliance(s). Township shall ensure that follow up documentation identifying deficiencies are sent to the non-compliant facility. Township shall pursue additional enforcement actions in necessary. Township shall include any enforcement related correspondences/actions in annual report.

6. Township shall attend Source Water Protection Board (Board) and Pre-Fund Board meetings. For Board-funded projects in the SWPA and the WR, Township shall work with residents, businesses, contractors, PHDMC, DEM, and CityWide Development on any Board-funded project in the SWPA and the WR to ensure all conditions on the funding are met. Township shall work cooperatively with PHDMC to provide annual updates to the Board regarding the status of Board-funded projects within Harrison Township jurisdiction and include in annual report. Township shall make presentations as necessary. Township shall attend and participate in at least one DEM / Board sponsored financial marketing event per year. Also, Township shall attend and participate in Multi-Jurisdictional meetings.

7. Township shall attend and participate in meetings of the PROGRESS committee and publication of PROGRESS News. Township shall compose at least 1 short article for 1 issue for every two years of the PROGRESS News.
8. Township shall assist and participate in the annual Children’s Groundwater Festival.

9. Township shall assist DEM and PHDMC in promoting sustainable practices and groundwater protection measures for businesses in the SWPA and the WR. Provide links to the County’s DRG3 and to DEM’s Blue-Gold Certification on Harrison Township’s website.

10. For 2020, support and work with PHDMC and DEM toward the development and enactment of an appropriate Zoning Code which reflects Dayton’s Zoning Code, Water Ordinance and Resolution No. 6125-15. Have the legislation approval of Riverside Council by November 2020 and include update to Board in Annual Report due to the Board in February 2021.

11. Township may be required to conduct additional services, as required by the City, to satisfy the intent of the Agreement for Professional Services.

**WORK PROGRAM DELIVERABLES**

All the above activities require deliverables to PHDMC, and the Source Water Protection Board, and **DEM in the 2020 and 2021 Annual Reports** *(and Annual Summaries)* or in the following time frame:

<table>
<thead>
<tr>
<th>DELIVERABLE</th>
<th>RESULTS INCLUDED IN REPORTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Summary report documenting consultation with Real Estate and/or Development Community and on distribution of marketing / financial incentive brochures, guides, and other informational materials</td>
<td>Annual Reports</td>
</tr>
<tr>
<td>2. Assist PHDMC in identifying businesses and prohibitions in the new WR and update Business List and Vacant Sites List</td>
<td>Update PHDMC as needed and incorporate into Annual reports</td>
</tr>
<tr>
<td>3. Update PHDMC regarding retention, expansion, and compliance visits to existing and new businesses</td>
<td>Update PHDMC within 30 days for existing and immediately of new. Incorporate list of companies into Annual Reports</td>
</tr>
<tr>
<td>4. Update efforts in assisting Dayton Dept. of Water in obtaining access for well installation, sampling, and maintenance</td>
<td>Mid-year and Annual Reports</td>
</tr>
<tr>
<td>5. List of non-compliant businesses and steps taken to mitigate issues</td>
<td>Include meetings, deficiency notices and compliance status in Annual Report</td>
</tr>
<tr>
<td>6. Summary of attendance and participation for Board, Financial Marketing Events, and Multi-Jurisdictional Meetings</td>
<td>Annual Reports</td>
</tr>
<tr>
<td>7. <em>PROGRESS</em> News articles</td>
<td>Include article in Annual Reports</td>
</tr>
<tr>
<td>8. Summary of participation in Children’s Water Festival</td>
<td>Annual Reports</td>
</tr>
<tr>
<td>10. Provide a mid-year update to Board regarding revision status of Zoning Code</td>
<td>Mid-year updates to Board and End of year summary in Annual Reports</td>
</tr>
</tbody>
</table>
Draft Annual Summaries (Mid-year Report), outlining activities performed through June of 2020 and June 2021 is due at the July Pre-Fund Board Meetings. The final Annual Summaries are due at the 2020 and 2021 August Source Water Protection Board meetings.

Draft Annual Reports are due at the January 2021 and 2022 Pre-Fund Board meetings. The final Annual Reports are due at the February 2021 and 2022 Source Water Protection Board meetings.
ATTACHMENT B
TO
AGREEMENT FOR SOURCE WATER PROTECTION

City: City of Dayton, Ohio
Project: Source Water Protection Services
Contractor: Harrison Township

ESTIMATED BUDGET
2020 Source Water Protection Agreement

Year 21 – Calendar 2020

Personnel
Salary and Benefits $ 77,035.00

Operating Expenses
Mileage $ 1,800.00
Supplies $ 1,500.00

Total Amount for 2020 $ 80,335.00

ESTIMATED BUDGET
2021 Source Water Protection Agreement

Year 22 – Calendar 2021

Personnel
Salary and Benefits $ 78,642.00

Operating Expenses
Mileage $ 1,800.00
Supplies $ 1,500.00

Total Amount for 2021 $ 81,942.00

If the City and Contractor mutually agree to extend this Agreement for additional terms as described in ARTICLE 1 of this Agreement, a two (2) percent increase in compensation will be allowed for each year that that Agreement is extended.
City Manager’s Report

From 6480 - PW/Property Management

Supplier, Vendor, Company, Individual

Name Moonlight Security, Inc.

Address 4977 Northcutt Pl
Dayton, Ohio 45414

Date December 29, 2021

Expense Type Service Agreement

Total Amount $425,000.00 thru 12/31/2022

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<tr>
<td>General Fund</td>
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<td>General Fund</td>
<td>11000-3510-1157-11</td>
<td>$225,000.00</td>
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<tr>
<td>General Fund</td>
<td>10000-6550-1157-56</td>
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</table>

Includes Revenue to the City □ Yes □ No

Affirmative Action Program □ Yes □ No □ N/A

FIFTH AMENDMENT TO SERVICE AGREEMENT FOR SECURITY GUARD SERVICES AND SECOND RENEWAL

The Department of Public Works requests approval to enter into a Fifth Amendment and second of three one-year renewal options to the City’s Agreement with Moonlight Security. This amendment and renewal will cover services needed at City Hall, City Hall Garage, One Stop, the Recreation Center – Sports Division and the Oregon Garage for a total expense that shall not exceed $425,000.00.

This Fifth Amendment and Second Renewal option shall commence upon execution and have a one-year term that expires on December 31, 2022, unless terminated earlier by either party. This Fifth Amendment and renewal represents the second of three one-year renewal options under the terms of the Third Amendment approved by City Commission on December 9, 2020, item #6, with one (1) remaining one-year renewal options for Fiscal Year 2023. If the Agreement is renewed for any of the one (1) remaining one-year options, the percentage increase per year following the initial term and second renewal shall not exceed one percent (1%).

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

A Certificate of Funds for $425,000.00 is attached.

Signatures/Approval

Approved by City Commission

Clerk

Date

FORM NO. MS-16

Updated 1/2019
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>New Contract</th>
<th>Renewal Contract</th>
<th>Change Order</th>
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<tbody>
<tr>
<td>Contract Start Date</td>
<td>01/01/2022</td>
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<tr>
<td>Expiration Date</td>
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<tr>
<td>Original Commission Approval</td>
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<tr>
<td>Initial Encumbrance</td>
<td>$425,000.00</td>
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<td>Remaining Commission Approval</td>
<td>$</td>
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<td>Original CT/CF</td>
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<td>Increase Encumbrance</td>
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<td></td>
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<tr>
<td>Decrease Encumbrance</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>

Required Documentation

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

Amount: $180,000.00

Fund Code 10000 - 6480 - 1157 - 54 - XXXX - XXXX

Amount: $225,000.00

Fund Code 11000 - 3510 - 1157 - 11 - XXXX - XXXX

Amount: $20,000.00

Fund Code 10000 - 6550 - 1157 - 56 - XXXX - XXXX

Attach additional pages for more FOAPALS

Vendor Name: Moonlight Security, Inc.
Vendor Address: 4977 Northcutt PI Dayton OH 45414
Street City State Zipcode + 4
Federal ID: 311450776
Commodity Code: 99046
Purpose: For security guard services throughout various City-owned facilities

Contact Person: Chatan Robinson
Public Works/Property Management Department/Division 12/17/2021
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

Date

CF Prepared by

Date

October 18, 2011
SECOND RENEWAL AND FIFTH AMENDMENT TO SERVICE AGREEMENT FOR PROFESSIONAL SECURITY GUARD SERVICES

THIS SECOND RENEWAL AND FIFTH AMENDMENT TO PROFESSIONAL SECURITY GUARD SERVICES AGREEMENT ("Agreement"), is entered into this ___ day of __________, 2021 between the City of Dayton, Ohio ("City"), a municipal corporation existing by and under the laws and the Constitution of the State of Ohio, and Moonlight Security, Inc. ("Contractor"), an Ohio corporation.

WITNESSETH THAT:

WHEREAS, City and Contractor entered into an Agreement on June 15, 2018 for unarmed and armed security guard services (hereinafter "Agreement"); and,

WHEREAS, The City requires the continued services of security guards during its operation and events; and,

WHEREAS, Contractor represents that it possesses the necessary special skills, knowledge and technical competence to provide such services as further described herein; and,

WHEREAS, The Agreement expired on December 31, 2020; and,

WHEREAS, Article 1 of the Agreement provides that the Agreement may be renewed for three (3) additional twelve (12) month terms; and,

WHEREAS, The parties entered into a First twelve (12) month Renewal which expires on December 31, 2021, and,

WHEREAS, The parties desire to renew the Agreement for a second twelve (12) month Renewal term.

NOW, THEREFORE, City and Contractor hereby agree as follows:

1. City and Contractor agree to renew the Agreement for the second twelve (12) month term under the Agreement. This second renewal shall commence on January 1, 2022 and expire on December 31, 2022.

2. Article 3 of the Agreement is hereby deleted in its entirety and replaced as follows:

ARTICLE 3. COMPENSATION

The City shall pay Contractor for the services provided under this Agreement an amount not to exceed $17.45 per hour for armed and unarmed security services, as set forth in the Scope of Services. The total amount of remuneration due under this Agreement in the initial term of this Agreement shall not exceed ONE MILLION THREE HUNDRED TWENTY-SIX THOUSAND THREE HUNDRED FIFTY-ONE DOLLARS AND ZERO CENTS ($1,326,351.00). The total
amount of remuneration due under the first twelve (12) month additional renewal of the
Agreement shall not exceed FOUR HUNDRED FORTY-NINE THOUSAND DOLLARS AND
ZERO CENTS ($449,000.00). The total amount of remuneration due under the second twelve
(12) month renewal shall not exceed FOUR HUNDRED TWENTY-FIVE THOUSAND
DOLLARS AND ZERO CENTS ($425,000.00) Contractor shall submit an invoice to the City by
the (10th) calendar day of the month following the month in which services were rendered. After
approval by the Department of Public Works, Division of Property Management, the City will
tender payment of each invoice within thirty (30) days from receipt thereof, unless the City, in
good faith, disputes the validity of the invoice. If this Agreement is renewed for any of the
additional twelve (12) month terms, the percent increase per year following the initial term and
first renewal shall not exceed one percent (1%).

3. Except as modified by this Second Renewal and Fifth Amendment, the Agreement
between the City and Contractor shall remain unchanged and in full force and effect.

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

THE CITY OF DAYTON, OHIO

_________________________________________
City Manager

MOONLIGHT SECURITY INC.

By: ________

Print: ________

Its: ________

APPROVED AS TO FORM
AND CORRECTNESS:

_________________________________________
City Attorney

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

_________________________________________
, 2021

Min. Bk. _______ Pg. ______

Clerk of the Commission
City Manager’s Report

From 5540 - PW/Property Management
Supplier, Vendor, Company, Individual
Name Moonlight Security
Address 2710 Dryden Rd
Moraine, OH 45439

Date June 6, 2018
Expense Type Service Agreement
Total Amount $663,351.00 thru 12/31/20

Fund Source(s) Fund Code(s) Fund Amount(s)
General Fund – Property Mgmt. 10000-5540-1157-54 $325,351.00
General Fund – Convention Center 11000-3500-1157-11 $300,000.00
General Fund – Rec & Youth Svcs. 10000-6530-1157-56 $ 38,000.00

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

Description

SERVICE AGREEMENT FOR PROFESSIONAL SECURITY GUARD SERVICES

The Department of Public Works recommends the approval of a contract with Moonlight Security for security guard services at various City of Dayton facilities and events. Moonlight Security was chosen through a Request for Proposal process. Eight out of the 18 companies solicited submitted a proposal in which Moonlight Security scored the highest.

This Agreement shall commence upon execution and shall have an initial term which expires on December 31, 2020, unless terminated earlier. This agreement has a renewable option for three (3) additional twelve (12) month terms. Total expense of this agreement in the initial term shall not exceed $663,351.00. If agreement is renewed for any of the additional 12 month terms, the percent increase per year following the initial term shall not exceed one percent (1%).

<table>
<thead>
<tr>
<th>Org</th>
<th>5540</th>
<th>3500</th>
<th>6530</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year 1</td>
<td>$56,095.00</td>
<td>$50,000.00</td>
<td>$6,000.00</td>
<td>$112,095.00</td>
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<tr>
<td>Year 2</td>
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<td>$125,000.00</td>
<td>$16,000.00</td>
<td>$275,628.00</td>
</tr>
<tr>
<td>Year 3</td>
<td>$134,628.00</td>
<td>$125,000.00</td>
<td>$16,000.00</td>
<td>$275,628.00</td>
</tr>
<tr>
<td>Total</td>
<td>$325,351.00</td>
<td>$300,000.00</td>
<td>$38,000.00</td>
<td>$663,351.00</td>
</tr>
</tbody>
</table>

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

A Certificate of Funds for $112,095.00 is attached for year one.

Signatures/Approval

Approved by City Commission

FORM NO. MS-16

Updated 8/2016
SERVICE AGREEMENT FOR
PROFESSIONAL SECURITY GUARD SERVICES

THIS AGREEMENT, dated this 15 of June, 2018, is between the City of Dayton, Ohio (“City”), a municipal corporation existing by and under the laws and the Constitution of the State of Ohio, and Moonlight Security, Inc. (“Contractor”), an Ohio corporation.

WHEREAS, The City desires to contract with Contractor for unarmed and armed security guard services as further described herein; and,

WHEREAS, The City requires the services of security guards during its operations and events; and

WHEREAS, Contractor represents that it possesses the necessary special skills, knowledge and technical competence to provide such services as further described herein.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement (“Agreement”), City and Contractor agree as follows:

ARTICLE 1. TERM

This Contract shall commence upon execution by the City (“Effective Date”) and shall have an initial term which expires on December 31, 2020, unless terminated earlier as provided in Section 7 herein. This Agreement shall be renewable for three (3) additional twelve (12) month terms. Each renewal must be executed in writing, approved by the Commission of the City of Dayton, if required or applicable, and signed by a duly authorized representative for each party.

ARTICLE 2. SERVICES

The Contractor shall provide services that are set forth in the Scope of Services, attached hereto as Exhibit A, pursuant to City of Dayton Request for Proposal No. 18009CSFM (hereinafter referred to as the “RFP”, a copy of which is attached as Exhibit B) and Contractor’s response to the RFP, (hereinafter referred to as the “Proposal”, a copy of which is attached as Exhibit C). The Scope of Services, RFP, and Proposal (Exhibits A, B, and C respectively) are attached hereto and incorporated herein by reference. In the event of a direct conflict between the terms and conditions contained in this Agreement and the RFP and/or the Proposal, the terms contained in this Agreement shall control.

ARTICLE 3. COMPENSATION

The City shall pay Contractor for the services provided under this Agreement an amount not exceed $17.45 per hour for armed and unarmed security services, as set forth in the Scope of Services. The total amount of remuneration due under this Agreement in the initial term of this Agreement shall not exceed SIX HUNDRED SIXTY-THREE THOUSAND THREE HUNDRED FIFTY-ONE DOLLARS AND ZERO CENTS ($663,351.00). Contractor shall
submit an invoice to City by the tenth (10th) calendar day of the month following the month in which services were rendered. After approval by the Department of Public Works, Division of Facilities Management, the City will tender payment of each invoice within thirty (30) days from receipt thereof, unless the City, in good faith, disputes the validity of the invoice. If Agreement is renewed for any of the additional 12 month terms, the percent increase per year following the initial term shall not exceed one percent (1%).

**ARTICLE 4. STANDARD OF CARE**

The Contractor 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.

**ARTICLE 5. INDEMNIFICATION**

The Contractor shall defend, indemnify and hold harmless the City, its officials, agents, representatives, and employees, in both their official and individual capacities, from any claims of violations of any federal, state, or local laws or regulations, resulting from work performed by Contractor, its subcontractors, and agents. This includes, but is not limited to, paying any fines or penalties assessed to the City, its officials, agents, representatives, and employees, that arise out of the negligence or intentional misconduct of Contractor, its subcontractors, and agents or Contractor’s breach of any of the provisions of the Contract.

**ARTICLE 6. INSURANCE**

Contractor shall provide the following insurance during the term of the Contract:

A. General Liability Insurance with a combined single limit of ONE MILLION DOLLARS ($1,000,000) for each occurrence and a minimum of at least ONE MILLION DOLLARS ($1,000,000) in the aggregate;

Contractor must procure the required insurance from an insurance company authorized by the Ohio Department of Insurance to do business in the State that has an A.M. Best rating of “A-“ or better. Each policy of insurance shall name the City as an additional insured or loss payee, as applicable; provided, however, that such designation shall not cause any claim between Contractor and the City to be waived. Each policy and the respective certificate shall also provide that no less than thirty (30) days prior written notice shall be given to the City in the event of cancellation, non-renewal, expiration or material alteration of the coverage contained in such policy or evidenced by such certificate of insurance. Contractor shall maintain all required insurance throughout the term of the Contract, and provide to the City a certificate of coverage showing that the required insurance is in effect and that the City has been added as an additional insured. Failure to maintain the required insurance may be cause for termination of the Contract by the City.

In addition, Contractor shall comply with all provisions of the Ohio Workers’ Compensation Act and all rules of the Ohio Bureau of Workers’ Compensation.
ARTICLE 7. TERMINATION

Either the City or the Contractor may terminate this Contract at any time by giving ten (30) days written notice to the other party. The City shall not be responsible to pay for any Services provided by the Contractor after the date of termination. Neither the City nor the Contractor shall be relieved of liability for damages sustained by virtue of any breach of the Contract prior to the date of termination.

ARTICLE 8. NON-DISCRIMINATION

The 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 or 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, Ohio, constitutes a material condition of this Contract 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 Contract at its option.

ARTICLE 9. SUBCONTRACTING AND ASSIGNMENT

None of the Services shall be subcontracted without the prior written consent of the City. The Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors, and of persons indirectly employed by the Contractor, as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor shall insert in each subcontract appropriate provisions requiring compliance with the labor standards provisions of this Contract.

The Contractor shall not assign any interest in this Contract without the prior written approval of the City. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the Contractor from any obligation under this Contract.

ARTICLE 10. INDEPENDENT CONTRACTOR

At all times, the Contractor shall be an independent contractor and not subject to control by the City, except as provided herein. The parties hereby agree that the relationship between the parties shall not be held out or construed as employer-employee, joint venture, or principal-agent. Neither party shall act or represent itself in such manner as to assume or create any obligation on behalf of, or in the name of, the other party, without the prior written and express authority to do so by a duly authorized representative.
The Contractor understands and agrees that any and all persons retained or hired to perform the Services, duties and responsibilities under this Contract are not City employees and are not entitled to any of the emoluments of City employment. Contractor is not a “Public Employee” for the purposes of Ohio Public Employees Retirement System membership. Further, the Contractor shall be responsible to withhold and pay, or cause such agents, contractors, and sub-contractors to withhold and pay, all local, state and federal taxes.

ARTICLE 11. STATE, FEDERAL, AND LOCAL TAXES

The Contractor must be in good standing with federal, state and local taxing authorities prior to entering this Contract and maintain compliance during the Contract term. The Contractor shall pay all applicable taxes related to performance of the Services. This shall include, but not be limited to, income, Social Security, Medicare, and self-employment taxes. The Contractor shall also pay any unemployment contributions related to performance of the Services. The City shall not withhold any taxes or unemployment contributions from payments to the Contractor. The Contractor shall pay any amounts required by law in connection with Workers Compensation.

ARTICLE 12. ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement between the City and Contractor. 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.

ARTICLE 13. COMMUNICATIONS AND NOTICES

Any written communication or notice required by this Contract 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 herein. Such written communication or notice shall be addressed to:

City: The City of Dayton, Ohio
       Department of Public Works
       Attn: Dennis Thomas
       101 West Third Street
       Dayton, Ohio 45402

Contractor: Moonlight Security
            2710 Dryden Road
            Moraine, Ohio 45439

ARTICLE 14. GOVERNING LAW

This Contract 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. The
parties hereby submit to the jurisdiction of the state and federal courts in Montgomery County, Ohio, with respect to any disputes arising under this Contract.

ARTICLE 15. AMENDMENT

The City and the Contractor may amend this Contract at any time in accordance with the Proposal submitted by Contractor in response to the City’s RFP. Upon mutual agreement to amend this Contract, the amendment shall be reduced to writing, make specific reference to this Contract, be signed by a duly authorized representative of the City and the Contractor, and, if required or applicable, be approved by the Commission of the City of Dayton, Ohio.

ARTICLE 16. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement will not be affected thereby, and all other parts of this Agreement will nevertheless be in full force and effect. If any provision of this Agreement requires judicial interpretation, the parties agree that the court construing the same will not apply a presumption that the terms of this Agreement will be more strictly construed against one party than against the other.

ARTICLE 17. POLITICAL CONTRIBUTIONS

The Contractor affirms and certifies that it complies with Ohio Revised Code §3517.13, limiting political contributions.

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

THE CITY OF DAYTON, OHIO

City Manager

MOONLIGHT SECURITY INC.

By: [Signature]

Print Name: Todd Ritz

Title: VP OF Operations

APPROVED AS TO FORM AND CORRECTNESS:

City Attorney

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

June 4, 2018

Min. Bk. 1-15 Pg. ___

Clerk of the Commission
EXHIBIT A
SCOPE OF SERVICES

Contractor shall perform the following services for the City of Dayton listed below:

1. Contractor shall provide all labor, equipment, tools, materials and supplies to perform services under this agreement.

2. Contractor shall have an established, comprehensive personnel training program that all security guards and other assigned staff will undergo in order to ensure that all security guards are competent to perform all duties required under this Agreement.

3. Contractor shall have established comprehensive standards of appearance for maintaining both professional stands of conduct and neat appearance for its employees.

4. The City reserves the right, at its sole discretion, to refuse the services of any particular guard. In such cases, Contractor shall immediately remove said guard from City services and provide a replacement guard at no additional cost.

5. Security guard services will be performed at certain city facilities and events.

6. Security Guards and Supervisors shall possess valid credentials evidencing Security Guard license by the State of Ohio, Department of Commerce.

7. Contractor and Contractor’s personnel shall comply with all applicable local, state and federal laws in the performance of duties, including but not limited to laws regarding personnel registration and training.

8. As security demands dictate, additional Contractor employees may be required by City on short notice and for various lengths of time. Contractor shall have available for immediate assignment supplemental personnel sufficient to cover all regularly assigned duties and other occasional services.

9. Contractor shall be fully responsible for the direct supervision of its employees. Contractor shall also provide an overall Project Manager to manage this Agreement. Contractor’s Project Manager must have the responsibility and authority to fully represent the Contractor on all matters pertaining to this Agreement. Contractor’s Project Manager’s responsibilities shall include, but are not limited to:

   9.1. Serve as the contact person for the City in the administration of this Agreement.

   9.2. Administer personnel duties, such as hiring, assignments, firings, schedules, timekeeping and payroll, quality standards and employee evaluations.
9.3. Review all security operations under this Agreement and make any recommendations for improvements to the City's designated employee in person or in writing.

10. Contractor's staff shall conduct themselves in a professional manner at all times while working on the site by staying visible and focused on all activities.

11. Contractor shall perform the following services for the facilities and events listed below:

CITY HALL

a) Contractor shall provide security guard services for City Hall five days per week, generally from 7:00 AM through 5:30 PM, 52 weeks per year.

b) Additional guard services may be required for weekends and/or additional hours if needed to cover City Commission Meetings that are held on the first, third and fifth Wednesdays of the month starting at 6PM. These are considered in the standard operating hours and are not considered overtime pay.

c) Current times provided are subject to change.

d) Security guard will be required to do rounds on all floors as well as the parking garage, monitor any and all cameras, inspect as required book bags, shoulder bags, brief cases, purses, and wheel chairs or any other items as instructed or required when citizens enter the building.

e) Monitor all citizens entering and exiting the building visually and through use of the security surveillance system.

f) Ensure that no unauthorized person(s) accesses the building and the secured areas.

g) Check and confirm badge and identification of all persons entering and leaving the building as required, as well as make sure all persons sign in and out using visitor's ledger.

h) Observe, investigate and report suspicious and hazardous conditions to designated City Hall personnel immediately and/or local authorities.

i) The City reserves the right, at its sole discretion, to refuse the services of any particular guard. In such cases, Contractor shall immediately remove said guard from City services and provide a replacement guard at no additional cost.
ONE STOP CENTER

a) Contractor shall provide security service for the One Stop Center six days per week, 52 weeks per year, generally from 7:00 AM through 5:30 PM weekdays and 8:00 AM through 1:00 PM weekends. Current times are scheduled to change.

b) Security guards will be required to do rounds on all floors, monitor any and all cameras, inspect as required book bags, shoulder bags, brief cases, purses, and wheel chairs or any other items as instructed or required when citizens enter the building.

c) Monitor all citizens entering and exiting the building visually and through use of the security surveillance system.

d) Ensure that no unauthorized person(s) accesses the building and the secured areas.

e) Check and confirm badge and identification of all persons entering and leaving the building as required, as well as make sure all persons sign in and out using visitor’s ledger.

f) Observe, investigate and report suspicious and hazardous conditions to designated One Stop Center personnel designee immediately and/or local authorities.

TRANSPORATION CENTER

a) This facility is a 24/7 facility and will need security services for that time.

b) Security guards will do a minimum of 3 full rounds per 8 hour shift, including street level perimeter, all decks and stairwells, and skywalk from the garage which crosses over Jefferson Street to the end of the Skywalk across Fifth Street.

c) During the rest of the shift, security guards are to be monitoring the cameras in the office, answering calls to assist parkers who are having difficulties entering or exiting the facility. They have the ability to open the gates with the phone.

d) Security guards are expected to report any equipment malfunction to the Parking Company immediately, including any lights that have gone out.

e) Observe, investigate and report suspicious and hazardous conditions to Parking Company immediately and/or local authorities.

f) Premier Health Care uses the garage for employee parking and requires a security guard to be on duty Monday through Friday from 7 AM to 7 PM. This security guard is to monitor the second floor of the garage where Premier employees park. They are to patrol the second level as well as the stairwell which exits into the street level lobby. Premier Health Care also requires the use of the regular garage security guard for monitoring the
shuttle arrival/departure area located near the corner of Fifth and Jefferson Streets Monday through Friday mornings from 7 AM to 9:30 AM and evenings 3:30 PM to 6:30 PM.

g) The City reserves the right, at its sole discretion, to refuse the services of any particular guard. In such cases, Contractor shall immediately remove said guard from City services and provide a replacement guard at no additional cost.

DAYTON CONVENTION CENTER

Contractor shall provide security guard services for the Dayton Convention Center seven days per week from 5:30 AM through 12:00 AM, 52 weeks per year and/or additional hours as needed. Current times are subject to change.

a) Security guard will monitor all citizens entering and exiting the building visually and through the use of the security surveillance system, inspect as required all book bags, shoulder bags, brief cases, purses, and wheel chairs or any other items as instructed or required when citizens enter the building for events.

b) Ensure that no unauthorized person(s) accesses the building and the secured areas and take appropriate actions, in conjunction with Dayton Convention Center staff and/or Dayton Police to remove unauthorized persons.

c) Security guard will be required to do rounds on all floors as well as stairwells, loading docks and back hallways, as well as event areas during set up, events, and tear down.

d) Check and confirm badge and identification of all persons entering and leaving the event as required.

e) Observe, investigate and report suspicious and hazardous conditions to Dayton Convention Center Management and/or local authorities.

f) Provide security services for dances, concerts and other events that may require security wands and metal detector services.

g) The City reserves the right, at its sole discretion, to refuse the services of any particular guard. In such cases, Contractor shall immediately remove said guard from City services and provide a replacement guard at no additional cost.

GREATER DAYTON RECREATION CENTER

a) Contractor shall provide security guard services for the Greater Dayton Recreation Center five days per week from 5:00 PM through 9:00 PM, 52 weeks per year and/or additional hours as needed.
b) Security guards will fully cooperate with in-house staff and take directions from authorized recreation personnel designee, as well as report to and sign in at the beginning of their shift and sign out at the end of their shift with that person.

c) Security guards shall keep detailed records of all hours worked and provide copies to the authorized recreation personnel designee.

d) Observe, investigate and report suspicious and hazardous conditions to Greater Dayton Recreation Center staff and/or local authorities.

e) Security guards will monitor the outside perimeter of the facility on a roving basis including all parking lots and entrance/exit areas of the facility. Due to the nature of this position, all security guards must have the stamina and be physically able to walk extensively during their shift.

f) The City reserves the right, at its sole discretion, to refuse the services of any particular guard. In such cases, Contractor shall immediately remove said guard from City services and provide a replacement guard at no additional cost.

NORTHWEST RECREATION CENTERS

a) Contractor shall provide security services Fridays from 5:00 PM through 9:00 PM, from January through March.

b) Security guards will fully cooperate with in-house staff and take directions from authorized recreation personnel designee, as well as report to and sign in at the beginning of their shift and sign out at the end of their shift with that person.

c) Security guards shall keep detailed records of all hours worked and provide copies to the authorized recreation personnel designee.

d) Observe, investigate and report suspicious and hazardous conditions to Greater Dayton Recreation Center staff and/or local authorities.

e) Security guards will monitor all citizens entering and exiting the building visually and inspect as required all book bags, shoulder bags, brief cases, purses, and wheel chairs or any other items as instructed or required when citizens enter the building for events.

f) Ensure that no unauthorized person(s) accesses the building and the secured areas and take appropriate actions, in conjunction with Northwest Recreation Center staff and/or Dayton Police to remove unauthorized persons.

g) Observe, investigate and report suspicious and hazardous conditions to authorized recreation personnel designee immediately and/or local authorities.
h) Security guard will be required to do rounds in the recreation center as well as the parking lots and facility entrances and exits.

i) The City reserves the right, at its sole discretion, to refuse the services of any particular guard. In such cases, Contractor shall immediately remove said guard from City services and provide a replacement guard at no additional cost.

CITY OF DAYTON SPECIAL EVENTS

a) Contractor shall provide security services for various City of Dayton special events that occur throughout the year.

b) Contractor and/or Contractor personnel designee shall attend all logistics meetings for these special events in order to obtain specific security requirements for those events.

c) At the start of a shift, security guards must check in with the special events personnel designee.

d) Personnel shall be physically capable to perform certain duties at these events.

e) The City reserves the right, at its sole discretion, to refuse the services of any particular guard. In such cases, Contractor shall immediately remove said guard from City services and provide a replacement guard at no additional cost.
City Manager’s Report

From 5540 - PW/Property Management
Supplier, Vendor, Company, Individual
Name Moonlight Security
Address 2710 Dryden Rd
Moraine, OH 45439

Date October 10, 2018
Expense Type Contract Modification
Total Amount $600,000.00 thru 12/31/2021

Fund Source(s) Fund Code(s) Fund Amount(s)
General Fund – Trans Ctr. Garage 11000-3510-1157-11 $600,000.00

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

Description

SERVICE AGREEMENT FOR PROFESSIONAL SECURITY GUARD SERVICES – FIRST AMENDMENT

The Department of Public Works requests permission to execute a First Amendment to the Service Agreement with Moonlight Security for security guard services at the Transportation Center Garage.

On June 6, 2018, the City Commission approved the Agreement with Moonlight Security for security guard services at various City of Dayton facilities. The security services for the Transportation Center Garage was originally managed by ABM Parking Services and has been brought in-house to be managed by Moonlight Security Services.

This Agreement shall commence upon execution and shall have an initial term which expires on December 31, 2020, unless terminated earlier. This agreement has a renewable option for three (3) additional twelve (12) month terms. Total expense of this agreement in the initial term shall not exceed $1,263,351.00. If agreement is renewed for any of the additional 12 month terms, the percent increase per year following the initial term shall not exceed one percent (1%).

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

A Certificate of Funds for $120,000.00 is attached for services through 12/31/2018.

Signatures/Approval

Approved by City Commission

 updated 8/2016
FIRST AMENDMENT TO SERVICE AGREEMENT FOR
PROFESSIONAL SECURITY GUARD SERVICES

THIS FIRST AMENDMENT TO PROFESSIONAL SECURITY GUARD SERVICES AGREEMENT ("Amendment"), is entered into this □ day of November, 2018 between the City of Dayton, Ohio ("City"), a municipal corporation existing by and under the laws and the Constitution of the State of Ohio, and Moonlight Security, Inc. ("Contractor"), an Ohio corporation.

WITNESSETH THAT:

WHEREAS, City and Contractor entered into an Agreement on June 15, 2018 for unarmed and armed security guard services; and,

WHEREAS, The City requires the services of security guards for the Transportation Center Garage during its operation and events; and,

WHEREAS, Contractor represents that it possesses the necessary special skills, knowledge and technical competence to provide such services as further described herein; and,

WHEREAS, City and Contractor agree that the additional work will require additional compensation to be paid to Contractor.

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

1. Section 1. Article Three of the Agreement is hereby deleted in its entirety and replaced with the following:

ARTICLE 3. COMPENSATION

The City shall pay Contractor for the services provided under this Agreement an amount not to exceed Seventeen Dollars and Forty-Five Cents ($17.45) per hour for armed and unarmed security services, as set forth in the Scope of Services. The total amount of remuneration due under this Agreement in the initial term of this Agreement shall not exceed One Million Two Hundred Sixty-Three Thousand Three Hundred Fifty-One Dollars and Zero Cents ($1,263,351.00). Contractor shall submit an invoice to the City by the tenth (10th) calendar day of the month following the month in which services were rendered. After approval by the Department of Public Works, Division of Property Management, the City will tender payment of each invoice within thirty (30) days from receipt thereof, unless the City, in good faith, disputes the validity of the invoice. If Agreement is renewed for any of the additional twelve (12) month terms, the percent increase per year following the initial term shall not exceed one percent (1%).

2. Section 2. Except as modified by this First Amendment, the Agreement between the City and Contractor shall remain unchanged and in full force and effect.
IN WITNESS WHEREOF, the City and the Contractor, each by a duly authorized representative, have executed this First Amendment as of the day and date first set forth above.

THE CITY OF DAYTON, OHIO

[Signature]
City Manager

MOONLIGHT SECURITY INC.

[Signature]
By:

Print: Todd Pite

Its: VP of Operations

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]
City Attorney

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

October 10, 2018

Min. Bk. 775 Pg. 0381

[Signature]
Clerk of the Commission
City Manager’s Report

From 6480 - PW/Property Management
Supplier, Vendor, Company, Individual
Name Moonlight Security, Inc.
Address 4977 Northcutt Pl
Dayton, Ohio 45414

Date October 28, 2020
Expense Type Service Agreement
Total Amount $63,000.00 thru 12/31/2020

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

SERVICES AGREEMENT FOR PROFESSIONAL SECURITY GUARD SERVICES – SECOND AMENDMENT

The Department of Public Works requests approval for a second amendment to the City’s agreement with Moonlight Security. This amendment will cover additional services needed through December 31, 2020 for City Hall, City Hall Garage, One Stop and the Oregon District Garage.

This Agreement shall commence upon execution and shall have an initial term that expires on December 31, 2020, unless terminated earlier. This agreement has a renewable option for three (3) additional twelve (12) months terms. Total expense of this agreement in the initial term shall not exceed $1,326,351.00. If agreement is renewed for any of the additional twelve (12) month terms, the percent increase per year following the initial term shall not exceed one percent (1%).

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

A Certificate of Funds for $63,000.00 is attached.

Division [ ]
Department [ ]
City Manager [ ]
FORM NO. MS-16

Signatures/Approval
Approved by City Commission
[]
Clerk [ ]
Date [ ]

Updated 1/2019
CERTIFICATE OF FUNDS
CT20-2037

SECTION I - to be completed by User Department

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

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Attach additional pages for more FOAPALS
Vendor Name: Moonlight Security, Inc.
Vendor Address: 4977 Northcutt Pl Dayton OH 45414
Street City State Zipcode + 4
Federal ID: 311450776
Commodity Code: 99046
Purpose: For security guard services throughout various City-owned facilities

Contact Person: Chatan Robinson
Public Works/Property Management
Department/Division 10/8/2020
Originating Department Director's Signature: JMS
Date: 10/14/2020

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: [Signature]
Date: 10/30/2020

CF Prepared by: Paul Williams
Date: 10/24/2020
CF/CT Number: CT20-2037
Finance Department
October 18, 2011
SECOND AMENDMENT TO SERVICE AGREEMENT FOR
PROFESSIONAL SECURITY GUARD SERVICES

THIS SECOND AMENDMENT TO PROFESSIONAL SECURITY GUARD SERVICES AGREEMENT ("Agreement"), is entered into this 5th day of November, 2020 between the City of Dayton, Ohio ("City"), a municipal corporation existing by and under the laws and the Constitution of the State of Ohio, and Moonlight Security, Inc. ("Contractor"), an Ohio corporation.

WITNESSETH THAT:

WHEREAS, City and Contractor entered into an Agreement on June 15, 2018 for unarmed and armed security guard services; and,

WHEREAS, City and Contractor entered into a First Amendment on November 2, 2018 for additional services; and,

WHEREAS, The City requires the services of security guards during its operation and events; and,

WHEREAS, Contractor represents that it possesses the necessary special skills, knowledge and technical competence to provide such services as further described herein; and

WHEREAS, City and Contractor agree that the additional work will require additional compensation to be paid to Contractor.

NOW, THEREFORE, City and Contractor hereby agree as follows:

1. Section 1. Article Three, of the Agreement is hereby deleted in its entirety and replaced with the following:

ARTICLE 3. COMPENSATION

The City shall pay Contractor for the services provided under this Agreement an amount not to exceed $17.45 per hour for armed and unarmed security services, as set forth in the Scope of Services. The total amount of remuneration due under this Agreement in the initial term of this Agreement shall not exceed ONE MILLION THREE HUNDRED TWENTY-SIX THOUSAND THREE HUNDRED FIFTY ONE DOLLARS AND ZERO CENTS ($1,326,351.00). Contractor shall submit an invoice to the City by the (10th) calendar day of the month following the month in which services were rendered. After approval by the Department of Public Works, Division of Property Management, the City will tender payment of each invoice within thirty (30) days from receipt thereof, unless the City, in good faith, disputes the validity of the invoice. If Agreement is renewed for any of the additional 12 month terms, the percent increase per year following the initial term shall not exceed one percent (1%).
2. **Section 2.** Except as modified by this Second Amendment, the Agreement between the City and Contractor shall remain unchanged and in full force and effect.

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

**THE CITY OF DAYTON, OHIO**

![Signature]

City Manager

**MOONLIGHT SECURITY INC.**

![Signature]

By: 

Print: Todd Ritz

Its: VP of Operations

**APPROVED AS TO FORM AND CORRECTNESS:**

10/7/2020

X Amelia N. Blankenship for

City Attorney

Signed by: Blankenship, Amelia

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

**October 28**, 2020

Min. Bk. 1/6 Pg. ___

![Signature]

Clerk of the Commission
THIRD AMENDMENT TO SERVICE AGREEMENT FOR SECURITY GUARD SERVICES AND FIRST RENEWAL

The Department of Public Works requests approval to enter into a Third Amendment and first of three one-year renewal options to the City's Agreement with Moonlight Security. This amendment and renewal will cover services needed at City Hall, City Hall Garage, One Stop and the Oregon Garage for a total expense that shall not exceed $449,000.00.

This Third Amendment and First Renewal option shall commence upon execution and have a one-year term that expires on December 31, 2021, unless terminated earlier by either party. This Third Amendment and renewal represents the first of three one-year renewal options under the terms of the Second Amendment approved by City Commission on October 28, 2020, item #2, with two (2) remaining one-year renewal options for Fiscal Years 2022 and 2023. If the Agreement is renewed for any of the two (2) remaining one-year options, the percentage increase per year following the initial term and first renewal shall not exceed one percent (1%).

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

A Certificate of Funds for $449,000.00 is attached.

Signature: Thomas J. Ritchie, Jr.  
Email: tom.ritchie@daytonohio.gov

Approved by City Commission  
Clerk, December 9, 2020
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

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

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Attach additional pages for more FOAPALs
Vendor Name: Moonlight Security, Inc.
Vendor Address: 4977 Northcutt Pl Dayton OH 45414
Federal ID: 311450776
Commodity Code: 99046
Purpose: For security guard services throughout various City-owned facilities

Contact Person: Chatan Robinson

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.

Financer Director Signature:  
Date: 12/11/2020

Prepared by: T. Williams
Date: 11/30/2020
CF/CT Number: CT18-2037

Finance Department
October 18, 2011
FIRST RENEWAL AND THIRD AMENDMENT TO SERVICE AGREEMENT FOR PROFESSIONAL SECURITY GUARD SERVICES

THIS FIRST RENEWAL AND THIRD AMENDMENT TO PROFESSIONAL SECURITY GUARD SERVICES AGREEMENT ("Agreement"), is entered into this 28th day of December, 2020 between the City of Dayton, Ohio ("City"), a municipal corporation existing by and under the laws and the Constitution of the State of Ohio, and Moonlight Security, Inc. ("Contractor"), an Ohio corporation.

WITNESSETH THAT:

WHEREAS, City and Contractor entered into an Agreement on June 15, 2018 for unarmed and armed security guard services (hereinafter "Agreement"); and,

WHEREAS, The City requires the continued services of security guards during its operation and events; and,

WHEREAS, Contractor represents that it possesses the necessary special skills, knowledge and technical competence to provide such services as further described herein; and,

WHEREAS, City and Contractor agree that the additional work will require additional compensation to be paid to Contractor; and,

WHEREAS, The Agreement expires on December 31, 2020; and,

WHEREAS, Article 1 of the Agreement provides that the Agreement may be renewed for three (3) additional twelve (12) month terms; and,

WHEREAS, The parties desire to renew the Agreement for the first additional twelve (12) month term.

NOW, THEREFORE, City and Contractor hereby agree as follows:

1. City and Contractor agree to renew the Agreement for the first additional twelve (12) month term under the Agreement. This first renewal shall commence on January 1, 2021 and expire on December 31, 2021.

2. Article 3 of the Agreement is hereby deleted in its entirety and replaced with the following:

ARTICLE 3. COMPENSATION

The City shall pay Contractor for the services provided under this Agreement an amount not to exceed $17.45 per hour for armed and unarmed security services, as set forth in the Scope of Services. The total amount of remuneration due under this Agreement in the initial term of this Agreement shall not exceed ONE MILLION THREE HUNDRED TWENTY-SIX THOUSAND
THREE HUNDRED FIFTY-ONE DOLLARS AND ZERO CENTS ($1,326, 351.00). The total amount of remuneration due under the first twelve (12) month additional renewal of the Agreement shall not exceed FOUR HUNDRED FORTY-NINE THOUSAND DOLLARS AND ZERO CENTS ($449,000.00). Contractor shall submit an invoice to the City by the (10th) calendar day of the month following the month in which services were rendered. After approval by the Department of Public Works, Division of Property Management, the City will tender payment of each invoice within thirty (30) days from receipt thereof, unless the City, in good faith, disputes the validity of the invoice. If this Agreement is renewed for any of the additional 12 month terms, the percent increase per year following the initial term and first renewal shall not exceed one percent (1%).

3. Except as modified by this First Renewal and Third Amendment, the Agreement between the City and Contractor shall remain unchanged and in full force and effect.

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

THE CITY OF DAYTON, OHIO

[Signature]
City Manager

MOONLIGHT SECURITY INC.

By:  

[Signature]  
Print:  Todd Ritz

Its: VP of Operations

APPROVED AS TO FORM AND CORRECTNESS:

11/10/2020

X  John Musto for
City Attorney

Signed by: Musto, John

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

December 9, 2020

Min. Bk. 114  Pg. 0350

[Signature]
Clerk of the Commission
City Manager's Report

From 3470 - Water/Environmental Protection
Supplier, Vendor, Company, Individual
Name Public Health-Dayton & Montgomery County
Address 117 South Main Street
Dayton, Ohio 45422-1280

Date December 29, 2021
Expense Type Contract Modification
Total Amount $373,195.00 (thru 12/31/2023)

Fund Source(s) | Fund Code(s) | Fund Amount(s)
---|---|---
2022 Water Enterprise | 53997-3470-1271-55 | $184,750.00
2023 Water Enterprise | 53997-3470-1271-55 | $188,445.00

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

Description
PUBLIC HEALTH – DAYTON & MONTGOMERY COUNTY AGREEMENT
FIRST AMENDMENT

The Department of Water requests permission to enter into a First Amendment to the Agreement for Professional Services with Public Health–Dayton & Montgomery County, in the amount of $373,195.00. This First Amendment is for the technical, educational, and inspectional aspects of the City of Dayton’s Multi-Jurisdictional Source Water Protection Program’s efforts in protecting the region’s drinking water supply. Public Health–Dayton & Montgomery County provides this assistance to the areas outside of the City of Dayton: Harrison Township, Huber Heights, Vandalia, and Riverside.

The Agreement was approved on November 27, 2019 and services commenced on January 1, 2020 in the amount of $358,704.00. The First Amendment will increase the contract amount to $731,899.00. There is an option to renew the First Amendment for an additional 24-month period, contingent upon satisfaction with the work and availability of funds.

The First Amendment is being funded using the 2022 and 2023 Wellfield Protection Funds as approved by the Source Water Protection Board.

The First Amendment shall commence on January 1, 2022 and shall expire upon expenditure of all funds provided herein or on December 31, 2023. Any unused amount will remain in the Source Water Protection Fund.

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

A Certificate of Funds in the amount of $184,750.00 for 2022, and a copy of the First Amendment are attached.

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 8/2018
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>1/1/2020</td>
<td></td>
</tr>
<tr>
<td>Expiration Date</td>
<td>12/31/2023</td>
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<tr>
<td>Original Commission Approval</td>
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<td>Initial Encumbrance</td>
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<td>Remaining Commission Approval</td>
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<tr>
<td>Original CT/CF</td>
<td>CT20-2503, CT21-2929</td>
<td>X</td>
</tr>
<tr>
<td>Increase Encumbrance</td>
<td>$ 184,750.00</td>
<td></td>
</tr>
<tr>
<td>Decrease Encumbrance</td>
<td>$ -</td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$ 188,445.00</td>
<td></td>
</tr>
</tbody>
</table>

Required Documentation

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

| Amount: | $ 184,750.00 |
| Fund Code: | 53997 - 3470 - 1271 - 55 - | |
| Fund | Org | Acct | Prog | Act | Loc |

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

Attach additional pages for more FOAPALs

Vendor Name: Public Health-Dayton and Montgomery County
Vendor Address: 117 S. Main St. Dayton OH 45422-1280
Federal ID: 31-6000472
Commodity Code: 964-37
Purpose: First Amendment to the Professional Services Agreement for technical and inspectional aspects of the Source Water Protection Program. Encumbering 2022 funds only.

Contact Person: Lisa Burton-Yates, Water/Water Engineering

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] 12/31/2021

CF Prepared by: [Signature] 12/31/2021

October 18, 2011
FIRST AMENDMENT TO THE
AGREEMENT FOR SOURCE WATER PROTECTION

This First Amendment is dated this ___ day of __________, 2021 between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio ("City") and Public Health – Dayton and Montgomery County ("PHDMC").

WITNESSETH:

WHEREAS, On November 27, 2019, the Commission of the City of Dayton approved an Agreement for Source Water Protection Services, (CT20-2503) ("Agreement") between the City and PHDMC; and

WHEREAS, The City desires additional services to reduce the risk of ground water contamination within the Source Water Protection Area.

NOW THEREFORE, in consideration of the foregoing, the parties hereby agree to renew and amend the Agreement as follows:

The City and the PHDMC agree to amend the Agreement as follows:

Section 1. Term of Contract shall be deleted in its entirety and replaced with the following language.

ARTICLE 1 – TERM OF CONTRACT

This Agreement shall commence upon January 1, 2022 and it shall terminate upon expenditure of all funds provided herein or on December 31, 2023, whichever date is earlier. The parties shall have the option to enter into an additional 24-month period for the years 2024 and 2025, contingent upon satisfaction with the work, availability of funds and mutual agreement of both parties.

Section 2. Article 2. Services shall be deleted in its entirety and replaced with the following language.

ARTICLE 2 – SERVICES

PHDMC shall provide all professional services necessary to complete the Services that are described in Attachment A and A1 Scope of Services, which is attached hereto and incorporated by reference.

Section 3. Article 3. Compensation shall be deleted in its entirety and replaced with the following language.

ARTICLE 3 – COMPENSATION shall be amended to include the following:

The total remuneration in this Agreement shall not exceed SEVEN HUNDRED THIRTY-ONE THOUSAND EIGHT HUNDRED NINETY-NINE DOLLARS AND ZERO CENTS ($731,899.00). The City shall pay PHDMC the additional compensation set forth in Attachment B and B1, which is attached hereto and incorporated herein.

1. The City and PHDMC hereby agree that Attachment B and B1, which are attached hereto, shall be a part of the Agreement and incorporated as if fully rewritten therein.
2. Except as amended by this First Amendment, all other terms, covenants, and conditions contained within the Agreement remain in full force and effect.

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

CITY OF DAYTON, OHIO

City Manager

APPROVED AS TO FORM AND CORRECTNESS:

12/1/2021

John Musto for
City Attorney

Signed by: Musto, John

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

, 2021

Min./Bk. Pg.

Clerk of the Commission

PUBLIC HEALTH – DAYTON AND MONTGOMERY COUNTY:

Health Commissioner

John M. Wu
MPH
ATTACHMENT A1
TO
AGREEMENT FOR SOURCE WATER PROTECTION

City: City of Dayton, Ohio
Project: Source Water Protection Services
Contractor: Public Health – Dayton and Montgomery County

Scope of Services

Specifically, the PHDMC shall provide expert professional assistance including, but not limited to tasks and subtasks as follows:

Task A. Implementation of Source Water Protection Program (SWPP)/Land Use Control Zoning

1. Facilitate zoning administration and implementation through the following:
   - Update zoning ordinances (see Task A. 8.)
   - Permit review
   - Complete or update windshield survey in new Source Water Protection Areas (SWPA) and Water Resource Areas (WR)
   - Work with Dayton Department of Water in identifying protective strategies in SWPA’s and WRs
   - Compliance inspections focusing on risk management and leading to risk matrix scoring for all businesses within the SWPAs and WRs
   - Data acquisition and management
   - Report writing
   - Enforcement actions (in cases of imminent danger to public health)
   - Identify 24-hour emergency contact
   - Provide written summary of any emergency responses within 72-hours

2. For jurisdictions outside Dayton participating in the Source Water Protection Program, participate as technical/expert witness throughout respective zoning, planning, City Council, and Township Trustee process for any case located in the SWPAs. Participation shall include providing written testimony in advance, attending the meeting, and providing oral testimony, as needed.

3. Provide quarterly reports of activity to the City of Dayton Division of Environmental Management (DEM) and the respective jurisdictions. Reports shall include a breakdown of the number of actions performed in each jurisdiction and grand total for each of the following:
   - Facilities inspected
   - Facilities submitting Regulated Substance Activity Inventory Reports (RSAIR)
   - Number and construction value of plans reviewed during the quarter
   - Number of emergency / spill / complaint responses and detail of how each incident was mitigated
   - Noncompliant Facilities
   - Educational efforts
     - Children’s Water Festival
     - PROGRESS
     - H2knOw Events
4. Maintain an up-to-date business list of the sites in the SWPA and the new WR of each jurisdiction. For each site, the list will provide information in the Annual Report including but not limited to:
   • Whether the site is conforming or non-conforming with respect to the SWPP
   • Status of occupancy (i.e. whether each site is occupied or vacant)
   • Potential sources between one-year and five-year time of travel, the newly designated WR, as determined from site visits or windshield survey

5. If a business is determined to be non-compliant relative to zoning/occupancy permit requirements or with SWPP requirements, including but not limited to facilities who have received funding through the Risk Point Buy Down Program, PHDMC and the respective jurisdiction shall cooperatively take steps to correct the non-compliance(s) or assist the business in relocation. Ensure that follow up documentation identifying deficiencies are sent to the non-compliant facility. Support jurisdictions in any necessary enforcement action to be taken. Include notices of deficiency sent to each non-compliant facility and provide updated compliance status in annual report.

6. Visit new businesses in the SWPA and WR as they occur and ensure they are knowledgeable with SWPP and jurisdictional requirements. Update each jurisdiction as needed concerning new businesses that have moved into and/or have expanded their existing occupancy to a new address in the SWPA and the WR.

7. Attend and participate in Multi-Jurisdictional meetings.

8. Work with Cities of Riverside, Huber Heights and Vandalia; Harrison Township and DEM toward the development and enactment of appropriate Zoning Codes which reflect Dayton’s Zoning Code, Water Ordinance and Resolution No. 6125-15. Provide mid-year update to Board.

9. As requested by DEM, assist in development of a comprehensive Risk Management Plan and Risk Matrix by:
   • Assisting in assessing the risk to groundwater based on chemical inventory. Chemical management and best management practices (BMP)
   • Coordinating with DEM to establish the matrix value for business sites in the SWPA and WR
   • Coordinating with DEM and Risk Assessment Consultant relative to Environmental, Health and Safety (EHS) assessments, assist in completion of Blue-Gold Certification forms, and to quantify risk from source to groundwater for businesses in the SWPA and WR

Task B. Risk Management Activities

1. Review and assess potential threats to City well fields and provide input to the Director of the City of Dayton Department of Water, or designee, toward the prioritization of risk management activities.

2. Maintain and update a list of Underground Storage Tanks (UST) and Above Ground Storage Tanks (AST) in the SWPA for systems still in use; previously removed; abandoned
in-place; and present but out of service, and their regulatory status. Maintain and provide
upon request a list of USTS which have been removed from the SWPA since the SWPP
was established. This includes number and size of USTS removed.

3. Once Jurisdictional approval of new SWPP ordinances are updated and approved, maintain
a list of businesses that are defined as Prohibited Uses or handle prohibited chemicals in
the SWPA but are grandfathered under zoning.

4. Assist Dayton, Department of Water in obtaining access, including right-of-ways, to
property outside the COD limits in order to install, maintain, and monitor Early Warning
Monitoring Wells.

5. Maintain and update a list of businesses that discharge to the “waters of the state” (NPDES
information) and including but not limited to storm sewers, detention and/or retention
basins and dry wells. Document pertinent storm water and dry well-related information
during business inspections, provide updates regarding problem sites and potential surface
water and ground water threats, and identify potential solutions, as needed.

6. Coordinate with all jurisdictions to obtain available storm sewer watershed information
including drainage areas and surveyed state plane coordinates at all outfall locations.

Task C. Support for the Source Water Protection Board

1. Attend all Source Water Protection Board (“Board”) meetings and all Pre-Fund Board
meetings. Make presentations to the Board as necessary.

2. For businesses and/or property owners in the jurisdictions outside Dayton that have
received Source Water Protection Funds, monitor compliance with any deed restrictions,
conservation easements, or other requirements imposed by the Board and provide an annual
update regarding status of projects and any concerns to the Board and include in annual
report.

3. Attend and participate in Board-sponsored financial marketing events, as needed.

Task D. Support of Educational Activities:

1. Attend and participate in meetings of PROGRESS Committee and the publication of
PROGRESS News. Compose short articles for a minimum of 1 issue per year of the
PROGRESS News. Articles shall first be submitted in draft form for Division of
Environmental Management (DEM) / PROGRESS News Committee review.

2. For the Children's Water Festival, provide one person to Co-Chair on the Festival Planning
Committee. Provide support, as needed, by other SWPP staff.

3. Invite and register businesses to attend H2knOw events and PHDMC may have to provide
at least once per year a presentation on relevant source water protection information.

4. Community Outreach
Task E. Support of Sustainable Practices

1. Assist the City of Dayton Department of Water in promoting sustainable practices and groundwater protection measures for businesses in the SWPA and the WR.

2. Provide/update links to Montgomery County’s DRG-and to Department of Water’s Blue-Gold Application on PHDMC’s website.

3. Encourage sustainable practices through Montgomery County’s DRG Green Certification Program and groundwater protection measures through the Blue-Gold Certification during SWPP inspections.

Deliverables

All the above activities require deliverables to the Source Water Protection Board in the 2022 Annual Summary and Annual Report or in the following time frame:

<table>
<thead>
<tr>
<th>DELIVERABLE</th>
<th>DUE DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Task A</td>
<td></td>
</tr>
<tr>
<td>1 Summarize assistance in jurisdictional facilitation and implementation activities and provide list of all potential sources in the WR and new SWPA sources in Riverside</td>
<td>Quarterly and Annual Reports</td>
</tr>
<tr>
<td>2 Summarize technical assistance to jurisdictions</td>
<td>As needed and Annual Reports</td>
</tr>
<tr>
<td>3 Quarterly reports and updates of listed activities</td>
<td>Quarterly and Annual Reports</td>
</tr>
<tr>
<td>4 Update SWPA and WR business list information including inventory and occupancy status</td>
<td>Quarterly and Annual Reports</td>
</tr>
<tr>
<td>5 Notify jurisdictions of and assist in mitigating deficiencies and non-compliance issues</td>
<td>Include notices and status in Annual Reports</td>
</tr>
<tr>
<td>6 Updates of new businesses and business expansions</td>
<td>Quarterly and Annual Reports</td>
</tr>
<tr>
<td>7 Summarize meeting attendance</td>
<td>Annual Reports</td>
</tr>
<tr>
<td>8 Updates on status of jurisdictions’ Zoning Code changes</td>
<td>Quarterly and Annual Reports</td>
</tr>
<tr>
<td>9 Summarize assistance in Risk Management activities</td>
<td>Quarterly and Annual Reports</td>
</tr>
<tr>
<td>Task B</td>
<td></td>
</tr>
<tr>
<td>1 Update of potential threats</td>
<td>As needed and Annual Reports</td>
</tr>
<tr>
<td>2 List of USTs &amp; ASTs. List of USTs removed since 1988</td>
<td>Annual Reports</td>
</tr>
<tr>
<td>3 List of businesses that are defined as a prohibited use or handle a prohibited chemical, but are grandfathered</td>
<td>Annual Reports</td>
</tr>
<tr>
<td>4 Summarize efforts in assisting Dayton Dept. of Water in obtaining access for well installation, sampling and maintenance</td>
<td>As needed and Annual Reports</td>
</tr>
<tr>
<td>5 List of businesses which discharge to waters of the state and/or to dry wells</td>
<td>Quarterly and Annual Reports</td>
</tr>
<tr>
<td>Task C</td>
<td></td>
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<tr>
<td>1 Summarize Board and Pre-Fund activities</td>
<td>Annual Reports</td>
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<td>Task</td>
<td>Description</td>
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<td>------</td>
<td>------------------------------------------------------------------------------</td>
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<tr>
<td>2</td>
<td>Update of Board-funded projects</td>
</tr>
<tr>
<td>3</td>
<td>Summarize Board-sponsored events</td>
</tr>
<tr>
<td>Task D</td>
<td>Summarize PROGRESS Committee activities and submit articles for PROGRESS News</td>
</tr>
<tr>
<td>2</td>
<td>Summarize Children’s Water Festival Committee Co-Chair activities and the activities of other participants</td>
</tr>
<tr>
<td>3</td>
<td>Summarize H2knOw Event activities</td>
</tr>
<tr>
<td>4</td>
<td>Summarize community outreach activities</td>
</tr>
<tr>
<td>Task E</td>
<td>Summarize implementation of sustainable practices by SWPA and WR businesses</td>
</tr>
<tr>
<td>2</td>
<td>Update DRG, Blue-Gold, and any other links to Montgomery County and Dayton Water Department’s website</td>
</tr>
<tr>
<td>3</td>
<td>Provide a list of businesses that have received Green and/or Blue-Gold Certifications</td>
</tr>
</tbody>
</table>

'A draft Mid-Year Annual Summary, outlining activities performed through June of 2022 and June of 2023 is due at the July Pre-Fund Board Meeting for each year. The final Mid-Year Annual Summary is due at the 2022 and 2023 August Source Water Protection Board meetings.

A draft Annual Report is due at the January 2023 and 2024 Pre-Fund Board meetings. The final Annual Report is due at the February 2023 and 2024 Source Water Protection Board meetings.'
ATTACHMENT B1
TO
AGREEMENT FOR SOURCE WATER PROTECTION

City: City of Dayton, Ohio
Project: Source Water Protection Services
Contractor: Public Health – Dayton and Montgomery County

Source Water Protection Program
2022 Budget

<table>
<thead>
<tr>
<th>Personnel Salary</th>
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<tbody>
<tr>
<td>Well Field Protection Spec.(2)</td>
<td>$105,882.00</td>
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<tr>
<td>Program Supervisor @ 20%</td>
<td>$ 15,653.00</td>
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<tr>
<td>Bureau Supervisor @ 5%</td>
<td>$  5,004.00</td>
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<tr>
<td><strong>Salary Sub-Total</strong></td>
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<table>
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<tr>
<th>Operating Expenses</th>
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<tbody>
<tr>
<td>Mileage Reimbursement</td>
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<tr>
<td>PPE/Supplies/Software</td>
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<td>Print/Copy/Fax/Postage</td>
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<td>Training (incl NGWA Membership)</td>
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<td>Insurance (liability, etc.)</td>
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<td>Telephone</td>
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<tr>
<td>Rent</td>
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<tr>
<td><strong>Operating Sub-Total</strong></td>
<td><strong>$10,900.00</strong></td>
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**TOTAL 2022 Budget** | $184,750.00
# 2023 Budget

## Personnel Salary
- Well Field Protection Spec (2) $108,000.00
- Field Supervisor @ 20% $15,966.00
- Bureau Supervisor @ 5% $5,104.00

**Salary Sub-Total** $129,070.00

## Personnel Fringe
- Fringe Sub-Total $48,257.00

## Operating Expenses
- Mileage Reimbursement $3,060.00
- Supplies/Software $1,020.00
- Print/Copy/Fax/Postage $510.00
- Training, Workshops $1,530.00
- Insurance (liability, etc.) $918.00
- Telephone $714.00
- Rent $3,366.00

**Operating Sub-Total** $11,118.00

**TOTAL 2023 Budget** $188,445.00*

*Assumes 2.0% increase from 2022

If the City and PHDMC mutually agree to extend this Agreement for additional terms as described in ARTICLE 1 of this Agreement, a two (2) percent increase in compensation will be allowed for each year that that Agreement is extended.
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>New Contract</th>
<th>Renewal Contract</th>
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<tbody>
<tr>
<td>Contract Start Date</td>
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<td>Expiration Date</td>
<td>12/31/2021</td>
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<tr>
<td>Original Commission Approval</td>
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<tr>
<td>Increase Encumbrance</td>
<td>$ 181,128.00</td>
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<tr>
<td>Decrease Encumbrance</td>
<td>$ -</td>
<td></td>
</tr>
<tr>
<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: | $ 181,128.00 |
| Fund Code: | 53997 - 3470 - 1271 - 55 - |
| Fund | Org | Acct | Prog | Act | Loc |

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

Attach additional pages for more FOAPALS

Vendor Name: Public Health-Dayton and Montgomery County
Vendor Address: 117 S. Main St. Dayton OH 45422-1280
Federal ID: 31-6000172
Commodity Code: 984-37
Purpose: 2021 Encumbrance for the Award of Professional Services Agreement for technical and inspectional aspects of the Source Water Protection Program.

Contact Person: Lisa Burton-Yates

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: [Signature]
Date: 2-9-2021

CF Prepared by: [Signature]
Date: 2/15/2021
CF/CT Number: CT20-2503

Finance Department
October 18, 2011
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>Contract Start Date</th>
<th>1/1/2020</th>
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<td>$368,704.00</td>
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<td>Initial Encumbrance</td>
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</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$181,128.00</td>
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<table>
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<tr>
<th>Required Documentation</th>
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<tbody>
<tr>
<td>X Initial City Manager's Report</td>
</tr>
<tr>
<td>X Initial Certificate of Funds</td>
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<tr>
<td>X Initial Agreement/Contract</td>
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| Original CT/CF | $ - |
| Increase Encumbrance | $ - |
| Decrease Encumbrance  | $ - |
| Remaining Commission Approval | $ - |

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<th>Amount: $177,676.00</th>
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| Fund Code | 63967 - 3470 - 1271 - 55 - |
| Fund | Org | Acct | Prog | Act | Loc |

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| Fund Code | |
| Fund | Org | Acct | Prog | Act | Loc |

Vendor Name: Public Health-Dayton and Montgomery County
Vendor Address: 117 S. Main St., Dayton, OH 45422-1280
Federal ID: 31-6000172
Commodity Code: 964-37
Purpose: Award of Professional Services Agreement for technical and inspectional aspects of the Source Water Protection Program.

Contact Person: Lisa Burton-Yates

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.

Originating Department Director's Signature: [Signature]
Date: 11/14/2019

Finance Department Director's Signature: [Signature]
Date: [Signature]

Finance Department

CT 20-2503

October 16, 2011
PUBLIC HEALTH – DAYTON & MONTGOMERY COUNTY AGREEMENT

The Department of Water requests permission to enter into a Professional Services Agreement with Public Health-Dayton & Montgomery County, in the amount of $358,704.00 for the technical, educational, and inspectional aspects of the City of Dayton’s Multi-Jurisdictional Source Water Protection Program’s efforts in protecting the region’s drinking water supply. Public Health-Dayton & Montgomery County provides this assistance to the areas outside of the City of Dayton: Harrison Township, Huber Heights, Vandalia, and Riverside.

The Professional Services Agreement is being funded using the Source Water Protection Funds as approved by the Source Water Protection Board on August 1, 2019.

The Agreement shall commence on January 1, 2020 and shall expire upon expenditure of all funds provided herein or on December 31, 2021. Any unused amount will remain in the Source Water Protection Fund.

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

A Certificate of Funds and a copy of the Agreement are attached.
AGREEMENT FOR SOURCE WATER PROTECTION

This Agreement, made this 17th day of December, 2019 is between the City of Dayton ("City") and Public Health - Dayton and Montgomery County ("PHDMC").

WITNESSETH:

WHEREAS, the ground water in the aquifer underlying the Miami Valley and the City of Dayton is the source of drinking water for the region;

WHEREAS, on August 3, 1988, the Commission of the City of Dayton unanimously voted to institute rational and scientific pollution source controls for source water protection (the "Source Water Protection Program");

WHEREAS, regional cooperation, coordination, and consistency are essential to maximize Source Water protection;

WHEREAS, Harrison Township, the City of Huber Heights, the City of Riverside, and the City of Vandalia have passed legislation to protect the City of Dayton’s well fields that provide drinking water to approximately 400,000 people in the region; and

WHEREAS, PHDMC is willing and able and has authority to provide assistance in the implementation of source water protection within the designated Source Water Protection Area and Water Resource Area, inside and outside the corporate boundaries of the City of Dayton.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE 1. TERM

This Agreement shall commence on January 1, 2020 and shall terminate on December 31, 2021. Upon the approval by the Multi-Jurisdictional Source Water Protection Board ("Board") and the availability of funds, the City and PHDMC may mutually agree to extend this Agreement for two (2) additional terms of 24-months.

ARTICLE 2. SERVICES

Public Health-Dayton and Montgomery County (PHDMC) shall provide assistance in the implementation of source water protection efforts in areas inside and outside of the boundaries of the City of Dayton, within the designated drinking water protection area boundaries or designated Source Water protection districts providing for the protection of City well fields, and as further set forth with reporting requirements in the Scope of Service and Deliverables as specified in Attachment A, which is attached hereto and incorporated herein by reference.

ARTICLE 3. COMPENSATION

In consideration for services provided, the City agrees to pay to PHDMC a sum not to exceed THREE HUNDRED FIFTY EIGHT THOUSAND SEVEN HUNDRED AND FOUR DOLLARS AND ZERO CENTS ($358,704.00). PHDMC shall invoice the City on a quarterly basis for services rendered under the terms of this Agreement, and funds shall be spent according to the budget attached hereto as Attachment B.
The amount available for training and workshops may be reimbursed after the fact, provided such classes are necessary for the performance of the services under this Agreement.

The City shall submit any comments or questions (regarding the quarterly invoice and associated services rendered) to PHDMC within ten (10) calendar days of receipt. The City shall process payment to PHDMC within thirty (30) calendar days of receipt of invoice or within thirty (30) calendar days of the PHDMC’s response to the City’s comments or questions.

If the City and PHDMC mutually agree to extend this Agreement for additional terms, a two (2) percent increase in compensation will be allowed for each year that that Agreement is extended.

ARTICLE 4. CITY’S RESPONSIBILITIES
The City will furnish to PHDMC, at no cost or expense, all reports, records, data that might be necessary or useful to complete the Services required under this Agreement.

ARTICLE 5. STANDARD OF CARE
PHDMC 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. PHDMC shall have no liability for defects in the Services attributable to PHDMC 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 PHDMC’s failure to meet such standards and the City has notified PHDMC in writing of any such error within that period, PHDMC shall perform, at no additional cost to the City, such Services within the original Project as may be necessary to remedy such error.

ARTICLE 6. LIABILITY AND INDEMNIFICATION
The parties agree to release each other from any and all liability, which may be caused by or arise by the wrongful and/or negligent conduct of the parties’ respective employees and agents in the performance of the services, duties, and responsibilities in this Agreement. Notwithstanding, neither party waives any available immunities under law.

ARTICLE 7. INSURANCE
Contractor represents and warrants that it is a self-insured entity. As a result, Contractor shall be solely liable and responsible for any claims against it concerning or relating to the performance of any duties, obligations, or covenants or of this Agreement.

ARTICLE 8. OWNERSHIP OF DOCUMENTS & INTELLECTUAL PROPERTY
Document and reports prepared by PHDMC as part of the Services shall become the sole and exclusive property of the City upon payment. However, PHDMC shall have the unrestricted right to their use.

PHDMC 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 PHDMC.

ARTICLE 9. TERMINATION
Either party may terminate this Agreement by giving sixty (60) days written notice to the other party.
ARTICLE 10. RECORDS TO BE MAINTAINED

All costs and expenditures pertaining in whole or part to this Agreement for the work and Services performed under this Agreement shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers or other accounting documents, which shall be clearly identified and readily accessible to the City. At any time during normal business hours and as often as the City may deem necessary, Contractor shall make available to the City all of its records related to this Agreement. PHDMC shall also permit the City to audit, examine and make excerpts or transcripts from such records and to have audits made of all contracts, invoices, materials, payrolls, personnel records, conditions of employment, and other data pertaining in whole or part to matters covered by this Agreement.

ARTICLE 11. RETENTION OF RECORDS

PHDMC shall retain all records pertinent to the expenditures incurred under this Agreement for a period of three (3) years after the termination of all work and services funded under this Agreement. Notwithstanding the above, if there is any action, including without limitation litigation, claims, audits, or negotiations that involves any of the records pertaining to this Agreement, which commences prior to the expiration of the three-year period, then PHDMC shall retain such records until completion of the actions and resolution of all issues, or the expiration of the three-year period, whichever occurs later.

ARTICLE 12. STANDARD TERMS

A. DELAY IN PERFORMANCE

Neither the City nor PHDMC 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 PHDMC under this Agreement.

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

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.

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

D. EQUAL EMPLOYMENT OPPORTUNITY

PHDMC 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 entitled the City to terminate this Agreement at its option.

E. WAIVER

A waiver by the City or PHDMC 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. 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.

G. INDEPENDENT CONTRACTOR

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

PHDMC and any employees and persons retained or hired by PHDMC to perform the services, duties, and responsibilities under this Agreement are not City employees, and therefore, are not entitled to, nor will they make a claim for, any of the emoluments of employment with the City of Dayton. Further, PHDMC shall be solely responsible to withhold and pay all applicable local, state, and federal taxes.

H. ASSIGNMENT

PHDMC 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 PHDMC 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 PHDMC.

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. The parties may mutually agree to extend the term of this Agreement to a later date. The Director of the Department of Water is authorized to extend the term of this Agreement for the City.

K. POLITICAL CONTRIBUTIONS

PHDMC 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 PHDMC. This Agreement supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement.
IN WITNESS WHEREOF, the parties, each by a duly authorized representative, have executed this Agreement on the date first above written.

CITY OF DAYTON, OHIO:

[Signature]
City Manager

PUBLIC HEALTH – DAYTON AND MONTGOMERY COUNTY:

[Signature]
Health Commissioner

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]
City Attorney

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

November 27, 2019

Min/Bk 1-14 Page 0031

Clerk of the Commission
ATTACHMENT A

TO

AGREEMENT FOR SOURCE WATER PROTECTION

City: City of Dayton, Ohio
Project: Source Water Protection Services
Contractor: Public Health – Dayton and Montgomery County

Scope of Services

Specifically, the PHDMC shall provide expert professional assistance including, but not limited to tasks and subtasks as follows:

Task A. Implementation of Source Water Protection Program (SWPP)/Land Use Control Zoning

1. Facilitate zoning administration and implementation through the following:
   - Update zoning ordinances (see Task A. 8.)
   - Permit review
   - Complete or update windshield survey in new Source Water Protection Areas (SWPA) and Water Resource Areas (WR)
   - Work with Dayton Department of Water in identifying protective strategies in SWPA’s and WRs
   - Compliance inspections focusing on risk management and leading to risk matrix scoring for all businesses within the SWPAs and WRs
   - Data acquisition and management
   - Report writing
   - Enforcement actions (in cases of imminent danger to public health)
   - Identify 24-hour emergency contact
   - Provide written summary of any emergency responses within 72-hours

2. For jurisdictions outside Dayton participating in the Source Water Protection Program, participate as technical/expert witness throughout respective zoning, planning, City Council, and Township Trustee process for any case located in the SWPAs. Participation shall include providing written testimony in advance, attending the meeting, and providing oral testimony, as needed.

3. Provide quarterly reports of activity to the City of Dayton Division of Environmental Management (DEM) and the respective jurisdictions. Reports shall include a breakdown of the number of actions performed in each jurisdiction and grand total for each of the following:
   - Facilities inspected
   - Facilities submitting Regulated Substance Activity Inventory Reports (RSAIR)
   - Number and construction value of plans reviewed during the quarter
   - Number of emergency / spill / complaint responses and detail of how each incident was mitigated
   - Noncompliant Facilities
   - Educational efforts
     > Children’s Water Festival
     > PROGRESS
     > H2knOw Events
> Community Outreach
> Dayton Regional Green (DRG) and Blue-Gold Certifications

4. Maintain an up-to-date business list of the sites in the SWPA and the new WR of each jurisdiction. For each site, the list will provide information in the Annual Report including but not limited to:
   - Whether the site is conforming or non-conforming with respect to the SWPP
   - Status of occupancy (i.e. whether each site is occupied or vacant)
   - Potential sources between one-year and five-year time of travel, the newly designated WR, as determined from site visits or windshield survey

5. If a business is determined to be non-compliant relative to zoning/occupancy permit requirements or with SWPP requirements, including but not limited to facilities who have received funding through the Risk Point Buy Down Program, PHDMC and the respective jurisdiction shall cooperatively take steps to correct the non-compliance(s) or assist the business in relocation. Ensure that follow up documentation identifying deficiencies are sent to the non-compliant facility. Support jurisdictions in any necessary enforcement action to be taken. Include notices of deficiency sent to each non-compliant facility and provide updated compliance status in annual report.

6. Visit new businesses in the SWPA and WR as they occur and ensure they are knowledgeable with SWPP and jurisdictional requirements. Update each jurisdiction as needed concerning new businesses that have moved into and/or have expanded their existing occupancy to a new address in the SWPA and the WR.

7. Attend and participate in Multi-Jurisdictional meetings.

8. Work with Cities of Riverside, Huber Heights and Vandalia; Harrison Township and DEM toward the development and enactment of appropriate Zoning Codes which reflect Dayton’s Zoning Code, Water Ordinance and Resolution No. 6125-15. Provide mid-year update to Board.

9. As requested by DEM, assist in development of a comprehensive Risk Management Plan and Risk Matrix by:
   - Assisting in assessing the risk to groundwater based on chemical inventory. Chemical management and best management practices (BMP)
   - Coordinating with DEM to establish the matrix value for business sites in the SWPA and WR
   - Coordinating with DEM and Risk Assessment Consultant relative to Environmental, Health and Safety (EHS) assessments, assist in completion of Blue-Gold Certification forms, and to quantify risk from source to groundwater for businesses in the SWPA and WR

Task B. Risk Management Activities

1. Review and assess potential threats to City well fields and provide input to the Director of the City of Dayton Department of Water, or designee, toward the prioritization of risk management activities.

2. Maintain and update a list of Underground Storage Tanks (UST) and Above Ground Storage Tanks (AST) in the SWPA for systems still in use; previously removed; abandoned in-place;
and present but out of service, and their regulatory status. Maintain and provide upon request a list of USTs which have been removed from the SWPA since the SWPP was established. This includes number and size of USTs removed.

3. Once Jurisdictional approval of new SWPP ordinances are updated and approved, maintain a list of businesses that are defined as Prohibited Uses or handle prohibited chemicals in the SWPA but are grandfathered under zoning.

4. Assist Dayton, Department of Water in obtaining access, including right-of-ways, to property outside the COD limits in order to install, maintain, and monitor Early Warning Monitoring Wells.

5. Maintain and update a list of businesses that discharge to the “waters of the state” (NPDES information) and including but not limited to storm sewers, detention and/or retention basins and dry wells. Document pertinent storm water and dry well-related information during business inspections, provide updates regarding problem sites and potential surface water and ground water threats, and identify potential solutions, as needed.

6. Coordinate with all jurisdictions to obtain available storm sewer watershed information including drainage areas and surveyed state plane coordinates at all outfall locations.

Task C. Support for the Source Water Protection Board

1. Attend all Source Water Protection Board (“Board”) meetings and all Pre-Fund Board meetings. Make presentations to the Board as necessary.

2. For businesses and/or property owners in the jurisdictions outside Dayton that have received Source Water Protection Funds, monitor compliance with any deed restrictions, conservation easements, or other requirements imposed by the Board and provide an annual update regarding status of projects and any concerns to the Board and include in annual report.

3. Attend and participate in Board-sponsored financial marketing events, as needed.

Task D. Support of Educational Activities:

1. Attend and participate in meetings of PROGRESS Committee and the publication of PROGRESS News. Compose short articles for a minimum of 1 issue per year of the PROGRESS News. Articles shall first be submitted in draft form for Division of Environmental Management (DEM) / PROGRESS News Committee review.

2. For the Children’s Water Festival, provide one person to Co-Chair on the Festival Planning Committee. Provide support, as needed, by other SWPP staff.

3. Invite and register businesses to attend H2knOw events and PHDMC may have to provide at least once per year a presentation on relevant source water protection information.

4. Community Outreach

Task E. Support of Sustainable Practices
1. Assist the City of Dayton Department of Water in promoting sustainable practices and groundwater protection measures for businesses in the SWPA and the WR.

2. Provide/update links to Montgomery County’s DRG and to Department of Water’s Blue-Gold Application on PHDMC’s website.

3. Encourage sustainable practices through Montgomery County’s DRG Green Certification Program and groundwater protection measures through the Blue-Gold Certification during SWPP inspections.

**Deliverables**

All the above activities require deliverables to the Source Water Protection Board in the 2020 Annual Summary and Annual Report or in the following time frame:

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<tr>
<th>DELIVERABLE</th>
<th>DUE DATE</th>
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<tbody>
<tr>
<td>Task A</td>
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</tr>
<tr>
<td>1 Summarize assistance in jurisdictional facilitation and implementation activities and provide list of all potential sources in the WR and new SWPA sources in Riverside</td>
<td>Quarterly and Annual Reports</td>
</tr>
<tr>
<td>2 Summarize technical assistance to jurisdictions</td>
<td>As needed and Annual Reports</td>
</tr>
<tr>
<td>3 Quarterly reports and updates of listed activities</td>
<td>Quarterly and Annual Reports</td>
</tr>
<tr>
<td>4 Update SWPA and WR business list information including inventory and occupancy status</td>
<td>Quarterly and Annual Reports</td>
</tr>
<tr>
<td>5 Notify jurisdictions of and assist in mitigating deficiencies and non-compliance issues</td>
<td>Include notices and status in Annual Reports</td>
</tr>
<tr>
<td>6 Updates of new businesses and business expansions</td>
<td>Quarterly and Annual Reports</td>
</tr>
<tr>
<td>7 Summarize meeting attendance</td>
<td>Annual Reports</td>
</tr>
<tr>
<td>8 Updates on status of jurisdictions’ Zoning Code changes</td>
<td>Quarterly and Annual Reports</td>
</tr>
<tr>
<td>9 Summarize assistance in Risk Management activities</td>
<td>Quarterly and Annual Reports</td>
</tr>
<tr>
<td>Task B</td>
<td></td>
</tr>
<tr>
<td>1 Update of potential threats</td>
<td>As needed and Annual Reports</td>
</tr>
<tr>
<td>2 List of USTs &amp; ASTs. List of USTs removed since 1988</td>
<td>Annual Reports</td>
</tr>
<tr>
<td>3 List of businesses that are defined as a prohibited use or handle a prohibited chemical, but are grandfathered</td>
<td>Annual Reports</td>
</tr>
<tr>
<td>4 Summarize efforts in assisting Dayton Dept. of Water in obtaining access for well installation, sampling and maintenance</td>
<td>As needed and Annual Reports</td>
</tr>
<tr>
<td>5 List of businesses which discharge to waters of the state and/or to dry wells</td>
<td>Quarterly and Annual Reports</td>
</tr>
<tr>
<td>Task C</td>
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<td>1 Summarize Board and Pre-Fund activities</td>
<td>Annual Reports</td>
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<tr>
<td>2 Update of Board-funded projects</td>
<td>Annual Reports and as needed at Board meetings</td>
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<tr>
<td>3 Summarize Board-sponsored events</td>
<td>Annual Reports</td>
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<tr>
<td>Task D</td>
<td>1 Summarize PROGRESS Committee activities and submit articles for PROGRESS News</td>
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<td></td>
<td>2 Summarize Children’s Water Festival Committee Co-Chair activities and the activities of other participants</td>
</tr>
<tr>
<td></td>
<td>3 Summarize H2knOw Event activities</td>
</tr>
<tr>
<td></td>
<td>4 Summarize community outreach activities</td>
</tr>
<tr>
<td>Task E</td>
<td>1 Summarize implementation of sustainable practices by SWPA and WR businesses</td>
</tr>
<tr>
<td></td>
<td>2 Update DRG, Blue-Gold, and any other links to Montgomery County and Dayton Water Department’s website</td>
</tr>
<tr>
<td></td>
<td>3 Provide a list of businesses that have received Green and/or Blue-Gold Certifications</td>
</tr>
</tbody>
</table>

*A draft Mid-Year Annual Summary, outlining activities performed through June of 2020 and June of 2021 is due at the July Pre-Fund Board Meeting for each year. The final Mid-Year Annual Summary is due at the 2020 and 2021 August Source Water Protection Board meetings.*

*A draft Annual Report is due at the January 2021 and 2022 Pre-Fund Board meetings. The final Annual Report is due at the February 2021 and 2022 Source Water Protection Board meetings.*
ATTACHMENT B
TO
AGREEMENT FOR SOURCE WATER PROTECTION

City: City of Dayton, Ohio
Project: Source Water Protection Services
Contractor: Public Health – Dayton and Montgomery County

Source Water Protection Program
2020 Budget

Personnel Salary
Well Field Protection Spec.(2) $111,449.00
Field Supervisor @ 20% $ 15,480.00
Bureau Supervisor @ 5% $ 4,805.00
Salary Sub-Total $131,734.00

Personnel Fringe
Fringe Sub-Total $ 34,771.00

Operating Expenses
Mileage Reimbursement $ 3,000.00
Supplies/Software $ 1,000.00
Print/Copy/Fax/Postage $ 500.00
Training, Workshops $ 1,700.00
Insurance (liability, etc.) $ 871.00
Telephone $ 700.00
Rent $ 3,300.00
Operating Sub-Total $ 11,071.00

TOTAL 2020 Budget $177,576.00
## 2021 Budget

### Personnel Salary
- Well Field Protection Spec.(2) $113,678.00
- Field Supervisor @ 20% $15,790.00
- Bureau Supervisor @ 5% $4,901.00

**Salary Sub-Total $134,369.00**

### Personnel Fringe
- Fringe Sub-Total $35,467.00

### Operating Expenses
- Mileage Reimbursement $3,060.00
- Supplies/Software $1,020.00
- Print/Copy/Fax/Postage $510.00
- Training, Workshops $1,734.00
- Insurance (liability, etc.) $888.00
- Telephone $714.00
- Rent $3,366.00

**Operating Sub-Total $11,292.00**

**TOTAL 2021 Budget $181,128.00**

*If the City and PHDMC mutually agree to extend this Agreement for additional terms as described in ARTICLE 1 of this Agreement, a two (2) percent increase in compensation will be allowed for each year that that Agreement is extended.*
PROFESSIONAL SERVICES AGREEMENT FOR SOURCE WATER PROTECTION MARKETING MATERIALS
THIRD AMENDMENT AND SECOND RENEWAL

The Department of Water requests permission to enter into a Third Amendment and Second Renewal with Think Patented, in the amount of $40,000.00 for the production and distribution of marketing materials. The scope for this Third amendment and Second Renewal is to continue providing information on the City of Dayton's Multi-Jurisdictional Source Water Protection Program. Services include materials, labor, and research required to complete the work. These publications will be used to emphasize the aspects of the Source Water Protection Program and are essential for the continued protection of the region's drinking water supply.

The original Agreement was approved on March 14, 2018 in the amount of $80,000.00. This First Amendment and First Renewal increased the contract amount to $120,000.00. The Second Amendment was approved on March 23, 2021 and it extended the term of the contract to December 31, 2021. This Third Amendment and Second Renewal will increase the contract amount to $160,000.00, an increase of $40,000.00 and extend the term to December 31, 2022.

The Third Amendment and Second Renewal is being funded using the 2022 Wellfield Protection Fund as approved by the Source Water Protection Board.

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

A Certificate of Funds in the amount of $40,000.000 for 2022, and a copy of the Third Amendment and Second Renewal are attached.
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

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<th>New Contract</th>
<th>Renewal Contract</th>
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<tr>
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<tr>
<td>Required Documentation</td>
<td></td>
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<tr>
<td>Initial City Manager's Report</td>
<td>X</td>
<td>X</td>
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<td>Initial Certificate of Funds</td>
<td>X</td>
<td></td>
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<tr>
<td>Initial Agreement/Contract</td>
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Original CT/CF:

<table>
<thead>
<tr>
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<td>CT20-1980</td>
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<tr>
<td>Remaining Commission Approval</td>
<td></td>
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</table>

Amount: $40,000.00

Fund Code: 53997 - 3470 - 1159 - 55 -

Fund | Org | Acct | Prog | Act | Loc
---|-----|------|------|-----|-----
     |     |      |      |     |     

Amount: 

Fund Code: 

Fund | Org | Acct | Prog | Act | Loc
---|-----|------|------|-----|-----
     |     |      |      |     |     

Attach additional pages for more FOAPALs

Vendor Name: Think Patented

Vendor Address: 2490 CrossPointe Drive Miamisburg OH 45342

Street | City | State | Zipcode + 4
---|------|-------|--------
     |      |       |        

Federal ID: 20-4558719

Commodity Code: 91503

Purpose: Third Amendment and Second Renewal to the Professional Services Agreement for the production and distribution of informational material regarding the protection of the City's Source Water Protection Area.

Contact Person: Lisa Burton-Yates

Water/ Water Engineering 12/17/2021

Department/Division Date

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: 

Date: 12/21/2021

CF/CT Number: CT22-1980

CF Prepared by: 

Date: 10/24/2021

Finance Department

October 18, 2011
FIRST AMENDMENT TO THE
AGREEMENT FOR SOURCE WATER PROTECTION

This First Amendment is dated this __________ day of __________, 2021 between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio ("City") and Harrison Township – Montgomery County, Ohio, a civil township in and of the State of Ohio ("Contractor").

WITNESSETH:

WHEREAS, On April 8, 2020, the Commission of the City of Dayton approved an Agreement for Source Water Protection Services, (CT20-2547) ("Agreement") between the City and Contractor; and

WHEREAS, The City desires additional services to reduce the risk of ground water contamination within the Source Water Protection Area.

NOW THEREFORE, in consideration of the foregoing, the parties hereby agree to renew and amend the Agreement as follows:

The City and the Contractor agree to amend the Agreement as follows:

Article 1. Term of Contract shall be deleted in its entirety and replaced with the following language.

ARTICLE 1 – TERM OF CONTRACT

This Agreement shall commence upon execution by the City, and it shall terminate upon expenditure of all funds provided herein or on December 31, 2023, whichever date is earlier. The Contractor and the City have the option of entering into (1) additional 24-month period, contingent upon satisfaction with the work, availability of funds and mutual agreement of both parties.

The City and the Contractor agree to amend the Agreement as follows:

Article 2. Services To Be Performed By Contractor, shall be deleted in its entirety and replaced with the following language.

ARTICLE 2 – SERVICES TO BE PERFORMED BY CONTRACTOR

Contractor shall provide all professional services necessary to complete the Services that are described in Attachment A and A1 Scope of Services, which is attached hereto and incorporated by reference.

Article 3. Compensation shall be deleted in its entirety and replaced with the following language.

ARTICLE 3 – COMPENSATION shall be amended to include the following:

The total remuneration in this Agreement shall not exceed THREE HUNDRED THIRTY-ONE THOUSAND ONE HUNDRED ELEVEN DOLLARS AND ZERO CENTS ($331,111.00). The City payment for years 2022 and 2023 shall not exceed the amounts contained in Attachment B1, which is attached hereto and incorporated herein.

1. The City and Contractor hereby agree that Attachment A1 and Attachment B1, which
3. Other than the provisions that may be supplemented, amended and/or modified by the terms and conditions contained herein, all other provisions of the Agreement shall 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 Third Amendment, Second Renewal as of the date set forth above.

CITY OF DAYTON, OHIO

City Manager

APPROVED AS TO FORM AND CORRECTNESS:
11/23/2021

X John Musto for
City Attorney
Signed by: Musto, John

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

Min./Bk.___________ Pg.____________

Clerk of the Commission

THINK PATENTED

By
Title: Vice President, Sales & Marketing
ATTACHMENT A2
TO
AGREEMENT FOR PROFESSIONAL SERVICES

City: City of Dayton, Ohio
Project: Production of Informational Materials for the Source Water Protection Program
Consultant: Think Patented

SCOPE OF SERVICES – SECOND RENEWAL

SCOPE OF WORK / PROJECT REQUIREMENTS:

Consultant shall provide services such as material, labor, research and any work required to complete work as denoted in the RFP. The focus will be on regional source water protection efforts, environmental regulatory updates, as well as any upcoming events related to groundwater protection and education. All items, layout, designs, pictures, etc., and any future materials resulting from this proposal shall be provided in a format that can be edit/reproduced by the City of Dayton. All printed and/or electronic media will be considered draft until approved by the City of Dayton. All materials shall become the property of the City of Dayton. Mailing list(s) shall not be sold or distributed without express written consent from the City of Dayton.

Frequency:

The City of Dayton’s (“City”) objectives are to have four (4) newsletters produced in 2022, (one 8-page, one 6-page, and two 4-page issues each year) for a total of eight (4) issues: Two (2) pamphlets produced in 2022; One (1) calendars; Laminated handouts and glossy cards will be produced as needed. The SWPP brochure, emergency contact list, and other items need to be redesigned and reproduced. The use of digital/electronic media may also be required. Modifications and reprinting of previously produced materials may be required. Publication/materials shall be printed on recycled paper using soy based ink or a comparable environmental friendly product. Above quantities are estimates and may be subject to change at the sole discretion of the City.

The following briefly describes, but is not limited to, the anticipated tasks required to successfully manage the Production of Informational Materials for the Source Water Protection Program:

Writing Responsibilities: Consultant shall provide the following informational processes for each production type:

1. Staff will provide draft copy for any publication(s) pertaining to information related to but not limited to: technical issues, regulatory requirements, financial incentives, and pollution prevention measures. The Proposer shall edit these drafts for readability, clarity, spelling, grammar, and brevity.
2. The Proposer is expected to research, write, and format information for each publication related to but not limited to: technical issues, regulatory requirements, pollution prevention measures, stimulus projects, any new programs that become available, and testimonials of local individuals or businesses that have been successful partners in the City’s environmental protection efforts.
3. Drafts of any/all articles shall be presented to the City of Dayton for review and approval prior to final printing. For purposes of proposal, the cost for writing shall include four (4) revisions after review for content and correctness by City staff. NOTE: There shall be no additional charges to the City for corrective actions after the four (4) edit reviews should edit reviews uncover grammar, punctuation, spelling, or any other related errors made by propose.
4. Articles may require, but are not limited to interviews with local business, regulatory personnel and citizens. Topic matters for interviews shall be the sole discretion of the City.

Design / Photography / Art Work: Consultant shall provide all layout designs in a format that can be edited and/or reproduced by the City; and shall provide and/or incorporate the following photography/art work for each publication as necessary:

1. Photographs, digital pictures, or artwork provided by the City.
2. Photographs or digital pictures taken by the Consultant
3. Art work provided by the Consultant
4. Travel cost for providing photographs of events or articles

MEDIA SERVICES: The selected Proposer will work with the City's Water: Environmental Management, Marketing, and Information Management Systems Divisions in collaboration with City’s Office of Public Affairs, as needed to:

1. Format printed material into versions capable of being distributed via electronic media,
2. Format printed material to contain active links when distributed via electronic media,
3. Adapt to various language translations,
4. Provide electronic versions to City in format that may be reproduced/edited by City,
5. Conduct Story Board meetings for video production

Printing: The actual quantity of documents needed for each item will be determined by the City and may fluctuate throughout the contract period. Publication/materials shall be printed on recycled paper using soy based ink or a comparable environmental friendly product.

Labeling / Delivery / Mailing: Consultant shall provide mailing services for all publications as necessary and delivery extra copies to: City of Dayton, Department of Water, 320 W Monument Ave., Dayton, OH 45402

Contingency: The actual format, quantity of documents, and mailings needed for each item is unknown and may change.
ATTACHMENT B2
TO
AGREEMENT FOR PROFESSIONAL SERVICES

City: City of Dayton, Ohio
Project: Production of Informational Materials for the Source Water Protection Program
Consultant: Think Patented

COMPENSATION – SECOND RENEWAL

The “Not-To-Exceed” fee is $40,000.00, apportioned as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Design Cost</td>
<td>$375.00</td>
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<tr>
<td>Production</td>
<td>$4,225.00</td>
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<td>Writing</td>
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<td>Photography / Art Work</td>
<td>$3,775.00</td>
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<tr>
<td>Printing</td>
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<td>Media</td>
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<td>$10,337.50</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$40,000.00</strong></td>
</tr>
</tbody>
</table>

1. The total “billing limits” shall not exceed $40,000.00 without further written authorization from the City.

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 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.
**CERTIFICATE OF FUNDS**

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

<table>
<thead>
<tr>
<th>New Contract</th>
<th>Renewal Contract</th>
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<tr>
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<tr>
<td>Increase Encumbrance</td>
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<td>Decrease Encumbrance</td>
<td>$</td>
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<tr>
<td>X Initial Agreement/Contract</td>
</tr>
</tbody>
</table>

| Amount: | $24,546.66 |
| Fund Code | 53997 - 3470 - 1159 - 55 -   |

**Attach additional pages for more FOAPALS**

**Vendor Name:** Think Patented

**Vendor Address:** 2490 CrossPointe Drive, Miamisburg, OH 45342

**Federal ID:** 20-4558719

**Commodity Code:** 91503

**Purpose:** Total Authority for this agreement was $120,000.00. In 2018, the encumbrance was closed with $275.69 remaining to spend and in 2019, the encumbrance had $248.68 remaining, and in 2020, the encumbrance had $24,022.39 remaining. Therefore, we are encumbering the remaining authority of $24,546.66 to complete the spending authority.

**Contact Person:** Lisa Burton-Yates

**Water/ Water Engineering Department/Division:** 8/6/2021

**Originating Department Director's Signature:** Aaron S. Zolin

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

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

**Finance Director Signature:**

**Date:** 8/16/2021

**CF Prepared by:** William

**Date:** 8/16/2021

**CF/CT Number:** C724-1980

Finance Department
October 18, 2011
SECOND AMENDMENT TO THE AGREEMENT FOR PROFESSIONAL SERVICES

This Second Amendment is dated this 23rd day of March, 2021, between the City of Dayton, Ohio ("City") and Think Patented, 2490 CrossPointe Drive, Miamisburg, OH 45342 ("Consultant").

WITNESSETH:

WHEREAS, On March 14, 2018, the Commission of the City of Dayton, Ohio, approved an Agreement for Services, CT18-1980, ("Agreement") between the City and Consultant; and

WHEREAS, On April 8, 2020, the Commission of the City of Dayton, Ohio, approved the First Amendment to the Agreement (CT20-1980), between the City and Consultant; and,

WHEREAS, The parties desire to enter into a Second Amendment to extend the term of the Agreement; and,

WHEREAS, The Consultant agrees to continue to provide the services of the original agreement as the City requested and the City agrees to pay Consultant for such services.

NOW THEREFORE, the City and the Consultant 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 execution by the City and it shall expire upon expenditure of all funds provided herein or on December 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 11, 1.

2. 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 have caused this Second Amendment to be executed, each by a duly authorized representative, on the date first set forth above.

CITY OF DAYTON, OHIO

[Signature]
City Manager

THINK PATENTED

By [Signature]
Its: CEO & Managing Sec.

APPROVED AS TO FORM
AND CORRECTNESS:

3/16/2021

X Amelia N. Blankenship for

City Attorney
Signed by: Blankenship, Amelia

**NO COMMISSION ACTION REQUIRED**
**CERTIFICATE OF FUNDS**

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

<table>
<thead>
<tr>
<th>New Contract</th>
<th>X</th>
<th>Renewal Contract</th>
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<td>Expiration Date</td>
<td>3/31/2021</td>
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<td>Original Commission Approval</td>
<td>$ 80,000.00</td>
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<tr>
<td>Initial Encumbrance</td>
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<tr>
<td>Remaining Commission Approval</td>
<td>$</td>
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</table>

**Contract Code:** CT-18-1980

| Increase Encumbrance | $ 40,000.00 | |
| Decrease Encumbrance | $ | |

| Amount: | $ 40,000.00 |

**Fund Code:** 63097 - 3470 - 1159 - 55

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

**Vendor Name:** Think Patented

**Vendor Address:** 2460 CrossPointe Drive Miamisburg OH 45342

**Federal ID:** 20-4558719

**Commodity Code:** 91503

**Purpose:** First Amendment and First Renewal to the Professional Services Agreement for the production and distribution of informational material regarding the protection of the City's Source Water Protection Area.

**Contact Person:** Lisa Burton-Yates Water/Water Engineering 3/13/2020

**Originating Department Director's Signature:**

---

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

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

**Finance Director's Signature:**

**Date:**

**CF Prepared by:**

**Date:**

---

**Finance Department**

October 16, 2011
July 31, 2020

TO:       City Commission Office
          City Manager’s Office
          Department of Finance

FROM:     Michael Powell, Director
          Department of Water

SUBJECT:  Request for Signature – First Amendment and First Renewal for Source
          Water Protection Marketing Materials CT18-1980- Think Patented

Attached please find four (4) copies of the Contract referenced above with applicable consultant
signatures. Authorization for execution of this Contract was granted by the City Commission on
April 8, 2020 by City Manager’s Report #8. This Contract is ready for City of Dayton signatures.

Please return to Lisa Burton-Yates (x3729) in the Division of Water Engineering.

Enclosures (4)
City Manager’s Report

From: 3470 - Water/Environmental Protection
Supplier, Vendor, Company, Individual
Name: Think Patented
Address: 2480 CrossPointe Dr.
Miamisburg, Ohio 45342

Fund Source(s)                      Fund Code(s)                      Fund Amount(s)
2020 Source Water Protection        53997-3470-1159-55                $40,000.00

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

Description
FIRST AMENDMENT AND FIRST RENEWAL OF AGREEMENT FOR SOURCE WATER PROTECTION MARKETING MATERIALS

The Department of Water requests permission to enter into a First Amendment and First Renewal with Think Patented, in the amount of $40,000.00 for the production and distribution of marketing materials. The scope for this Renewal is to continue providing information on the City of Dayton’s Multi-Jurisdictional Source Water Protection Program. Services include materials, labor, and research required to complete the work. These publications will be used to emphasize the aspects of the Source Water Protection Program and are essential for the continued protection of the region’s drinking water supply.

The original Agreement was approved on March 14, 2018 in the amount of $80,000.00. This First Renewal will increase the contract amount to $120,000.00. The First Amendment and First Renewal Agreement is being funded using the Source Water Protection Funds as approved by the Source Water Protection Board on February 6, 2020.

The First Amendment and First Renewal will extend the contract for an additional 12 months and it shall expire upon expenditure of all funds provided herein or on March 31, 2021. There is an option to renew for (2) additional 12-month periods, contingent upon satisfaction with the work and availability of funds. Any unused amount will remain in the Source Water Protection Fund.

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

A Certificate of Funds, and a copy of the First Amendment and First Renewal are attached.

Signature/Approval

Approved by City Commission

Rashelle Lancaster
Clerk
April 8, 2020
Date

Updated 8/2016
FIRST AMENDMENT AND FIRST RENEWAL OF AGREEMENT FOR SOURCE WATER PROTECTION MARKETING MATERIALS

THIS FIRST AMENDMENT AND FIRST RENEWAL FOR SOURCE WATER PROTECTION MARKETING MATERIALS, is dated this 29th day of August, 2020 between the City of Dayton, Ohio ("City") an Ohio municipal corporation, and Think Patented, 2490 CrossPointe Drive, Miamisburg, OH 45342 ("Consultant").

WITNESSETH:

WHEREAS, on March 14, 2018, the Commission of the City of Dayton approved an Agreement for Source Water Protection marketing Materials (CT18-1980) between the City and Consultant ("Agreement"); and

WHEREAS, The City desires to exercise its right to renew the Agreement for an additional 12-month period, and Consultant is willing to agree to such renewal period, the City and Consultant mutually agree to this First Renewal of the Agreement under the terms and conditions set forth herein.

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

1. Renewal

The City and Consultant agree to the City’s exercise of the first of three successive 12-month renewal periods as provided in the original Agreement. Therefore, the first renewal term of the Agreement shall commence on April 1, 2020 and terminate on March 31, 2021. During the renewal period, the Consultant shall provide services listed in Attachment A2.

2. Amendment

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

A. Article 2. Services to be Performed by Consultant, shall include the following language.

Consultant shall provide all professional services ("Services") necessary to complete the obligations and undertakings that are described in Attachment A, and Attachment A1, which are incorporated herein by reference and attached to the relevant agreement.

B. Article 3. Compensation shall be deleted in its entirety and replaced with the following language:

The total remuneration in this Agreement shall not exceed ONE HUNDRED TWENTY THOUSAND DOLLARS AND ZERO CENTS ($120,000.00) and will be paid according to Attachment B, Attachment B1, which are attached to the relevant document and incorporated herein. Consultant shall submit invoices for payment of the Services actually provided. Such invoices shall state the project completed and total amount requested. The City will, unless disputed, remit payment of all disputed amounts of invoices within thirty (30) days from receipt thereof.

3. Other than the provisions that may be supplemented, amended and/or modified by the terms and conditions contained herein, all other provisions of the Agreement shall 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 Renewal as of the date set forth above.

CITY OF DAYTON, OHIO

City Manager

APPROVED AS TO FORM
AND CORRECTNESS:

City Attorney

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

April 8, 2020

Min./Bk. I-16 Pg. 0148

Clerk of the Commission

THINK PATENTED

By

Title
ATTACHMENT A1
TO
AGREEMENT FOR PROFESSIONAL SERVICES

City: City of Dayton, Ohio
Project: Production of Informational Materials for the Source Water Protection Program
Consultant: Think Patented

SCOPE OF SERVICES – FIRST RENEWAL

SCOPE OF WORK / PROJECT REQUIREMENTS:

Consultant shall provide services such as material, labor, research and any work required to complete work as denoted in the RFP. The focus will be on regional source water protection efforts, environmental regulatory updates, as well as any upcoming events related to groundwater protection and education. All items, layout, designs, pictures, etc., and any future materials resulting from this proposal shall be provided in a format that can be edit/reproduced by the City of Dayton. All printed and/or electronic media will be considered draft until approved by the City of Dayton. All materials shall become the property of the City of Dayton. Mailing list(s) shall not be sold or distributed without express written consent from the City of Dayton.

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reviews uncover grammar, punctuation, spelling, or any other related errors made by propose.

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2. Photographs or digital pictures taken by the Consultant
3. Art work provided by the Consultant
4. Travel cost for providing photographs of events or articles

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4. Provide electronic versions to City in format that may be reproduced/edited by City,
5. Conduct Story Board meetings for video production

Printing: The actual quantity of documents needed for each item will be determined by the City and may fluctuate throughout the contract period. Publication/materials shall be printed on recycled paper using soy based ink or a comparable environmental friendly product.

Labeling / Delivery / Mailing: Consultant shall provide mailing services for all publications as necessary and delivery extra copies to: City of Dayton, Department of Water, 320 W Monument Ave., Dayton, OH 45402

Contingency: The actual format, quantity of documents, and mailings needed for each item is unknown and may change.
ATTACHMENT B1
TO
AGREEMENT FOR PROFESSIONAL SERVICES

City: City of Dayton, Ohio
Project: Production of Informational Materials for the Source Water Protection Program
Consultant: Think Patented

COMPENSATION – FIRST RENEWAL

The “Not-To-Exceed” fee is $40,000.00, apportioned as follows:

<table>
<thead>
<tr>
<th>Service</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Design Cost</td>
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<tr>
<td>Production</td>
<td>$4,225.00</td>
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<td>Writing</td>
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<tr>
<td>Photography / Art Work</td>
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<td>Printing</td>
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<td>Media</td>
<td>$2,875.00</td>
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<td>Labeling / Mailing</td>
<td>$4,385.50</td>
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<td>Delivery</td>
<td>$157.50</td>
</tr>
<tr>
<td>Contingency</td>
<td>$10,337.50</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$40,000.00</td>
</tr>
</tbody>
</table>

1. The total “billing limits” shall not exceed $40,000.00 without further written authorization from the City.

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 whole 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.

The 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. Consultant shall have audits made of all contracts, invoices, materials, payrolls, records of personnel, expenses 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 comply with all applicable City rules and regulations governing such procedures.
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>New Contract</th>
<th>X</th>
<th>Renewal Contract</th>
<th>Change Order</th>
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<tr>
<td>Contract Start Date</td>
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<td></td>
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<td>Expiration Date</td>
<td>3/31/2020</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Original Commission Approval</td>
<td>$ 80,000.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Initial Encumbrance</td>
<td>$ 40,000.00</td>
<td></td>
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</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$ 40,000.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Original CT/CF</td>
<td>CT18-1980</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Increase Encumbrance</td>
<td>$ 40,000.00</td>
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</tr>
<tr>
<td>Decrease Encumbrance</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
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<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: $ 40,000.00

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

Attach additional pages for more FOAPALS

Vendor Name: Think Patented
Vendor Address: 2490 CrossPointe Drive Miamisburg OH 45342
Street City State Zipcode + 4
Federal ID: 20-4558719
Commodity Code: 91503
Purpose: To provide Professional Services for the production and distribution of informational material regarding the protection of the City's Source Water Protection Area. Year 2 of 2

Contact Person: Lisa Burton-Yates
Water/ Water Engineering Department/Division 4/22/2019 Date

Originating Department Director's Signature:

SECTION II - to be completed by the Finance Department

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

Finance Director Signature 4-29-19

CF Prepared by 4/25/19

October 18, 2011
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

- X New Contract
- Renewal Contract
- Change Order:

<table>
<thead>
<tr>
<th>Contract Start Date</th>
<th>3/14/2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expiration Date</td>
<td>3/31/2020</td>
</tr>
<tr>
<td>Original Commission Approval</td>
<td>$ 80,000.00</td>
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<td>Initial Encumbrance</td>
<td>$ 40,000.00</td>
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<td>Remaining Commission Approval</td>
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</tr>
</tbody>
</table>

| Original CT/CF | $ - |
| Increase Encumbrance | $ - |
| Decrease Encumbrance | $ - |
| Remaining Commission Approval | $ - |

| Amount: | $ 80,000.00 |
| Fund Code | 53997 - 3470 - 1159 - 55 |

| Amount: |
| Fund Code |

Attach additional pages for more FOAPALs

Vendor Name: Think Patented
Vendor Address: 2490 CrossPoints Drive Miamisburg OH 45342
Street City State Zipcode + 4
Federal ID: 20-4558719
Commodity Code: 91503
Purpose: To provide Professional Services for the production and distribution of informational material regarding the protection of the City's Source Water Protection Area.

Contact Person: Lisa Burton-Yates Water/ Water Engineering Department/Division 3/31/2018 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 Signature: [Signature] Date 3-5-18

Prepared by: [Signature] Date 3/2/18 CF/CT Number CT18-1980

Finance Department

October 18, 2011
City Manager's Report

From 3470 - Water/Environmental Protection
Supplier, Vendor, Company, Individual
Name Think Patented
Address 2490 CrossPointe Dr.
Miamisburg, Ohio 45342

Date March 14, 2018
Expense Type Service Agreement
Total Amount $80,000.00 (thru 3/31/2020)

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<tr>
<td>2019 Source Water Protection</td>
<td>53997-3470-1159-55</td>
<td>$40,000.00</td>
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</tbody>
</table>

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

Description

SOURCE WATER PROTECTION MARKETING MATERIALS

The Department of Water requests permission to enter into a Professional Services Agreement with Think Patented, in the amount of $80,000.00 for the production and distribution of marketing materials. These materials will provide information on the City of Dayton's Multi-Jurisdictional Source Water Protection Program. Services include materials, labor, and research required to complete the work. These publications will be used to emphasize the aspects of the Source Water Protection Program and are essential for the continued protection of the region's drinking water supply.

The Professional Services Agreement is being funded using the Source Water Protection Funds as approved by the Source Water Protection Board on October 6, 2016.

Eight bids were received for this project on 1/24/2018. After evaluation, Think Patented's bid criteria was the lowest and best.

The Agreement shall commence upon execution by the City and shall expire upon expenditure of all funds provided herein or on March 31, 2020. There is an option to renew for three (3) additional 12-month periods, contingent upon satisfaction with the work and availability of funds. Any unused amount will remain in the Source Water Protection Fund.

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

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

Signatures/Approval

Division

Department

City Manager

FORM NO. MS-16

Approved by City Commission

Rashella Lavender
Clerk

Date

March 14, 2018

Updated 8/2016
AGREEMENT

THIS AGREEMENT ("Agreement") is dated this 5th day of April 2018, between the City of Dayton, Ohio, ("City") an Ohio municipal corporation, and Think Patented, 2490 CrossPointe Drive, Miamisburg, OH 45342 ("Consultant").

WITNESSETH THAT:

WHEREAS, The City desires the production and distribution of materials to provide information about the City of Dayton's Multi-Jurisdictional Source Water Protection Program; and,

WHEREAS, The City issued RFP No. 18002WTWE in November 2017 for the production of Informational Materials; and,

WHEREAS, Consultant submitted a proposal in response to the RFP; and,

WHEREAS, The City finds it in its best interest to accept Consultant’s Proposal; and,

WHEREAS, Consultant is willing to perform such services and represents that its staff is fully qualified to perform such services; and,

WHEREAS, The 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 March 31, 2020, whichever date is earlier. Upon the approval by the Dayton Source Water Protection Board ("Board") and the availability of funds, the City and Consultant may mutually agree to extend this agreement for three (3) additional terms of 12-months, at the established rates per Consultant’s proposal.

ARTICLE 2. SERVICES TO BE PERFORMED BY CONSULTANT
Consultant shall provide all services necessary to complete the Services that are described in an Attachment A, Scope of Services, which is attached hereto incorporated herein by reference.

ARTICLE 3. COMPENSATION
The total remuneration for the Services provided herein shall not exceed Eighty Thousand Dollars and Zero Cents ($80,000.00). The City shall pay Consultant according to Attachment B, attached hereto and incorporated herein by reference. Consultant shall submit invoices for payment of the Services actually provided. Such invoices shall state the project completed and total amount requested. The City will, unless disputed, remit payment of all undisputed amounts of invoices within thirty (30) days from receipt thereof.
ARTICLE 4. AUDITS
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.

ARTICLE 5. 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 by reference.

ARTICLE 6. 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 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 ninety (90) day period following completion of the Services, it is shown there is an error in the Services caused by Consultant's failure to meet such industry 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 7. LIABILITY AND INDEMNIFICATION
Consultant shall defend, indemnify, and hold harmless the City and its elected officials, officers, agents and employees, from and against all claims, losses, damages, and expenses for bodily injury, death, or third party property damage to the extent such claims, losses, damages, or expenses are caused by Consultant’s negligent or willful acts, errors, or omissions. City is accountable for materials it supplies.

This Article 6 shall survive termination of this Agreement.

ARTICLE 8. 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 $1,000,000 for each occurrence and $1,000,000 in the aggregate.
2. Automobile Liability Insurance, having a combined single limit of $1,000,000 for each person and $1,000,000 for each accident.
3. Employers’ Liability Insurance, having a limit of $500,000 for each occurrence.
4. Professional Liability Insurance, having a limit of $1,000,000 annual 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. 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 9. CONFIDENTIALITY

Either party may provide the other party with information that it considers confidential or proprietary. Proprietary information is information that, if made public, would put the disclosing party at a disadvantage in the market place or trade of which the party is a part. Confidential information is information that, under the laws of the State of Ohio, is classified as being “private.” Such information shall be marked “confidential” and/or “proprietary” by the party providing it.

To the extent permitted by law, each party agrees that for a period of two (2) years following the date of disclosure of the confidential or proprietary information, it will not disclose such information of the other to any third party without the other party's written consent. During this two-year period, each party will protect the confidential or proprietary information in the same manner that it protects its own confidential information of a similar nature. Each party agrees that it will only copy the confidential or proprietary information to the extent necessary to perform the work and services contracted for pursuant to this Agreement.

Nothing in this Article shall prohibit or limit Consultant’s disclosure of confidential information: (i) previously known to it without an agreement of confidentiality, (ii) independently developed by it, (iii) that is or becomes publicly available through no breach of this Agreement, (iv) when such disclosure is required by an order of a Court or under state or federal law, or (v) when such disclosure is authorized in writing by the City.

ARTICLE 10. 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 11. TERMINATION

This Agreement may be terminated by the City upon written notice in the event of failure by Consultant to perform in accordance with the terms of this Agreement. Consultant shall have fifteen (15) calendar days from the date of the termination notice to submit a plan to the City.

The City may terminate or suspend performance of this Agreement for the city’s convenience upon thirty (30) days prior written notice to Consultant. In the event of termination by the City hereunder, the City will pay Consultant for services actually provided up to the date of termination.

ARTICLE 12. 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
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: Think Patented
2490 CrossPointe Dr.
Miamisburg, OH 45342
Attention: Kenneth O. McNerney, CEO and Managing Partner

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

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 sub-contractors 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 § 35.17.13 this one 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 THIS PAGE INTENTIONALLY LEFT BLANK.]
IN WITNESS WHEREOF, the City and Consultant, each by a duly authorized representative, have executed this Agreement on the date first written above.

CITY OF DAYTON, OHIO

[Signature]
City Manager

THINK PATENTED

By: [Signature]

Its: [Signature]

APPROVED:

[Signature]
Director, Department of Water

APPROVED AS TO FORM
AND CORRECTNESS:

[Signature]
City Attorney

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

MARCH 14, 2018

Mjn./Bk. I-15  Pg. 0210

[Kashella Lavendar]
Clerk of Commission
ATTACHMENT A
TO
PROFESSIONAL SERVICES AGREEMENT

City: City of Dayton, Ohio
Project: Production of Informational Materials for the Source Water Protection Program
Consultant: Think Patented

SCOPE OF WORK / PROJECT REQUIREMENTS:

Consultant shall provide services such as material, labor, research and any work required to complete work as denoted in the RFP. The focus will be on regional source water protection efforts, environmental regulatory updates, as well as any upcoming events related to groundwater protection an education. All items, layout, designs, pictures, etc., and any future materials resulting from this proposal shall be provided in a format that can be edit/reproduced by the City of Dayton. All printed and/ or electronic media will be considered draft until approved by the City of Dayton. All materials shall become the property of the City of Dayton. Mailing list(s) shall not be sold or distributed without express written consent from the City of Dayton.

Frequency:

The City of Dayton’s (“City”) objectives are to have four (4) newsletters produced 2018 and 2019, (one 8-page, one 6-page, and two 4-page issues each year) for a total of eight (8) issues: Two (2) pamphlets produced each year, 2018 and 2019, for a total of four (4) pamphlets; Two (2) calendars - one for each year; Laminated handouts and glossy cards will be produced as needed. The SWPP brochure, emergency contact list, and other items need to be redesigned and reproduced. The use of digital/electronic media may also be required. Modifications and reprinting of previously produced materials may be required. Publication/materials shall be printed on recycled paper using soy-based ink or a comparable environmental friendly product. Above quantities are estimates and may be subject to change at the sole discretion of the City.

The following briefly describes, but is not limited to, the anticipated tasks required to successfully manage the Production of Informational Materials for the Source Water Protection Program:

Writing Responsibilities: Consultant shall provide the follow informational processes for each production type:

1. The City staff will provide draft copy for any publication(s) pertaining to information related to but not limited to: technical issues, regulatory requirements, financial incentives, and pollution prevention measures. The Consultant shall edit these drafts for readability, clarity, spelling, grammar, and brevity.

2. Consultant is expected to research, write, and format information for each publication related to but not limited to: technical issues, regulatory requirements, pollution prevention measures, stimulus projects, any new programs that become available, and testimonials of local individuals or businesses that have been successful partners in the City’s environmental protection efforts.

3. Drafts of any/all articles shall be presented to the City of Dayton for review and approval prior to final printing. For purposes of proposal, the cost for writing shall include four (4) revisions after review for content and correctness by City staff. NOTE: There shall be no additional charges to
the City for corrective actions after the four (4) edit reviews should edit reviews uncover grammar, punctuation, spelling, or any other related errors made by Consultant. Articles may require, but are not limited to interviews with local business, regulatory personnel and citizens. Topic matters for interviews shall be the sole discretion of the City.

**Design / Photography / Art Work:** Consultant shall provide all layout designs in a format that can be edited and/or reproduced by the City; and shall provide and/or incorporate the following photography/art work for each publication as necessary:

1. Photographs, digital pictures, or artwork provided by the City.
2. Photographs or digital pictures taken by the Consultant.
3. Art work provided by the Consultant.
4. Travel cost for providing photographs of events or articles.

**MEDIA SERVICES:** The selected Proposer will work with the City’s Water: Environmental Management, Marketing, and Information Management Systems Divisions in collaboration with City’s Office of Public Affairs, as needed to:

1. Format printed material into versions capable of being distributed via electronic media.
2. Format printed material to contain active links when distributed via electronic media.
3. Adapt to various language translations.
4. Provide electronic versions to City in format that may be reproduced/edited by City.
5. Conduct Story Board meetings for video production.

**Printing:** The actual quantity of documents needed for each item will be determined by the City and may fluctuate throughout the contract period. Publication/materials shall be printed on recycled paper using soy-based ink or a comparable environmental friendly product.

**Labeling / Delivery / Mailing:** Consultant shall provide mailing services for all publications as necessary and delivery extra copies to: City of Dayton, Department of Water, 320 W Monument Ave., Dayton, OH 45402.

**Contingency:** The actual format, quantity of documents, and mailings needed for each item is unknown and may change.
ATTACHMENT B
TO
PROFESSIONAL SERVICES AGREEMENT

City: City of Dayton, Ohio
Project: Production of Informational Materials for the Source Water Protection Program
Consultant: Think Patented

COMPENSATION

The “Not-To-Exceed” fee is $80,000.00, apportioned as follows:

<table>
<thead>
<tr>
<th>Service</th>
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<td>Design Cost</td>
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<td>$20,675.00</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$80,000.00</strong></td>
</tr>
</tbody>
</table>
ATTACHMENT C
TO
PROFESSIONAL SERVICES AGREEMENT

City: City of Dayton, Ohio
Project: Production of Informational Materials for the Source Water Protection Program
Consultant: Think Patented

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.
City Manager's Report

From 3470 - Water/Environmental Protection
Supplier, Vendor, Company, Individual
Name Veolia Environmental Services North America Operations, Inc. dba Veolia ES Technical Solutions LLC
Address 4301 Infirmary Road
Dayton, OH 45449

Date December 29, 2021
Expense Type Contract Modification
Total Amount $ 75,000.00 (thru 12/31/203)

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2022 Storm Water Operating Fund</td>
<td>58000-3470-1159-55</td>
<td>$37,500.00</td>
</tr>
<tr>
<td>2023 Storm Water Operating Fund</td>
<td>58000-3470-1159-55</td>
<td>$37,500.00</td>
</tr>
</tbody>
</table>

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

PROFESSIONAL SERVICES AGREEMENT
MANAGEMENT OF VARIOUS ENVIRONMENTAL WASTE STREAMS
FIRST AMENDMENT AND FIRST RENEWAL

The Department of Water requests permission to enter into a First Amendment and First Renewal for Professional Services with Veolia Environmental Services North America Operations, Inc., dba Veolia ES Technical Solutions LLC. In the amount of $75,000.00 for the management of various environmental waste streams. These services will be required on an as-needed basis, and may include tasks such as material collection, analyses and characterization; proper container packaging, labeling, handling, and transportation; record keeping; and disposal or recycling. All tasks must be performed in accordance with all applicable federal, state, and local regulations governing such activities, including but not limited to USEPA, OEPA, DOT and OSHA regulations.

The original Agreement was approved on November 25, 2020 in the amount of $50,000.00. This First Amendment and First Renewal will increase the contract amount to $125,000,000, an increase of $75,000.00 and extend the term to December 31, 2023.

The First Amendment and First Renewal is being funded using 2022 and 2023 Storm Water Operating Funds.

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

A Certificate of Funds in the amount of $37,500.00 for 2022, and a copy of the First Amendment and First Renewal are attached.

Signatures/Approval

Approved by City Commission

City Manager
FORM NO. MS-16

Digitally signed by Michael Powell
Date: 2021.12.20 16:10:38 -05'00'

Clerk
Date

Updated 10/2019
Digital Version Updated 04/2020
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>11/25/2020</td>
<td></td>
</tr>
<tr>
<td>Expiration Date</td>
<td>12/31/2023</td>
<td></td>
</tr>
<tr>
<td>Original Commission Approval</td>
<td>$125,000.00</td>
<td></td>
</tr>
<tr>
<td>Initial Encumbrance</td>
<td>$50,000.00</td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$75,000.00</td>
<td></td>
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<tr>
<td>Original CT/CF</td>
<td>CT20-2744, CT21-2744</td>
<td></td>
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<tr>
<td>Increase Encumbrance</td>
<td>$37,500.00</td>
<td></td>
</tr>
<tr>
<td>Decrease Encumbrance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$37,500.00</td>
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</table>

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

<table>
<thead>
<tr>
<th>Amount:</th>
<th>$37,500.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seq. 1</td>
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</tr>
</tbody>
</table>

<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>58000</td>
<td>3470</td>
<td>1159</td>
<td>55</td>
<td></td>
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| Amount: | |
|---------| |
| Seq. 2  | |

<table>
<thead>
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<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>

<table>
<thead>
<tr>
<th>Vendor Name:</th>
<th>Veolia Environmental Services North America Operations, Inc. dba Veolia ES Technical Solutions, LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vendor Address:</td>
<td>4301 Infirmary Road Dayton OH 45449</td>
</tr>
<tr>
<td>Federal ID:</td>
<td>13-4038062</td>
</tr>
<tr>
<td>Commodity Code:</td>
<td>90793</td>
</tr>
<tr>
<td>Purpose:</td>
<td>First Amendment and First Renewal of Professional Services Agreement with Veolia for management of Environmental Waste Streams.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Contact Person:</th>
<th>Lisa Burton-Yates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water Engineering Department/Division</td>
<td>12/17/2021</td>
</tr>
<tr>
<td>Originating Department Director's Signature</td>
<td></td>
</tr>
</tbody>
</table>

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: 12/31/2021

CF Prepared by: [Signature] Date: 12/31/21
FIRST AMENDMENT AND FIRST RENEWAL TO THE AGREEMENT FOR
PROFESSIONAL MANAGEMENT SERVICES FOR VARIOUS CITY OF DAYTON
ENVIRONMENTAL WASTE STREAMS

This First Amendment and First Renewal for Professional Services is dated this day of 2021 between the City of Dayton, Ohio, ("City"), and Veolia Environmental Services North America Operations, Inc., dba Veolia ES Technical Solutions, LLC with an office at 4301 Infirmary Road, Dayton, OH 45449 ("Consultant").

WITNESSETH:

WHEREAS, On November 25, 2020, the Commission of the City of Dayton approved an Agreement for Professional Services, CT20-2744 between the City and the Consultant; and,

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

WHEREAS, The City desires the Consultant to continue providing the services and the Consultant is willing to perform such services for additional compensation.

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

1. Renewal

The City and the Consultant agree to renew the Agreement to enable Veolia ES Technical solutions, LLC to continue providing as-needed services to include tasks such as material collection, analyses, and characterization; proper container packaging, labeling, handling, and transportation; record keeping and disposal or recycling. All tasks must be performed in accordance with all applicable federal, state, and local regulations governing such activities, including but not limited to USEPA, OEPA, DOT and OSHA regulation. Both parties agree to renew the contract for the (2) additional 12-month periods at this time, as provided in the Article 1 of the Agreement. Therefore, the renewal term of this Agreement shall commence upon execution and terminate on December 31, 2023.

2. Amendment

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

A. Article 3. Compensation, shall be deleted in its entirety and replaced with the following language;

ARTICLE 3 – COMPENSATION
The Total remuneration in this Agreement shall not exceed ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS AND ZERO CENTS ($125,000.00) for all services to be provided by the Consultant pursuant to this Agreement. The Administrator shall submit invoices, not more frequently than monthly for payment of the Services provided. Such invoices shall state the invoice period, total amount requested, and services provided during the invoice period. The City will unless disputed, remit payment of all disputed amount of invoices within (30) days from receipt thereof. An itemization of fees is
described in Attachment B1, Fee Schedule which is incorporated herein by reference.

3. The City and Consultant hereby agree that Attachment B1, which is attached hereto, shall be a part of the Agreement and incorporated as if fully rewritten therein.

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

IN WITNESS WHEREOF, the City and Consultant have caused this First Amendment, First Renewal to be executed, each by an authorized representative, on the date set forth above.

CITY OF DAYTON, OHIO

City Manager

VEOLIA ES TECHNICAL SOLUTIONS, LLC

By: _____

Its: General Manager

APPROVED AS TO FORM AND CORRECTNESS:

11/23/2021

X John Musto for

City Attorney

Signed by Musto, John

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

_______ Min./Bk. _______ Pg. _______

2021

Clerk of Commission
The requested cost breakdown includes the following:

<table>
<thead>
<tr>
<th>Task or Materials</th>
<th>Unit Cost ($)</th>
<th>Unit</th>
<th>Estimated Number</th>
<th>Total Cost ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sample Collection/Analysis</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Field Screening</td>
<td>22.00</td>
<td>per drum</td>
<td>5</td>
<td>110.00</td>
</tr>
<tr>
<td>- Field Screening of unknown oil, paints, or greases for the purpose of consolidation</td>
<td>22.00</td>
<td>per drum</td>
<td>5</td>
<td>110.00</td>
</tr>
<tr>
<td>PCB Containing Materials</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Sampling and Analysis of suspect PCB-containing materials</td>
<td>66.00</td>
<td>per drum</td>
<td>3</td>
<td>198.00</td>
</tr>
<tr>
<td>- Sampling and analysis of suspect PCB signal transformers</td>
<td>66.00</td>
<td>per sample</td>
<td>3</td>
<td>198.00</td>
</tr>
<tr>
<td>- PCB wipes</td>
<td>66.00</td>
<td>per sample</td>
<td>10</td>
<td>660.00</td>
</tr>
<tr>
<td>Non-PCB Containing Materials</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Sampling and Analysis of unknown petroleum products and oils for the purpose of identification for disposal</td>
<td>22.00</td>
<td>per drum</td>
<td>3</td>
<td>66.00</td>
</tr>
<tr>
<td>- (Attach List of analytical method(s) included in cost estimate)</td>
<td>Flashpoint, pH, BTU value, water content</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Sampling and Analysis of unknown soils / solids for the purpose of identification for disposal</td>
<td>275.00</td>
<td>per drum</td>
<td>3</td>
<td>825.00</td>
</tr>
<tr>
<td>- (Attach List of analytical method(s) included in cost estimate)</td>
<td>TCLP, RCRA Metal</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sampling and Analysis of paints (latex and/or oil based) or the purpose of identification for disposal</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------------------------------</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Flashpoint, pH, BTU value, water content</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Transportation</th>
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<tbody>
<tr>
<td>Transportation to PCB incinerator</td>
</tr>
<tr>
<td>6050.00 per trip 1</td>
</tr>
<tr>
<td>Veolia- Port Arthur, TX</td>
</tr>
<tr>
<td>Transportation to disposal facility</td>
</tr>
<tr>
<td>220.00 per trip 3</td>
</tr>
<tr>
<td>Veolia- West Carrollton, OH</td>
</tr>
<tr>
<td>Transportation to hazardous waste incinerator</td>
</tr>
<tr>
<td>1974.00 per trip 1</td>
</tr>
<tr>
<td>Veolia – Sauget, IL</td>
</tr>
<tr>
<td>Transportation to blended fuels waste incinerator</td>
</tr>
<tr>
<td>495.00 per trip 3</td>
</tr>
<tr>
<td>Veolia- West Carrollton, OH</td>
</tr>
<tr>
<td>Transportation to petroleum recycling facility</td>
</tr>
<tr>
<td>495. per trip 3</td>
</tr>
<tr>
<td>Veolia- West Carrollton, OH</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Disposal/Recycling</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disposal of soil at PCB incinerator</td>
</tr>
<tr>
<td>1078.00 per drum 1</td>
</tr>
<tr>
<td>Disposal of oil at PCB incinerizer</td>
</tr>
<tr>
<td>687.50 per drum 1</td>
</tr>
<tr>
<td>Disposal of soil at hazardous waste incinerator</td>
</tr>
<tr>
<td>852.50 per drum 2</td>
</tr>
<tr>
<td>Disposal of oil at blended fuels waste incinerator</td>
</tr>
<tr>
<td>66.00 per drum 2</td>
</tr>
<tr>
<td>Disposal of oil at petroleum recycling facility</td>
</tr>
<tr>
<td>66.00 per drum 15</td>
</tr>
<tr>
<td>Disposal of oil/water mixture at blended fuels waste incinerator</td>
</tr>
<tr>
<td>66.00 per drum 1</td>
</tr>
<tr>
<td>Disposal of oil/water mixture at petroleum recycling facility</td>
</tr>
<tr>
<td>66.00 per drum 5</td>
</tr>
<tr>
<td>Description</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Disposal of waste paint at blended fuels waste incinerator (solvent/oils based paints)</td>
</tr>
<tr>
<td>Disposal of waste paint after solidification at solid waste facility (landfill) (latex/water based paints)</td>
</tr>
<tr>
<td>Disposal of waste grease at hazardous waste incinerator</td>
</tr>
<tr>
<td>Disposal of waste grease at petroleum recycling facility</td>
</tr>
<tr>
<td>Disposal of PCB-containing signal transformers</td>
</tr>
<tr>
<td>Disposal of empty 55-gallon drum</td>
</tr>
<tr>
<td>Recycling of 8 ft. fluorescent bulbs (specify method)</td>
</tr>
<tr>
<td>Recycling of 4ft fluorescent bulbs (specify method)</td>
</tr>
<tr>
<td>Disposal of PCB containing Ballasts</td>
</tr>
<tr>
<td>Recycling of ballasts (Non-PCB)</td>
</tr>
<tr>
<td>Recycling of batteries (All Types)</td>
</tr>
<tr>
<td>Recycling of electronic waste</td>
</tr>
</tbody>
</table>

**Mercury Containing Waste**

- Recovery and disposal of mercury waste (Assume hourly rate based on two (2) technicians and specify method) per hour 8
- Decontamination of mercury spill area (Assume hourly rate based on two (2) technicians and specify method) per hour 8

**Pedestrian Signal Transformer Containerization**

- Removal and drumming of signal transformers (Assume hourly rate based on two (2) technicians) per hour 8
- Containerized transformers in 55 gallon drums, properly label 60.50 per drum 2 1,210.00
- Decontamination of signal housing (clean metal for recycling) per signal 25

**Miscellaneous Items**

- Initial Start up meeting and estimate of 4 meetings per year 0.00 lump sum 4
<table>
<thead>
<tr>
<th>Description</th>
<th>Unit</th>
<th>Price</th>
<th>Quantity</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Report which will include: Quantity of Materials consolidated, disposed, recycled and destination</td>
<td>lump sum</td>
<td>0.00</td>
<td>1</td>
<td>0.00</td>
</tr>
<tr>
<td>Mobilization Costs for Sampling and Disposal (specify number required for each effort)</td>
<td>lump sum</td>
<td>117.70</td>
<td>1</td>
<td>117.70</td>
</tr>
<tr>
<td>Over pack drums (85 gallon) includes drum loading</td>
<td>per drum</td>
<td>192.50</td>
<td>5</td>
<td>962.5</td>
</tr>
<tr>
<td>Lab (clean) Pack small containers into 55 gal drum</td>
<td>per drum</td>
<td>275.00</td>
<td>5</td>
<td>1,375.00</td>
</tr>
<tr>
<td>Clean out of Oil Water Separators (Pricing includes transportation, disposal, fuel, and on site time)</td>
<td>Per vacuum unit (~3,000 gal)</td>
<td>2172.50</td>
<td>2</td>
<td>4,345.00</td>
</tr>
<tr>
<td>Technical Supervisor</td>
<td>per hour</td>
<td>77.00</td>
<td>2</td>
<td>154.00</td>
</tr>
<tr>
<td>Technical Assistant</td>
<td>per hour</td>
<td>66.00</td>
<td>1</td>
<td>66.00</td>
</tr>
<tr>
<td><strong>Other:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Health and Safety Plan, Personal Protective Equipment, Etc.</td>
<td>per (unit)</td>
<td>0.00</td>
<td>1</td>
<td>0.00</td>
</tr>
<tr>
<td>Treatment</td>
<td>Price</td>
<td>Unit</td>
<td>Quantity</td>
<td>Total</td>
</tr>
<tr>
<td>-----------------------------------------------------</td>
<td>-------</td>
<td>--------</td>
<td>----------</td>
<td>--------</td>
</tr>
<tr>
<td>Neutral Liquids/Solids w/ Low Metals</td>
<td>412.50</td>
<td>per drum</td>
<td>1</td>
<td>412.5</td>
</tr>
<tr>
<td>Contaminated Debris with Liquids for Fuels Blending</td>
<td>390.50</td>
<td>per drum</td>
<td>5</td>
<td>1952.5</td>
</tr>
<tr>
<td>Oil fuel drums</td>
<td>77.00</td>
<td>per drum</td>
<td>2</td>
<td>154.00</td>
</tr>
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<table>
<thead>
<tr>
<th>Metals Recovery</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Lamps: Crushed Fluorescent</td>
<td>205.70</td>
<td>per 5 gal</td>
<td>10</td>
<td>2,057.00</td>
</tr>
<tr>
<td>Lamps: U-Tube</td>
<td>1.03</td>
<td>per bulb</td>
<td>300</td>
<td>309.00</td>
</tr>
<tr>
<td>Mercury: Contaminated Water</td>
<td>1,732.00</td>
<td>per drum</td>
<td>1</td>
<td>1,732.00</td>
</tr>
<tr>
<td>Nonhazardous Solids Suitable for Waste to Energy</td>
<td>43.00</td>
<td>per 55 gal</td>
<td>1</td>
<td>143.00</td>
</tr>
<tr>
<td>Batteries: Wet Lead Acid</td>
<td>1.38</td>
<td>per pound</td>
<td>20</td>
<td>27.6</td>
</tr>
<tr>
<td>Electronics: Unsorted Electronic Equipment w/ Monitors CRT</td>
<td>385.00</td>
<td>per CYDBOX</td>
<td>1</td>
<td>385.00</td>
</tr>
<tr>
<td>Mercury: Contaminated Debris</td>
<td>1,155.00</td>
<td>per drum</td>
<td>1</td>
<td>1,155.00</td>
</tr>
<tr>
<td>Non-PCB Oil Filled Transformer</td>
<td>60.50</td>
<td>each</td>
<td>1</td>
<td>60.50</td>
</tr>
<tr>
<td>CBC - Vacuum Drummer Unit</td>
<td>88.00</td>
<td>each</td>
<td>1</td>
<td>88.00</td>
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</table>

<table>
<thead>
<tr>
<th>Containers</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>5-Gallon Open-Top Poly Container</td>
<td>17.60</td>
<td>each</td>
<td>1</td>
<td>17.60</td>
</tr>
<tr>
<td>Cubic Yard Box</td>
<td>82.50</td>
<td>each</td>
<td>1</td>
<td>82.50</td>
</tr>
<tr>
<td>14-Gallon Open-Top Poly Container</td>
<td>60.50</td>
<td>each</td>
<td>1</td>
<td>60.50</td>
</tr>
<tr>
<td>30-Gallon Open-Top Poly Container</td>
<td>66.00</td>
<td>each</td>
<td>1</td>
<td>66.00</td>
</tr>
<tr>
<td>Overpack drum</td>
<td>92.50</td>
<td>each</td>
<td>1</td>
<td>192.50</td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>Description</th>
<th>Quantity</th>
<th>Unit</th>
<th>Rate</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Report which will include: Quantity of Materials consolidated, disposed, recycled and destination</td>
<td>0.00</td>
<td>lump sum</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Mobilization Costs for Sampling and Disposal (specify number required for each effort)</td>
<td>117.70</td>
<td>lump sum</td>
<td>1</td>
<td>117.700</td>
</tr>
<tr>
<td>Disposal of waste grease at hazardous waste incinerator</td>
<td>390.50</td>
<td>per drum</td>
<td>1</td>
<td>390.50</td>
</tr>
<tr>
<td>Disposal of waste grease at petroleum recycling facility</td>
<td>390.50</td>
<td>per drum</td>
<td>5</td>
<td>390.50</td>
</tr>
<tr>
<td>Disposal of PCB-containing signal transformers</td>
<td></td>
<td>per drum</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Disposal of empty 55-gallon drum</td>
<td>27.50</td>
<td>per drum</td>
<td>5</td>
<td>137.50</td>
</tr>
<tr>
<td>Recycling of 8 ft. fluorescent bulbs (specify method)</td>
<td>1.21</td>
<td>per bulb</td>
<td>300</td>
<td>363.00</td>
</tr>
<tr>
<td>Recycling of 4ft fluorescent bulbs (specify method)</td>
<td>0.61</td>
<td>per bulb</td>
<td>300</td>
<td>183.00</td>
</tr>
<tr>
<td>Disposal of PCB containing Ballasts</td>
<td>1.85 ($390.50 min)</td>
<td>per (unit)</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Recycling of ballasts (Non-PCB)</td>
<td>1.65</td>
<td>per (unit)</td>
<td>100</td>
<td>165.00</td>
</tr>
<tr>
<td>Recycling of batteries (All Types)</td>
<td>1.38</td>
<td>per pound</td>
<td>200</td>
<td>276.00</td>
</tr>
<tr>
<td>Recycling of electronic waste</td>
<td>385.00</td>
<td>per pallet</td>
<td>3</td>
<td>1,155.00</td>
</tr>
</tbody>
</table>

**Mercury Containing Waste**

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
<th>Unit</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Recovery and disposal of mercury waste (Assume hourly rate based on two (2) technicians and specify method)</td>
<td></td>
<td>per hour</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>Decontamination of mercury spill area (Assume hourly rate based on two (2) technicians and specify method)</td>
<td></td>
<td>per hour</td>
<td>8</td>
<td></td>
</tr>
</tbody>
</table>

**Pedestrian Signal Transformer Containerization**

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
<th>Unit</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Removal and drumming of signal transformers (Assume hourly rate based on two (2) technicians)</td>
<td></td>
<td>per hour</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>Containerized transformers in 55 gallon drums, properly label</td>
<td>60.50</td>
<td>per drum</td>
<td>2</td>
<td>121.00</td>
</tr>
<tr>
<td>Decontamination of signal housing (clean metal for recycling)</td>
<td></td>
<td>per signal</td>
<td>25</td>
<td></td>
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</tbody>
</table>

**Miscellaneous Items**

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
<th>Unit</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial Start up meeting and estimate of 4 meetings per year</td>
<td>0.00</td>
<td>lump sum</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Report which will include: Quantity of Materials consolidated, disposed, recycled and destination</td>
<td>0.00</td>
<td>lump sum</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>------</td>
<td>---------</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>Mobilization Costs for Sampling and Disposal (specify number required for each effort)</td>
<td>117.70</td>
<td>lump sum</td>
<td>1</td>
<td>117.70</td>
</tr>
</tbody>
</table>

**COMPENSATION**

1. 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.

2. 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.
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>11/25/2020</td>
<td></td>
</tr>
<tr>
<td>Expiration Date</td>
<td>12/31/2021</td>
<td></td>
</tr>
<tr>
<td>Original Commission Approval</td>
<td>$ 50,000.00</td>
<td></td>
</tr>
<tr>
<td>Initial Encumbrance</td>
<td>$ 25,000.00</td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$ 25,000.00</td>
<td></td>
</tr>
<tr>
<td>Original CT/CF</td>
<td>CT20-2744</td>
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</tr>
<tr>
<td>Increase Encumbrance</td>
<td>$ 25,000.00</td>
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</tr>
<tr>
<td>Decrease Encumbrance</td>
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<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>-</td>
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</table>

Required Documentation

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

Amount: $ 25,000.00 Seq. 1

<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>
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<tr>
<td>58000</td>
<td>3470</td>
<td>1159</td>
<td>55</td>
<td>-</td>
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Amount: ____________

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Attach additional pages for more FOAPALs

Vendor Name: Veolia Environmental Services North America Operations, Inc. dba Veolia ES Technical Solutions, LLC

Vendor Address: 4301 Infirmary Road Dayton OH 45449

Federal ID: 13-4038062

Commodity Code: 90793

Purpose: Year 2 of Professional Services Agreement with Veolia for management of Environmental Waste Streams.

Contact Person: Lisa Burton-Yates Water Engineering Department/Division 6/30/2021

Originating Department Director's Signature: [Signature]

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: [Signature] 7/19/2021

CF Prepared-by: [Signature] 7/10/2021

CF/CT Number: CT21-2744 7/15/21

Finance Department

October 18, 2011
# CERTIFICATE OF FUNDS

## SECTION I - to be completed by User Department

<table>
<thead>
<tr>
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<td></td>
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<td>Initial Encumbrance</td>
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<td></td>
<td></td>
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<tr>
<td>Decrease Encumbrance</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Attach additional pages for more FOAPALs

### Vendor Information
- **Vendor Name:** Veolia Environmental Services North America Operations, Inc. dba Veolia ES Technical Solutions, LLC
- **Vendor Address:** 4301 Inisimy Road, Dayton, OH 45449
- **Federal ID:** 13-4038062
- **Commodity Code:** 90703
- **Purpose:** Professional Services Agreement for Management of Environmental Waste Streams

### Contact Person
- **Lisa Burton-Yates**
- **Water Engineering**
- **Department/Division:**
- **Date:** 11/6/2020

### Originating Department Director's Signature
- **Michael Powell**
- **Digitally signed by Michael Powell**
- **Date:** 11/6/2020

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

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

### Finance Director Signature
- **R. Marshall**
- **Date:** 11/12/2020

### CF Prepared by
- **Valerie Williams**
- **Date:** 11/12/2020

### October 18, 2011
PROFESSIONAL SERVICES AGREEMENT
MANAGEMENT OF VARIOUS ENVIRONMENTAL WASTE STREAMS

The Department of Water requests permission to enter into a Professional Services Agreement with Veolia Environmental Services North America Operations, Inc. dba Veolia ES Technical Solutions, LLC. in the amount of $50,000.00 for the management of various environmental waste streams. These services will be required on an as-needed basis, and may include tasks such as material collection, analyses and characterization; proper container packaging, labeling, handling, and transportation; record keeping; and disposal or recycling. All tasks must be performed in accordance with all applicable federal, state and local regulations governing such activities, including but not limited to USEPA, OSHA, DOT and OSHA regulations.

Veolia ES Technical Solutions, LLC was chosen in response to the Request for Proposal (RFP No. 18043WTWE). Veolia ES Technical Solutions, LLC is chosen because they have the best combination of experience, approach, and resources for routine stormwater waste disposal items to meet the Department of Water's objectives.

This project is being funded using 2020 and 2021 Storm Water Operating Funds.

This Agreement shall commence upon execution by the City and it shall expire upon expenditure of all funds provided herein or on December 31, 2021.

This Agreement 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**

[Signature]

**Date**

November 25, 2020

[Date]

November 25, 2020
December 18, 2020

TO: City Commission Office
    City Manager’s Office
    Department of Finance

FROM: Michael Powell, Director
       Department of Water

SUBJECT: Request for Signature – Professional Services Agreement for
Management of Various Waste Streams – Veolia ES Technical
Solutions LLC - CT20-2744

Attached please find four (4) copies of the Contract referenced above with applicable consultant
signatures. Authorization for execution of this Contract was granted by the City Commission on
November 25, 2020 by City Manager’s Report #8. This Contract is ready for City of Dayton
signatures.

Please return to Lisa Burton-Yates in the Division of Water Engineering (X3729).

Attachments (4)

c: Lisa Burton-Yates
AGREEMENT FOR PROFESSIONAL MANAGEMENT SERVICES FOR VARIOUS CITY OF DAYTON ENVIRONMENTAL WASTE STREAMS

This Professional Services Agreement ("Agreement") is made this 24th day of December, 2020, between the City of Dayton, Ohio, ("City"), and Veolia Environmental Services North America Operations, Inc. d/b/a Veolia ES Technical Solutions, LLC. with an office at 4301 Infirmary Road, Dayton, OH 45449 ("Consultant").

WITNESSETH:

WHEREAS, The City desires assistance with the management of various environmental waste streams encountered during day-to-day operations. These services will be required on an as-needed basis, and may include tasks such as material collection, analyses and characterization; proper container packaging, labeling, handling, and transportation; record keeping; and disposal or recycling. All tasks must be performed in accordance with all applicable federal, state and local regulations governing such activities, including but not limited to USEPA, OEPA, DOT and OSHA regulations; and

WHEREAS, Consultant is willing to perform such professional services and represents that its staff is fully qualified to perform such services; 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 December 31, 2021, whichever date is earlier. The Consultant and the City shall enter into this contract with options to renew for two (2) additional 12-month periods, contingent upon satisfaction with the work, availability of funds and mutual agreement of both parties.

ARTICLE 2. SERVICES TO BE PERFORMED BY CONSULTANT
Consultant shall provide all services necessary to complete the Services that are described in Attachment A, Scope of Services, which is incorporated herein by reference.

ARTICLE 3. COMPENSATION
The total remuneration of this Agreement shall not exceed FIFTY THOUSAND DOLLARS AND ZERO CENTS ($50,000.00) for Services provided as presented in Attachment B, which is incorporated herein by reference. 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.
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 incorporated herein by reference.

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. LIABILITY AND 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, contractors, sub-contractors and representatives in undertaking and performing the Services.

This Article shall survive early termination or expiration of this Agreement.

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, and said policy shall name the City of Dayton as an additional insured.

Current certificates of insurance for all 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 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. In the event of a claim, Consultant shall make copies of applicable insurance policies available for review by the City.

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. CONFIDENTIALITY
Either party may provide the other party with information that it considers confidential or proprietary. Proprietary information is information that, if made public, would put the disclosing party at a disadvantage in the market-place or trade of which the party is a part. Confidential information is information that, under the laws of the State of Ohio, is classified as being "private." Such information shall be marked "confidential" and/or "proprietary" by the party providing it.

To the extent permitted by law, each party agrees that for a period of two (2) years following the date of disclosure of the confidential or proprietary information, it will not disclose such information of the other to any third party without the other party's written consent. During this two-year period, each party will protect the confidential or proprietary information in the same manner that it protects its own confidential information of a similar nature. Each party agrees that it will only copy the confidential or proprietary information to the extent necessary to perform the work and services contracted for pursuant to this Agreement.

ARTICLE 9. 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 10. 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 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 11. 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, subcontractors 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: Veolia Environmental Services North America Operations, Inc.
dba Veolia ES Technical Solutions, L.L.C.
4301 Infirmary Road
Dayton, OH 45449
Attention: Derek Bedle, General Manager

City: City of Dayton, Department of Water
320 West Monument Avenue
Dayton, Ohio 45402
Attention: Michele Simmons, Manager

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 sub-contractors to withhold and pay, all applicable local, state and federal taxes.

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

[Signature]
City Manager

VEOLIA ENVIRONMENTAL SERVICES
NORTH AMERICA OPERATIONS, INC.
dba VEOLIA ES TECHNICAL
SOLUTIONS, LLC

[Signature]
By: James Sullivan
(Sep 27, 2020 23:02 EDT)
Its: SVP-Operations

APPROVED:

[Signature]
Aaron Zonin
(Aug 18, 2020 21:05 EDT)
Director, Department of Water

APPROVED AS TO FORM
AND CORRECTNESS:

10/27/2020

[Signature]
Amelia N. Blankenship for
City Attorney
Signed by: Blankenship, Amelia

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

November 25, 2020

Min./Bk. 16 Pg. 0529

Clerk of Commission

7
ATTACHMENT A
TO
AGREEMENT FOR CONSULTING SERVICES

City: City of Dayton, Ohio
Project: Professional Services Associated with the Management of Various Environmental Waste Streams
Consultant: Veolia Environmental Services North American Operations, Inc. dba Veolia ES Technical Solutions, LLC

Scope of Work: The proposed professional services are intended to assist the City of Dayton with the management of various environmental waste streams encountered during day-to-day operations. These services will be required on an as-needed basis, and may include tasks such as material collection, analyses and characterization; proper container packaging, labeling, handling, and transportation; record keeping; and disposal or recycling. All tasks must be performed in accordance with all applicable federal, state and local regulations governing such activities, including but not limited to USEPA, OEPA, DOT and OSHA regulations. Please note that the generation of any given waste stream is not a routine event. Therefore, the description, quantity and location of the material cannot be predicted at this time.

The following briefly describes the anticipated tasks required to successfully manage these typical waste streams:

1. Meetings
   The Consultant shall be available for a preliminary start-up meeting with the City of Dayton, and additional meetings as needed by City of Dayton.

2. Characterization
   The Consultant must be capable of providing 40-hour OSHA HAZWOPER-trained personnel who are competent in determining the proper number and types of samples to be collected from a given waste stream with or without supporting information supplied by the City of Dayton regarding the characterization of the material for disposal. Field staff shall be competent in the use of equipment designed to collect, containerize, and preserve representative samples of solids, liquids, sludge, and soils from various sources. All sampling equipment, containers and personal protective equipment are to be provided by the Consultant.

   The scope of work may include the testing of unknown materials, consolidation of like waste streams of petroleum products, and paints for removal and disposal. The Consultant must be able to initiate field screening of like waste streams for the purpose of consolidation. All consolidation of materials will be performed in accordance with all applicable federal, state and local regulations governing such activities.

   The scope of work may include universal (i.e., fluorescent lamps, ballasts, and batteries) and electronic waste management.

   The scope of work may include decontamination, removal, and disposal of mercury waste.
The scope of work may include the testing, decontamination; removal and disposal of small transformer equipment located inside of pedestrian signal devices (walk/ don't walk signals). These transformers may contain PCB oil. Normally, the transformer is a sealed unit approximately 4" X 6". The transformer must be removed from the signal. Note: the signals have been removed from the street and are located in one central storage area. Where combustion or leaking has occurred, the signal unit will be required to be decontaminated. Wipe samples shall be collected from the device to confirm successful decontamination. The Consultant will dispose of the transformers; the City shall recycle the pedestrian signal equipment.

3. **Analytical Services**
   The Consultant shall arrange for laboratory services and chemical analyses of materials to properly assess and classify for shipment, recycling and or disposal. Laboratory analytical data shall be used to prepare a complete waste profile, used to meet RCRA regulatory compliance and TSO facility permits. The laboratory must successfully administer a comprehensive QA/QC program, which assures the reliability of analytical results through regular instrument calibration, sample duplicates, reference standards or other quality control checks. The City of Dayton shall be provided all laboratory data and documentation concerning each waste stream requiring characterization. Additionally, all samples shall be collected and analyzed in accordance with USEPA and OEP guidelines and regulations. Chain of custody must be maintained for each laboratory sample.

4. **Packaging and Labeling**
   Following the site evaluation, the Consultant shall properly evaluate the packaged waste and then sort, segregate, over pack or consolidate materials where appropriate to effectively reduce cost where possible. Packaging and labeling is to be provided by the Consultant in preparation for shipping by authorized licensed hazardous waste carriers when applicable, and shall conform to all required USEPA and DOT regulations. Additionally, the Consultant shall be responsible for spill clean-up associated with these activities.

5. **Waste Transportation**
   The Consultant shall provide fully permitted and properly placard vehicles to safely transport the variety of containers that are reasonably anticipated to be encountered in this scope of work. In addition, DOT-trained and licensed drivers shall operate all vehicles. The City of Dayton expects that the Consultant use the most reasonable and cost-efficient route to the final delivery point.

6. **Record Keeping**
   Tracking documents shall be strictly maintained by the Consultant throughout the waste management process, from characterization, packaging, and transportation to final disposition. To assist the City of Dayton in effectively tracking all waste, the Consultant shall complete the proper waste data sheets, hazardous material manifests and applicable DOT permits. All record keeping documents (including destruction certificates and complete project summary report) shall be submitted to the City of Dayton at the conclusion of each waste management event.

7. **Waste Management**
   The Consultant shall develop cost-effective solutions for the final disposition of all affected waste streams. Recommendations and guidance shall be offered to the City of Dayton regarding
recycling, treatment or disposal options which meet all regulatory standards, together with waste acceptance at fully permitted RCRA or TSCA facilities.

8. **Site Safety**
The Consultant is required to comply with all applicable safety regulations. The Consultant is required to provide all necessary safety equipment. A site-specific health and safety plan must be prepared for each project, in accordance with 29 CFR 1910.120. The plan should be understood and strictly adhered to by all personnel associated with the project. The Consultant is responsible for ensuring that all personnel, including all subcontractors involved at the site, comply with the site health and safety requirements.

9. **Emergency Clean-Up Procedures**
The Consultant shall be prepared to initiate emergency clean-up procedures as necessary. All vehicles must be equipped with absorbent material, and other appropriate emergency response equipment. All field personnel must be capable in directing containment measures and in performing initial containment actions.

10. **Reports**
The Consultant shall prepare a report outlining each task (1-9) listed above. Each report shall be submitted to the City in draft form. The City reserves the right to request changes and/or modifications of the draft report prior to the acceptance of any final report.

11. **Work Acceptance**
All work, which does not conform to 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 shall be corrected immediately and completed in an acceptable manner at the Consultant's expense. The Consultant is also responsible for any work completed that is not authorized in writing by the City.

12. **Subcontractors**
If subcontractors are involved in any part of the project, a representative of the Consultant must be on site to ensure compliance with the provisions in this Request for Proposal.

13. **Personnel Qualifications**
All personnel associated with each project shall have sufficient skill and experience to adequately perform the work properly and satisfactorily. Proof of all required and relevant certification, license or training must be furnished in this proposal to the City of Dayton for all such persons, including subcontractors.

14. **Equipment**
All equipment proposed for use during the project shall be of sufficient size and in such mechanical condition as to meet the requirements of the work and to produce a satisfactory quality of work. Equipment used on any portion of the project shall be utilized such that no injury to the roadway, adjacent property or other highways will result from its use.
15. Other

The results of all services under this contract shall 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 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. Any questions regarding the information contained above shall be directed toward Felicia Graham, Environmental Compliance Coordinator, at (937) 333-8598.
ATTACHMENT B
TO
AGREEMENT FOR CONSULTING SERVICES

City: City of Dayton, Ohio
Project: Professional Services Associated with the Management of Various Environmental Waste Streams
Consultant: Veolia Environmental Services North America Operations, Inc. dba Veolia ES Technical Solutions, LLC

The fee schedule for services, as submitted by Veolia ES Technical Solutions LLC in the proposal in response to RFP No. 18043WTWE, is below:

<table>
<thead>
<tr>
<th>Task or Materials</th>
<th>Unit Cost</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Field Screening</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Field Screening of unknown oil, paints, or greases for the purpose of consolidation</td>
<td>20</td>
<td>per drum</td>
</tr>
<tr>
<td>Field Screening of unknown petroleum products for purpose of consolidation</td>
<td>20</td>
<td>per drum</td>
</tr>
<tr>
<td>PCB Containing Materials</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sampling and Analysis of suspect PCB-containing materials</td>
<td>60</td>
<td>per drum</td>
</tr>
<tr>
<td>Sampling and analysis of suspect PCB signal transformers</td>
<td>60</td>
<td>per sample</td>
</tr>
<tr>
<td>PCB wipes</td>
<td>60</td>
<td>per sample</td>
</tr>
<tr>
<td>Non-PCB Containing Materials</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sampling and Analysis of unknown petroleum products and oils for the purpose of identification for disposal</td>
<td>20</td>
<td>per drum</td>
</tr>
<tr>
<td>Sampling and Analysis of unknown soils / solids for the purpose of identification for disposal</td>
<td>250</td>
<td>per drum</td>
</tr>
<tr>
<td>Sampling and Analysis of paints (latex and/or oil based) or the purpose of identification for disposal</td>
<td>20</td>
<td>per drum</td>
</tr>
<tr>
<td>Transportation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transportation to PCB incinerator</td>
<td>5500.00</td>
<td>per trip</td>
</tr>
<tr>
<td>Transportation to disposal facility</td>
<td>200</td>
<td>per trip</td>
</tr>
<tr>
<td>Transportation to hazardous waste incinerator</td>
<td>1795</td>
<td>per trip</td>
</tr>
<tr>
<td>Transportation to blended fuels waste incinerator</td>
<td>450</td>
<td>per trip</td>
</tr>
<tr>
<td>Transportation to petroleum recycling facility</td>
<td>450</td>
<td>per trip</td>
</tr>
<tr>
<td>Disposal/Recycling</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disposal of soil at PCB incinerator</td>
<td>980</td>
<td>per drum</td>
</tr>
<tr>
<td>Disposal of oil at PCB incinerator</td>
<td>625</td>
<td>per drum</td>
</tr>
<tr>
<td>Disposal of soil at hazardous waste incinerator</td>
<td>775</td>
<td>per drum</td>
</tr>
<tr>
<td>Disposal of oil at blended fuels waste incinerator</td>
<td>70</td>
<td>per drum</td>
</tr>
<tr>
<td>Disposal at of oil at petroleum recycling facility</td>
<td>60</td>
<td>per drum</td>
</tr>
<tr>
<td>Disposal of oil/water mixture at blended fuels waste incinerator</td>
<td>60</td>
<td>per drum</td>
</tr>
<tr>
<td>Disposal at of oil/water mixture at petroleum recycling facility</td>
<td>60</td>
<td>per drum</td>
</tr>
<tr>
<td>---------------------------------------------------------------</td>
<td>----</td>
<td>---------</td>
</tr>
<tr>
<td>Disposal of waste paint at blended fuels waste incinerator (solvent/oils based paints)</td>
<td>60</td>
<td>per drum</td>
</tr>
<tr>
<td>Disposal of waste paint after solidification at solid waste facility (landfill) (latex/water based paints)</td>
<td>55</td>
<td>per drum</td>
</tr>
<tr>
<td>Disposal of waste grease at hazardous waste incinerator</td>
<td>355</td>
<td>per drum</td>
</tr>
<tr>
<td>Disposal of waste grease at petroleum recycling facility</td>
<td>355</td>
<td>per drum</td>
</tr>
<tr>
<td>Disposal of PCB-containing signal transformers</td>
<td>CBC</td>
<td>per drum</td>
</tr>
<tr>
<td>Disposal of empty 55-gallon drum</td>
<td>25</td>
<td>per drum</td>
</tr>
<tr>
<td>Recycling of 8 ft. fluorescent bulbs (specify method)</td>
<td>1.10</td>
<td>per bulb</td>
</tr>
<tr>
<td>Recycling of 4 ft fluorescent bulbs (specify method)</td>
<td>0.55</td>
<td>per bulb</td>
</tr>
<tr>
<td>Disposal of PCB containing Ballasts</td>
<td>1.68 ($355 minimum)</td>
<td>per unit</td>
</tr>
<tr>
<td>Recycling of ballasts (Non-PCB)</td>
<td>1.50</td>
<td>per unit</td>
</tr>
<tr>
<td>Recycling of batteries (All Types)</td>
<td>1.25</td>
<td>per pound</td>
</tr>
<tr>
<td>Recycling of electronic waste</td>
<td>350</td>
<td>per pallet</td>
</tr>
</tbody>
</table>

**Mercury Containing Waste**

| Recovery and disposal of mercury waste (Assume hourly rate based on two (2) technicians and specify method) | CBC | per hour |
| Decontamination of mercury spill area (Assume hourly rate based on two (2) technicians and specify method) | CBC | per hour |

**Pedestrian Signal Transformer Containerization**

| Removal and drumming of signal transformers | CBC | per hour |
| Containerized transformers in 55 gallon drums, properly label | 55 | per drum |
| Decontamination of signal housing (clean metal for recycling) | CBC | per signal |

**Miscellaneous Items**

| Initial Start up meeting and estimate of 4 meetings per year | 0 | lump sum |
| Report which will include: Quantity of Materials consolidated, disposed, recycled and destination | 0 | lump sum |
| Mobilization Costs for Sampling and Disposal (specify number required for each effort) | 0 | lump sum |
| Over pack drums (85 gallon) includes drum loading | 175 | per drum |
| Lab (clean) Pack small containers into 55 gal drum | 250 | per drum |
| Clean out of Oil Water Separators | $1975 | per Vacuum unit (~3,000 gal) |
COMPENSATION

1. 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.

2. 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.

3. The City shall pay Consultant up to $25,000.00 in Year 2020, and $25,000.00 in Year 2021 for services rendered.
ATTACHMENT C
TO
AGREEMENT FOR CONSULTING SERVICES

City: City of Dayton, Ohio
Project: Professional Services Associated with the Management of Various Environmental Waste Streams
Consultant: Veolia Environmental Services North America dba Veolia ES Technical Solutions, LLC

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.
ATTACHMENT D

(Provided by the Consultant)

City: City of Dayton, Ohio
Project: Professional Services Associated with the Management of Various Environmental Waste Streams
Consultant: Veolia Environmental Services North America Operations, Inc. dba Veolia ES Technical Solutions, LLC

ENVIRONMENTAL PROVISIONS. In addition to the terms and conditions contained in the Agreement between the parties, if the Services involve the transportation and disposal of hazardous waste, the following environmental provisions shall also apply:

A. DEFINITIONS The following terms used in this Agreement shall have the meanings set forth below:

i. "Profile Sheet" means a standard Waste Profile Sheet executed by CITY.
ii. "Services" means analytical, collection, management, treatment, remediation, transportation, disposal and recycling services and such other services which CONTRACTOR may perform from time to time with respect to CITY’s waste materials.
iii. "Waste Materials" shall mean any chemical, substance or material designated or regulated as a "hazardous material," "hazardous waste," "toxic substance" or any similar designation (including petroleum products) by any national, federal, state, provincial, or local government (including any agency, authority, department, instrumentality or other subdivision of the foregoing) having or asserting environmental regulatory jurisdiction with respect to the substance or material generated pursuant to 40 CFR 260.10.

B. Waste Materials listed in the Profile Sheet will contain as true and accurate a description of City’s Waste Material as City is able to provide. If the City’s Waste Materials do not conform to the descriptions and specifications stated in the corresponding Profile Sheet, City and Contractor shall, in good faith, attempt to amend the Profile Sheet and any other pertinent documents and/or correct any improper containerization, marking or labeling to enable Contractor to accept such non-conforming Waste Materials at a Facility. City agrees to pay Contractor its reasonable expenses and charges incurred with respect to City’s non-conforming Waste Materials. In the event CONTRACTOR performs services on premises owned or controlled by CITY, CITY will provide CONTRACTOR with a safe workplace, and if CONTRACTOR requests that work areas be secured, CITY will be solely responsible for securing such work areas and for preventing anyone other than the designated personnel from entering the designated work areas.

In the case of Universal Wastes, CITY must provide an accurate piece count for each of the items being shipped to the CONTRACTOR (lamps, bulbs, monitors, etc.). In the absence of the piece count on shipping documents, the piece count made by CONTRACTOR at the receiving Facility shall be conclusive and final.

C. With respect to CITY’s Waste Materials being shipped to a third party facility for disposal, and notwithstanding anything to the contrary in this Agreement, CONTRACTOR’s aggregate liability arising out of the services provided hereunder, other than transportation services provided by CONTRACTOR or storage, treatment and/or disposal services provided by CONTRACTOR at CONTRACTOR’s locations, shall not exceed the greater of the aggregate fees paid in any calendar year hereunder or one million dollars ($1,000,000).
NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT
AT THE DAYTON INTERNATIONAL AIRPORT

The Department of Aviation requests permission to enter into an Agreement with Avis Budget Car Rental, LLC dba Avis and Budget. A Request for Proposals (RFP) was issued in June 2020 for six available rental car locations at the Dayton International Airport. Five responses were received with all five companies being recommended for agreements with the City.

Avis Budget Car Rental, LLC dba Avis and Budget is an incumbent operator, will dual brand with Avis and Budget, and lease one (1) counter. They will pay 10% of gross revenues or the Minimum Annual Guarantee (MAG), whichever is greater, plus rents for counter, office, queuing and common space in the Rental Car Counter Facility building.

Rents to the City are anticipated to be $2,548,003.00 for the 3-year MAG and $168,332.64 for the 3-year counter rent, totaling $2,716,335.64.

This Concession and Lease Agreement is effective for a three (3) year period, commencing on January 1, 2022 and terminating/expiring on December 31, 2024. There are no options for renewal.

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

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name: Avis Budget Car Rental, LLC  
RAC-Accounting

Address: 300 Centre Point Drive

City: Virginia Beach  State: VA  Zip+4: 23462

Customer #:  Address Location #:  

Federal ID#: 22-3475741

Revenue Information: Fund: 51000  Organization: 3216  Revenue: 23344  Program: 43

Contract Information: Contract Start Date: 01/01/2022  Contract Expiration Date: 12/31/2024

Billing Information: Rate: $4,675.91  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:  Rate Change Amount:  

Description of Services (wording on invoice): Effective 1/1/2022.

Terminal space rent at Dayton International Airport

842 sf counter, office, queuing and common space in the rental car facility @ 66.64/sf per year for 2021-2022, subject to change in January 2022

Departmental Approval: 

TO BE COMPLETED BY FINANCE

Revenue Contract Number: 1-5741-1  Auditor: O'Bally  Date: 12/22/2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

Director of Finance: 12/22/2021
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name Avis Budget Car Rental, LLC
RAC – Accounting

Address 300 Centre Point Drive

City Virginia Beach State VA Zip+4 23462

Customer # ______________ Add Type/Seq # A2

Federal ID# 22-3475741

Revenue Information: Fund 51000 Orgn 3216 Rev 23344 Prog 43 Actv ____________

Contract Information: Contract Start Date 1/1/2022 Contract Expiration Date 12/31/2024

Billing Information: Rate: $62,583.42 Arrears Pre-bill X

Monthly (1st month of billing) Jan

Quarterly (1st month of quarter)

Semi-annual (1st month of half)

Annual (1st month of billing)

Other (explain)

Rate Change Date 1/1/2023 Rate Change Amount $71,000.08

Description of Services (wording on invoice): Effective 1/1/2022
Pre-Bill MAG (Minimum monthly Rental Car Concession Guarantee) at Dayton Intl Airport
Annual Settle-up (the greater of annual MAG and 10% Gross Revenue)

Departmental Approval

TO BE COMPLETED BY FINANCE

City Reference Number 1-5741 Auditor D. Billy Date 12-16-21

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

12/14/2021
NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT AT THE JAMES M. COX DAYTON INTERNATIONAL AIRPORT

THIS NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT ("Agreement") is made and entered into this __________ day of ______________, 2021 between the City of Dayton, Ohio ("City"), a political subdivision in and of the State of Ohio, and Axis Budget Car Rental, LLC ("Operator").

WITNESSETH THAT:

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, State of Ohio; and

WHEREAS, On June 9, 2021, the City submitted a Request for Proposal, titled "Request for Proposal for Non-Exclusive Rental Car Concessions at the James M. Cox International Airport No. 21-018AOAD" ("RFP"); and

WHEREAS, Operator responded to the RFP on August 18, 2021, setting forth its desire and qualifications to operate a rental car concession at and from the Airport; and

WHEREAS, City selected Operator's response to the RFP; and

WHEREAS, The parties enter into this Agreement to set forth the terms and conditions for the non-exclusive right and privilege to operate an on-Airport rental car concession.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and the mutual benefits to be derived, IT IS AGREED AS FOLLOWS:

ARTICLE I
DEFINITIONS

For the purposes of this Agreement, the following words and phrases shall have the meanings ascribed to them respectively regardless of whether the word(s) or phrase(s) is capitalized, unless otherwise clearly indicated by the context in which it is used:

"Airport Rules and Regulations" means the rules and regulations of the Dayton International Airport as adopted and as the same may be updated from time to time.

"Assigned Areas" means the areas at the Airport designated by the City, from time to time, for occupancy and use by Concessionaires.

"Commencement Date" means January 1, 2022.
"Concession Fee" means the amount payable, per Contract Year, for the on-Airport rental car concession rights and privileges granted to Operator under this Agreement.

"Concessionaire(s)" means all rental car businesses operating at the Airport pursuant to the terms of an agreement similar to this Agreement.

"Contract Year" means a twelve-month period beginning on January 1 and ending on December 31 within the Term.

"Customer" means anyone who enters into a vehicle rental contract that originates or ends at the Airport.

"Customer Facility Charge" or "CFC" means the charge established by Section 37.11 of the Revised Code of General Ordinances of the City of Dayton, which charge must be collected by Operator from its Customers and submitted to the City and is subject to change during this Agreement Term.

"Environmental Laws" means any federal, state, or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree or rule of common law, and any judicial or agency interpretation of any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future, that pertains to any Hazardous Material, or the environment including but not limited to ground, air, water, or noise pollution or contamination, and underground or above ground tanks and shall include, without limitation, the Solid Waste Disposal Act, 42 U.S.C. §69901 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 et seq. ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; and the Safe Drinking Water Act, 42 U.S.C. §300f et seq.

"FAA" means the United States Department of Transportation, Federal Aviation Administration, or such other successor agency or agencies of the United States Government.

"Expiration Date" means December 31, 2024.

"Fees" means all amounts, including but not limited to, Premises Rent (including Counter, Office and Queuing Space Rent, Shared Common Space Rent), Concession Fee, and any other incidental fees and charges that are paid or payable by Operator to City pursuant to this Agreement.

"Gross Revenues" as used herein shall mean, as determined in the reasonable discretion of the City, all amounts charged to its customers by Operator for or in connection with contracts it secures through its operations and business at the Airport, regardless of whether such amount is actually paid to or received by Operator. Gross Revenues shall include all monies or other consideration of whatsoever nature paid or payable to Operator by customers for all sales made and services performed for cash, credit or consideration in connection with
automobile and vehicle rentals or other products or services provided to persons through Operator’s operations at the Airport without regard to the ownership, area, fleet, or location assignment of vehicles and without regard to the manner in which or place at which the vehicles or other products or services are furnished to Operator’s customers and without regard to whether the vehicles or other products are returned to the Airport or to some other location.

Gross Revenues may not be reduced by promotional or other discounts not given directly to the customer at the time of rental. The retroactive adjustment by Operator of Gross Revenues designated as volume discounts or rebates, corporate discounts or rebates, or any other designation of any nature, or for any other purpose, is prohibited.

Gross Revenues shall include anything and everything that is not specifically excluded. The only exclusions from Gross Revenues permitted under this Agreement shall be the specific exclusions set forth below:

1. Federal, state, county, city or municipal sales, use, or excise taxes now in effect or hereinafter levied on Operator’s operations which are separately stated on customers’ rental contracts and collected from customers of Operator;

2. Those fees referred to in this Agreement as Customer Facility Charges, “CFC’s” which for the purpose of this Agreement shall include all customer facility charges, authorized pursuant to City of Dayton RCGO § 37.11 (B), as may be amended;

3. Amounts received specifically for the actual loss or damages of vehicles or other property of Operator;

4. Amounts received from the sale of vehicles off-airport premises, provided, however, any amounts paid in connection with automobile and vehicle rentals or other products or services provided to persons through Operator’s operations at the Airport that are applied to or otherwise reimbursed as a result of the sale of a vehicle shall not be excluded from Gross Revenues; and

5. Reimbursements for amounts actually paid for parking tickets, red light tickets, tolls and toll violations from its customers to pass through without markup to an independent third party with no amount being retained by Operator. However, any amounts collected above the pass-through amount shall be included as Gross Revenue under this Agreement.

“Hazardous Materials” means any substance, whether solid, liquid or gaseous, that is listed, defined or regulated as a “hazardous substance,” “hazardous waste,” “solid waste,” or pesticide, or is otherwise classified as hazardous or toxic, in or pursuant to any Environmental Law or that is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons; or that causes or poses a threat to cause a contamination or nuisance or a hazard to the environment or to the health or safety of any persons, except Operator may use, bring, and store household and commercial cleaners and chemicals in connection with the operation and
maintenance of the premises in commercially reasonable quantities, and may have fuel in the tanks of its vehicles.

“Minimum Annual Guarantee” or “MAG” means that minimum amount to be paid to the City, per Contract Year, for the concession privileges and rights stated in this Agreement, which Operator specified in its response to the City’s RFP and provided in Article VIII(b).

“Percentage Concession Fee” means an amount equal to ten percent (10%) of Gross Revenues.

“Premise Rent” means an amount paid the City for Operator’s occupancy of the Rental Car Counter Facility.

“Ready Return” means that area at the Airport identified by the Ready Return Agreement and consisting of parking blocks for use by Concessionaires as the location where Customers pick-up and or drop-off Vehicles.

“Ready Return Agreement” means that certain Agreement between the City and Operator pertaining to ready return activities, attached hereto as Exhibit A and incorporated herein.

“Reallocation Date” means on or about March 1 during the term, beginning March 1, 2023.

“Rental Car Counter Facility” means the facility constructed adjacent to the lower level of the parking garage for the purpose of providing an area for conducting rental car transactions with customers.

“Term” means the effective period of this Agreement, beginning on the Commencement Date and expiring on the Expiration Date.

“Terminal” means the main passenger terminal building located at the Airport.

“TSA” means the United States Department of Homeland Security, Transportation Security Administration, or such other successor agency or agencies of the United States government.

“Transaction Days” means a twenty-four (24) hour period or fraction thereof for which a Customer is charged rental for a vehicle which is paid in the form of currency, credit, or promotional coupon for which a Customer is given complimentary use of a vehicle, regardless of the duration or length of the rental term. Late return (after twenty-four (24) hours) shall be considered a Transaction Day.

“Vehicles” means any automobiles, trucks, vans, and all accessories and appurtenances thereto provided by the Operator (and or other Concessionaires, as the context would dictate) to meet the transportation needs of Customers.
ARTICLE II
NON-EXCLUSIVE AGREEMENT

The rights and privileges granted under this Agreement are non-exclusive. By entering into this Agreement, Operator acknowledges that the City is or will be entering into non-exclusive agreements with other Concessionaires. The City reserves the right to enter into agreements with other companies providing rental car services from off-Airport locations. If the City determines that it is in its best interest to do so. However, such agreements with off-Airport rental car businesses operators shall not include the right to staff or operate a rental car concession from an off-Airport Counter and Office area (or other area on the Airport) and or occupy and use the Ready Return. Such off-Airport agreements may be at terms and conditions more or less favorable than this Agreement.

ARTICLE III
TERM

A. This Agreement is effective for a period of three (3) years ("Term"), beginning January 1, 2022 ("Commencement Date") and expiring December 31, 2024 ("Expiration Date"), unless terminated earlier or renewed in accordance with the provisions of this Agreement.

B. In the event that Operator holds over and remains in possession of the Premises, in whole or part, and the rights and obligations granted herein after the Expiration Date, such holding over shall only constitute a month-to-month license on the same terms and conditions specified in this Agreement, except that it may be terminated at any time by the City or Operator. Further, Operator agrees and shall continue to pay during the holding over period all Fees that were effective on the Expiration Date.

ARTICLE IV
PREMISES

A. The City leases to Operator the following areas in the Rental Car Counter Facility described herein together with any substitutions or additions thereto, but less any removals therefrom, from time to time as provided in this Agreement thereafter all areas leased to Operator shall be collectively referred to herein as the "Premises": approximately eight hundred forty-two (842) square feet of counter, office, storage, queuing and shared common area identified as position #6 depicted on Exhibit B.

B. By the execution of this Agreement, Operator accepts the Premises "AS IS". Operator also understands and agrees that the occupant of the Premises prior to the Commencement Date may remove trade fixtures prior to the delivery of possession of the Premises to Operator. Except as expressly provided in this Agreement, the City shall have no obligation or responsibility whatsoever to do any work or furnish any improvements of any kind to the Premises or perform any maintenance or repair on the Premises. CITY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PREMISES OR THAT THE PREMISES ARE SUITABLE FOR OPERATOR'S USE, PURPOSES OR NEEDS. Upon expiration or termination of the Agreement, Operator shall promptly and peaceably surrender to City its Premises and all improvements thereon to which
City is entitled in good and fit condition, reasonable wear and tear excepted, provided however, nothing in the Article shall be construed to modify the obligations of the parties set forth elsewhere in the Agreement.

C. Priority of choice for location of Operator's block in the Ready Return area during the Term is based on the cumulative MAG (the MAG for each of the three years added together) Proposal by each Concessionaire in response to the RFP, with the Concessionaire having the highest cumulative MAG given first priority for choice of location of Operator's block in the Ready Return.

The allocation of the block of Ready Return parking area to Operator for the first Contract Year of this Agreement, commencing on the Commencement Date, is based on the sum of the three years minimum annual guarantee proposed by the Operator divided by the sum of the three years minimum annual guarantees proposed by all successful operators. The City may, on not less than thirty (30) days advance notice to Operator and or on each Reallocation Date, reduce or increase the size and layout of the parking block in the Ready Return area allocated for use by Operator based on Operator's market share for the immediately preceding Contract Year. If the calculation of the reallocation of the parking area does not result in a change to any operator of an increase or decrease of block size of more than 10%, the City will not reallocate the parking blocks for that Contract Year.

In general, each parking block will be a general rectangle shape, with at least one side providing for terminal frontage (east side) and the opposite side providing for the entrance exit driveway (west side). However, when allocating or reallocating the Ready Return parking area, the City has full discretion on the shape of each Concessionaire's block based on the geometry or any physical characteristics of the garage (such as support columns and common use sidewalks).

On the date designated for deletion or increase of the parking blocks in the Ready Return:
1. Operator shall surrender such portion of the parking block in the Ready Return to the City, if a deletion;
2. Operator will be permitted to use any additional parking block assigned to Operator in the Ready Return, if an addition;
3. Exhibit I shall be revised accordingly, which shall not require a formal written amendment to this Agreement.

Notwithstanding the allocation and reallocation process outlined above, the parking block assigned to Operator shall not be fewer than fifteen (15) spaces, except in the event that the Ready Return area is reduced in size twenty-five percent (25%) or more as required by the FAA and or TSA for security purposes or construction activities upon or near the Ready Return. In the event Operator's block must be reduced in order to allocate fifteen (15) spaces to the smallest Concessionaire, the City will propose a plan to reduce the space to Operator for comment; however, the City shall retain final authority as to the reduction of blocks.

All expenses for the Operator's block configuration upon commencement of this Agreement and/or upon any reallocation of Ready Return area will be the sole responsibility of the Operator.
D. Notwithstanding any other provision of this Agreement, the City may adjust the boundaries of the Premises as may be required by the City for its purposes by adding to or deleting space from such portion of the Premises from time to time. The City shall notify Operator not less than sixty (60) days in advance of such adjustment, and Operator shall remove all personal property and fixtures located on the areas being deleted no later than the date such adjustment is to occur. In such instances, the Premises Rent (as applicable) may be adjusted, based on the new area comprising the Premises.

E. The City reserves the right to relocate the Premises to other space in the Terminal and or on Airport grounds, as applicable, on the terms and conditions hereinafter set forth:

1. If the City elects to relocate all or part of the Premises, the City will give Operator at least sixty (60) days' prior written notice of the relocation date. The City agrees to provide substitute space of comparable square footage and shall provide improvements of comparable condition and utility (if not then existing at the new location). City shall pay all reasonable out-of-pocket moving costs for moving Operator's personal property to the substitute premises. Operator shall cooperate with the City in connection with the relocation, including, without limitation, responding in a timely manner to any requests for information or for review and comment on proposed plans for improvements to the substitute premises. Operator shall surrender possession of the portion of the Premises for which the substitution is being made and move from such portion of the Premises to the substitute premises on the relocation date.

2. On the relocation date, the substitute premises shall be deemed for the purposes of this Agreement to be the portion of the Premises being relocated. The Premises Rent, as applicable, shall be recalculated and adjusted based on the new area of the substitute Premises. The MAG, however, shall not be adjusted.

The City's exercise of its relocation right under this Subsection (E) shall not constitute a constructive eviction or interference with the right of quiet enjoyment, nor shall the City's exercise of such right subject the City to damages for loss of profits or business.

F. Operator's use of the Premises shall be subject to any and all easements, licenses and other rights with respect to the Premises granted to or vested in itself or any other governmental entities or agencies, such as the FAA and TSA. Operator acknowledges that there may currently exist, and that City may grant in the future, easements and rights on, over or under the Premises for the benefit of suppliers or owners of utilities that service the Airport, and Operator hereby consents to any such utility easements whether now in existence or later granted.

ARTICLE V
USE OF THE PREMISES

A. Subject to the terms and provisions contained in this Agreement, and all applicable rules, regulations, laws, ordinances, codes and orders of any federal, state or local government or
subdivision thereof in connection with the conduct of activities by Operator at the Airport. Operator shall use the Premises for the following purposes only and for no other purpose:

1. Arranging and administering the rental of Vehicles and the related incidental provision of loss and collision damage waiver protection, insurance (including but not limited to personal injury insurance), children's car seats, GPS devices, mobile telephones and such other incidental services, items and equipment not being provided by Operator at the Airport prior to the Commencement Date and equipment reasonably associated with the rental of automobiles (but not including any items for which any exclusive right to provide such services, items or equipment has been or may in the future be granted to others at the Airport), which are approved in advance in writing by the City; and

2. For such other uses only as the City may approve in writing in its sole and absolute discretion.

B. If Operator parks its Vehicles in public parking lots on the Airport or permits its employees, contractors or agents to park automobiles in such lots, Operator must pay the posted parking rates.

C. Operator shall not use, bring, store, or dispose of any Hazardous Materials on the Premises, except Operator may use, bring, and store household and commercial cleaners and chemicals in connection with the operation and maintenance of the premises in commercially reasonable quantities, provided such is permitted by the Airport Rules and Regulations. Operator may have fuel in the tanks of its vehicles. Operator shall comply with all applicable Environmental Laws in its use of the Premises and the conduct of its concession business at the Airport.

ARTICLE VI
OPERATOR'S CONCESSION RIGHTS AND OBLIGATIONS

A. Operator shall have the non-exclusive right and obligation to conduct a rental car (a.k.a. rent-a-car) concession at the Airport from the Premises under the terms and conditions described herein.

B. During the Term of this Agreement, Operator shall operate its concession and maintain all signage under the brand(s) or trade name(s) of Avis Budget Car Rental, LLC. Operator is prohibited from operating at Airport under any other brand name(s) or trade name(s). No other brand name(s) or trade name(s) shall be used or displayed by Operator at the Airport or upon the Premises during the Term of this Agreement. During the term of this Agreement Operator shall operate and maintain all signage under the brand(s) or trade name(s) stated above. No additional brand or trade name may be added to this Agreement during the Term.

If Operator uses any particular brand or trade name under a license or franchise contract, Operator represents and warrants that it has been granted the right to use such brand or trade name for the entire term of this Agreement. At the City's request, Operator agrees to provide a
copy of such franchise or license agreement as evidence that the same is in full force and effect. Operator shall immediately notify the City if such agreement is terminated.

C. Operator shall occupy the Ready Return block assigned for its use only for the parking of rental Vehicles by Operator for pick-up or drop-off by its Customers, in a manner consistent with the terms of the Ready Return Agreement. Vehicles returned by customers must be removed to the Operator’s service facility within one hour of return. Returned vehicles which have not been cleaned and are not immediately available for rental shall not be stored in the Ready Return. Operator understands that returned vehicles cannot be cleaned and/or serviced in the Ready Return, including the removal of trash. Operator employees are permitted to park personal vehicles in the Ready Return which are properly displaying an Airport-issued vehicle permit issued to the employee for that specific personal vehicle. Upon notification by the City, Operator shall immediately remove any employee vehicle parked in the Ready Return that does not display an Airport-issued vehicle permit. Operator’s employees shall only park personal vehicles in the Ready Return while on duty at the Airport and shall not be permitted to park in the Ready Return at any other time, including during personal or business travel, see Article IV(M) below.

D. In operating the rental car concession permitted hereunder, Operator shall comply with the following:

1. Operator shall offer for rental only Vehicles of recent manufacture (not more than two (2) model years old and less than 40,000 miles), except as may be allowed under (D)(2) below. All Vehicles provided by Operator shall be maintained at Operator’s expense in good and safe operating order, free from any known mechanical defects and be in clean, neat, and attractive condition inside and out. Operator shall furnish good, prompt and efficient service and shall at all times have available a sufficient number of Vehicles (a fleet of no fewer than fifty (50)) to meet all reasonably foreseeable demands of the traveling public.

2. Operator may offer for rental antique, vintage, classic or other luxury or prestige automobile or handicapped operated Vehicles of good quality, free from any known defect and clean and attractive both inside and out. The City shall have the right to prohibit Operator from offering for rental any such automobile which the City reasonably determines not to meet the standards described in (D)(1) above.

3. Operator shall provide the following services for its Customers at the Airport: (i) accept at least three (3) nationally recognized credit cards and at least one (1) locally named credit or debit cards for payment of Vehicle rental; (ii) provide for a national reservation system for services of Operator at the Airport, and (iii) will rent motor vehicles to customers who are local walk-up customers, ticketed Airline passengers and any other customer who so chooses to rent.
4. Operator shall maintain a sufficient number of trained personnel to ensure that Operators customers will receive prompt and courteous service at all times. All personnel of Operator, while on or about the Premises, shall be polite, clean and neat in appearance and appropriately attired. The City shall have the right to complain to Operator as to the demeanor, conduct or appearance of Operator's employees, invitees and those doing business with it, or regarding the Operator's staffing levels, and Operator agrees to take all reasonable steps necessary to resolve such complaints.

5. Without limiting any other requirement set forth in this Agreement, Operator shall conduct its concession business operations within the Airport in such manner as shall reduce to a minimum the emanation of noise, vibration, dust, fumes and odors; so as not to interfere with the use of adjacent areas on the Airport.

6. Operator's rights to use the Premises for the purposes provided in this Agreement are subject to the rights of the City, as City, to monitor compliance with this Agreement to ensure that the Premises are used and operated as required by Operator.

7. If Operator receives (or the City receives and forwards to Operator) any written complaint concerning Operator's operation of the business at the Airport, Operator shall promptly respond to such complaint in writing within thirty (30) days of its receipt and make a good-faith attempt to explain, resolve or rectify the cause of such complaint. Without further notice or demand, Operator shall keep a copy of each such complaint and Operator's written response for a period of one (1) year from the date of the complaint and shall make the complaint and the written response available to the City upon its request.

8. Operator shall respond in writing to complaints registered by the Airport's police with respect to violations of traffic regulations committed in the course of Operator's business by Operator's agents, employees, invitees and licensees, setting forth such action as have been taken or are immediately contemplated to remedy said violations.

9. Operator shall keep the Premises open for service for such periods during each day and on such days during each week as may be necessary to meet reasonable demands for such services and to properly and adequately serve the public, as determined by the City; provided, Operator shall provide rental car services to Airport customers during all hours of air carrier operations at the Airport. Should the Operator operate more than one concession location in the Rental Car Counter Facility, Operator is not permitted to close one location and direct customers to its other location.

10. Counters will be adequately staffed and open one hour before the first scheduled flight departure and one hour after the last scheduled flight arrival.

11. Operator shall comply with the Airports Rules & Regulations and any amendments to that shall be approved.
12. Operations Violations. Operator's failure to adhere to the operating requirements set forth in this Agreement is reasonably anticipated to result in significant inconvenience to the public, adversely affect the overall commercial business of the Airport, and reduce the amount of rent to be paid to the City. Additionally, City resources will be expended in dealing with violations of this Agreement by Operator. The parties hereby agree that total damages sustained by the City for violations of the provisions of this Agreement addressing this subject matter could be significant, but would be difficult to determine and to track. Therefore, the parties hereto agree that the liquidated damages amounts set forth below for violation of Agreement terms addressing the referenced subject matter three (3) business days from a notice occurrence, for the first occurrence only, are reasonable estimates of the loss anticipated to be suffered or incurred by the City. Operator, therefore, hereby agrees that imposition of the liquidated damages set forth below is fair and reasonable and Operator agrees to pay immediately upon demand by the City the following amounts as liquidated damages upon the occurrence of breaches, in any Contract Year, related to the following operation violations:

- $100 per occurrence - first occurrence
- $200 per occurrence - second occurrence
- $300 per occurrence - third occurrence
- $1,000 per occurrence thereafter

For hours of operations violations, liquidated damages are as follows:

- $100 per hour or portion thereof during which location is not open - first occurrence
- $200 per hour or portion thereof during which location is not open - first occurrence
- $300 per hour or portion thereof during which location is not open - first occurrence
- $1,000 per occurrence thereafter

E. Operator shall, at its expense, obtain all permits, licenses, certificates or other authorizations required for conduct of its concession business at the Airport, shall register all Vehicles as may be required by laws and ordinances and display all permits or stickers as may be required. Upon execution of this Agreement and thereafter annually or at the City's request, Operator shall provide evidence to the City that Operator has obtained such permits, licenses, certificates, other authorizations and registrations.

F. Operator shall not use or occupy or permit the Premises to be used or occupied, or do or permit anything to be done in or on the Premises, in whole or in part, in a manner which would in any way violate any certificate of occupancy affecting the Premises, or make void or voidable any insurance then in force with respect thereto, or which may make it impossible to obtain fire or other insurance thereon required to be furnished by Operator under this Agreement, or which will constitute a public or private nuisance, or which will disrupt the safe, efficient and normal operations of the Airport.
G. Operator shall not use or occupy or permit the Premises to be used or occupied, in whole or in part, in a manner which may violate and shall comply with any present or future, ordinary or extraordinary, foreseen or unforeseen, laws, regulations, ordinances or requirements of the federal, state or municipal governments or of any other governmental, public or quasi-public authorities now existing or hereafter created, having jurisdiction in the Premises, whether or not City also is liable for compliance.

H. Operator shall not sell or give away food or beverages on the Premises. Operator may not install vending machines on the Premises for sale of food, beverages or any other items.

I. Operator may, at its own expense and only after receiving written approval from the City, erect and maintain informational signs within and upon the Premises in addition to those provided by City; the size and type of signs are subject to City’s standards and prior written approval.

J. Operator shall not erect, allow or permit to be maintained on the Premises, or upon the exterior or any improvement on the Premises, any billboard or advertising signs, except those which have the prior written approval of the City.

K. Throughout the Term of this Agreement Operator shall employ a qualified, full-time, local resident manager having experience in the management of this type of concession, who shall be available during normal business hours, and be delegated sufficient authority to ensure the competent performance and fulfillment of the responsibilities of Operator under this Agreement, and to accept service of all notices provided for herein. Operator shall provide the City with emergency telephone numbers at which Operator’s local manager or designated local employee with authority to speak for Operator may be reached on a 24-hour basis.

L. Operator shall at its sole expense, provide and use suitable receptacles for the storing of all trash, garbage, and other refuse created in the conduct of its business or operations in the Premises, or arising from Operator’s exercise of any right or obligation under this Agreement. Trash receptacles in the Ready Return area are provided for customers disposal of trash. These receptacles shall not be used for trash generated from Operator’s activities or employees and shall not be used for disposing of trash left in returned vehicles. Such cleaning shall take place at the Operator’s service facility.

M. Operator’s employees shall be required to obtain an Airport-issued identification badge conditioned upon successful completion of a background check and other requirements as stated in the Airport Rules and Regulations. Such badge must be obtained within thirty (30) days of execution of this Agreement. At that time, Operator’s employees may request a parking sticker for their personal vehicle. See Article IV(C) above.

N. Operator shall repair or pay for any and all damages to City and its property caused by any wrongful, intentional or negligent acts or omissions by Operator, its agents, contractors or employees arising out of Operator’s use or occupancy of the Premises or in the exercise of any right or obligation granted herein.
Operator shall operate or cause to be operated all its Vehicles in a safe manner and in accordance with all applicable rules and regulations, and with all federal, state and local laws and to strictly observe all posted speed limits.

Operator shall be a party to a Ready Return Agreement at all times this Agreement is effective.

Operator's employees shall be required to obtain an Airport-issued vehicle permit for any personal vehicle which Operator's employees intend to park in the Ready Return.

All of Operator's computer software, hardware, firmware, payment card processing policies, procedures and related services utilized to process City of Dayton revenue transactions shall be:
1. Completed by a qualified professional payment card processing firm acceptable and approved by the City of Dayton, and

Operator shall provide and agrees to maintain the PII compliance reporting Attestation of Compliance ("AOC") forms in their latest version(s), or within the year of record as requested and or in an annual transmittal to the City of Dayton.  
(https://www.psidecuritystandards.org/documents/PCI-DSS-v3.2-AOC-Merchant.docx?agreement=true&time=1493826893795 or

ARTICLE VII
CITY RIGHTS AND OBLIGATIONS

A. The City agrees to provide normal heating, air conditioning and electrical service to the Rental Car Counter Facility as reasonably required. Operator shall pay for its own telephone service and installation of any telephone or computer connections or equipment or for extension of any electrical facilities to provide service. The City reserves the right to interrupt temporarily the heating, air conditioning or electrical services furnished to the Premises to make emergency repairs or for other reasonable purposes, and the City shall restore said services as soon as reasonably possible. The City shall endeavor to provide Operator with reasonable notice of such interruptions when possible. The City shall have no responsibility or liability for any failure of heating, air conditioning, electrical or any other service to the Premises, the Rental Car Counter Facility or to the Airport for any other reason whatsoever.

B. All rights not expressly granted to Operator herein are reserved by the City, including, without limitation, the following rights (which may be exercised by the City's officers, employees, agents, licensees, contractors or designees):
1. to have, at any and all reasonable times, and with reasonable notice to Operator, when possible, the full and unrestricted access to the Premises for the purpose of inspecting the Premises and doing any and all things, which the City is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport and in the exercise of the City’s police power;

2. to enter the Premises at any time;

3. to enter the Premises to maintain, replace, repair, alter, construct or reconstruct existing and future utility, mechanical, electrical and other systems or portions thereof on the Airport, including without limitation, systems for the supply of heat, water, gas, fuel, electricity, and for the furnishing of sprinkler, sewage, drainage, and telephone service, including all related lines, pipes, mains, wires, conduits and equipment, and;

4. to adopt and enforce reasonable rules and regulations with respect to the use of the Airport and facilities thereon, which Operator agrees to observe and obey;

5. to exercise such other rights as may be granted the City elsewhere in this Agreement.

Except in the case of an emergency or previous arrangement with the Operator, City’s entry into the Premises shall be during reasonable business hours after providing reasonable advance notice, and in the presence of Operator’s representative.

All rights in this Subsection (B) shall be exercisable without notice (except as expressly provided in this Section) and without liability to Operator for damage or injury to property, person or business, and without effecting an eviction or disturbance of Operator’s use or possession or giving rise to any claim for setoff or abatement of Fees or affecting any of Operator’s obligations under this Agreement. Notices under this Subsection (B) may be given verbally in an emergency or where entry does not materially affect Operator’s use and occupancy. Reasonable notice shall in no event require more than twenty-four (24) hours’ notice.

C. City warrants quiet enjoyment of the rights and privileges granted herein, during the term hereof, upon the performance of Operator’s covenants contained herein, subject to Subsection (B) of this Article VII.

D. City will remove, during normal business hours, all collected trash, garbage, and refuse from the Premises with the exception of any construction, renovation, Ready Return area or relocation debris.

E. In an emergency situation or upon occurrence of an Event of Default, the City may (but shall not be obligated so to do), and without waiving or releasing Operator from any obligation of Operator hereunder, make any payment or perform any other act which Operator is obligated to make or perform under this Agreement in such manner and to such extent as the City may deem desirable; and in so doing the City shall also have the right to enter upon the Premises for any purpose reasonably necessary in connection therewith and to pay or incur any other
necessary and incidental costs and expenses, including reasonable attorneys’ fees. All sums so paid and all liabilities so incurred by the City, together with interest thereon, shall be deemed additional fees hereunder and shall be payable to the City upon demand. The performance of any such obligation by the City shall not constitute a waiver of Operator’s default in failing to perform the same. Injunction of the City shall not be considered as a waiver of any right accruing to it pursuant to this Agreement. The City shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business or other damage of Operator or any other occupant of the Premises or any part thereof, by reason of exercise of its rights under this Subsection (E).

ARTICLE VIII
RENTS, FEES, PAYMENTS AND PERFORMANCE BOND

A. Premises Rent. Operator shall pay to the City, in advance on the 1st day of each month, a
premise rent for the Premises described in Article IV(A). For the period commencing January 1, 2022 through December 31, 2022, the Operator will pay the sum of what will be adopted as stated below for 2022. The sum of Sixty-Six Dollars and Sixty-Four Cents ($66.64) per square
foot per year (the rate for 2021) is inserted into this Agreement for purposes of planning only. This rate is subject to updating annually upon adoption of the Airlines Rates and Charges Resolution by the Commission of the City of Dayton.

B. Concession Fee. As consideration for the privilege of operating the concession hereunder, Operator shall pay to the City each Contract Year, for the full term of this Agreement, a Concession Fee. The Concession Fee is the greater of:

1. The Percentage Concession Fee as defined in Article I;
   OR

2. The respective amount shown below as the Operator’s Minimum Annual Guarantee:

<table>
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<th>Period</th>
<th>Amount</th>
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<td>January 1, 2024 to December 31, 2024</td>
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</tr>
</tbody>
</table>

The MAG shall be paid in equal monthly installments, in advance, on the first day of each month
during the Term.

C. Additional Fees. City may invoice Operator additional fees for items including, but not limited to, employee parking, badging fees, background checks and additional vehicle storage. The City may assess reasonable, non-discriminatory charges for these items. Operator shall pay for such additional fees within thirty (30) days of invoicing by the City.

D. In the event of termination of this Agreement on a date other than December 31st in any
year of the Agreement, the MAG and Premises Rent shall be prorated. Proration for a fractional
Contract Year shall be determined by multiplying the number of days that have transpired that
year by 1/365th of the annual MAG and Premises Rent.
E. On or before the twentieth (20th) day of each month, Operator shall furnish to the City a sworn or verified statement of its total Gross Revenues for the preceding month, with the Concession Fee calculated. No additional payment is due at this time. The Concession Fee will be reconciled at Contract Year end, as described in Paragraph G below. This statement shall be in the format (as given to Operator by the City) acceptable to the City and shall contain detailed financial information, broken down by categories of items representing Gross Revenues.

F. Operator shall furnish each year during the term of this Agreement, a written statement, certified by an independent Certified Public Accountant, to the City stating that in his or her opinion the percentage fees paid by Operator to City during the preceding year pursuant to this Agreement were made in accordance with the terms of this Agreement. Said statement shall be submitted by Operator to be received by the City within ninety (90) days of the end of each Contract Year. Such statement shall also contain a list of the Gross Revenue receipts, by month, as shown on the books and records of the Operator and which were used to compute the percentage fee payments made to City during the period covered by such statement.

G. The Concession Fee will be reconciled at the end of each Contract Year. In the event an annual report indicates Operator's underpayment of the Concession Fee during said annual report Contract Year, the amount of such underpayment shall be remitted from Operator to the City not later than thirty (30) days from the date the annual report was submitted to the City. In the event an annual report indicates overpayment of Concession Fees to the City, Operator shall subtract the amount of such overpayment from its next monthly MAG payment, except that, if, after the last Contract Year of this Agreement, Operator is no longer a Concessionaire at Airport, such settlement shall be remitted from the City to Operator, provided Operator is not then in default under the terms of this Agreement. This provision shall survive the expiration or termination of this Agreement.

H. Prior to the Commencement Date, Operator 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, a performance bond for the payments required hereunder, in an amount equivalent to one half (1/2) the MAG for the first Contract Year. The City may draw upon the Performance Bond if Operator 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.

I. Except as provided in Subsection (J) below, all rental and fees payable hereunder shall be remitted by Operator to the following address or at such other address as City shall direct in writing:

City of Dayton, Ohio
P. O. Box 632094
Cincinnati, OH 45263-2094
J. All annual reports and monthly statements of Gross Revenues together with the associated payments to the City, as described 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

K. In the event Operator fails to make any payments as required to be paid under the provisions of this Agreement within ten (10) calendar days of the due date, late charges at the rate of two percent (2%) per month shall accrue against all such delinquent payment(s) from the original due date until City actually receives payment. The right of City to require payment of such late charges and the obligation of City to pay same shall be in addition to and not in lieu of the right of the City to enforce other provisions herein, including termination of this Agreement, or to pursue other remedies provided by Law.

L. In the event that the following condition exists during the term of this Agreement, the MAG hereinafter provided for in Article VIII(B)(2) shall be subject to proportional abatement for the period of time the condition exists:

1. A major traffic reduction at the Airport. A major traffic reduction shall be defined as a greater than twenty-five percent (25%) reduction in the number of passengers deplaning on scheduled airline flights at the Airport during any period of three (3) consecutive calendar months as compared to the number of such deplaning passengers in the same calendar months during the preceding calendar year.

2. The abatement amount for those months that are abated as defined in Article VIII(I)(1) will be the prorated reduction of that month’s 112th payment of the MAG. For example, if May, June and July have a traffic reduction of 27%, 30% and 26% respectively, then the 112th MAG payment for May would be reduced by 27%, June would be reduced by 30% and July would be reduced by 26%.

3. If the major traffic reduction continues for additional months, the proportional abatement will continue as well, until there is a month when traffic does not fall below the 25% threshold, at which time the full MAG payment shall be made for such month.

This major traffic reduction can only be identified after any three-month period ends; however, the major traffic reduction exists for any three-month period when all three months had a not less than 25% reduction in passenger deplanements. Overpayments of the MAG will be credited to the Operator during the year-end reconciliation process described in Article VIII(G).
ARTICLE IX
CUSTOMER FACILITY CHARGE

Operator shall comply with Section 37.31 of the Revised Code of General Ordinances of the City of Dayton, as may be amended, during the term of this Agreement regarding the imposition and collection of a CFC on all vehicle rental transactions originating at the Airport.

ARTICLE X
INDEMNIFICATION

A. Operator shall defend, indemnify, save and hold harmless the City, its elected officials, officers, employees, agents and volunteers, from and against any and all claims and actions, and all expenses incidental to the investigation and defense thereof, based upon or arising out of any accident or damages arising from, or in any way connected with, Operator's use or occupancy of the Premises or any condition of the Premises and or Operator's exercise of any right granted herein (including operation of its concession), and or Operator's performance or breach or default in the performance of any obligation to be performed pursuant to this Agreement, and or any wrongful, intentional or negligent act or omission of Operator, its agents, contractors and employees.

B. In the event Operator, its agents, contractors or employees violate any security measure at the Airport, including, but not limited to, any Federal Aviation Administration or Transportation Security Administration security laws, rules, regulations, orders or directives, Operator 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.

C. Operator shall defend, indemnify and hold harmless the City, its elected officials, officers, employees, agents and volunteers, from and against any mechanics or other lien or order for the payment of money filed against the Premises, the City or any property of the City, arising out of any act or omission of Operator or anyone claiming through or under Operator. Operator shall, at Operator's expense, cause the same to be cancelled or discharged of record and shall save and hold harmless the City from and against any and all costs, expense, claims, losses or damages including reasonable attorney fees resulting therefrom or by reason thereof.

D. City shall not be liable to Operator or to Operator's agents, representatives, contractors or employees, for any injury to, or death of, any of them or of any other person or for any damage to any of Operator's property or loss of revenue, caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport; nor, to the extent permitted by law, shall City have any liability whatsoever to Operator, Operator's agents, representatives, contractors or employees, for any damage, destruction, injury, loss or claim of any kind arising out of the use by any of the aforementioned of any parking lot located on the Airport. City shall not be liable to Operator for damage to property of Operator or any loss of revenues to Operator resulting from City's acts or omissions in the maintenance and operation of the Airport or failure to operate the Airport.
F. The obligations of Operator under this Article X shall survive expiration or termination of this Agreement, and shall not be affected in any way by the amount of or the absence in any case of covering insurance, or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any part thereof.

G. The City's elected officials, officers, agents and employees shall have no personal liability with respect to any provision of this Agreement or any obligation or liability arising from this Agreement or in connection with this Agreement or the Premises in the event of a breach or default by City of any of its obligations.

G. Notwithstanding any other provision of this Agreement to the contrary, to the extent permitted by law, Operator waives any and every claim for recovery from the City for any and all loss or damage to the Premises or to the contents thereof, which loss or damage is covered by valid and collectable physical damage insurance policies maintained by Operator or which would have been recoverable if the insurance required hereunder had been maintained by Operator, to the extent that such loss or damage is recoverable, or would have been recoverable, as applicable, under said insurance policies. As this waiver will preclude the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), Operator agrees to give each insurance company which has issued, or in the future may issue, its policies of physical damage insurance, written notice of the terms of this waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverage by reason of said waiver. Operator shall require any subtenant to include similar waivers of subrogation in favor of the City.

ARTICLE XI
INSURANCE

A. Operator, at its sole cost and expense, shall procure and maintain, or cause to be maintained, at all times during the Term, the following insurance, with insurance companies authorized to do business in the State of Ohio and having at least an "A" rating from A.M. Best and covering all operations under this Agreement, whether performed by Operator or by persons or entities retained by Operator:

1. Worker's Compensation and Occupational Disease Insurance

Worker's Compensation and Occupational Disease Insurance, in accordance with the laws of the State of Ohio, or any other applicable jurisdiction, covering all employees who are to provide a service under this Agreement, and Employer's liability coverage with limits of not less than Five Hundred Thousand Dollars ($500,000) for each accident or illness. Coverage extensions shall include other states endorsement, alternate employer and voluntary compensation endorsement, when applicable.
2. Commercial General Liability Insurance (Primary and Umbrella)

Commercial General Liability Insurance with limits of not less than Five Million Dollars ($5,000,000) per occurrence combined single limit, for bodily injury and property damage liability. Coverage extensions shall include the following: All Premises and operations; products completed operations; explosion, collapse, underground, independent contractors; broad form property damage; separation of insured and contractual liability (with no limitation endorsement). The City, its elected officials, officers, agents, volunteers and employees, shall be named as additional insureds, on a primary, non-contributory basis for any liability arising directly or indirectly from this Agreement.

3. All Risk Property Insurance

Operator shall obtain an “All Risk Property” policy, including improvements and betterments covering damage to building, machinery, equipment or supplies in the amount of full replacement value of the property constituting within the Premises. Coverage extensions shall include business interruptions loss of rents (in an amount not less than the sum of Fees then payable under this Agreement for a period of one year), and flood. City is to be named as a loss payee.

The Operator shall be responsible for all loss or damage to personal property (including but not limited to material, equipment, tools and supplies), owned or rented by Operator.

4. Automobile Liability Insurance

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, Operator shall provide Comprehensive Automobile Liability Insurance with limits of not less than Five Million Dollars ($5,000,000) per occurrence combined single limit, for bodily injury and property damage. City is to be named as an additional insured on a primary, non-contributory basis.

B. Original certificates of insurance evidencing the required coverage to be in force on the Commencement Date, and all renewal certificates of such insurance, shall be provided to City. At the City’s request, Operator shall furnish complete copies of all policies of insurance. The receipt of any certificate or policy does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Agreement. The failure of the City to obtain certificates or other insurance evidence from Operator shall not be deemed to be a waiver by the City. Operator shall advise all insurers of these Agreement provisions regarding insurance. Non-conforming insurance shall not relieve Operator of its obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Agreement, and the City retains the right to terminate this Agreement as provided in Article XIII until proper evidence of insurance is provided. All policies of insurance
shall provide for a minimum of thirty (30) days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

C. If Operator fails to obtain or maintain any of the insurance policies under this Agreement or to pay any premium in whole or in part when due, City may, without waiving or releasing any obligation or default by Operator hereunder, obtain and maintain such insurance policies and take any other action which City, including reasonable attorney's fees, court costs and expenses, shall be reimbursed by the Operator upon demand by City.

D. Operator shall require all contractors to carry the insurance required herein, or Operator or its contractors may provide the coverage for any or all contractors, and, if so, the evidence of insurance submitted shall so stipulate. Any and all deductibles or self-insured retentions on referenced insurance coverages shall be borne by Operator or its contractors. Operator and its contractors agree that insurers shall waive their rights of subrogation against the City, its employees, elected officials, agents, or representatives. Operator and its contractors expressly understand and agree that any coverages and limits furnished by Operator or its contractors shall in no way limit the Operator or its contractors' liabilities and responsibilities specified within this Agreement or by law. Operator and its contractors expressly understand and agree that any insurance or self-insurance programs maintained by the City shall not contribute with insurance provided by the Operator or its contractors under this Agreement.

E. The insurance required hereunder shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity herein given as a matter of law. The City maintains the right to modify, delete, alter or change these requirements.

F. The insurance required by this Agreement, at the option of Operator, may be effected by blanket or umbrella policies issued to Operator covering the Premises and other properties owned or leased by Operator, provided that the policies otherwise comply with the provisions of this Agreement and allocate to the Premises the specified coverage, without possibility of reduction or coinsurance by reason of, or damage to, any other premises covered therein.

ARTICLE XII
DAMAGE AND DESTRUCTION OF PREMISES

A. If improvements on a portion of the Premises are damaged, in whole or in part, by fire or casualty, and there is not substantial damage to the Rental Car Counter Facility in which such portion of the Premises is located, or material damage to such Rental Car Counter Facility as described in Subsection (B), Operator may use insurance proceeds from insurance it carried to pay for the work as it progresses, and the City shall permit any such proceeds to be made available.

B. If there is material damage to a portion of the Rental Car Counter Facility or damage to a material access point or building systems serving such portion of the Rental Car Counter Facility by a fire or casualty, rendering such portion of the Rental Car Counter Facility not usable, whether or not improvements on the Premises are damaged, then where operations in the Premises are severely curtailed or such portions of the Premises are unusable, such portion of the
Premises shall be deleted from the Premises unless and until the City repairs and restores the damage to the Rental Car Counter Facility within the Term of this Agreement so that the affected portion of the Rental Car Counter Facility is again usable. Operator shall repair and restore any damaged improvements to the Premises at its expense (but it may use insurance proceeds from insurance it carried for the work as the work progresses, and the City shall permit any such proceeds to be made available) if the City repairs and restores the damage to the Rental Car Counter Facility during the Term.

Notwithstanding the foregoing, the City shall not be obligated to repair or restore the Rental Car Counter Facility, and the space deleted shall not be re-included in the Premises if the City determines not to include space for car rental counters in the portion of the Rental Car Counter Facility previously rendered unusable.

C. In the event the Terminal is substantially damaged or destroyed, whether or not improvements to the Premises are substantially damaged or destroyed, and as a result of such damage or destruction, flight operations with respect to the Terminal are terminated or substantially curtailed for ninety (90) days or more, then either the City or the Operator may delete the portion of the Premises located in the Terminal from the Premises or terminate this Agreement.

D. During any period in which Operator is unable to use the portion of the Premises in the Rental Car Counter Facility because of damage or destruction to the improvements on the Premises or the Rental Car Counter Facility, the rent payable for that portion of the Premises in the damaged or destroyed Rental Car Counter Facility shall be abated for the period during which such damage to the Rental Car Counter Facility renders the Premises unusable or operations are so curtailed or terminated. Except for such abatement of rents due, the Operator shall have no claim against the City for any damage suffered by reason of any such damage, destruction, repair or restoration. There shall be no abatement of Concession Fees. Upon any deletion of a portion of the Premises from this Agreement Operator shall surrender such portion of the Premises to the City.

E. If any improvements to the Premises are not diligently repaired by Operator where required within forty-five (45) days or if any space is deleted from the Premises, then the City shall be entitled to all insurance proceeds payable on account of improvements in such space. Where the Operator is obligated to repair or restore improvements, Operator must do so notwithstanding that insurance proceeds may be insufficient.

**ARTICLE XIII**
**TERMINATION BY CITY**

A. For purposes of this Agreement, the occurrence of any of the following shall constitute an "Event of Default":

1. The failure by Operator to pay any Fees as required under this Agreement when due and or the failure of Operator to and to remit all CFC's as required by Section 37.11 of
the Revised Code of General Ordinances, and the failure to cure same within ten (10) days after the receipt of written notice thereof by Operator;

2. The failure by Operator on or after the date of this Agreement to perform any other representation, warranty, or covenant or contract required to be performed by Operator in this Agreement and the failure of Operator to remedy such default within a period of thirty (30) days after receipt of written notice by the Operator;

B. If an Event of Default occurs, and after the expiration of the applicable period cure period specified for such Event of Default, the City may terminate this Agreement. In the event of termination and in addition to any and all rights and remedies provided elsewhere herein or at law or equity, the City may repossess the Premises and shall be entitled to recover as damages: (i) all of the Fees accrued and unpaid for the period up to and including such termination date; and (ii) any other sums for which Operator is liable or in respect of which Operator has agreed to indemnify City under any provisions of this Agreement which may be then due and owing.

ARTICLE XIV
TERMINATION BY OPERATOR

A. Operator may terminate this Agreement and all of its obligations hereunder, after the happening and during the continuance of any one of the following events (none of which, however, shall result in any liability to the City or provide Operator with any remedy other than an option to terminate as set forth herein):

1. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport or any part thereof so as to prevent Operator's use of the Premises in its conduct of its car rental business and the remaining in force of such injunction, not stayed by way of appeal or otherwise, for a period of at least six (6) months;

2. The substantial restriction of City's operation of the Airport by action of any governmental agency or department (other than the City or its agencies and departments) and continuance thereof for a period of not less than six (6) months, provided such restriction adversely affects all of Operator's operations at the Airport.

B. Any termination by Operator pursuant to this Article shall not occur unless the Operator notifies the City of its election to terminate at least thirty (30) days prior to the effective date of such termination, together with a statement of the grounds for termination. If Operator does not give such notice during the period that any of the above events is occurring, then Operator's right to terminate this Agreement as provided in this Article shall not be available to Operator until another happening of any one of said events.
ARTICLE XV
SURRENDER AND RETURN OF THE PREMISES

Upon termination of this Agreement or on the Expiration Date, whichever is earlier, Operator shall return the Premises in as good condition and repair as at the Commencement Date, subject to ordinary wear and tear, and Operator shall remove all personal property and trade fixtures of Operator from such portion of the Premises prior to the date of expiration or termination.

Further, at the City's request, Operator shall also remove all movable, non-permanent improvements installed by or for Operator prior to or within ten (10) days after the expiration or termination of the Agreement, and Operator shall repair any damage to the Premises caused by Operator's removal of the personal property, trade fixtures and improvements. All such removal and repair required of Operator pursuant to this Section shall be at Operator's sole cost and expense. If Operator fails to remove any items required to be removed by it hereunder or fails to repair any resulting damage prior to or within ten (10) days after expiration or termination of the Agreement, then the City may remove said items, including the improvements, and repair any resulting damage and Operator shall pay the cost of any such removal and repair, together with interest thereon.

ARTICLE XVI
NON-DISCRIMINATION AND AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM (ACDBE)

A. The Operator agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Operator transfers its obligation to another, the transferee is obligated in the same manner as the Operator.

The provision obligates the Operator for the period during which the property is owned, used, or possessed by the Operator and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

B. During the performance of this Agreement, the Operator, for itself, its assignees and successors in interest agrees as follows:

1. Compliance with Regulations: Operator will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are attached as Exhibit C and which are herein incorporated by reference and made a part of this Agreement.

2. Nondiscrimination: Operator, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. Operator will not participate directly or
indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Operator for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Operator of the Operator’s obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color or national origin.

4. Information and Reports: Operator will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Operator is in the exclusive possession of another who fails or refuses to furnish the information, the Operator will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of Operator’s noncompliance with the non-discrimination provisions of this Agreement, the City will impose such Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending this Agreement, in whole or in part.

6. Incorporation of Provisions: The Operator will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Operator will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Operator becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Operator may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Operator may request the United States to enter into the litigation to protect the interests of the United States.

C. Operator shall abide by all U. S. Department of Transportation requirements regarding DBE and ACDBE requirements and reporting procedures.
D. It is the goal of the City to encourage participation by organizations classified as Airport Concession Disadvantaged Business Enterprises (ACDBEs) as defined in 49 CFR Part 23 for a concession at the Airport. The City established an overall goal for ACDBE participation in Airport Concessions of 13.46% of the total gross revenues of all Airport Concessions for federal fiscal years 2022, 2023 and 2024. A new goal will be established for subsequent federal fiscal years per the FAA requirements, and will be reported to the Operator upon its adoption. Operator shall provide information under this Article XVI as requested by City for City’s reporting requirements for FAA or any other governmental entity. Operator is required to submit quarterly statements, provided in Exhibit D (subject to change), to the City regarding their participation in their ACDBE participation goal.

E. This Agreement is subject to the requirements of the U.S. Department of Transportation’s regulations, 49 CFR Part 23. The Operator 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 Operator 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.

ARTICLE XVII
ASSIGNMENT AND SUBLETING

A. Except with the consent of City and as the result of a merger or acquisition, Operator shall not, (a) assign, transfer, mortgage, pledge, hypothecate or encumber or subject to or permit to exist upon or be subjected to any lien or charge, this Agreement or any interest under it; (b) allow to exist or occur any transfer of or lien upon the Premises, this Agreement or Operator’s interest herein by operation of law; (c) sublease the Premises or any part thereof; or (d) permit the use or occupancy of the Premises or any part thereof for any purpose not provided for herein or by anyone other than Operator. The City may withhold its consent to the foregoing in its sole discretion. The requirements of this Article shall apply to any transaction or series of transactions that shall have the same effect as any of the aforementioned occurrences, and in no event shall this Agreement be assigned or assignable by voluntary or involuntary bankruptcy proceedings or otherwise, and in no event shall this Agreement or any rights or privileges hereunder be an asset of Operator under any bankruptcy, insolvency or reorganization proceedings.

B. If Operator desires, as a result of an acquisition or merger, to assign its interest under this Agreement or sublease any part of Premises, Operator shall make a written request for authorization in a notice to the City. Such notice shall state the name and address of the proposed sub-Operator or assignee and include a copy of the proposed sublease or assignment and all related documents, and, including a financial statement of the sub-Operator or assignee, disclosures and information required by City.

C. Consent by City to any assignment or sublease shall not operate to relieve, release or discharge Operator of or from any obligations, whether past, present or future, under this
Agreement, and Operator shall continue fully liable hereunder except to the extent, if any, expressly provided for in such consent. Consent by City in any one instance shall not be deemed to be consent to or relieve Operator from obtaining City's consent to any subsequent assignment or sublease. Consent by City shall be conditioned upon agreement by the sub-Operator or assignees to comply with and be bound by all of terms, covenants, conditions, provisions and agreements of this Agreement to the extent of the space subleased or assigned, and an agreement that City shall have the right, but not the obligation, to enforce the terms and provisions of any such assignment or sublease affecting City's interests and Operator shall deliver to City within thirty (30) days after execution, an executed copy of each such sublease or assignment containing an agreement of compliance by each such sub-Operator and assignee. Operator shall pay all of City's costs, charges and expenses, including attorney's fees, incurred in connection with any assignment or sublease requested or made by Operator.

ARTICLE XVIII
GENERAL PROVISIONS

A. The term 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.

B. Notices to the City provided for in this Agreement shall be sufficient if sent by certified or registered U. S. mail, postage prepaid, addressed to:

Department of Aviation
James M. Cox Dayton International Airport
5600 Terminal Drive, Suite 300
Vandalia, Ohio 45377
Attn: Director of Aviation

or such other address as the City shall direct in writing.

C. Notices to Operator provided for in this Agreement shall be sufficient if sent by certified or registered U. S. mail, postage prepaid, addressed to:

Avis Budget Car Rental, L.L.C
6 Sylvan Way
Parsippany, NJ 07054
Attn: Anne D. Morrison

or such other address as Operator shall direct in writing.

D. Operator 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 the Agreement.
B. Any headings of 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 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.

E. By execution of this Agreement, Operator 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.

G. Operator shall, upon its execution and delivery of the required copies of this Agreement to the City, deliver to the City the following instruments and documents:

1. Certificates of insurance evidencing the insurance required by this Agreement.
2. Performance Bond.

H. Operator (and any person claiming by or through Operator) 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 whatsoever.

I. Neither Operator nor any contractor of Operator 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 Premises.

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

K. The City may amend or modify this Agreement, at any time, provided that such amendment or modification makes specific reference to this Agreement, is executed in writing, signed by a duly authorized representative of City and Operator and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.

L. This Agreement, including the incorporated Ready Return Agreement and any executed service facility lease, represents the entire and integrated agreement between City and Operator. This Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreement or contracts, whether oral or written, relating to the subject matter of this Agreement.
M. A waiver by the City of any breach of this Agreement shall be in writing. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it is given and shall not affect the City's rights with respect to any other or further breach.

N. 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.

O. 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.

(BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK)
IN WITNESS WHEREOF, the City and Operator, each by a duly authorized representative, have executed this Agreement as of the date first set forth above.

WITNESSED BY:

Barbara J. Smith

WITNESSED BY:

CITY OF DAYTON, OHIO

Justine Brungardt

CITY OF DAYTON, OHIO

APPROVED AS TO FORM
AND CORRECTNESS:

City Attorney

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

______________________________ . 2021

Min Bk. ___________ Pg. ___________

______________________________
Clerk of the Commission
EXHIBIT 1 to the Rental Car Ready Return Agreement

Ready Return Block Layout.
Rental Car Facility Counter Layout

EXHIBIT K
Concession Agreement, Effective Jan 2022
Sept, 2021

Counter 1  N/A
Counter 2  Byera dba Thrifty
Counter 3  Byera dba Hertz and Dollar
Counter 4  EAN dba National
Counter 5  EAN dba Alamo/Enterprise
Counter 6  Avis Budget

Department Legend

- COMMON
- COMMON VESTIRULE
- COUNTER 1
- COUNTER 2
- COUNTER 3
- COUNTER 4
- COUNTER 5
- COUNTER 6
- RAC CIRCULATION
- RAC VESTIRULE

Individual Office = 109 SF
Individual Storage = 50 SF
Individual Counter = 146 SF
Individual TOTAL = 305 SF

RAC Circulation = 2218 SF / 6 Counters = 370 SF per
RAC Vestibule = 847 SF / 6 Counters = 142 SF per
RAC Mechanical/Closet = 150 SF / 6 Counters - 25 SF per
RAC Shared TOTAL = 537 SF per

Individual TOTAL = 305 SF

RAC Shared TOTAL = 537 SF per

TOTAL EACH RAC = 842 SF
Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Agreement, the Operator, for itself, its assignees, and successors in interest (hereinafter referred to as the "Operator") agrees to comply with the following nondiscrimination statutes and authorities, including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 Stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation - Affirmation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC § 4601 (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federally-aided programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability), and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, color, national origin, or sex);
- The Civil Rights Restoration Act of 1988 (PL 100-203) (amended the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definitions of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipient, subrecipients and contractors, whether such programs or activities are Federally-funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 - 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 27 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, or sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).
**PART I: CONTACT INFORMATION**

| Concessionaire: |  
| Address: |  
| Contact Person/Email: |  
| Phone No./Fax No.: |  

**PART II: ACDBE Participation**

In order to count toward goal achievement, the listed firm(s) must be certified as Airport Concession Disadvantaged Business Enterprises ("ACDBE") by the State of Ohio's certification program. [Certification can be verified at http://www.dot.state.oh.us/Divisions/ODT/SDBE/Pages/DBE-Directory.aspx](http://www.dot.state.oh.us/Divisions/ODT/SDBE/Pages/DBE-Directory.aspx)

<table>
<thead>
<tr>
<th>ACDBE Firm Name Address &amp; Phone No.</th>
<th>Total ACDBE Participation to Date in Dollars (for Fiscal Year Oct. 1 – Sept. 30)</th>
<th>Nature of Relationship with ACDBE Firm</th>
<th>Race/Gender of Disadvantaged Owner with Largest Ownership Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name:</td>
<td>$________________________</td>
<td>□ Frame Concession&lt;br&gt;□ Subcontractor&lt;br&gt;□ Management Contract&lt;br&gt;□ Goods/Services</td>
<td>□ Black&lt;br&gt;□ Hispanic&lt;br&gt;□ Asian Pacific American&lt;br&gt;□ Asian Indian American&lt;br&gt;□ Non-Minority Women&lt;br&gt;□ Other</td>
</tr>
<tr>
<td>Address:</td>
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<td>Phone No.:</td>
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<td>Email:</td>
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</tbody>
</table>

**Business Type:**
- Car Rental Insurance
- Car Rental Vendoring
- Car Rental Office Supplies
- Car Rental Uniforms
- Car Rental Gas/Oil
- Car Rental Other (Explain business type below)

**Shortfall Explained:**

**Does this vendor have a lease or sublease?**
- Yes
- No

**Agreement Dates:**
- Yes
- No

**Does the agreement have an option to renew?**
- Yes
- No

**How many renewal options?**
- Length of time of renewal.
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE ("ACDBE")
RENTAL CAR ANNUAL PARTICIPATION REPORT
QUARTERLY REPORTING

NON-ACDBE Subconcession(s)

<table>
<thead>
<tr>
<th>NAME</th>
<th>TYPE OF GOODS OR SERVICE</th>
<th>Total NON-ACDBE Subs Gross Receipts</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

PART III: QUARTERLY REPORTING - PRIME CONCESSIONAIRE

Quarterly Reports are required to be submitted by the 30th day of the month following the end of each annual quarter. The information received will be compiled and reported on the below graph.

1st Quarter
(Jan 1, 20__ - Mar 30, 20__) 

2nd Quarter
(Apr 1, 20__ - Jun 30, 20__) 

3rd Quarter
(Jul 1, 20__ - Sep 30, 20__) 

4th Quarter
(Oct 1, 20__ - Dec 31, 20__) 

I hereby certify that the information contained in this report is true and correct:

________________________________________
Signature of Authorized Representative

________________________________________
Print Name/Title

________________________________________
Date

For BOTH Annual and Quarterly Reporting:
In the event the Prime Concessionaire has not achieved the ACDBE participation contract goal, this report must be accompanied by a corrective action plan and written documentation evidencing the Prime Concessionaire’s good faith efforts to achieve the ACDBE participation contract goal.
RENTAL CAR SERVICE CENTER LEASE AGREEMENTS (2)

The Department of Aviation requests permission to enter into two (2) Rental Car Service Center Lease Agreements with Avis Budget Car Rental, LLC dba Avis and Budget. A Request for Proposals (RFP) was issued in June 2020 for six available rental car Concession locations at the Dayton International Airport, which included an option to lease one of 4 available Service Centers. Four Service Center Lease options were received with all four companies being recommended for lease agreements with the City.

Avis Budget Car Rental, LLC dba Avis and Budget is an incumbent operator, and requests to lease two (2) Service Center sites, 3300 Valet Drive and 3340 Valet Drive. They will pay a monthly fixed ground and building rent of $15,001.00 and $4,501.00 to the City for each site respectfully. Total Rents to the City for both sites are anticipated to be $234,024.00 per year, and $702,072.00 for the 3-year term.

These Lease Agreements are effective for a three (3) year period, commencing on January 1, 2022, and terminating/expiring on December 31, 2024. There are no options for renewal.

The Department of Law has reviewed and approved the Lease Agreements as to form and correctness. Two (2) Certificates of Revenue are attached for each Lease Agreement.
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name  Avis Budget Car Rental, LLC dba Avis and Budget
Address 6 Sylvan Way
City  Parsippany State  NJ  Zip+4  07054
Customer #  Address Location #  
Federal ID#  

Revenue Information: Fund  51000  Organization  3216  Revenue  23203  Program  43

Contract Information: Contract Start Date  Upon Execution Contract Expiration Date  12/31/2024

Billing Information: Rate:  $4,501.00  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  Rate Change Amount  

Description of Services (wording on invoice): Service center lease for 3-years through 2024, lease is located at the service center, 3340 Valet Drive.

$ 54,012 annually; $162,036 3yf total off

Departmental Approval  

TO BE COMPLETED BY FINANCE

Revenue Contract Number  1 - 8681  Auditor  D Billig  Date  12/16/2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection. Director of Finance  12/16/21
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name Avis Budget Car Rental, LLC dba Avis and Budget
Address 6 Sylvan Way
City Parsippany State NJ Zip+4 07054 -
Customer # Address Location #
Federal ID# 

Revenue Information: Fund 51000 Organization 3216 Revenue 23203 Program 43

Contract Information: Contract Start Date Upon Execution Contract Expiration Date 12/31/2024

Billing Information: Rate: $15,001.00 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 Rate Change Amount 

Description of Services (wording on invoice): Service center lease for 3-years through 2024, lease is located at the service center, 3300 Valet Drive.

TOTAL = $80,012 ANNUALLY: $540,036 FOR 3 YR.

Departmental Approval

TO BE COMPLETED BY FINANCE

Revenue Contract Number 1-866-1 Auditor D Billy Date 12/16/2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection. Director of Finance

12/16/21
RENTAL CAR SERVICE CENTER LEASE AGREEMENT

THIS RENTAL CAR SERVICE CENTER LEASE AGREEMENT. ("Lease") is made and entered into this ___day of__________, 2021, between the City of Dayton, Ohio ("Lessor"), a political subdivision in and of the State of Ohio, and Avis Budget Car Rental, LLC ("Lessee"), a Delaware Corporation authorized to conduct business in the State of Ohio.

WITNESSETH THAT:

WHEREAS, Lessor is the owner and operator of 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, State of Ohio;

WHEREAS, Lessor heretofore acquired a rental car service center, which is located at 3300 Valet Road, Vandalia OH, and listed on Exhibit A as property B;

WHEREAS, Lessee operates a rental car concession at the Airport pursuant to a separate Non-Exclusive Rental Car Concession and Lease Agreement with Lessor ("Concession Agreement") to be dated January 1, 2022 and desires to lease the rental car service center to support its rental car operations at the Airport; and

WHEREAS, Lessor deems it advantageous to itself, to the operation of the Airport and in the best interest of the public to lease unto Lessee this rental car service center upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and the mutual benefits to be derived, IT IS AGREED AS FOLLOWS:

ARTICLE I - LEASED REAL PROPERTY

A. Lessor leases to Lessee the rental car service center located at the Airport and having the address of 3300 Valet Drive, which facility is situated on 130,000 square feet of ground space ("Ground Space") and containing a building containing approximately 10,250 square feet space ("Building", and collectively, the Ground Space and Building referred to herein as the "Premises"). The exact location of the Premises at the Airport is depicted in Exhibit A, property B, which is attached hereto and incorporated herein.

B. As part of this Lease and the Premises leased hereunder. Lessee shall have the right to use all appurtenances, equipment and fixtures located and/or situated upon the Premises. Lessor makes no representation or warranty as to such appurtenances, equipment and/or fixtures, their fitness for a particular purpose or merchantability or condition. By
execution hereof. Lessee represents that it has inspected the Premises and all appurtenances, equipment and fixtures, and accepts same on an “as-is” basis.

C. From and after the date of execution of this Lease, Lessee shall be solely responsible for replacement, repair and maintenance for all appurtenances, equipment and fixtures.

**ARTICLE II - USE OF PREMISES**

A. Lessee shall have the exclusive use of the Premises for operating a rental car service center in support of its rental car concession at the Airport. It is agreed that the Premises will not be used for servicing any other rental car concessionaire, whether operating at the Airport or off the Airport, without the prior written approval of Lessor. Sales of vehicles at and/or from the Premises are strictly prohibited. Lessee shall only be permitted to operate the rental car service center under the trade name which shall be identical to that under the Concession Agreement for the Lessee.

B. Lessee shall not transport its Customers to or from the Terminal in Vehicles without prior written consent of the City, except to accommodate disabled Customers. All employees shall be required to obtain an airport-issued vehicle permit for any personal vehicle which the Lessee’s employees intend to park in the Premises.

C. If Lessee parks its Vehicles in public parking lots on the Airport or permits its employees, contractors or agents to park automobiles in such lots, Lessee shall pay the posted parking rates.

D. Lessee shall actively use the Premises only for the purposes specified in this Lease at all times. Lessee shall not at any time leave the Premises vacant without the written consent of Lessor; provided, however, that failure to actively use the Premises as the result of (1) a work stoppage by Lessee’s employees, or (2) the repair or restoration or making of alterations, additions and changes to the Premises, will not constitute a default or breach of this Lease.

E. Lessee shall not do or permit anything to be done on or about the Premises which will in any way conflict with any applicable law, ordinance, rule or regulation issued by any competent governmental authority; or allow the Premises to be used for any improper, immoral or unlawful purpose.

F. Lessee may make any necessary minor alterations to the Premises required for its operations, upon obtaining the prior approval of Lessor.

G. Lessee shall, upon termination and/or expiration of this Lease, remove all personal property and trade fixtures and repair any damage or injury to the Premises resulting from such removal and deliver the Premises to Lessor in good condition, normal wear and tear excepted.
ARTICLE III - RIGHTS AND OBLIGATIONS OF LESSEE

A. As applicable or required by Lessor, Lessee shall, at its expense, arrange for and ensure that its employees and agents operating under this Lease are properly identified with an Airport Identification Badge and that said badge is prominently displayed at all times. Lessee’s employees shall, at Lessee’s expense, be required to obtain an Airport-issued identification badge conditioned upon successful completion of a background check and other requirements as stated in the Airport Rules and Regulations.

B. Lessee shall, at its expense, obtain from all authorities having jurisdiction over the operations and activities to be conducted upon the Premises, including, but not limited to, the Federal Aviation Administration (“FAA”), Transportation Security Administration (“TSA”), Environmental Protection Agency (“EPA”), Ohio Environmental Protection Agency (“OEPA”), and state and local fire protection agencies, all licenses, certificates, permits, registrations or other authorizations which may be required for the conduct of its operations and activities, and/or necessary to comply with any requirements of this Lease and/or in the exercise of any right or obligation granted in this Lease, including, but not limited to, any licenses, permits, procedures, or sampling required for Lessor to comply with its National Pollutant Discharge Elimination System (“NPDES”) permit. In addition, the Airport holds the Ohio EPA NPDES permit for the Airport as a whole. In accordance with the Dayton International Airport Storm Water Pollution Prevention Plan, as required by the NPDES Permit, Lessee is required to submit a chemical inventory and implement Best Management Practices in accordance with the Dayton International Airport Storm Water Pollution Prevention Plan. Lessee, however, shall not be deemed to have waived any right to exhaust administrative and/or judicial remedies, which may be available to Lessee regarding any dispute or contest related to any authorizations required. Lessee will provide Lessor with complete information concerning any such dispute or contest.

C. Lessee shall fully comply with all current and future requirements of all regulatory agencies having jurisdiction over the fuel/oil storage tank systems, either underground or aboveground including, but not limited to, the Bureau of Underground Storage Tank Regulations (“BUSTR”), EPA, OEPA, the State Fire Marshall, and the Fire Department of the City of Dayton, Ohio, or their respective successors and designees. In the event of a conflict between regulatory agencies, the decision of Lessor’s Director of Aviation will be final. Lessee agrees to register the Premises’ underground storage tanks with BUSTR, its successor or any other regulatory agency having jurisdiction. Lessee further agrees to apply, maintain, and pay the annual assessment fee for coverage for the underground storage tanks with the Petroleum Underground Storage Tank Release Compensation Board. Lessee shall also at its sole expense, when required by law or when deemed necessary by the Lessor or his designee, test all storage tanks located on the Premises for structural integrity and leaks and shall maintain and repair the leak detection system provided by Lessor. Upon request, Lessee shall make available to the Lessor the results of
such tests. Testing required herein shall be to the satisfaction of the Lessor and in conformance with all applicable federal, state or local laws, rules, regulations or ordinances as these provisions presently exist, or as they may be amended or enacted. If during the Lessee's occupancy of the Premises, a tank leaks or the pipelines servicing a tank leak or are discovered to be leaking, Lessee shall immediately notify the Lessor and take all necessary steps to repair the tank and/or pipelines and clean up the contaminated area to the satisfaction of the Lessor and in accordance with this Lease and all applicable federal, state or local laws, rules, regulations or ordinances as these provisions presently exist, or as they may be amended or enacted. Lessee agrees to maintain the existing storage tank system in operational condition at its sole expense and pay or reimburse Lessor for all licenses, inspections, fines, insurance and other fees and charges that may be incurred by or levied upon Lessor due to Lessee's activities under this Lease. If the fuel facility must be removed through no fault or cause of Lessee, Lessor shall be responsible for the cost of the removal, but not previously existing environmental issues, of the fuel facility. This clause shall survive the termination of this Lease with respect to environmental issues caused by Lessee.

D. Lessee shall repair or pay for any and all damages to Lessor and its property caused by any wrongful or negligent acts or omissions of Lessee, its agents or employees arising out of Lessee's use or occupancy of the Premises or in the exercise of any right or obligation granted herein.

E. Lessee shall, at its expense, provide and use suitable covered receptacles for the storing of all trash, garbage and other refuse created in the conduct of its business or operations, or arising from Lessee's exercise of any right or obligation under this Lease. Lessee shall, at its expense, provide for the complete and proper removal and disposal away from the Airport of all refuse collected. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner on or about the Premises is forbidden.

F. The storage, handling and disposal of all Hazardous Materials, as defined by federal, state and local laws, shall be in compliance with all applicable licenses, permits, certificates or other authorizations obtained by Lessee and in compliance with all applicable federal, state and local laws governing the storage, handling and disposal of same.

G. Lessee, its agents, employees, patrons, guests, invitees and suppliers of service or furnishers of materials shall have the right of ingress to and egress from the Premises and shall have the right in common with others to use the public roadways serving the Airport.

H. In addition to rents and fees, Lessee shall, at its expense, pay all taxes and assessments that are now and may be levied or imposed upon the Premises and any real, leasehold and personal properties situated or placed thereon, provided, however, that real property taxes and assessments shall be prorated so as to require Lessee to pay such taxes and assessments only for the period of Lessee's tenancy. Real property taxes and assessments are assessed on the entire Airport parcel, of which the Premises are a portion thereof. The calculation for property taxes for the Premises shall be based on
the Industrial Report of the Auditor of Montgomery County, Ohio (the “Report”), and any updates thereto or successor reports. Lessee shall be permitted to protest or contest in a manner specified by Lessor, the validity or amount of any such real property tax or assessment under this provision. Lessor retains the sole right and obligation to file such protest or contest with the taxing authority for Montgomery County, Ohio; however, Lessee shall provide all necessary information and required legal or appraisal services relating to such protest or contest to Lessor at Lessee’s sole cost and expense. Lessor shall bill Lessee and Lessee shall pay the invoiced amount to Lessor within thirty (30) days after receipt of invoice. Lessee’s right to protest or contest taxes and assessments hereunder does not relieve Lessee of the obligation to pay taxes to Lessor unless Lessor receives a waiver from the taxing authority for Montgomery County, Ohio.

I. Except as otherwise provided in Article VI, Lessee is responsible for the complete and proper maintenance and repair of the Premises including any maintenance and repair of all building systems, including but not limited to:

1. Vehicular parking and entrance drive snow removal, lighting repair, brooming, striping, sealing, replacement and overlay of all surfaces located on the Premises as required;
2. Mowing, planting and maintenance of grass areas and landscaping on the Premises;
3. Maintenance of all utility lines serving the Premises to lease line or metering or submetering point, whichever is larger. Access to such areas located outside the Premises shall be provided by Lessor;
4. Maintenance of storm drainage structures and storm lines that solely serve the Premises and maintenance of oil separators in storm and sanitary sewer lines serving the Premises, if provided. Access to such areas located outside the Premises shall be provided by Lessor;
5. Maintenance, test and service of the fire suppression system serving the Premises in accordance with applicable codes;
6. Maintenance, test and service of the fire alarm system serving the Premises;
7. Maintenance, test and service of existing Underground storage tank system, associated piping and associated leak detection system; and
8. Complete interior and exterior maintenance.

J. Lessee shall not make any alterations, repairs, additions or undertake demolition activities (collectively, “modifications”) during the term of this Lease. In the event any such modification(s) are required or desired, the Lessee must first receive written approval for the modification(s) from Lessor.

K. Lessee shall have all utility accounts placed in its name and shall pay all utility charges (i.e., water, sanitary sewer, natural gas and electric) directly to the utility companies or municipalities providing such services. Lessee agrees to notify Lessor immediately upon termination of any utility account, except at the termination of this Lease. Lessor may, at its option, place such terminated account in its name. In the event Lessor, willingly or
otherwise, assumes the responsibilities for providing water, sanitary sewer, natural gas or electric services to Lessee. Lessee shall pay to Lessor the higher of: i) the prevailing rates for similar type utility services offered by utility companies and/or municipalities providing utilities to similar utility users located in Dayton, Ohio or ii) the actual cost incurred by the Lessor in providing the utility service to the Lessee.

L. Lessee shall not erect, allow or permit to be maintained on the Premises, or upon the exterior of any improvement on the Premises, any billboards or advertising signs, except those which have the prior written approval of Lessor. Lessor may maintain on the Premises, or on the exterior of any improvement on the Premises, its name, or trade name, in neatly arranged electric, neon or other type sign or signs; the size and type of sign or signs subject to Lessor's approval.

M. Nothing contained in this Lease prohibits Lessor from granting easements, utility or otherwise, as long as said easements would not restrict Lessee's use of the Premises for purposes stated herein.

ARTICLE IV - TERM

This Lease shall commence on January 1, 2022 and terminate on December 31, 2024, provided that the Concession Agreement has not been terminated and/or expired without a written renewal or written extension thereof and Lessee is not in default in any of the terms, conditions or promises set forth in the Concession Agreement.

ARTICLE V - RENTAL

A. During the term of this Lease, Lessee shall pay to Lessor as rent for the Premises the following monthly amount which Lessee specified in its response to the City's RFP: Fifteen-Thousand And One-Dollars And Zero Cents ($15,001.00). Lessee shall pay the aforesaid monthly rentals on the first day of the month. All payments due hereunder shall be sent to Lessor at the following address:

    City of Dayton, Ohio
    P. O. Box 632094
    Cincinnati, Ohio 45202

or at such other place as Lessor shall, in writing, direct.

B. Lessee shall pay a security deposit equivalent to the sum of three (3) months rental fee plus Two Thousand Five Hundred Dollars ($2,500) for utilities.

C. Without waiving any other right or action available to Lessor in the event of default in payment of rentals hereunder, if Lessee is delinquent for a period of thirty (30) days or more in paying to Lessor any rental due and owing to Lessor pursuant to this Lease, Lessee shall pay to Lessor a late charge thereon at the rate of two percent (2%) per
month from the date such item was due and owing until full payment has been paid. The late charge shall not occur with respect to disputed items being contested in good faith by Lessee.

ARTICLE VI - RIGHTS AND OBLIGATIONS OF LESSOR

A. Lessor shall have the right to adopt and enforce reasonable rules and regulations, with respect to the use of the Airport and facilities thereon, which Lessee agrees to observe, obey and enforce.

B. Lessor's Director of Aviation or such designees shall have the full and unrestricted right, at all times during normal business hours and at all other times upon reasonable notice to Lessee, when possible, to enter the Premises for the purposes of inspecting the Premises and doing any and all things which the Lessor is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport and in the exercise of the Lessor's police power. This provision shall in no way limit or restrict Lessor's right to enter upon the Premises in the event of an emergency. Reasonable notice, as used in this subsection, shall in no event be interpreted to require more than twenty-four (24) hour notification.

C. Should Lessee fail to provide and maintain proper trash removal, mowing, snow removal or other required maintenance, Lessor shall have the right, but not the obligation, to provide or perform said services and to bill Lessee the costs of providing same plus a fifteen percent (15%) administrative service fee.

ARTICLE VII - NON-DISCRIMINATION

A. Lessee agrees to comply with pertinent statutes. Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the Lessee.

The provision obligates the Lessee for the period during which the property is owned, used, or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

B. During the performance of this Agreement, the Lessee, for itself, its assignees and successors in interest agrees as follows:

1. Compliance with Regulations: Lessee will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended
from time to time, which are attached as Exhibit B and which are herein incorporated by reference and made a part of this Agreement.

2. Nondiscrimination: Lessee, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Lessee of the Lessee’s obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color or national origin.

4. Information and Reports: Lessee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Lessee is in the exclusive possession of another who fails or refuses to furnish the information, the Lessee will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of Lessee’s noncompliance with the non-discrimination provisions of this Agreement, the City will impose such Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending this Agreement, in whole or in part.

6. Incorporation of Provisions: The Lessee will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Lessee will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Lessee becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Lessee may request the sponsor to enter into any litigation to
protect the interests of the sponsor. In addition, the Lessee may request the United States to enter into the litigation to protect the interests of the United States.

ARTICLE VIII - INDEMNIFICATION

A. Lessee shall defend, indemnify, save and hold harmless Lessor, its elected officials, officers, agents and employees, from and against any and all claims and actions, and all expenses incidental to the investigation and defense thereof, based upon or arising out of any accident or damages suffered by third persons and arising from, or in any way connected with, the use or occupancy of the Premises, or any condition of the Premises, fixtures, structures, equipment or other improvements thereon, or Lessee's exercise of any right granted herein, or Lessee's performance for breach or default in the performance of any obligation to be performed pursuant to this Lease, or any wrongful or negligent act or omission of Lessee, its agents and employees.

It is agreed that, to the extent permitted by law, no agreement or covenant by Lessee under this Subsection A shall include liability or damages for injury to persons or damage to property caused by or resulting from the sole negligence of Lessor, its agents or employees.

B. Lessee shall defend, indemnify, save and hold harmless Lessor, its elected officials, officers, agents and employees, from and against any mechanics or other lien or order for the payment of money filed against the Premises, Lessor or any property of Lessor, arising out of any act or omission of Lessee, its tenants or subtenants or anyone claiming through or under Lessee. Lessee shall, at Lessee's expense, cause the same to be cancelled or discharged of record and shall save and hold harmless Lessor from and against any and all costs, expense, claims, losses or damages including reasonable counsel fees resulting therefrom or by reason thereof.

C. Lessor shall not be liable to Lessee or to Lessee's subtenants, agents, representatives, contractors or employees, for any injury to, or death of, any of them or of any other person or for any damage to any of Lessee's property or loss of revenue, caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport nor, to the extent permitted by law, shall Lessor have any liability whatsoever to Lessee, Lessee's subtenants, agents, representatives, contractors or employees, for any damage, destruction, injury, loss or claim of any kind arising out of the use by any of the aforementioned of any parking lot, including the future parking garage, located either on or off the Airport. Lessor shall not be liable to Lessee for damage to property of Lessee or any loss of revenues to Lessee resulting from Lessor's acts or omissions in the maintenance and operation of the Airport or failure to operate the Airport.
D. The obligations of Lessee under this Article VIII shall survive the termination or expiration date of this Lease and shall not be affected in any way by the amount of or the absence in any case of covering insurance, or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any part thereof.

E. The Lessor's elected officials, officers, agents and employees, shall, to the extent permitted by law, have absolutely no personal liability with respect to any provision of this Lease or any obligation or liability arising from this Lease or in connection with this Lease or the Premises in the event of a breach or default by Lessor of any of its obligations.

F. Notwithstanding any other provision of this Lease to the contrary, to the extent permitted by law, Lessee waives any and every claim for recovery from the Lessor for any and all loss or damage to the Premises or to the contents thereof, which loss or damage is covered by valid and collectable physical damage insurance policies maintained by Lessee or which would have been recoverable if the insurance required hereunder had been maintained by Lessee, to the extent that such loss or damage is recoverable, or would have been recoverable, as applicable, under said insurance policies. As this waiver will preclude the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), Lessee agrees to give each insurance company which has issued, or in the future may issue, its policies of physical damage insurance, written notice of the terms of this waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverage by reason of said waiver. Lessee shall require any subtenant to include similar waivers of subrogation in favor of the Lessor.

ARTICLE IX - INSURANCE

A. Lessee, at its sole cost and expense, shall procure and maintain, or cause to be maintained, at all times during the term of this Lease, the following insurance, with insurance companies authorized to do business in the State of Ohio and having at least an “A” rating from A. M. Best and covering all operations under this Lease, whether performed by Lessee or by its contractors:

1. Commercial Liability Insurance (Primary and Umbrella):
Commercial Liability Insurance with limits of not less than $5,000,000 per occurrence combined single limit, for bodily injury and property damage liability. Coverage extensions shall include the following: All Premises and operations, products/completed operations, explosion, collapse, underground, independent contractors, broad form property damage, separation of insured and contractual liability (with no limitation endorsement). The Lessor, its elected officials, officers, agents, volunteers and employees, shall be named as additional insureds, on a primary, non-contributory basis for any liability arising directly or indirectly from this Lease.

2. **All Risk Property Insurance:**

   i. Lessee shall obtain an "All Risk Property" policy, including improvements and betterments covering damage to building, machinery, equipment or supplies in the amount of full replacement value of the property constituting within the Premises. Coverage extensions shall include business interruptions/loss of rents (in an amount not less than the sum of rents then payable under this Lease for a period of one year), and flood. Lessor is to be named as a loss payee.

   ii. The Lessee shall be responsible for all loss or damage to personal property (including but not limited to material, equipment, tools and supplies), owned or rented by Lessee.

   iii. When Lessee undertakes any improvement, construction or repair project to the Premises. All Risk Blanket Builders Risk Insurance shall be provided to cover at replacement cost the materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility. Coverage extensions shall include the following: right to partial occupancy, material stored off-site and in transit, earthquake, flood including surface water backup, collapse, faulty workmanship or materials, business interruption, extra expense, loss of revenue, and loss of use of property. The Lessor shall be named as loss payee.

3. **Automobile Liability Insurance:**

   When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, Lessee shall provide Comprehensive Automobile Liability Insurance with limits of not less than $5,000,000 per occurrence combined single limit, for bodily injury and property damage. Lessor is to be named as an additional insured on a primary, non-contributory basis.

4. **Petroleum Underground Storage Tank Release Compensation Board (PUSTRCB):**
Lessee will, at its expense, enroll the existing underground storage tank system in the Petroleum Underground Storage Tank Release Compensation Board (PUSTRCB).

B. Original certificates of insurance evidencing the required coverage to be in force on the effective date of this Lease, and all renewal certificates of such insurance, shall be provided to Lessor. Lessee shall provide the Lessor with a Certificate of Insurance on all required insurance prior to Lessee’s exercise of any privileges provided by this Lease within thirty (30) days of execution of this Lease. In the event of a claim or threatened claim against Lessor that could be covered under a policy of insurance required hereunder, Lessee agrees to promptly furnish, upon Lessor’s request, a copy of such policy or policies of insurance to Lessor. The receipt of any certificate or policy does not constitute agreement by the Lessor that the insurance requirements in the Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Lease. The failure of the Lessor to obtain certificates or other insurance evidence from Lessee or its contractors shall not be deemed to be waiver by the Lessor. Lessee or its contractors shall advise all insurers of these Lease provisions regarding insurance. Non-conforming insurance shall not relieve Lessee or its contractors of their obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Lease, and the Lessor retains the right to terminate this Lease as provided in Article XIV until proper evidence of insurance is provided. All policies of insurance shall provide for a minimum of thirty (30) days prior written notice to be given to the Lessor in the event coverage is substantially changed, canceled, or non-renewed.

C. If Lessee fails to obtain or maintain any of the insurance policies under this Lease or to pay any premium in whole or in part when due, Lessor may (without waiving or releasing any obligation or default by Lessee hereunder) obtain and maintain such insurance policies and take any other action which Lessor, including reasonable attorney’s fees, court costs and expenses, shall be reimbursed by the Lessee upon demand by Lessor.

D. Lessee shall require all contractors to carry the insurance required herein, or Lessee or its contractors may provide the coverage for any or all contractors, and, if so, the evidence of insurance submitted shall so stipulate. Any and all deductibles or self-insured retentions on referenced insurance coverages shall be borne by Lessee or its contractors. Lessee and its contractors agree that insurers shall waive their rights of subrogation against the Lessor, its employees, elected official, agents, or representatives. Lessee and its contractors expressly understand and agree that any coverages and limits furnished by Lessee or its contractors shall in no way limit the Lessee or its contractors’ liabilities and responsibilities specified within this Lease or by law. Lessee and its contractors expressly understand and agree that any insurance or self insurance programs maintained by the Lessor shall not contribute with insurance provided by the Lessee or its contractors under this Lease. If Lessee or its contractors desire additional coverage, higher limits of liability, or other modifications for its own protection, then Lessee or its contractors shall each be responsible for the acquisition and cost of such additional protection.
E. The insurance required hereunder shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law. The Lessor maintains the right to modify, delete, alter or change these requirements.

F. The insurance required by this Lease, at the option of Lessee or contractors, may be effected by blanket or umbrella policies issued to Lessee or contractors covering the Premises and other properties owned or leased by Lessee or contractors, provided that the policies otherwise comply with the provisions of this Lease and allocate to the Premises the specified coverage, without possibility of reduction or coinsurance by reason of, or damage to, any other premises covered therein.

G. Lessee shall also maintain, at all times during the term hereof, Workers’ Compensation and Occupational Disease Insurance for its employees employed or providing service(s) upon the Premises in such amounts as prescribed under Ohio law, or of at least $1,000,000 each accident.

ARTICLE X - DAMAGE AND DESTRUCTION OF PREMISES

A. If improvements on a portion of the Premises are damaged, in whole or in part, by fire or casualty, Lessee shall repair the damage to the improvements as soon as reasonably possible at Lessee’s expense or, upon mutual agreement, shall take such other actions as is mutually agreed between Lessor and Lessee, which actions may include, but are not limited to, demolition and removal of the entire Building and all appurtenances and fixtures. Lessee may use insurance proceeds from insurance it carried to pay for the work as it progresses, and the Lessor shall permit any such proceeds to be made available.

B. During any period in which Lessee is unable to use all or a substantial portion of the Premises due to damage or destruction of the Premises and which significantly impacts Lessee’s operations at the Airport, then the rent payable for the Premises shall be abated or appropriately adjusted for the period during which such damage renders the Premises unusable or operations are so curtailed or terminated. However, if Lessor determines that such damage resulting in inability to use all or a substantial portion of the Premises is caused by the acts, errors or omissions of Lessee, its employees, agents and/or contractors, Lessee shall not be entitled to an abatement of rents as provided herein. Except for such abatement of rents due, as applicable, Lessee shall have no claim against the Lessor for any damage suffered by reason of any such damage, destruction, repair or restoration.

C. If any improvements to the Premises are not diligently repaired by Lessee where required, or such action as mutually agreed by the Lessor and Lessee is not completed, or if any space is deleted from the Premises, then the Lessor shall be entitled to all insurance proceeds payable on account of improvements in such space. Where the Lessee is
obligated to repair or restore or remove improvements or the entire Building structure. Lessee must do so notwithstanding that insurance proceeds may be insufficient.

ARTICLE XI - ASSIGNMENT AND SUBLETTING

The leasehold estate and rights granted herein are personal property of Lessee. Lessee may not sell, assign, transfer sublet or underlet the same, or any portion thereof. Any assignment in violation hereof shall be void.

ARTICLE XII - SUCCESSORS AND ASSIGNS BOUND BY COVENANTS

All covenants, stipulations and agreements in this Lease shall extend to and bind the legal representatives, successors and assigns of the respective parties hereto.

ARTICLE XIII - TERMINATION BY LESSEE

A. In addition to all other remedies available to the Lessee under this Lease or at law, this Lease shall be subject to termination by Lessee should any one or more of the following events occur:

1. The issuance by any court of competent jurisdiction of any injunction, order or decree preventing or restraining the use of the Airport for usual airport purposes in its entirety, or the use of any part thereof which is used by Lessee and which is necessary for Lessee's operations on the Airport, which remains in force unvacated or unstayed for a period of thirty (30) consecutive days and results in material interference with Lessee's normal business operations;

2. The default by Lessor in the performance of any material covenant or agreement required to be performed by it herein, and the failure of Lessor to remedy such default, or to take prompt action to remedy such default, within a period of thirty (30) days after receipt from Lessee of written notice to remedy the same; or if by reason of the nature of such default the same cannot be remedied within said thirty (30) days, then Lessee shall have the right to terminate this Lease if the Lessor shall have failed to commence the remedying of such default within said thirty (30) days following such written demand, or having so commenced, shall fail thereafter to continue with diligence the remedying thereof.

B. Lessee may exercise its rights of termination by prior written notice to Lessor at any time after the lapse of the applicable periods of time, and this Lease shall terminate as of the effective date of termination specified in such notice. Rentals due hereunder shall be payable only to the date of termination.

ARTICLE XIV - TERMINATION BY LESSOR
A. In addition to all other remedies available to Lessor under this Lease or at law, this Lease shall be subject to termination by Lessor should any one or more of the following events occur:

1. If Lessee shall file a voluntary petition of bankruptcy; or if proceedings in bankruptcy shall be instituted against it and it is thereafter adjudicated a bankrupt pursuant to proceedings; or if a court shall take jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act; or if a receiver for Lessee's assets is appointed by a court of competent jurisdiction; or if Lessee shall be divested of its rights, powers and privileges under this Lease by other operation of law.

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

3. If Lessee shall fail to perform, keep and observe all of the covenants and conditions contained in this Lease 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 Lessor notifies Lessee in writing of said failure.

4. Violations by Lessee, its agents or employees, of applicable laws, ordinances, codes, rules and regulations issued by any competent governmental authority, or revocations of permits or licenses required in the performance of this Lease, if the same shall not be corrected or action taken to correct within thirty (30) days after Lessee's receipt of written notice, which shall state in detail the violation.

B. Lessor may terminate this Lease upon giving Lessee ninety (90) days prior written notice to Lessee in the event the Premises is needed for any municipal, airport or economic development purpose or project.

ARTICLE XV - HOLDING OVER

In the event that Lessee holds over and remains in possession of the Premises and the rights granted herein after expiration and/or termination of this Lease and without any written renewal thereof, such holding over shall not be deemed to operate as a renewal or extension of this Lease but shall only create an at will month-to-month tenancy that may be terminated at any time by Lessor or Lessee.

ARTICLE XVI - INVALID PROVISIONS

In the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision herein contained shall not constitute a material breach of this Lease; provided that the validity of any such covenant, condition or provision does not materially prejudice either the Lessor or
Lessee in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Lease.

**ARTICLE XVII - WAIVER**

A. No waiver by either party at any time, of any of the terms, conditions, covenants or agreements of this Lease, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the other. Receipt by Lessor of rent with knowledge of the breach by Lessee of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by either party of any provisions of this Lease shall be deemed to have been made unless expressed in writing and signed by Lessor or Lessee, as the case may be.

B. No option, right, power, remedy or privilege of either party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to each party by this Lease are cumulative and no one of them shall be exclusive of the other or exclusive of any remedies provided by law except as specifically provided herein and that the exercise of one right, power, option or remedy by either party shall not impair its right or any other right, power, option or remedy, except as specifically provided herein.

**ARTICLE XVIII - GENERAL PROVISIONS**

A. The term Lessor, as used in this Lease, means the City of Dayton, Ohio, and where this Lease speaks of approval and consent by the Lessor, such approval is understood to be manifested by act of the Lessor’s Director of Aviation, except as otherwise expressly stated in this Lease. Whenever in this Lease, the approval or consent of Lessor is required, such approval or consent will not be unreasonably withheld.

B. Notices to the Lessor provided for in this Lease shall be sufficient if sent by registered mail, postage prepaid, addressed to:

City of Dayton, Ohio - Department of Aviation
James M. Cox Dayton International Airport
3600 Terminal Drive, Suite 300
Vandalia, Ohio 45377
Attn: Director of Aviation

or such other address as the Lessor shall direct in writing.

C. Notices to Lessee provided for in this Lease shall be sufficient if sent by registered mail, postage prepaid, addressed to:

Avis Budget Car Rental, LLC
D. Lessee represents that it has carefully reviewed the terms and conditions of this Lease 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 the Lease.

E. Any headings in this Lease are for convenience of reference only and do not define or limit the provisions thereof. In this Lease, unless the context otherwise requires, the terms "hereby", "herein", "hereof", "hereeto", "hereunder" and any similar terms used in this manner refer to this Lease. All section references, unless otherwise expressly indicated, are to sections in this Lease. 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 Lease.

F. By execution of this Lease, Lessee hereby irrevocably submits to the original jurisdiction of the courts located within the County of Montgomery, State of Ohio, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Lease.

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

H. Neither Lessee nor any contractor of Lessee shall be entitled to claim any exemption from sales or use taxes or similar taxes by reason of the Lessor’s ownership of fee title to the Premises.

I. By entering into this Lease, Lessor shall in no way be deemed a partner or joint venturer with Lessee, nor shall any term or provision hereof be construed in any way to grant, convey or create any rights or interests to any person or entity not a party to this Lease.

J. The parties may amend or modify this Lease, at any time, provided that no such amendment or modification shall be effective unless it is reduced to a writing, which makes specific reference to this Lease, executed by a duly authorized representative of Lessor and Lessee and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.
K. This Lease represents the entire and integrated agreement between Lessor and Lessee. This Lease supersedes all prior and contemporaneous communications, representations, understandings, agreements or contracts, whether oral or written, relating to the subject matter of this Lease.

L. This Lense 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.

IN WITNESS WHEREOF, Lessor and Lessee, each by a duly authorized representative, have executed this Lease as of the date first set forth above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WITNESSED BY: 

Signature

WITNESSED BY: 

Signature

Avis Budget Car Rental, LLC

By: 

Signature

Its: Ann Morrison
Vice President Properties & Facilities

CITY OF DAYTON, OHIO

City Manager

APPROVED AS TO FORM AND CORRECTNESS

Signature

CITY ATTORNEY

APPROVED BY THE COMMISSION
OF THE CITY OF DAYTON, OHIO

20 Min. Book Page

CLERK OF THE COMMISSION
EXHIBIT B - Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Agreement, the Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the "Lessee") agrees to comply with the following nondiscrimination statutes and authorities: including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).
RENTAL CAR SERVICE CENTER LEASE AGREEMENT

THIS RENTAL CAR SERVICE CENTER LEASE AGREEMENT ("Lease") is made and entered into this __ day of ____________, 2021, between the City of Dayton, Ohio ("Lessor"), a political subdivision in and of the State of Ohio, and Avis Budget Car Rental, LLC ("Lessee"), a Delaware Corporation authorized to conduct business in the State of Ohio.

WITNESSETH THAT:

WHEREAS, Lessor is the owner and operator of 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, State of Ohio:

WHEREAS, Lessee heretofore acquired a rental car service center, which is located at 3340 Valet Road, Vandalia OH, and listed on Exhibit A as property D:

WHEREAS, Lessee operates a rental car concession at the Airport pursuant to a separate Non-Exclusive Rental Car Concession and Lease Agreement with Lessor ("Concession Agreement") to be dated January 1, 2022 and desires to lease the rental car service center to support its rental car operations at the Airport; and

WHEREAS, Lessor deems it advantageous to itself, to the operation of the Airport and in the best interest of the public to lease unto Lessee this rental car service center upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and the mutual benefits to be derived, IT IS AGREED AS FOLLOWS:

ARTICLE I - LEASED REAL PROPERTY

A. Lessor leases to Lessee the rental car service center located at the Airport and having the address of 3340 Valet Drive, which facility is situated on 40,000 square feet of ground space ("Ground Space") and containing a building containing approximately 1,200 square feet space ("Building"), and collectively, the Ground Space and Building referred to herein as the "Premises"). The exact location of the Premises at the Airport is depicted in Exhibit A, property D, which is attached hereto and incorporated herein.

B. As part of this Lease and the Premises leased hereunder, Lessee shall have the right to use all appurtenances, equipment and fixtures located and/or situated upon the Premises. Lessor makes no representation or warranty as to such appurtenances, equipment and/or fixtures, their fitness for a particular purpose or merchantability or condition. By
execution hereof. Lessee represents that it has inspected the Premises and all appurtenances, equipment and fixtures, and accepts same on an "as-is" basis.

C. From and after the date of execution of this Lease, Lessee shall be solely responsible for replacement, repair and maintenance for all appurtenances, equipment and fixtures.

**ARTICLE II - USE OF PREMISES**

A. Lessee shall have the exclusive use of the Premises for operating a rental car service center in support of its rental car concession at the Airport. It is agreed that the Premises will not be used for servicing any other rental car concessionaire, whether operating at the Airport or off the Airport, without the prior written approval of Lessor. Sales of vehicles at and/or from the Premises are strictly prohibited. Lessee shall only be permitted to operate the rental car service center under the trade name which shall be identical to that under the Concession Agreement for the Lessee.

B. Lessee shall not transport its Customers to or from the Terminal in Vehicles without prior written consent of the City, except to accommodate disabled Customers. All employees shall be required to obtain an airport-issued vehicle permit for any personal vehicle which the Lessees employees intend to park in the Premises.

C. If Lessee parks its Vehicles in public parking lots on the Airport or permits its employees, contractors or agents to park automobiles in such lots. Lessee must pay the posted parking rates.

D. Lessee shall actively use the Premises only for the purposes specified in this Lease at all times. Lessee shall not at any time leave the Premises vacant without the written consent of Lessor; provided, however, that failure to actively use the Premises as the result of (1) a work stoppage by Lessee’s employees, or (2) the repair or restoration or making of alterations, additions and changes to the Premises, will not constitute a default or breach of this Lease.

E. Lessee shall not do or permit anything to be done on or about the Premises which will in any way conflict with any applicable law, ordinance, rule or regulation issued by any competent governmental authority; or allow the Premises to be used for any improper, immoral or unlawful purpose.

F. Lessee may make any necessary minor alterations to the Premises required for its operations, upon obtaining the prior approval of Lessor.

G. Lessee shall, upon termination and/or expiration of this Lease, remove all personal property and trade fixtures and repair any damage or injury to the Premises resulting from such removal and deliver the Premises to Lessor in good condition, normal wear and tear excepted.
ARTICLE III - RIGHTS AND OBLIGATIONS OF LESSEE

A. As applicable or required by Lessor, Lessee shall, at its expense, arrange for and ensure that its employees and agents operating under this Lease are properly identified with an Airport Identification Badge and that said badge is prominently displayed at all times. Lessee's employees shall, at Lessee's expense, be required to obtain an Airport-issued identification badge conditioned upon successful completion of a background check and other requirements as stated in the Airport Rules and Regulations.

B. Lessee shall, at its expense, obtain from all authorities having jurisdiction over the operations and activities to be conducted upon the Premises, including, but not limited to, the Federal Aviation Administration ("FAA"), Transportation Security Administration ("TSA"), Environmental Protection Agency ("EPA"), Ohio Environmental Protection Agency ("OEPAD"), and state and local fire protection agencies, all licenses, certificates, permits, registrations or other authorizations which may be required for the conduct of its operations and activities, and/or necessary to comply with any requirements of this Lease and/or in the exercise of any right or obligation granted in this Lease, including, but not limited to, any licenses, permits, procedures, or sampling required for Lessor to comply with its National Pollutant Discharge Elimination System ("NPDES") permit. In addition, the Airport holds the Ohio EPA NPDES permit for the Airport as a whole. In accordance with the Dayton International Airport Storm Water Pollution Prevention Plan, as required by the NPDES Permit, Lessee is required to submit a chemical inventory and implement Best Management Practices in accordance with the Dayton International Airport Storm Water Pollution Prevention Plan. Lessee, however, shall not be deemed to have waived any right to exhaust administrative and/or judicial remedies, which may be available to Lessee regarding any dispute or contest related to any authorizations required. Lessee will provide Lessor with complete information concerning any such dispute or contest.

C. Lessee shall fully comply with all current and future requirements of all regulatory agencies having jurisdiction over the fuel/oil storage tank systems, either underground or aboveground including, but not limited to, the Bureau of Underground Storage Tank Regulations ("BUSTR"), EPA, OEPAD, the State Fire Marshall, and the Fire Department of the City of Dayton, Ohio, or their respective successors and designees. In the event of a conflict between regulatory agencies, the decision of Lessor’s Director of Aviation will be final. Lessee agrees to register the Premises’ underground storage tanks with BUSTR, its successor or any other regulatory agency having jurisdiction. Lessee further agrees to apply, maintain, and pay the annual assessment fee for coverage for the underground storage tanks with the Petroleum Underground Storage Tank Release Compensation Board. Lessee shall also at its sole expense, when required by law or when deemed necessary by the Lessor or his designee, test all storage tanks located on the Premises for structural integrity and leaks and shall maintain and repair the leak detection system provided by Lessor. Upon request, Lessee shall make available to the Lessor the results of
such tests. Testing required herein shall be to the satisfaction of the Lessor and in conformance with all applicable federal, state or local laws, rules, regulations or ordinances as these provisions presently exist, or as they may be amended or enacted. If during the Lessee’s occupancy of the Premises, a tank leaks or the pipelines servicing a tank leak or are discovered to be leaking, Lessee shall immediately notify the Lessor and take all necessary steps to repair the tank and/or pipelines and clean up the contaminated area to the satisfaction of the Lessor and in accordance with this Lease and all applicable federal, state or local laws, rules, regulations or ordinances as these provisions presently exist, or as they may be amended or enacted. Lessee agrees to maintain the existing storage tank system in operational condition at its sole expense and pay or reimburse Lessor for all licenses, inspections, fines, insurance and other fees and charges that may be incurred by or levied upon Lessor due to Lessee’s activities under this Lease. If the fuel facility must be removed through no fault or cause of Lessee, Lessor shall be responsible for the cost of the removal, but not previously existing environmental issues of the fuel facility. This clause shall survive the termination of this Lease with respect to environmental issues caused by Lessee.

D. Lessee shall repair or pay for any and all damages to Lessor and its property caused by any wrongful or negligent acts or omissions of Lessee, its agents or employees arising out of Lessee’s use or occupancy of the Premises or in the exercise of any right or obligation granted herein.

E. Lessee shall, at its expense, provide and use suitable covered receptacles for the storing of all trash, garbage and other refuse created in the conduct of its business or operations, or arising from Lessee’s exercise of any right or obligation under this Lease. Lessee shall, at its expense, provide for the complete and proper removal and disposal away from the Airport of all refuse collected. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner on or about the Premises is forbidden.

F. The storage, handling and disposal of all Hazardous Materials, as defined by federal, state and local laws, shall be in compliance with all applicable licenses, permits, certificates or other authorizations obtained by Lessee and in compliance with all applicable federal, state and local laws governing the storage, handling and disposal of same.

G. Lessee, its agents, employees, patrons, guests, invitees and suppliers of service or furnishers of materials shall have the right of ingress to and egress from the Premises and shall have the right in common with others to use the public roadways serving the Airport.

H. In addition to rents and fees, Lessee shall, at its expense, pay all taxes and assessments that are now and may be levied or imposed upon the Premises and any real, leasehold and personal properties situated or placed thereon, provided, however, that real property taxes and assessments shall be prorated so as to require Lessee to pay such taxes and assessments only for the period of Lessee’s tenancy. Real property taxes and assessments are assessed on the entire Airport parcel, of which the Premises are a portion thereof. The calculation for property taxes for the Premises shall be based on
the Industrial Report of the Auditor of Montgomery County, Ohio (the “Report”), and any updates thereto or successor reports. Lessee shall be permitted to protest or contest in a manner specified by Lessor, the validity or amount of any such real property tax or assessment under this provision. Lessor retains the sole right and obligation to file such protest or contest with the taxing authority for Montgomery County, Ohio; however, Lessee shall provide all necessary information and required legal or appraisal services relating to such protest or contest to Lessor at Lessee’s sole cost and expense. Lessor shall bill Lessee and Lessee shall pay the invoiced amount to Lessor within thirty (30) days after receipt of invoice. Lessee’s right to protest or contest taxes and assessments hereunder does not relieve Lessee of the obligation to pay taxes to Lessor unless Lessor receives a waiver from the taxing authority for Montgomery County, Ohio.

I. Except as otherwise provided in Article VI, Lessee is responsible for the complete and proper maintenance and repair of the Premises including any maintenance and repair of all building systems, including but not limited to:

1. Vehicular parking and entrance drive snow removal, lighting repair, broom, striping, sealing, replacement and overlay of all surfaces located on the Premises as required;
2. Mowing, planting and maintenance of grass areas and landscaping on the Premises;
3. Maintenance of all utility lines serving the Premises to lease line or metering or submetering point, whichever is larger. Access to such areas located outside the Premises shall be provided by Lessor;
4. Maintenance of storm drainage structures and storm lines that solely serve the Premises and maintenance of oil separators in storm and sanitary sewer lines serving the Premises, if provided. Access to such areas located outside the Premises shall be provided by Lessor;
5. Maintenance, test and service of the fire suppression system serving the Premises in accordance with applicable codes;
6. Maintenance, test and service of the fire alarm system serving the Premises;
7. Maintenance, test and service of existing Underground storage tank system, associated piping and associated leak detection system; and
8. Complete interior and exterior maintenance.

J. Lessee shall not make any alterations, repairs, additions or undertake demolition activities (collectively, “modifications”) during the term of this Lease. In the event any such modification(s) are required or desired, the Lessee must first receive written approval for the modification(s) from Lessor.

K. Lessee shall have all utility accounts placed in its name and shall pay all utility charges (i.e., water, sanitary sewer, natural gas and electric) directly to the utility companies or municipalities providing such services. Lessee agrees to notify Lessor immediately upon termination of any utility account, except at the termination of this Lease. Lessor may, at its option, place such terminated account in its name. In the event Lessor, willingly or
otherwise, assumes the responsibilities for providing water, sanitary sewer, natural gas or electric services to Lessee. Lessee shall pay to Lessor the higher of: i) the prevailing rates for similar type utility services offered by utility companies and/or municipalities providing utilities to similar utility users located in Dayton, Ohio or, ii) the actual cost incurred by the Lessor in providing the utility service to the Lessee.

L. Lessee shall not erect, allow or permit to be maintained on the Premises, or upon the exterior of any improvement on the Premises, any billboards or advertising signs, except those which have the prior written approval of Lessor. Lessee may maintain on the Premises, or on the exterior of any improvement on the Premises, its name, or trade name, in neatly arranged electric, neon or other type sign or signs; the size and type of sign or signs subject to Lessor's approval.

M. Nothing contained in this Lease prohibits Lessor from granting easements, utility or otherwise, as long as said easements would not restrict Lessee's use of the Premises for purposes stated herein.

**ARTICLE IV - TERM**

This Lease shall commence on January 1, 2022 and terminate on December 31, 2024, provided that the Concession Agreement has not been terminated and/or expired without a written renewal or written extension thereof and Lessee is not in default in any of the terms, conditions or promises set forth in the Concession Agreement.

**ARTICLE V - RENTAL**

A. During the term of this Lease, Lessee shall pay to Lessor as rent for the Premises the following monthly amount which Lessee specified in its response to the City's RFP: Four-Thousand Five-Hundred and One-Dollars and Zero Cents ($4,501.00). Lessee shall pay the aforesaid monthly rentals on the first day of the month. All payments due hereunder shall be sent to Lessor at the following address:

City of Dayton, Ohio  
P. O. Box 632094  
Cincinnati, Ohio 45202

or at such other place as Lessor shall, in writing, direct.

B. Lessee shall pay a security deposit equivalent to the sum of three (3) months rental fee plus Two-Thousand Five-Hundred and Zero Cents ($2,500.00) dollars for utilities.

C. Without waiving any other right or action available to Lessor in the event of default in payment of rentals hereunder, if Lessee is delinquent for a period of thirty (30) days or more in paying to Lessor any rental due and owing to Lessor pursuant to this Lease, Lessee shall pay to Lessor a late charge thereon at the rate of two percent (2%) per
month from the date such item was due and owing until full payment has been paid. The
late charge shall not occur with respect to disputed items being contested in good faith
by Lessee.

ARTICLE VI - RIGHTS AND OBLIGATIONS OF LESSOR

A. Lessor shall have the right to adopt and enforce reasonable rules and regulations, with
respect to the use of the Airport and facilities thereon, which Lessee agrees to observe,
obey and enforce.

B. Lessor's Director of Aviation or such designees shall have the full and unrestricted right,
at all times during normal business hours and at all other times upon reasonable notice to
Lessee, when possible, to enter the Premises for the purposes of inspecting the Premises
and doing any and all things which the Lessor is obligated or authorized to do as set forth
herein, or which may be deemed necessary for the proper general conduct and operation
of the Airport and in the exercise of the Lessor's police power. This provision shall in no
way limit or restrict Lessor's right to enter upon the Premises in the event of an
emergency. Reasonable notice, as used in this subsection, shall in no event be interpreted
to require more than twenty-four (24) hour notification.

C. Should Lessee fail to provide and maintain proper trash removal, mowing, snow removal
or other required maintenance. Lessor shall have the right, but not the obligation, to
provide or perform said services and to bill Lessee the costs of providing same plus a
fifteen percent (15%) administrative service fee.

ARTICLE VII - NON-DISCRIMINATION

A. Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are
promulgated to ensure that no person shall, on the grounds of race, creed, color,
national origin, sex, age, or disability be excluded from participating in any activity
conducted with or benefiting from Federal assistance. If the Lessee transfers its
obligation to another, the transferee is obligated in the same manner as the Lessee.

The provision obligates the Lessee for the period during which the property is owned,
used, or possessed by the Lessee and the airport remains obligated to the Federal
Aviation Administration. This provision is in addition to that required by Title VI of
the Civil Rights Act of 1964.

B. During the performance of this Agreement, the Lessee, for itself, its assignees and
successors in interest agrees as follows:

1. Compliance with Regulations: Lessee will comply with the Title VI List of
Pertinent Nondiscrimination Acts and Authorities, as they may be amended
from time to time, which are attached as Exhibit B and which are herein
incorporated by reference and made a part of this Agreement.
2. Nondiscrimination: Lessee, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Lessee of the Lessee's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color or national origin.

4. Information and Reports: Lessee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Lessee is in the exclusive possession of another who fails or refuses to furnish the information, the Lessee will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of Lessee's noncompliance with the non-discrimination provisions of this Agreement, the City will impose such Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending this Agreement, in whole or in part.

6. Incorporation of Provisions: The Lessee will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Lessee will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Lessee becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Lessee may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Lessee may request the
United States to enter into the litigation to protect the interests of the United States.

ARTICLE VIII - INDEMNIFICATION

A. Lessee shall defend, indemnify, save and hold harmless Lessor, its elected officials, officers, agents and employees, from and against any and all claims and actions, and all expenses incidental to the investigation and defense thereof, based upon or arising out of any accident or damages suffered by third persons and arising from, or in any way connected with, the use or occupancy of the Premises, or any condition of the Premises, fixtures, structures, equipment or other improvements thereon, or Lessee's exercise of any right granted herein, or Lessee's performance for breach or default in the performance of any obligation to be performed pursuant to this Lease, or any wrongful or negligent act or omission of Lessee, its agents and employees.

It is agreed that, to the extent permitted by law, no agreement or covenant by Lessee under this Subsection A shall include liability or damages for injury to persons or damage to property caused by or resulting from the sole negligence of Lessor, its agents or employees.

B. Lessee shall defend, indemnify, save and hold harmless Lessor, its elected officials, officers, agents and employees, from and against any mechanics or other lien or order for the payment of money filed against the Premises, Lessor or any property of Lessor, arising out of any act or omission of Lessee, its tenants or subtenants or anyone claiming through or under Lessee. Lessee shall, at Lessee's expense, cause the same to be cancelled or discharged of record and shall save and hold harmless Lessor from and against any and all costs, expense, claims, losses or damages including reasonable counsel fees resulting therefrom or by reason thereof.

C. Lessor shall not be liable to Lessee or to Lessee's subtenants, agents, representatives, contractors or employees, for any injury to, or death of, any of them or of any other person or for any damage to any of Lessor's property or loss of revenue, caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport nor, to the extent permitted by law, shall Lessor have any liability whatsoever to Lessee, Lessee's subtenants, agents, representatives, contractors or employees, for any damage, destruction, injury, loss or claim of any kind arising out of the use by any of the aforementioned any parking lot, including the future parking garage, located either on or off the Airport. Lessor shall not be liable to Lessee for damage to property of Lessee or any loss of revenues to Lessee resulting from Lessor's acts or omissions in the maintenance and operation of the Airport or failure to operate the Airport.

D. The obligations of Lessee under this Article VIII shall survive the termination or expiration date of this Lease and shall not be affected in any way by the amount of or
the absence in any case of covering insurance, or by the failure or refusal of any
insurance carrier to perform any obligation on its part under insurance policies
affecting the Premises or any part thereof.

E. The Lessor's elected officials, officers, agents and employees, shall, to the extent
permitted by law, have absolutely no personal liability with respect to any provision
of this Lease or any obligation or liability arising from this Lease or in connection
with this Lease or the Premises in the event of a breach or default by Lessor of any of
its obligations.

F. Notwithstanding any other provision of this Lease to the contrary, to the extent
permitted by law. Lessee waives any and every claim for recovery from the Lessor for
any and all loss or damage to the Premises or to the contents thereof, which loss or
damage is covered by valid and collectable physical damage insurance policies
maintained by Lessee or which would have been recoverable if the insurance required
hereunder had been maintained by Lessee, to the extent that such loss or damage is
recoverable, or would have been recoverable, as applicable, under said insurance
policies. As this waiver will preclude the assignment of any such claim by
subrogation (or otherwise) to an insurance company (or any other person), Lessee
agrees to give each insurance company which has issued, or in the future may issue,
its policies of physical damage insurance, written notice of the terms of this waiver,
and to have said insurance policies properly endorsed, if necessary, to prevent the
invalidation of insurance coverage by reason of said waiver. Lessee shall require any
subtenant to include similar waivers of subrogation in favor of the Lessor.

ARTICLE IX - INSURANCE

A. Lessee, at its sole cost and expense, shall procure and maintain, or cause to be
maintained, at all times during the term of this Lease, the following insurance, with
insurance companies authorized to do business in the State of Ohio and having at least an
“A” rating from A. M. Best and covering all operations under this Lease, whether
performed by Lessee or by its contractors:

1. Commercial Liability Insurance (Primary and Umbrella):

Commercial Liability Insurance with limits of not less than $5,000,000 per
occurrence combined single limit, for bodily injury and property damage liability.
Coverage extensions shall include the following: All Premises and operations,
products/completed operations, explosion, collapse, underground, independent
contractors, broad form property damage, separation of insured and contractual
liability (with no limitation endorsement). The Lessor, its elected officials,
officers, agents, volunteers and employees, shall be named as additional insureds,
on a primary, non-contributory basis for any liability arising directly or indirectly
from this Lease.
2. **All Risk Property Insurance:**

   i. Lessee shall obtain an “All Risk Property” policy, including improvements and betterments covering damage to building, machinery, equipment or supplies in the amount of full replacement value of the property constituting within the Premises. Coverage extensions shall include business interruptions/loss of rents (in an amount not less than the sum of rents then payable under this Lease for a period of one year), and flood. Lessor is to be named as a loss payee.

   ii. The Lessee shall be responsible for all loss or damage to personal property (including but not limited to material, equipment, tools and supplies), owned or rented by Lessee.

   iii. When Lessee undertakes any improvement, construction or repair project to the Premises, All Risk Blanket Builders Risk Insurance shall be provided to cover at replacement cost the materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility. Coverage extensions shall include the following: right to partial occupancy, material stored off-site and in transit, earthquake, flood including surface water backup, collapse, faulty workmanship or materials, business interruption, extra expense, loss of revenue, and loss of use of property. The Lessor shall be named as loss payee.

3. **Automobile Liability Insurance:**

   When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed. Lessee shall provide Comprehensive Automobile Liability Insurance with limits of not less than $5,000,000 per occurrence combined single limit, for bodily injury and property damage. Lessor is to be named as an additional insured on a primary, non-contributory basis.

4. **Petroleum Underground Storage Tank Release Compensation Board (PUSTRCB):**

   Lessee will, at its expense, enroll the existing underground storage tank system in the Petroleum Underground Storage Tank Release Compensation Board (PUSTRCB).

B. Original certificates of insurance evidencing the required coverage to be in force on the effective date of this Lease, and all renewal certificates of such insurance, shall be provided to Lessor. Lessee shall provide the Lessor with a Certificate of Insurance on all required insurance prior to Lessee’s exercise of any privileges provided by this Lease within thirty (30) days of execution of this Lease. In the event of a claim or threatened claim against Lessor that could be covered under a policy of insurance required hereunder, Lessee agrees to promptly furnish, upon Lessor’s request, a copy of such
policy or policies of insurance to Lessor. The receipt of any certificate or policy does not constitute agreement by the Lessor that the insurance requirements in the Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Lease. The failure of the Lessor to obtain certificates or other insurance evidence from Lessee or its contractors shall not be deemed to be a waiver by the Lessor. Lessee or its contractors shall advise all insurers of these Lease provisions regarding insurance. Non-conforming insurance shall not relieve Lessee or its contractors of their obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Lease, and the Lessor retains the right to terminate this Lease as provided in Article XIV until proper evidence of insurance is provided. All policies of insurance shall provide for a minimum of thirty (30) days prior written notice to be given to the Lessor in the event coverage is substantially changed, canceled, or non-renewed.

C. If Lessee fails to obtain or maintain any of the insurance policies under this Lease or to pay any premium in whole or in part when due, Lessor may (without waiving or releasing any obligation or default by Lessee hereunder) obtain and maintain such insurance policies and take any other action which Lessor, including reasonable attorney’s fees, court costs and expenses, shall be reimbursed by the Lessee upon demand by Lessor.

D. Lessee shall require all contractors to carry the insurance required herein, or Lessee or its contractors may provide the coverage for any or all contractors, and, if so, the evidence of insurance submitted shall so stipulate. Any and all deductibles or self-insured retentions on referenced insurance coverages shall be borne by Lessee or its contractors. Lessee and its contractors agree that insurers shall waive their rights of subrogation against the Lessor, its employees, elected official, agents, or representatives. Lessee and its contractors expressly understand and agree that any coverages and limits furnished by Lessee or its contractors shall in no way limit the Lessee or its contractors’ liabilities and responsibilities specified within this Lease or by law. Lessee and its contractors expressly understand and agree that any insurance or self insurance programs maintained by the Lessor shall not contribute with insurance provided by the Lessee or its contractors under this Lease. If Lessee or its contractors desire additional coverage, higher limits of liability, or other modifications for its own protection, then Lessee or its contractors shall each be responsible for the acquisition and cost of such additional protection.

E. The insurance required hereunder shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law. The Lessor maintains the right to modify, delete, alter or change these requirements.

F. The insurance required by this Lease, at the option of Lessee or contractors, may be effected by blanket or umbrella policies issued to Lessee or contractors covering the Premises and other properties owned or leased by Lessee or contractors, provided that the policies otherwise comply with the provisions of this Lease and allocate to the Premises
the specified coverage, without possibility of reduction or coinsurance by reason of, or
damage to, any other premises covered therein.

G. Lessee shall also maintain, at all times during the term hereof, Workers’ Compensation
and Occupational Disease Insurance for its employees employed or providing service(s)
upon the Premises in such amounts as prescribed under Ohio law, or of at least
$1,000,000 each accident.

ARTICLE X - DAMAGE AND DESTRUCTION OF PREMISES

A. If improvements on a portion of the Premises are damaged, in whole or in part, by fire or
casualty, Lessee shall repair the damage to the improvements as soon as reasonably
possible at Lessee’s expense or, upon mutual agreement, shall take such other actions as
is mutually agreed between Lessor and Lessee, which actions may include, but are not
limited to, demolition and removal of the entire Building and all appurtenances and
fixtures. Lessee may use insurance proceeds from insurance it carried to pay for the work
as it progresses, and the Lessor shall permit any such proceeds to be made available.

B. During any period in which Lessee is unable to use all or a substantial portion of the
Premises due to damage or destruction of the Premises and which significantly impacts
Lessee’s operations at the Airport, then the rent payable for the Premises shall be abated
or appropriately adjusted for the period during which such damage renders the Premises
unusable or operations are so curtailed or terminated. However, if Lessor determines that
such damage resulting in inability to use all or a substantial portion of the Premises is
caused by the acts, errors or omissions of Lessee, its employees, agents and/or
contractors. Lessee shall not be entitled to an abatement of rents as provided herein.
Except for such abatement of rents due, as applicable, Lessee shall have no claim against
the Lessor for any damage suffered by reason of any such damage, destruction, repair or
restoration.

C. If any improvements to the Premises are not diligently repaired by Lessee where required,
or such action as mutually agreed by the Lessor and Lessee is not completed, or if any
space is deleted from the Premises, then the Lessor shall be entitled to all insurance
proceeds payable on account of improvements in such space. Where the Lessee is
obligated to repair or restore or remove improvements or the entire Building structure,
Lessee must do so notwithstanding that insurance proceeds may be insufficient.

ARTICLE XI - ASSIGNMENT AND SUBLETTING

The leasehold estate and rights granted herein are personal property of Lessee. Lessee may not
sell, assign, transfer sublet or underlet the same, or any portion thereof. Any assignment in
violation hereof shall be void.
ARTICLE XII - SUCCESSORS AND ASSIGNS BOUND BY COVENANTS

All covenants, stipulations and agreements in this Lease shall extend to and bind the legal representatives, successors and assigns of the respective parties hereto.

ARTICLE XIII - TERMINATION BY LESSEE

A. In addition to all other remedies available to the Lessee under this Lease or at law, this Lease shall be subject to termination by Lessee should any one or more of the following events occur:

1. The issuance by any court of competent jurisdiction of any injunction, order or decree preventing or restraining the use of the Airport for usual airport purposes in its entirety, or the use of any part thereof which is used by Lessee and which is necessary for Lessee's operations on the Airport, which remains in force unvacated or unstayed for a period of thirty (30) consecutive days and results in material interference with Lessee's normal business operations;

2. The default by Lessor in the performance of any material covenant or agreement required to be performed by it herein, and the failure of Lessor to remedy such default, or to take prompt action to remedy such default, within a period of thirty (30) days after receipt from Lessee of written notice to remedy the same; or if by reason of the nature of such default the same cannot be remedied within said thirty (30) days, then Lessee shall have the right to terminate this Lease if the Lessor shall have failed to commence the remedying of such default within said thirty (30) days following such written demand, or having so commenced, shall fail thereafter to continue with diligence the remedying thereof.

B. Lessee may exercise its rights of termination by prior written notice to Lessor at any time after the lapse of the applicable periods of time, and this Lease shall terminate as of the effective date of termination specified in such notice. Rentals due hereunder shall be payable only to the date of termination.

ARTICLE XIV - TERMINATION BY LESSOR

A. In addition to all other remedies available to Lessor under this Lease or at law, this Lease shall be subject to termination by Lessor should any one or more of the following events occur:

1. If Lessee shall file a voluntary petition of bankruptcy; or if proceedings in bankruptcy shall be instituted against it and it is thereafter adjudicated a bankrupt pursuant to proceedings; or if a court shall take jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act; or if a receiver for Lessee's assets is appointed by a court of competent
jurisdiction; or if Lessee shall be divested of its rights, powers and privileges under this Lease by other operation of law.

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

3. If Lessee shall fail to perform, keep and observe all of the covenants and conditions contained in this Lease 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 Lessor notifies Lessee in writing of said failure:

4. Violations by Lessee, its agents or employees, of applicable laws, ordinances, codes, rules and regulations issued by any competent governmental authority, or revocations of permits or licenses required in the performance of this Lease, if the same shall not be corrected or action taken to correct, within thirty (30) days after Lessee's receipt of written notice, which shall state in detail the violation.

B. Lessor may terminate this Lease upon giving Lessee ninety (90) days prior written notice to Lessee in the event the Premises is needed for any municipal, airport or economic development purpose or project.

ARTICLE XV - HOLDING OVER

In the event that Lessee holds over and remains in possession of the Premises and the rights granted herein after expiration and/or termination of this Lease and without any written renewal thereof, such holding over shall not be deemed to operate as a renewal or extension of this Lease but shall only create an at will month-to-month tenancy that may be terminated at any time by Lessor or Lessee.

ARTICLE XVI - INVALID PROVISIONS

In the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision herein contained shall not constitute a material breach of this Lease; provided that the validity of any such covenant, condition or provision does not materially prejudice either the Lessor or Lessee in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Lease.

ARTICLE XVII - WAIVER

A. No waiver by either party at any time, of any of the terms, conditions, covenants or agreements of this Lease, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the
other. Receipt by Lessor of rent with knowledge of the breach by Lessee of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by either party of any provisions of this Lease shall be deemed to have been made unless expressed in writing and signed by Lessor or Lessee, as the case may be.

B. No option, right, power, remedy or privilege of either party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to each party by this Lease are cumulative and no one of them shall be exclusive of the other or exclusive of any remedies provided by law except as specifically provided herein and that the exercise of one right, power, option or remedy by either party shall not impair its right or any other right, power, option or remedy, except as specifically provided herein.

ARTICLE XVIII - GENERAL PROVISIONS

A. The term Lessor, as used in this Lease, means the City of Dayton, Ohio, and where this Lease speaks of approval and consent by the Lessor, such approval is understood to be manifested by act of the Lessor’s Director of Aviation, except as otherwise expressly stated in this Lease. Whenever in this Lease, the approval or consent of Lessor is required, such approval or consent will not be unreasonably withheld.

B. Notices to the Lessor provided for in this Lease shall be sufficient if sent by registered mail, postage prepaid, addressed to:

City of Dayton, Ohio - Department of Aviation
James M. Cox Dayton International Airport
3600 Terminal Drive, Suite 300
Vandalia, Ohio 45377
Attn: Director of Aviation

or such other address as the Lessor shall direct in writing.

C. Notices to Lessee provided for in this Lease shall be sufficient if sent by registered mail, postage prepaid, addressed to:

Avis Budget Car Rental, LLC
6 Sylvan Way
Parsippany, NJ 07054
Attn: Anne D. Morrison

or such other address as Lessee shall direct in writing.

D. Lessee represents that it has carefully reviewed the terms and conditions of this Lease 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 the Lease.

E. Any headings in this Lease are for convenience of reference only and do not define or limit the provisions thereof. In this Lease, unless the context otherwise requires, the terms "hereby", "herein", "hereof", "hereto", "hereunder" and any similar terms used in this manner refer to this Lease. All section references, unless otherwise expressly indicated, are to sections in this Lease. 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 Lease.

F. By execution of this Lease, Lessee hereby irrevocably submits to the original jurisdiction of the courts located within the County of Montgomery, State of Ohio, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Lease.

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

H. Neither Lessee nor any contractor of Lessee shall be entitled to claim any exemption from sales or use taxes or similar taxes by reason of the Lessor’s ownership of fee title to the Premises.

I. By entering into this Lease, Lessor shall in no way be deemed a partner or joint venturer with Lessee, nor shall any term or provision hereof be construed in any way to grant, convey or create any rights or interests to any person or entity not a party to this Lease.

J. The parties may amend or modify this Lease, at any time, provided that no such amendment or modification shall be effective unless it is reduced to a writing, which makes specific reference to this Lease, executed by a duly authorized representative of Lessor and Lessee and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.

K. This Lease represents the entire and integrated agreement between Lessor and Lessee. This Lease supersedes all prior and contemporaneous communications, representations, understandings, agreements or contracts, whether oral or written, relating to the subject matter of this Lease.

L. This Lease shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws.
IN WITNESS WHEREOF, Lessor and Lessee, each by a duly authorized representative, have executed this Lease as of the date first set forth above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WITNESSED BY:

[Signature]

Avis Budget Car Rental, LLC

By: [Signature] Anne Morrison

Its: Vice President Real Estate & Facilities

WITNESSED BY:

[Signature]

CITY OF DAYTON, OHIO

__________________________________________

City Manager

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]

City Attorney

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

_______________________________. 2021

Min/Bk. _________ Pg. __________
Clerk of the Commission
Service Center Site Map
2022

EXHIBIT A - RENTAL CAR SERVICE CENTER PROPERTY

Rental Car Service Centers

EXHIBIT A
EXHIBIT B - Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Agreement, the Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the “Lessee”) agrees to comply with the following nondiscrimination statutes and authorities, including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471. Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).
NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT
AT THE DAYTON INTERNATIONAL AIRPORT

The Department of Aviation requests permission to enter into an Agreement with Byers Car Rental, LLC dba Hertz and Dollar. A Request for Proposals (RFP) was issued in June 2020 for six available rental car locations at the Dayton International Airport. Five responses were received with all five companies being recommended for agreements with the City.

Byers Car Rental, LLC dba Hertz and Dollar is an incumbent operator, will dual brand with Hertz and Dollar, and lease one (1) counter. They will pay 10% of gross revenues or the Minimum Annual Guarantee (MAG), whichever is greater, plus rents for counter, office, queuing and common space in the Rental Car Counter Facility building.

Rents to the City are anticipated to be $1,125,000.00 for the 3-year MAG and $168,332.64 for the 3-year counter rent, totaling $1,293,332.64.

This Concession and Lease Agreement is effective for a three (3) year period, commencing on January 1, 2022 and terminating/expiring on December 31, 2024. There are no options for renewal.

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

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name  Byers dba Hertz and Dollar  Attention: Hertz Accounting
Address  4185 East 5th Avenue
City  Columbus  State  OH  Zip+4  43219
Customer #  Add Type/Seq #  
Federal ID#  31-4139860

Revenue Information: Fund  51000  Orgn  3216  Rev  23344  Prog  43  Actv  

Contract Information: Contract Start Date  1/1/2022  Contract Expiration Date  12/31/2024

Billing Information: Rate:  $4,675.91  Arrears  Pre-bill  X
Monthly (1st month of billing)  Jan
Quarterly (1st month of quarter)
Semi-annual (1st month of half)
Annual (1st month of billing)
Other (explain)  
Rate Change Date  1/1/2022  Rate Change Amount  TBD

Description of Services (wording on invoice): Effective 1/1/2022
Terminal Space Rent at Dayton Intl Airport
842 sf Counter, Office, Queuing and common space in the Rental Car Counter facility @ $66.64/sf per year for 2021-2022

Departmental Approval

TO BE COMPLETED BY FINANCE

City Reference Number  1 4225-1  Auditor  D Billy  Date  12-16-2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

Director of Finance  12/14/2021

12/14/2021
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name  Byers dba Hertz and Dollar
Address  4185 East 5th Avenue
City  Columbus  State  OH  Zip+4  43219
Customer #  Add Type/Seq #  A1
Federal ID#  31-4139860

Revenue Information: Fund  51000  Orgn  3216  Rev  23344  Prog  43  Actv

Contract Information: Contract Start Date  1/1/2022  Contract Expiration Date  12/31/24

Billing Information: Rate:  $31,250.00  Arrears  Pre-bill X
Monthly (1st month of billing)  Jan
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): Effective 1/1/2022
Pre-Bill MAG (Minimum monthly Rental Car Concession Guarantee) at Dayton Intl Airport
Annual Settle-up (the greater of annual MAG and 10% Gross Revenue)

Departmental Approval

TO BE COMPLETED BY FINANCE

City Reference Number  L - 4225  Auditor  Billy  Date  12/16/21

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  12/16/21

12/14/2021
NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT AT THE JAMES M. COX DAYTON INTERNATIONAL AIRPORT

THIS NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT ("Agreement") is made and entered into this ______ day of __________________, 2021 between the City of Dayton, Ohio ("City"), a political subdivision in and of the State of Ohio, and Byers Car Rentals LLC, dba Hertz and Dollar ("Operator").

WITNESSETH THAT:

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, State of Ohio; and

WHEREAS, On June 9, 2021, the City submitted a Request for Proposal, titled “Request for Proposal for Non-Exclusive Rental Car Concessions at the James M. Cox International Airport No. 21-018AOAD” (“RFP”); and

WHEREAS, Operator responded to the RFP on August 18, 2021, setting forth its desire and qualifications to operate a rental car concession at and from the Airport; and

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

WHEREAS, The parties enter into this Agreement to set forth the terms and conditions for the non-exclusive right and privilege to operate an on-Airport rental car concession.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and the mutual benefits to be derived, IT IS AGREED AS FOLLOWS:

ARTICLE I
DEFINITIONS

For the purposes of this Agreement, the following words and phrases shall have the meanings ascribed to them respectively regardless of whether the word(s) or phrase(s) is capitalized, unless otherwise clearly indicated by the context in which it is used:

“Airport Rules and Regulations” means the rules and regulations of the Dayton International Airport as adopted and as the same may be updated from time to time.

“Assigned Areas” means the areas at the Airport designated by the City, from time to time, for occupancy and use by Concessionaires.

“Commencement Date” means January 1, 2022.
“Concession Fee” means the amount payable, per Contract Year, for the on-Airport rental car concession rights and privileges granted to Operator under this Agreement.

“Concessionaire(s)” means all rental car businesses operating at the Airport pursuant to the terms of an agreement similar to this Agreement.

“Contract Year” means a twelve-month period beginning on January 1 and ending on December 31 within the Term.

“Customer” means anyone who enters into a vehicle rental contract that originates or ends at the Airport.

“Customer Facility Charge” or “CFC” means the charge established by Section 37.11 of the Revised Code of General Ordinances of the City of Dayton, which charge must be collected by Operator from its Customers and submitted to the City and is subject to change during this Agreement Term.

“Environmental Laws” means any federal, state, or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree or rule of common law, and any judicial or agency interpretation of any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future, that pertains to any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above ground tanks) and shall include, without limitation, the Solid Waste Disposal Act, 42 U.S.C. §6901 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 et seq. (“CERCLA”), as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”); the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; and the Safe Drinking Water Act, 42 U.S.C. §300f et seq.

“FAA” means the United States Department of Transportation, Federal Aviation Administration, or such other successor agency or agencies of the United States Government.

“Expiration Date” means December 31, 2024.

“Fees” means all amounts, including but not limited to, Premise Rent (including Counter, Office and Queuing Space Rent, Shared Common Space Rent), Concession Fee, and any other incidental fees and charges that are paid or payable by Operator to City pursuant to this Agreement.

“Gross Revenues” as used herein shall mean, as determined in the reasonable discretion of the City, all amounts charged to its customers by Operator for or in connection with contracts it secures through its operations and business at the Airport, regardless of whether such amount is actually paid to or received by Operator. Gross Revenues shall include all monies or other consideration of whatsoever nature paid or payable to Operator by customers for all sales made and services performed for cash, credit or consideration in connection with
automobile and vehicle rentals or other products or services provided to persons through Operator’s operations at the Airport without regard to the ownership, area, fleet, or location assignment of vehicles and without regard to the manner in which or place at which the vehicles or other products or services are furnished to Operator’s customers and without regard to whether the vehicles or other products are returned to the Airport or to some other location.

Gross Revenues may not be reduced by promotional or other discounts not given directly to the customer at the time of rental. The retroactive adjustment by Operator of Gross Revenues designated as volume discounts or rebates, corporate discounts or rebates, or any other designation of any nature, or for any other purpose, is prohibited.

Gross Revenues shall include anything and everything that is not specifically excluded. The only exclusions from Gross Revenues permitted under this Agreement shall be the specific exclusions set forth below:

1. Federal, state, county, city or municipal sales, use, or excise taxes now in effect or hereinafter levied on Operator’s operations which are separately stated on customers’ rental contracts and collected from customers of Operator;

2. Those fees referred to in this Agreement as Customer Facility Charges, “CFC’s” which for the purpose of this Agreement shall include all customer facility charges, authorized pursuant to City of Dayton RCGO § 37.11 (B), as may be amended;

3. Amounts received specifically for the actual loss of or damages of vehicles or other property of Operator;

4. Amounts received from the sale of vehicles off-airport premises; provided, however, any amounts paid in connection with automobile and vehicle rentals or other products or services provided to persons through Operator’s operations at the Airport that are applied to or otherwise reimbursed as a result of the sale of a vehicle shall not be excluded from Gross Revenues; and

5. Reimbursements for amounts actually paid for parking tickets, red light tickets, tolls and toll violations from its customers to pass through without markup to an independent third party with no amount being retained by Operator. However, any amounts collected above the pass-through amount shall be included as Gross Revenue under this Agreement.

“Hazardous Materials” means any substance, whether solid, liquid or gaseous, that is listed, defined or regulated as a “hazardous substance,” “hazardous waste,” “solid waste,” or pesticide, or is otherwise classified as hazardous or toxic, in or pursuant to any Environmental Law or that is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons; or that causes or poses a threat to cause a contamination or nuisance or a hazard to the environment or to the health or safety of any persons, except Operator may use, bring, and store household and commercial cleaners and chemicals in connection with the operation and
maintenance of the premises in commercially reasonable quantities, and may have fuel in the tanks of its vehicles.

“Minimum Annual Guarantee” or “MAG” means that minimum amount to be paid to the City, per Contract Year, for the concession privileges and rights stated in this Agreement, which Operator specified in its response to the City’s RFP and provided in Article VIII(B).

“Percentage Concession Fee” means an amount equal to ten percent (10%) of Gross Revenues.

“Premise Rent” means an amount paid the City for Operator’s occupancy of the Rental Car Counter Facility.

“Ready/Return” means that area at the Airport identified by the Ready/Return Agreement and consisting of parking blocks for use by Concessionaires as the location where Customers pick-up and/or drop-off Vehicles.

“Ready/Return Agreement” means that certain Agreement between the City and Operator pertaining to ready/return activities, attached hereto as Exhibit A and incorporated herein.

“Reallocation Date” means on or about March 1 during the term, beginning March 1, 2023.

“Rental Car Counter Facility” means the facility constructed adjacent to the lower level of the parking garage for the purpose of providing an area for conducting rental car transactions with customers.

“Term” means the effective period of this Agreement, beginning on the Commencement Date and expiring on the Expiration Date.

“Terminal” means the main passenger terminal building located at the Airport.

“TSA” means the United States Department of Homeland Security, Transportation Security Administration, or such other successor agency or agencies of the United States government.

“Transaction Day(s)” means a twenty-four (24) hour period or fraction thereof for which a Customer is charged rental for a vehicle which is paid in the form of currency, credit, or promotional coupon for which a Customer is given complimentary use of a vehicle, regardless of the duration or length of the rental term. Late return (after twenty-four (24) hours) shall be considered a Transaction Day.

“Vehicle(s)” means any automobiles, trucks, vans, and all accessories and appurtenances thereto provided by the Operator (and/or other Concessionaires, as the context would dictate) to meet the transportation needs of Customers.
ARTICLE II
NON-EXCLUSIVE AGREEMENT

The rights and privileges granted under this Agreement are non-exclusive. By entering into this Agreement, Operator acknowledges that the City is or will be entering into non-exclusive agreements with other Concessionaires. The City reserves the right to enter into agreements with other companies providing rental car services from off-Airport locations, if the City determines that it is in its best interest to do so. However, such agreements with off-Airport rental car businesses/operators shall not include the right to staff or operate a rental car concession from an on-Airport Counter and Office area (or other area on the Airport) and/or occupy and use the Ready/Return. Such off-Airport agreements may be at terms and conditions more or less favorable than this Agreement.

ARTICLE III
TERM

A. This Agreement is effective for a period of three (3) years (“Term”), beginning January 1, 2022 (“Commencement Date”) and expiring December 31, 2024 (“Expiration Date”), unless terminated earlier or renewed in accordance with the provisions of this Agreement.

B. In the event that Operator holds over and remains in possession of the Premises, in whole or part, and the rights and obligations granted herein after the Expiration Date, such holding over shall only constitute a month-to-month license on the same terms and conditions specified in this Agreement, except that it may be terminated at any time by the City or Operator. Further, Operator agrees and shall continue to pay during the holding over period all Fees that were effective on the Expiration Date.

ARTICLE IV
PREMISES

A. The City leases to Operator the following areas in the Rental Car Counter Facility described herein together with any substitutions or additions thereto, but less any removals therefrom, from time to time as provided in this Agreement (hereinafter all areas leased to Operator shall be collectively referred to herein as the “Premises”): approximately eight hundred forty-two (842) square feet of counter, office, storage, queuing and shared common area identified as position #2A depicted on Exhibit B.

B. By the execution of this Agreement, Operator accepts the Premises "AS IS". Operator also understands and agrees that the occupant of the Premises prior to the Commencement Date may remove trade fixtures prior to the delivery of possession of the Premises to Operator. Except as expressly provided in this Agreement, the City shall have no obligation or responsibility whatsoever to do any work or furnish any improvements of any kind to the Premises or perform any maintenance or repair on the Premises. CITY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PREMISES OR THAT THE PREMISES ARE SUITABLE FOR OPERATOR'S USE, PURPOSES OR NEEDS. Upon expiration or termination of the Agreement, Operator shall promptly and peaceably surrender to City its Premises and all improvements thereon to which
City is entitled in good and fit condition, reasonable wear and tear excepted; provided, however, nothing in the Article shall be construed to modify the obligations of the parties set forth elsewhere in the Agreement.

C. Priority of choice for location of Operator’s block in the Ready/Return area during the Term is based on the cumulative MAG (the MAG for each of the three years added together) Proposal by each Concessionaire in response to the RFP, with the Concessionaire having the highest cumulative MAG given first priority for choice of location of Operator’s block in the Ready/Return.

The allocation of the block of Ready/Return parking area to Operator for the first Contract Year of this Agreement, commencing on the Commencement Date, is based on the sum of the three years minimum annual guarantee proposed by the Operator divided by the sum of the three years minimum annual guarantees proposed by all successful operators. The City may, on not less than thirty (30) days advance notice to Operator and/or on each Reallocation Date, reduce or increase the size and layout of the parking block in the Ready/Return area allocated for use by Operator based on Operator’s market share for the immediately preceding Contract Year. If the calculation of the reallocation of the parking area does not result in a change to any operator of an increase or decrease of block size of more than 10%, the City will not reallocate the parking blocks for that Contract Year.

In general, each parking block will be a general rectangle shape, with at least one side providing for terminal frontage (east) side and the opposite side providing for the entrance/exit driveway (west) side. However, when allocating or reallocating the Ready/Return parking area, the City has full discretion on the shape of each Concessionaire’s block based on the geometry or any physical characteristics of the garage (such as support columns and common use sidewalks).

On the date designated for deletion or increase of the parking blocks in the Ready/Return:

1. Operator shall surrender such portion of the parking block in the Ready/Return to the City, if a deletion;
2. Operator will be permitted to use any additional parking block assigned to Operator in the Ready/Return, if an addition;
3. Exhibit 1 shall be revised accordingly, which shall not require a formal written amendment to this Agreement.

Notwithstanding the allocation and reallocation process outlined above, the parking block assigned to Operator shall not be fewer than fifteen (15) spaces, except in the event that the Ready/Return area is reduced in size twenty-five percent (25%) or more as required by the FAA and/or TSA for security purposes or construction activities upon or near the Ready/Return. In the event Operator’s block must be reduced in order to allocate fifteen (15) spaces to the smallest Concessionaire, the City will propose a plan to reduce the space to Operator for comment; however, the City shall retain final authority as to the reduction of blocks.

All expenses for the Operator’s block configuration upon commencement of this Agreement and/or upon any reallocation of Ready/Return area will be the sole responsibility of the Operator.
D. Notwithstanding any other provision of this Agreement, the City may adjust the boundaries of the Premises as may be required by the City for its purposes by adding to or deleting space from such portion of the Premises from time to time. The City shall notify Operator not less than sixty (60) days in advance of such adjustment, and Operator shall remove all personal property and fixtures located on the area(s) being deleted no later than the date such adjustment is to occur. In such instances, the Premises Rent (as applicable) may be adjusted, based on the new area comprising the Premises.

E. City reserves the right to relocate the Premises to other space in the Terminal and/or on Airport grounds, as applicable, on the terms and conditions hereinafter set forth:

1. If the City elects to relocate all or part of the Premises the City will give Operator at least sixty (60) days' prior written notice of the relocation date. The City agrees to provide substitute space of comparable square footage and shall provide improvements of comparable condition and utility (if not then existing at the new location). City shall pay all reasonable out-of-pocket moving costs for moving Operator's personal property to the substitute premises. Operator shall cooperate with the City in connection with the relocation, including, without limitation, responding in a timely manner to any requests for information or for review and comment on proposed plans for improvements to the substitute premises. Operator shall surrender possession of the portion of the Premises for which the substitution is being made and move from such portion of the Premises to the substitute premises on the relocation date.

2. On the relocation date, the substitute premises shall be deemed for the purposes of this Agreement to be the portion of the Premises being relocated. The Premises Rent, as applicable, shall be recalculated and adjusted based on the new area of the substitute Premises. The MAG, however, shall not be adjusted.

The City's exercise of its relocation right under this Subsection (E) shall not constitute a constructive eviction or interference with the right of quiet enjoyment, nor shall the City's exercise of such right subject the City to damages for loss of profits or business.

F. Operator's use of the Premises shall be subject to any and all easements, licenses and other rights with respect to the Premises granted to or vested in itself or any other governmental entities or agencies, such as the FAA and TSA. Operator acknowledges that there may currently exist, and that City may grant in the future, easements and rights on, over or under the Premises for the benefit of suppliers or owners of utilities that service the Airport, and Operator hereby consents to any such utility easements whether now in existence or later granted.

**ARTICLE V**

**USE OF THE PREMISES**

A. Subject to the terms and provisions contained in this Agreement, and all applicable rules, regulations, laws, ordinances, codes and orders of any federal, state or local government or
subdivision thereof in connection with the conduct of activities by Operator at the Airport, Operator shall use the Premises for the following purposes only and for no other purpose:

1. Arranging and administering the rental of Vehicles and the related incidental provision of loss and collision damage waiver protection, insurance (including but not limited to personal injury insurance), children’s car seats, GPS devices, mobile telephones and such other incidental services, items and equipment not being provided by Operator at the Airport prior to the Commencement Date and equipment reasonably associated with the rental of automobiles (but not including any items for which any exclusive right to provide such services, items or equipment has been or may in the future be granted to others at the Airport), which are approved in advance in writing by the City; and

2. For such other uses only as the City may approve in writing in its sole and absolute discretion.

B. If Operator parks its Vehicles in public parking lots on the Airport or permits its employees, contractors or agents to park automobiles in such lots, Operator must pay the posted parking rates.

C. Operator shall not use, bring, store, or dispose of any Hazardous Materials on the Premises, except Operator may use, bring, and store household and commercial cleaners and chemicals in connection with the operation and maintenance of the premises in commercially reasonable quantities, provided such is permitted by the Airport Rules and Regulations. Operator may have fuel in the tanks of its vehicles. Operator shall comply with all applicable Environmental Laws in its use of the Premises and the conduct of its concession business at the Airport.

ARTICLE VI
OPERATOR’S CONCESSION RIGHTS AND OBLIGATIONS

A. Operator shall have the non-exclusive right and obligation to conduct a rental car (a.k.a. rent-a-car) concession at the Airport from the Premises under the terms and conditions described herein.

B. During the Term of this Agreement, Operator shall operate its concession and maintain all signage under the brand(s) or trade name(s) of Byers Car Rentals LLC DBA Hertz Dollar. Operator is prohibited from operating at Airport under any other brand name(s) or trade name(s). No other brand name(s) or trade name(s) shall be used or displayed by Operator at the Airport or upon the Premises during the Term of this Agreement. During the term of this Agreement Operator shall operate and maintain all signage under the brand(s) or trade name(s) stated above. No additional brand or trade name may be added to this Agreement during the Term.

If Operator uses any particular brand or trade name under a license or franchise contract, Operator represents and warrants that it has been granted the right to use such brand or trade name for the entire term of this Agreement. At the City’s request, Operator agrees to provide a
copy of such franchise or license agreement as evidence that the same is in full force and effect. Operator shall immediately notify the City if such agreement is terminated.

C. Operator shall occupy the Ready/Return block assigned for its use only for the parking of rental Vehicles by Operator for pick-up or drop-off by its Customers, in a manner consistent with the terms of the Ready/Return Agreement. Vehicles returned by customers must be removed to the Operator’s service facility within one hour of return. Returned vehicles which have not been cleaned and are not immediately available for rental shall not be stored in the Ready/Return. Operator understands that returned vehicles cannot be cleaned and/or serviced in the Ready/Return, including the removal of trash. Operator employees are permitted to park personal vehicles in the Ready/Return which are properly displaying an Airport-issued vehicle permit issued to the employee for that specific personal vehicle. Upon notification by the City, Operator shall immediately remove any employee vehicle parked in the Ready/Return that does not display an Airport-issued vehicle permit. Operator’s employees shall only park personal vehicles in the Ready/Return while on duty at the Airport and shall not be permitted to park in the Ready/Return at any other time, including during personal or business travel, see Article IV(M) below.

D. In operating the rental car concession permitted hereunder, Operator shall comply with the following:

1. Operator shall offer for rental only Vehicles of recent manufacture (not more than two (2) model years old and less than 40,000 miles), except as may be allowed under (D) (2) below. All Vehicles provided by Operator shall be maintained at Operator’s expense in good and safe operating order, free from any known mechanical defects and be in clean, neat, and attractive condition inside and out. Operator shall furnish good, prompt and efficient service and shall at all times have available a sufficient number of Vehicles (a fleet of no fewer than fifty (50)) to meet all reasonably foreseeable demands of the traveling public.

2. Operator may offer for rental antique, vintage, classic or other luxury or prestige automobile or handicapped operated vehicles of good quality, free from any known defect and clean and attractive both inside and out. The City shall have the right to prohibit Operator from offering for rental any such automobile which the City reasonably determines not to meet the standards described in (D) (1) above.

3. Operator shall provide the following services for its Customers at the Airport: (i) accept at least three (3) nationally recognized credit cards and at least one (1) locally named credit or debit cards for payment of Vehicle rental; (ii) provide for a national reservation system for services of Operator at the Airport, and (iii) will rent motor vehicles to customers who are local walk-up customers, ticketed Airline passengers and any other customer who so chooses to rent.
4. Operator shall maintain a sufficient number of trained personnel to ensure that Operator's Customers will receive prompt and courteous service at all times. All personnel of Operator, while on or about the Premises, shall be polite, clean and neat in appearance and appropriately attired. The City shall have the right to complain to Operator as to the demeanor, conduct or appearance of Operator's employees, invitees and those doing business with it, or regarding the Operator’s staffing levels, and Operator agrees to take all reasonable steps necessary to resolve such complaint(s).

5. Without limiting any other requirement set forth in this Agreement, Operator shall conduct its concession business operations within the Airport in such manner as shall reduce to a minimum the emanation of noise, vibration, dust, fumes and odors, so as not to interfere with the use of adjacent areas on the Airport.

6. Operator’s rights to use the Premises for the purposes provided in this Agreement are subject to the rights of the City, as City, to monitor compliance with this Agreement to ensure that the Premises are used and operated as required by Operator.

7. If Operator receives (or the City receives and forwards to Operator) any written complaint concerning Operator’s operation of the business at the Airport, Operator shall promptly respond to such complaint in writing within thirty (30) days of its’ receipt and make a good-faith attempt to explain, resolve or rectify the cause of such complaint. Without further notice or demand, Operator shall keep a copy of each such complaint and Operator’s written response for a period of one (1) year from the date of the complaint and shall make the complaint and the written response available to the City upon its request.

8. Operator shall respond in writing to complaints registered by the Airport’s police with respect to violations of traffic regulations committed in the course of Operator’s business by Operator’s agents, employees, invitees and licensees, setting forth such action as have been taken or are immediately contemplated to remedy said violations.

9. Operator shall keep the Premises open for service for such periods during each day and on such days during each week as may be necessary to meet reasonable demands for such services and to properly and adequately serve the public, as determined by the City; provided. Operator shall provide rental car services to Airport customers during all hours of air carrier operations at the Airport. Should the Operator operate more than one concession location in the Rental Car Counter Facility, Operator is not permitted to close one location and direct customers to its other location.

10. Counters will be adequately staffed and open one hour before the first scheduled flight departure and one hour after the last scheduled flight arrival.

11. Operator shall comply with the Airports Rules & Regulations and any amendments to that shall be approved.
12. Operations Violations. Operator’s failure to adhere to the operating requirements set forth in this Agreement is reasonably anticipated to result in significant inconvenience to the public, adversely affect the overall commercial business of the Airport, and reduce the amount of rent to be paid to the City. Additionally, City resources will be expended in dealing with violations of this Agreement by Operator. The parties hereby agree that total damages sustained by the City for violations of the provisions of this Agreement addressing this subject matter could be significant, but would be difficult to determine and to track. Therefore, the parties hereto agree that the liquidated damages amounts, set forth below for violation of Agreement terms addressing the referenced subject matter three (3) business days from a notice/occurrence, for the first occurrence only, are reasonable estimates of the loss anticipated to be suffered or incurred by the City. Operator, therefore, hereby agrees that imposition of the liquidated damages set forth below is fair and reasonable and Operator agrees to pay immediately upon demand by the City the following amounts as liquidated damages upon the occurrence of breaches, in any Contract Year, related to the following operation violations:

- $100 per occurrence - first occurrence
- $200 per occurrence - second occurrence
- $300 per occurrence - third occurrence
- $1,000 per occurrence thereafter

For hours of operations violations, liquidated damages are as follows:

- $100 per hour or portion thereof during which location is not open - first occurrence
- $200 per hour or portion thereof during which location is not open - first occurrence
- $300 per hour or portion thereof during which location is not open - first occurrence
- $1,000 per occurrence thereafter

E. Operator shall, at its expense, obtain all permits, licenses, certificates or other authorizations required for conduct of its concession business at the Airport, shall register all Vehicles as may be required by laws and ordinances and display all permits or stickers as may be required. Upon execution of this Agreement and thereafter annually or at the City’s request, Operator shall provide evidence to the City that Operator has obtained such permits, licenses, certificates, other authorizations and registrations.

F. Operator shall not use or occupy or permit the Premises to be used or occupied, or do or permit anything to be done in or on the Premises, in whole or in part, in a manner which would in any way violate any certificate of occupancy affecting the Premises, or make void or voidable any insurance then in force with respect thereto, or which may make it impossible to obtain fire or other insurance thereon required to be furnished by Operator under this Agreement, or which will constitute a public or private nuisance, or which will disrupt the safe, efficient and normal operations of the Airport.
G. Operator shall not use or occupy or permit the Premises to be used or occupied, in whole or in part, in a manner which may violate and shall comply with any present or future, ordinary or extraordinary, foreseen or unforeseen, laws, regulations, ordinances or requirements of the federal, state or municipal governments or of any other governmental, public or quasi-public authorities now existing or hereafter created, having jurisdiction in the Premises, whether or not City also is liable for compliance.

H. Operator shall not sell or give away food or beverages on the Premises. Operator may not install vending machines on the Premises for sale of food, beverages or any other items.

I. Operator may, at its own expense and only after receiving written approval from the City, erect and maintain informational signs within and upon the Premises in addition to those provided by City; the size and type of signs are subject to City’s standards and prior written approval.

J. Operator shall not erect, allow or permit to be maintained on the Premises, or upon the exterior or any improvement on the Premises, any billboard or advertising signs, except those which have the prior written approval of the City.

K. Throughout the Term of this Agreement Operator shall employ a qualified, full-time, local resident manager having experience in the management of this type of concession, who shall be available during normal business hours, and be delegated sufficient authority to ensure the competent performance and fulfillment of the responsibilities of Operator under this Agreement, and to accept service of all notices provided for herein. Operator shall provide the City with emergency telephone numbers at which Operator’s local manager or designated local employee with authority to speak for Operator may be reached on a 24-hour basis.

L. Operator shall at its sole expense, provide and use suitable receptacles for the storing of all trash, garbage, and other refuse created in the conduct of its business or operations in the Premises, or arising from Operator’s exercise of any right or obligation under this Agreement. Trash receptacles in the Ready/Return are provided for customers disposal of trash. These receptacles shall not be used for trash generated from Operator’s activities or employees and shall not be used for disposing of trash left in returned vehicles. Such cleaning shall take place at the Operator’s service facility.

M. Operator’s employees shall be required to obtain an Airport-issued identification badge conditioned upon successful completion of a background check and other requirements as stated in the Airport Rules and Regulations. Such badge must be obtained within thirty (30) days of execution of this Agreement. At that time, Operator’s employees may request a parking sticker for their personal vehicle. See Article IV(C) above.

N. Operator shall repair or pay for any and all damages to City and its property caused by any wrongful, intentional or negligent acts or omissions by Operator, its agents, contractors or employees arising out of Operator’s use or occupancy of the Premises or in the exercise of any right or obligation granted herein.
O. Operator shall operate or cause to be operated all its Vehicles in a safe manner and in accordance with all applicable rules and regulations, and with all federal, state and local laws and to strictly observe all posted speed limits.

P. Operator shall be a party to a Ready/Return Agreement at all times this Agreement is effective.

Q. Operator’s employees shall be required to obtain an Airport-issued vehicle permit for any personal vehicle which Operator’s employees intend to park in the Ready/Return.

R. All of Operator’s computer software, hardware, firmware, payment card processing policies, procedures and related services utilized to process City of Dayton revenue transactions shall be:
   1. Completed by a qualified professional payment card processing firm acceptable and approved by the City of Dayton; and,

Operator shall provide and agrees to maintain the PCI compliance reporting Attestation of Compliance (“AOC”) Form(s) in its/their latest version(s), or within the year of record as requested and/or in an annual transmittal to the City of Dayton. (https://www.pcisecuritystandards.org/documents/PCI-DSS-v3_2-AOC-Merchant.docx?agreement=true&time=1493826893795 or https://www.pcisecuritystandards.org/documents/PCI-DSS-v3-AOC-Officer.docx?agreement=true&time=1493826893795).

ARTICLE VII
CITY RIGHTS AND OBLIGATIONS

A. The City agrees to provide normal heating, air conditioning and electrical service to the Rental Car Counter Facility as reasonably required. Operator shall pay for its own telephone service and installation of any telephone or computer connections or equipment or for extension of any electrical facilities to provide service. The City reserves the right to interrupt temporarily the heating, air conditioning or electrical services furnished to the Premises to make emergency repairs or for other reasonable purposes, and the City shall restore said services as soon as reasonably possible. The City shall endeavor to provide Operator with reasonable notice of such interruptions when possible. The City shall have no responsibility or liability for any failure of heating, air conditioning, electrical or any other service to the Premises, the Rental Car Counter Facility or to the Airport for any other reason whatsoever.

B. All rights not expressly granted to Operator herein are reserved by the City, including, without limitation, the following rights (which may be exercised by the City's officers, employees, agents, licensees, contractors or designees):
1. to have, at any and all reasonable times, and with reasonable notice to Operator when possible, the full and unrestricted access to the Premises for the purpose of inspecting the Premises and doing any and all things, which the City is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport and in the exercise of the City’s police power;

2. to enter the Premises at any time;

3. to enter the Premises to maintain, replace, repair, alter, construct or reconstruct existing and future utility, mechanical, electrical and other systems or portions thereof on the Airport, including without limitation, systems for the supply of heat, water, gas, fuel, electricity, and for the furnishing of sprinkler, sewage, drainage, and telephone service, including all related lines, pipes, mains, wires, conduits and equipment, and;

4. to adopt and enforce reasonable rules and regulations with respect to the use of the Airport and facilities thereon, which Operator agrees to observe and obey; and

5. to exercise such other rights as may be granted the City elsewhere in this Agreement.

Except in the case of an emergency or previous arrangement with the Operator, City’s entry into the Premises shall be during reasonable business hours after providing reasonable advance notice, and in the presence of Operator’s representative.

All rights in this Subsection (B) shall be exercisable without notice (except as expressly provided in this Section) and without liability to Operator for damage or injury to property, person or business, and without effecting an eviction or disturbance of Operator’s use or possession or giving rise to any claim for setoff or abatement of Fees or affecting any of Operator’s obligations under this Agreement. Notices under this Subsection (B) may be given verbally in an emergency or where entry does not materially affect Operator’s use and occupancy. Reasonable notice shall in no event require more than twenty-four (24) hours’ notice.

C. City warrants quiet enjoyment of the rights and privileges granted herein, during the term hereof, upon the performance of Operator’s covenants contained herein, subject to Subsection (B) of this Article VII.

D. City will remove, during normal business hours, all collected trash, garbage, and refuse from the Premises with the exception of any construction, renovation, Ready/Return area or relocation debris.

E. In an emergency situation or upon occurrence of an Event of Default, the City may (but shall not be obligated so to do), and without waiving or releasing Operator from any obligation of Operator hereunder, make any payment or perform any other act which Operator is obligated to make or perform under this Agreement in such manner and to such extent as the City may deem desirable; and in so doing the City shall also have the right to enter upon the Premises for any purpose reasonably necessary in connection therewith and to pay or incur any other
necessary and incidental costs and expenses, including reasonable attorneys' fees. All sums so paid and all liabilities so incurred by the City, together with interest thereon, shall be deemed additional fees hereunder and shall be payable to the City upon demand. The performance of any such obligation by the City shall not constitute a waiver of Operator’s default in failing to perform the same. Inaction of the City shall not be considered as a waiver of any right accruing to it pursuant to this Agreement. The City shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business or other damage of Operator by any other occupant of the Premises or any part thereof, by reason of exercise of its rights under this Subsection (E).

**ARTICLE VIII**
**RENTS, FEES, PAYMENTS AND PERFORMANCE BOND**

A. Premises Rent. Operator shall pay to the City, in advance on the 1st day of each month, a premise rent for the Premises described in Article IV(A). For the period commencing January 1, 2022 through December 31, 2022, the Operator will pay the sum of what will be adopted as stated below for 2022. The sum of Sixty-Six Dollars and Sixty-Four Cents ($66.64) per square foot per year (the rate for 2021) is inserted into this Agreement for purposes of planning only. This rate is subject to updating annually upon adoption of the Airlines Rates and Charges Resolution by the Commission of the City of Dayton.

B. Concession Fee. As consideration for the privilege of operating the concession hereunder, Operator shall pay to the City each Contract Year, for the full term of this Agreement, a Concession Fee. The Concession Fee is the greater of:
1. The Percentage Concession Fee as defined in Article I;
   OR
2. The respective amount shown below as the Operator’s Minimum Annual Guarantee:

<table>
<thead>
<tr>
<th>Period</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1, 2022 to December 31, 2022</td>
<td>$375,000.00</td>
</tr>
<tr>
<td>January 1, 2023 to December 31, 2023</td>
<td>$375,000.00</td>
</tr>
<tr>
<td>January 1, 2024 to December 31, 2024</td>
<td>$375,000.00</td>
</tr>
</tbody>
</table>

The MAG shall be paid in equal monthly installments, in advance, on the first day of each month during the Term.

C. Additional Fees. City may invoice Operator additional fees for items including, but not limited to, employee parking, badging fees, background checks and additional vehicle storage. The City may assess reasonable, non-discriminatory charges for these items. Operator shall pay for such additional fees within thirty (30) days of invoicing by the City.

D. In the event of termination of this Agreement on a date other than December 31st in any year of the Agreement, the MAG and Premises Rent shall be prorated. Proration for a fractional Contract Year shall be determined by multiplying the number of days that have transpired that year by 1/365th of the annual MAG and Premises Rent.
E. On or before the twentieth (20th) day of each month, Operator shall furnish to the City a sworn or verified statement of its total Gross Revenues for the preceding month, with the Concession Fee calculated. No additional payment is due at this time. The Concession Fee will be reconciled at Contract Year end, as described in Paragraph G below. This statement shall be in the format (as given to Operator by the City) acceptable to the City and shall contain detailed financial information, broken down by categories of items representing Gross Revenues.

F. Operator shall furnish each year during the term of this Agreement, a written statement, certified by an independent Certified Public Accountant, to the City stating that in his or her opinion the percentage fees paid by Operator to City during the preceding year pursuant to this Agreement were made in accordance with the terms of this Agreement. Said statement shall be submitted by Operator, to be received by the City within ninety (90) days of the end of each Contract Year. Such statement shall also contain a list of the Gross Revenue receipts, by month, as shown on the books and records of the Operator and which were used to compute the percentage fee payments made to City during the period covered by such statement.

G. The Concession Fee will be reconciled at the end of each Contract Year. In the event an annual report indicates Operator’s underpayment of the Concession Fee during said annual report Contract Year, the amount of such underpayment shall be remitted from Operator to the City not later than thirty (30) days from the date the annual report was submitted to the City. In the event an annual report indicates overpayment of Concession Fees to the City, Operator shall subtract the amount of such overpayment from its next monthly MAG payment; except that, if, after the last Contract Year of this Agreement, Operator is no longer a Concessionaire at Airport, such settlement shall be remitted from the City to Operator, provided Operator is not then in default under the terms of this Agreement. This provision shall survive the expiration or termination of this Agreement.

H. Prior to the Commencement Date, Operator 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, a performance bond for the payments required hereunder, in an amount equivalent to one half (1/2) the MAG for the first Contract Year. The City may draw upon the Performance Bond if Operator 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.

I. Except as provided in Subsection (J) below, all rental and fees payable hereunder shall be remitted by Operator to the following address or at such other address as City shall direct in writing:

   City of Dayton, Ohio
   P. O. Box 632094
   Cincinnati, OH 45263-2094
J. All annual reports and monthly statements of Gross Revenues together with the associated payments to the City, as described 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

K. In the event Operator fails to make any payments as required to be paid under the provisions of this Agreement within ten (10) calendar days of the due date, late charges at the rate of two percent (2%) per month shall accrue against all such delinquent payment(s) from the original due date until City actually receives payment. The right of City to require payment of such late charges and the obligation of City to pay same shall be in addition to and not in lieu of the right of the City to enforce other provisions herein, including termination of this Agreement, or to pursue other remedies provided by Law.

L. In the event that the following condition exists during the term of this Agreement, the MAG hereinabove provided for in Article VIII(B)(2) shall be subject to proportional abatement for the period of time the condition exists:

1. A major traffic reduction at the Airport. A major traffic reduction shall be defined as a greater than twenty five percent (25%) reduction in the number of passengers deplaning on scheduled airline flights at the Airport during any period of three (3) consecutive calendar months as compared to the number of such deplaning passengers in the same calendar months during the preceding calendar year.

2. The abatement amount for those months that are abated as defined in Article VIII(L)(1) will be the prorated reduction of that month’s 1/12th payment of the MAG. For example, if May, June and July have a traffic reduction of 27%, 30% and 26% respectively, then the 1/12th MAG payment for May would be reduced by 27%, June would be reduced by 30%, and July would be reduced by 26%.

3. If the major traffic reduction continues for additional months, the proportional abatement will continue as well, until there is a month when traffic does not fall below the 25% threshold, at which time the full MAG payment shall be made for such month.

This major traffic reduction can only be identified after any three-month period ends; however, the major traffic reduction exists for any three-month period when all three months had a not less than 25% reduction in passenger deplanements. Overpayments of the MAG will be credited to the Operator during the year-end reconciliation process described in Article VIII(G).
ARTICLE IX
CUSTOMER FACILITY CHARGE

Operator shall comply with Section 37.11 of the Revised Code of General Ordinances of the City of Dayton, as may be amended, during the term of this Agreement regarding the imposition and collection of a CFC on all vehicle rental transactions originating at the Airport.

ARTICLE X
INDEMNIFICATION

A. Operator shall defend, indemnify, save and hold harmless the City, its elected officials, officers, employees, agents and volunteers, from and against any and all claims and actions, and all expenses incidental to the investigation and defense thereof, based upon or arising out of any accident or damages arising from, or in any way connected with, Operator's use or occupancy of the Premises or any condition of the Premises and/or Operator's exercise of any right granted herein (including operation of its concession), and/or Operator's performance for breach or default in the performance of any obligation to be performed pursuant to this Agreement, and/or any wrongful, intentional or negligent act or omission of Operator, its agents, contractors and employees.

B. In the event Operator, its agents, contractors or employees violate any security measure at the Airport, including, but not limited to, any Federal Aviation Administration or Transportation Security Administration security laws, rules, regulations, orders or directives, Operator 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.

C. Operator shall defend, indemnify and hold harmless the City, its elected officials, officers, employees, agents and volunteers, from and against any mechanics or other lien or order for the payment of money filed against the Premises, the City or any property of the City, arising out of any act or omission of Operator or anyone claiming through or under Operator. Operator shall, at Operator's expense, cause the same to be cancelled or discharged of record and shall save and hold harmless the City from and against any and all costs, expense, claims, losses or damages including reasonable attorney fees resulting therefrom or by reason thereof.

D. City shall not be liable to Operator or to Operator's agents, representatives, contractors or employees, for any injury to, or death of, any of them or of any other person or for any damage to any of Operator's property or loss of revenue, caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport; nor, to the extent permitted by law, shall City have any liability whatsoever to Operator, Operator's agents, representatives, contractors or employees, for any damage, destruction, injury, loss or claim of any kind arising out of the use by any of the aforementioned of any parking lot located on the Airport. City shall not be liable to Operator for damage to property of Operator or any loss of revenues to Operator resulting from City's acts or omissions in the maintenance and operation of the Airport or failure to operate the Airport.
E. The obligations of Operator under this Article X shall survive expiration or termination of this Agreement, and, shall not be affected in any way by the amount of or the absence in any case of covering insurance, or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any part thereof.

F. The City's elected officials, officers, agents and employees shall have no personal liability with respect to any provision of this Agreement or any obligation or liability arising from this Agreement or in connection with this Agreement or the Premises in the event of a breach or default by City of any of its obligations.

G. Notwithstanding any other provision of this Agreement to the contrary, to the extent permitted by law, Operator waives any and every claim for recovery from the City for any and all loss or damage to the Premises or to the contents thereof, which loss or damage is covered by valid and collectable physical damage insurance policies maintained by Operator or which would have been recoverable if the insurance required hereunder had been maintained by Operator, to the extent that such loss or damage is recoverable, or would have been recoverable, as applicable, under said insurance policies. As this waiver will preclude the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), Operator agrees to give each insurance company which has issued, or in the future may issue, its policies of physical damage insurance, written notice of the terms of this waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverage by reason of said waiver. Operator shall require any subtenant to include similar waivers of subrogation in favor of the City.

ARTICLE XI
INSURANCE

A. Operator, at its sole cost and expense, shall procure and maintain, or cause to be maintained, at all times during the Term, the following insurance, with insurance companies authorized to do business in the State of Ohio and having at least an “A” rating from A.M. Best and covering all operations under this Agreement, whether performed by Operator or by persons or entities retained by Operator:

1. Worker's Compensation and Occupational Disease Insurance

Worker's Compensation and Occupational Disease Insurance, in accordance with the laws of the State of Ohio, or any other applicable jurisdiction, covering all employees who are to provide a service under this Agreement, and Employer's liability coverage with limits of not less than Five Hundred Thousand Dollars ($500,000) for each accident or illness. Coverage extensions shall include other states endorsement, alternate employer and voluntary compensation endorsement, when applicable.
2. **Commercial General Liability Insurance** (Primary and Umbrella)

Commercial General Liability Insurance with limits of not less than Five Million Dollars ($5,000,000) per occurrence combined single limit, for bodily injury and property damage liability. Coverage extensions shall include the following: All Premises and operations, products/completed operations, explosion, collapse, underground, independent contractors, broad form property damage, separation of insured and contractual liability (with no limitation endorsement). The City, its elected officials, officers, agents, volunteers and employees, shall be named as additional insureds, on a primary, non-contributory basis for any liability arising directly or indirectly from this Agreement.

3. **All Risk Property Insurance**

Operator shall obtain an “All Risk Property” policy, including improvements and betterments covering damage to building, machinery, equipment or supplies in the amount of full replacement value of the property constituting within the Premises. Coverage extensions shall include business interruptions/loss of rents (in an amount not less than the sum of Fees then payable under this Agreement for a period of one year), and flood. City is to be named as a loss payee.

The Operator shall be responsible for all loss or damage to personal property (including but not limited to material, equipment, tools and supplies), owned or rented by Operator.

4. **Automobile Liability Insurance**

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, Operator shall provide Comprehensive Automobile Liability Insurance with limits of not less than Five Million Dollars ($5,000,000) per occurrence combined single limit, for bodily injury and property damage. City is to be named as an additional insured on a primary, non-contributory basis.

B. Original certificates of insurance evidencing the required coverage to be in force on the Commencement Date, and all renewal certificates of such insurance, shall be provided to City. At the City’s request, Operator shall furnish complete copies of all policies of insurance. The receipt of any certificate or policy does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Agreement. The failure of the City to obtain certificates or other insurance evidence from Operator shall not be deemed to be a waiver by the City. Operator shall advise all insurers of these Agreement provisions regarding insurance. Non-conforming insurance shall not relieve Operator of its obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Agreement, and the City retains the right to terminate this Agreement as provided in Article XIII until proper evidence of insurance is provided. All policies of insurance
shall provide for a minimum of thirty (30) days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

C. If Operator fails to obtain or maintain any of the insurance policies under this Agreement or to pay any premium in whole or in part when due, City may (without waiving or releasing any obligation or default by Operator hereunder) obtain and maintain such insurance policies and take any other action which City, including reasonable attorney’s fees, court costs and expenses, shall be reimbursed by the Operator upon demand by City.

D. Operator shall require all contractors to carry the insurance required herein, or Operator or its contractors may provide the coverage for any or all contractors, and, if so, the evidence of insurance submitted shall so stipulate. Any and all deductibles or self-insured retentions on referenced insurance coverages shall be borne by Operator or its contractors. Operator and its contractors agree that insurers shall waive their rights of subrogation against the City, its employees, elected official, agents, or representatives. Operator and its contractors expressly understand and agree that any coverages and limits furnished by Operator or its contractors shall in no way limit the Operator or its contractors’ liabilities and responsibilities specified within this Agreement or by law. Operator and its contractors expressly understand and agree that any insurance or self-insurance programs maintained by the City shall not contribute with insurance provided by the Operator or its contractors under this Agreement.

E. The insurance required hereunder shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law. The City maintains the right to modify, delete alter or change these requirements.

F. The insurance required by this Agreement, at the option of Operator, may be effected by blanket or umbrella policies issued to Operator covering the Premises and other properties owned or leased by Operator, provided that the policies otherwise comply with the provisions of this Agreement and allocate to the Premises the specified coverage, without possibility of reduction or coinsurance by reason of, or damage to, any other premises covered therein.

**ARTICLE XII**

**DAMAGE AND DESTRUCTION OF PREMISES**

A. If improvements on a portion of the Premises are damaged, in whole or in part, by fire or casualty, and there is not substantial damage to the Rental Car Counter Facility in which such portion of the Premises is located, or material damage to such Rental Car Counter Facility as described in Subsection (B), Operator may use insurance proceeds from insurance it carried to pay for the work as it progresses, and the City shall permit any such proceeds to be made available.

B. If there is material damage to a portion of the Rental Car Counter Facility or damage to a material access point or building system(s) serving such portion of the Rental Car Counter Facility, by a fire or casualty, rendering such portion of the Rental Car Counter Facility not usable, whether or not improvements on the Premises are damaged, then where operations in the Premises are severely curtailed or such portions of the Premises are unusable, such portion of the
Premises shall be deleted from the Premises unless and until the City repairs and restores the damage to the Rental Car Counter Facility within the Term of this Agreement so that the affected portion of the Rental Car Counter Facility is again usable. Operator shall repair and restore any damaged improvements to the Premises at its expense (but it may use insurance proceeds from insurance it carried for the work as the work progresses, and the City shall permit any such proceeds to be made available) if the City repairs and restores the damage to the Rental Car Counter Facility during the Term.

Notwithstanding the foregoing, the City shall not be obligated to repair or restore the Rental Car Counter Facility, and the space deleted shall not be re-included in the Premises if the City determines not to include space for car rental counters in the portion of the Rental Car Counter Facility previously rendered unusable.

C. In the event the Terminal is substantially damaged or destroyed, whether or not improvements to the Premises are substantially damaged or destroyed, and as a result of such damage or destruction, flight operations with respect to the Terminal are terminated or substantially curtailed for ninety (90) days or more, then either the City or the Operator may delete the portion of the Premises located in the Terminal from the Premises or terminate this Agreement.

D. During any period in which Operator is unable to use the portion of the Premises in the Rental Car Counter Facility because of damage or destruction to the improvements on the Premises or the Rental Car Counter Facility, the rent payable for that portion of the Premises in the damaged or destroyed Rental Car Counter Facility shall be abated for the period during which such damage to the Rental Car Counter Facility renders the Premises unusable or operations are so curtailed or terminated. Except for such abatement of rents due, the Operator shall have no claim against the City for any damage suffered by reason of any such damage, destruction, repair or restoration. There shall be no abatement of Concession Fees. Upon any deletion of a portion of the Premises from this Agreement Operator shall surrender such portion of the Premises to the City.

E. If any improvements to the Premises are not diligently repaired by Operator where required within forty-five (45) days or if any space is deleted from the Premises, then the City shall be entitled to all insurance proceeds payable on account of improvements in such space. Where the Operator is obligated to repair or restore improvements, Operator must do so notwithstanding that insurance proceeds may be insufficient.

**ARTICLE XIII**
TERMINATION BY CITY

A. For purposes of this Agreement, the occurrence of any of the following shall constitute an "Event of Default":

1. The failure by Operator to pay any Fees as required under this Agreement when due and/or the failure of Operator to and to remit all CFCs as required by Section 37.11 of
the Revised Code of General Ordinances, and the failure to cure same within ten (10) days after the receipt of written notice thereof by Operator;

2. The failure by Operator on or after the date of this Agreement to perform any other representation, warranty or covenant or contract required to be performed by Operator in this Agreement and the failure of Operator to remedy such default within a period of thirty (30) days after receipt of written notice by the Operator;

B. If an Event of Default occurs, and after the expiration of the applicable period cure period specified for such Event of Default, the City may terminate this Agreement. In the event of termination and in addition to any and all rights and remedies provided elsewhere herein or at law or equity, the City may repossess the Premises and shall be entitled to recover as damages: (i) all of the Fees accrued and unpaid for the period up to and including such termination date; and (ii) any other sums for which Operator is liable or in respect of which Operator has agreed to indemnify City under any provisions of this Agreement which may be then due and owing.

ARTICLE XIV
TERMINATION BY OPERATOR

A. Operator may terminate this Agreement and all of its obligations hereunder, after the happening and during the continuance of any one of the following events (none of which, however, shall result in any liability to the City or provide Operator with any remedy other than an option to terminate as set forth herein):

1. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport or any part thereof so as to prevent Operator’s use of the Premises in its conduct of its car rental business and the remaining in force of such injunction, not stayed by way of appeal or otherwise, for a period of at least six (6) months;

2. The substantial restriction of City's operation of the Airport by action of any governmental agency or department (other than the City or its agencies and departments) and continuance thereof for a period of not less than six (6) months, provided such restriction adversely affects all of Operator’s operations at the Airport.

B. Any termination by Operator pursuant to this Article shall not occur unless the Operator notifies the City of its election to terminate at least thirty (30) days prior to the effective date of such termination, together with a statement of the grounds for termination. If Operator does not give such notice during the period that any of the above events is occurring, then Operator's right to terminate this Agreement as provided in this Article shall not be available to Operator until another happening of any one of said events.
ARTICLE XV
SURRENDER AND RETURN OF THE PREMISES

Upon termination of this Agreement or on the Expiration Date, whichever is earlier, Operator shall return the Premises in as good condition and repair as at the Commencement Date, subject to ordinary wear and tear, and Operator shall remove all personal property and trade fixtures of Operator from such portion of the Premises prior to the date of expiration or termination. Further, at the City's request, Operator shall also remove all movable, non-permanent improvements installed by or for Operator prior to or within ten (10) days after the expiration or termination of the Agreement, and Operator shall repair any damage to the Premises caused by Operator's removal of the personal property, trade fixtures and improvements. All such removal and repair required of Operator pursuant to this Section shall be at Operator's sole cost and expense. If Operator fails to remove any items required to be removed by it hereunder or fails to repair any resulting damage prior to or within ten (10) days after expiration or termination of the Agreement, then the City may remove said items, including the improvements, and repair any resulting damage and Operator shall pay the cost of any such removal and repair, together with interest thereon.

ARTICLE XVI
NON-DISCRIMINATION AND AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM (ACDBE)

A. The Operator agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Operator transfers its obligation to another, the transferee is obligated in the same manner as the Operator.

The provision obligates the Operator for the period during which the property is owned, used, or possessed by the Operator and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

B. During the performance of this Agreement, the Operator, for itself, its assignees and successors in interest agrees as follows:

1. Compliance with Regulations: Operator will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are attached as Exhibit C and which are herein incorporated by reference and made a part of this Agreement.

2. Nondiscrimination: Operator, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. Operator will not participate directly or
indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Operator for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Operator of the Operator’s obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color or national origin.

4. Information and Reports: Operator will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Operator is in the exclusive possession of another who fails or refuses to furnish the information, the Operator will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of Operator’s noncompliance with the non-discrimination provisions of this Agreement, the City will impose such Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending this Agreement, in whole or in part.

6. Incorporation of Provisions: The Operator will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Operator will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Operator becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Operator may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Operator may request the United States to enter into the litigation to protect the interests of the United States.

C. Operator shall abide by all U. S. Department of Transportation requirements regarding DBE and ACDBE requirements and reporting procedures.
D. It is the goal of the City to encourage participation by organizations classified as Airport Concession Disadvantaged Business Enterprises (ACDBE) as defined in 49 CFR Part 23 for a concession at the Airport. The City established an overall goal for ACDBE participation in Airport Concessions of 13.46% of the total gross revenues of all Airport Concessions for federal fiscal years 2022, 2023 and 2024. A new goal will be established for subsequent federal fiscal years per the FAA requirements, and will be reported to the Operator upon its’ adoption. Operator shall provide information under this Article XVI as requested by City for City’s reporting requirements for FAA or any other governmental entity. Operator is required to submit quarterly statements, provided in Exhibit D (subject to change), to the City regarding their participation in their ACDBE participation goal.

E. This Agreement is subject to the requirements of the U.S. Department of Transportation’s regulations, 49 CFR Part 23. The Operator 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 Operator 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.

ARTICLE XVII
ASSIGNMENT AND SUBLETTING

A. Except with the consent of City and as the result of a merger or acquisition, Operator shall not, (a) assign, transfer, mortgage, pledge, hypothecate or encumber or subject to or permit to exist upon or be subjected to any lien or charge, this Agreement or any interest under it; (b) allow to exist or occur any transfer of or lien upon the Premises, this Agreement or Operator’s interest herein by operation of law; (c) sublease the Premises or any part thereof; or (d) permit the use or occupancy of the Premises or any part thereof for any purpose not provided for herein or by anyone other than Operator. The City may withhold its consent to the foregoing in its sole discretion. The requirements of this Article shall apply to any transaction or series of transactions that shall have the same effect as any of the aforementioned occurrences, and in no event shall this Agreement be assigned or assignable by voluntary or involuntary bankruptcy proceedings or otherwise, and in no event shall this Agreement or any rights or privileges hereunder be an asset of Operator under any bankruptcy, insolvency or reorganization proceedings.

B. If Operator desires, as a result of an acquisition or merger, to assign its interest under this Agreement or sublease any part of Premises, Operator shall make a written request for authorization in a notice to the City. Such notice shall state the name and address of the proposed sub-Operator or assignee and include a copy of the proposed sublease or assignment and all related documents, and, including a financial statement of the sub-Operator or assignee, disclosures and information required by City.

C. Consent by City to any assignment or sublease shall not operate to relieve, release or discharge Operator of or from any obligations, whether past, present or future, under this
Agreement, and Operator shall continue fully liable hereunder except to the extent, if any, expressly provided for in such consent. Consent by City in any one instance shall not be deemed to be consent to or relieve Operator from obtaining City's consent to any subsequent assignment or sublease. Consent by City shall be conditioned upon agreement by the sub-Operator or assignees to comply with and be bound by all of terms, covenants, conditions, provisions and agreements of this Agreement to the extent of the space subleased or assigned, and an agreement that City shall have the right, but not the obligation, to enforce the terms and provisions of any such assignment or sublease affecting City's interests and Operator shall deliver to City within thirty (30) days after execution, an executed copy of each such sublease or assignment containing an agreement of compliance by each such sub-Operator and assignee. Operator shall pay all of City's costs, charges and expenses, including attorney's fees, incurred in connection with any assignment or sublease requested or made by Operator.

**ARTICLE XVIII**

**GENERAL PROVISIONS**

A. The term 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.

B. Notices to the City provided for in this Agreement shall be sufficient if sent by certified or registered U. S. mail, postage prepaid, addressed to:

   Department of Aviation  
   James M. Cox Dayton International Airport  
   3600 Terminal Drive, Suite 300  
   Vandalia, Ohio 45377  
   Attn: Director of Aviation

or such other address as the City shall direct in writing.

C. Notices to Operator provided for in this Agreement shall be sufficient if sent by certified or registered U. S. mail, postage prepaid, addressed to:

   Byers Car Rentals, LLC dba  
   Hertz and Dollar  
   4185 E. 5th Ave.  
   Columbus, OH 43219  
   Attn: Josh Pierre

or such other address as Operator shall direct in writing.

D. Operator 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 the Agreement.

E. Any headings of 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 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.

F. By execution of this Agreement, Operator 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.

G. Operator shall, upon its execution and delivery of the required copies of this Agreement to the City, deliver to the City the following instruments and documents:

1. Certificates of insurance evidencing the insurance required by this Agreement;
2. Performance Bond.

H. Operator (and any person claiming by or through Operator) 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 whatsoever.

I. Neither Operator nor any contractor of Operator 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 Premises.

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

K. The City may amend or modify this Agreement, at any time, provided that such amendment or modification makes specific reference to this Agreement, is executed in writing, signed by a duly authorized representative of City and Operator and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.

L. This Agreement, including the incorporated Ready/Return Agreement and any executed service facility lease, represents the entire and integrated agreement between City and Operator. This Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreement or contracts, whether oral or written, relating to the subject matter of this Agreement.
M. A waiver by the City of any breach of this Agreement shall be in writing. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it is given and shall not affect the City’s rights with respect to any other or further breach.

N. 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.

O. 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.

(BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK)
IN WITNESS WHEREOF, the City and Operator, each by a duly authorized representative, have executed this Agreement as of the date first set forth above.

WITNESSED BY: Byers Car Rentals, LLC dba Hertz and Dollar

By: 

Its: 

WITNESSED BY: CITY OF DAYTON, OHIO

_____________________________
City Manager

APPROVED AS TO FORM
AND CORRECTNESS:

_____________________________
City Attorney

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

_____________________________, 2021

Min/Bk. ____________ Pg. ____________

_____________________________
Clerk of the Commission
EXHIBIT 1 to the Rental Car Ready/Return Agreement

Ready Return Block Layout.
EXHIBIT B to the NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT

Rental Car Counter Facility Layout
Rental Car Facility Counter Layout

EXHIBIT K
Concession Agreement, Effective Jan 2022
Sept, 2021

Counter 1: N/A
Counter 2: Byers dba Thrifty
Counter 3: Byers dba Hertz and Dollar
Counter 4: EAN dba National
Counter 5: EAN dba Alamo/Enterprise
Counter 6: Avis Budget

Department Legend
- COMMON
- COMMON VESTIBULE
- COUNTER 1
- COUNTER 2
- COUNTER 3
- COUNTER 4
- COUNTER 5
- COUNTER 6
- RAC CIRCULATION
- RAC VESTIBULE

Individual Office = 109 SF
Individual Storage = 50 SF
Individual Counter = 146 SF
Individual TOTAL = 305 SF

RAC Circulation = 2218 SF / 6 Counters = 370 SF per
RAC Vestibule = 847 SF / 6 Counters = 142 SF per
RAC Mechanical/Closet = 150 SF / 6 Counters - 25 SF per
RAC Shared TOTAL = 537 SF per

Individual TOTAL = 305 SF
RAC Shared TOTAL = 537 SF per
TOTAL EACH RAC = 842 SF
Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Agreement, the Operator, for itself, its assignees, and successors in interest (hereinafter referred to as the "Operator") agrees to comply with the following nondiscrimination statutes and authorities, including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 88 Stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation; Implementation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) (prohibits discrimination on the basis of age);
- The Airport and Airway Improvement Act of 1982 (49 U.S.C. § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not;
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 - 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).
EXHIBIT D to the NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT
ACDBE Rental Car Annual Participation Report - Quarterly Reporting

Fiscal Year: October 1, 20_____ - September 30, 20_____

ACDBE Participation Contract Goal: __% Prime Concessionaire Total Gross Revenue: $______________

Total ACDBE Participation: $______________

Annual Reports are required to be submitted by the 30th day of the month following the end of each fiscal year. The information received will be compiled and reported to the FAA in accordance with 49 CFR Part 23.

PART II: CONTACT INFORMATION
Concessionaire: ____________________________
Address: ____________________________
Contact Person/Email: ____________________________
Phone No. / Fax No.: ____________________________

PART II: ACDBE Participation
In order to count toward goal achievement, the listed firm(s) must be certified as Airport Concession Disadvantaged Business Enterprises ("ACDBE") by the State of Ohio's certification program. (Certification can be verified at http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/ DBE-Directory.aspx)

<table>
<thead>
<tr>
<th>ACDBE Firm Name</th>
<th>Total ACDBE Participation to Date in Dollars (for Fiscal Year Oct. 1 - Sept. 30)</th>
<th>Nature of Relationship with ACDBE Firm</th>
<th>Race/Gender of Disadvantaged Owner with Largest Ownership Interest</th>
</tr>
</thead>
</table>
| Address & Phone No. | $____________________ | ☐ Prime Concession  
☐ Subcontractor  
☐ Management Contract  
☐ Goods/Services | ☐ Black  
☐ Hispanic  
☐ Asian Pacific American  
☐ Asian Indian American  
☐ Non Minority Women  
☐ Other |
| Name: ____________________________ | | | |
| Address: ____________________________ | | | |
| Phone No.: ____________________________ | | | |
| Email: ____________________________ | | | |

Business Type:
☐ Car Rental Insurance  
☐ Car Rental: Vending  
☐ Car Rental: Office Supplies  
☐ Car Rental Uniforms  
☐ Car Rental: Gas/Diesel  
☐ Car Rental Other (Explain business type below)  

Shortfall Explained:

Does this vendor have a lease or sublease?
☐ Yes
☐ No

Agreement Dates:

Does the agreement have an option to renew?
☐ Yes  
☐ No

How many renewal options?

Length of time of renewal:

☐ Yes
☐ No
PART III: QUARTERLY REPORTING - PRIME CONCESSIONAIRE

Quarterly Reports are required to be submitted by the 30th day of the month following the end of each annual quarter. The information received will be compiled and reported on the below graph.

1st Quarter
(Jan 1, 20__ - Mar 30, 20__)

2nd Quarter
(Apr 1, 20__ - Jun 30, 20__)

3rd Quarter
(Jul 1, 20__ - Sep 30, 20__)

4th Quarter
(Oct 1, 20__ - Dec 31, 20__)

I hereby certify that the information contained in this report is true and correct:

________________________________________
Signature of Authorized Representative

________________________________________
Print Name/Title

________________________________________
Date

For BOTH Annual and Quarterly Reporting:
In the event the Prime Concessionaire has not achieved the ACDBE participation contract goal, this report must be accompanied by a corrective action plan and written documentation evidencing the Prime Concessionaire’s good faith efforts to achieve the ACDBE participation contract goal.
NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT
AT THE DAYTON INTERNATIONAL AIRPORT

The Department of Aviation requests permission to enter into an Agreement with Byers Car Rental, LLC dba Thrifty. A Request for Proposals (RFP) was issued in June 2020 for six available rental car locations at the Dayton International Airport. Five responses were received with all five companies being recommended for agreements with the City.

Byers Car Rental, LLC dba Thrifty is an incumbent operator and will lease one (1) counter. They will pay 10% of gross revenues or the Minimum Annual Guarantee (MAG), whichever is greater, plus rents for counter, office, queueing and common space in the Rental Car Counter Facility building.

Rents to the City are anticipated to be $750,000.00 for the 3-year MAG and $168,332.64 for the 3-year counter rent, totaling $918,332.64.

This Concession and Lease Agreement is effective for a three (3) year period, commencing on January 1, 2022 and terminating/expiring on December 31, 2024. There are no options for renewal.

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

TO BE COMPLETED BY THE DEPARTMENT

Customer Information:
Name: Byers dba Thrifty
Address: 4185 East 5th Avenue
City: Columbus, State: OH, Zip+4: 43219
Customer #: Address Location #: 
Federal ID#: 31-4139860

Revenue Information:
Fund: 51000, Organization: 3216, Revenue: 23344, Program: 43

Contract Information:
Contract Start Date: 1/1/2022, Contract Expiration Date: 12/31/2024

Billing Information:
Rate: $20,833.33, 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: ___________, Rate Change Amount: ___________

Description of Services (wording on invoice): Effective 1/1/2022
Pre-Bill MAG (Minimum monthly Rental Car Concession Guarantee) at Dayton International Airport
Annual Settle-up (the greater of annual MAG and 10% Gross Revenue).

Departmental Approval: ___________

TO BE COMPLETED BY FINANCE

Revenue Contract Number: 1-9225, Auditor: D. Billy, Date: 12-22-2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in
the Accounts Receivable database and contains the terms and conditions necessary for collection.
Director of Finance: ___________, Date: 1/22/2021
CERTIFICATE OF REVENUE
TO BE COMPLETED BY THE DEPARTMENT

Customer Information:  
Name: Byers dba Thrifty  
Address: 4185 East 5th Avenue  
City: Columbus  
State: OH  
Zip+4: 43219  
Customer #:  
Add Type/Seq #: A1  
Federal ID#: 31-4139860

Revenue Information:  
Fund: 51000  
Orgn: 3216  
Rev: 23344  
Prog: 43  
Actv:  

Contract Information:  
Contract Start Date: 1/1/2022  
Contract Expiration Date: 12/31/2024

Billing Information:  
Rate: $4,675.91  
Arrears:  
Pre-bill: X  
Monthly (1st month of billing): Jan  
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): Effective 1/1/2022  
Terminal Space Rent at Dayton Intl Airport  
842 sf Counter, Office, Queuing and common space in the Rental Car Counter Facility @ $66.64 sf per year for 2021-2022, subject to change in Jan 2022

Departmental Approval:  

TO BE COMPLETED BY FINANCE

City Reference Number: 1-4225-1  
Auditor: D Billy  
Date: 12/16/2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

Director of Finance:  

12/14/2021
NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT AT THE JAMES M. COX DAYTON INTERNATIONAL AIRPORT

THIS NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT ("Agreement") is made and entered into this ____ day of ______________, 2021 between the City of Dayton, Ohio ("City"), a political subdivision in and of the State of Ohio, and Byers Car Rentals LLC, dba Thrifty ("Operator").

WITNESSETH THAT:

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, State of Ohio; and

WHEREAS, On June 9, 2021, the City submitted a Request for Proposal, titled “Request for Proposal for Non –Exclusive Rental Car Concessions at the James M. Cox International Airport No. 21-018AOAD” (“RFP”); and

WHEREAS, Operator responded to the RFP on August 18, 2021, setting forth its desire and qualifications to operate a rental car concession at and from the Airport; and

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

WHEREAS, The parties enter into this Agreement to set forth the terms and conditions for the non-exclusive right and privilege to operate an on-Airport rental car concession.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and the mutual benefits to be derived, IT IS AGREED AS FOLLOWS:

ARTICLE I
DEFINITIONS

For the purposes of this Agreement, the following words and phrases shall have the meanings ascribed to them respectively regardless of whether the word(s) or phrase(s) is capitalized, unless otherwise clearly indicated by the context in which it is used:

“Airport Rules and Regulations” means the rules and regulations of the Dayton International Airport as adopted and as the same may be updated from time to time.

“Assigned Areas” means the areas at the Airport designated by the City, from time to time, for occupancy and use by Concessionaires.

“Commencement Date” means January 1, 2022.
“Concession Fee” means the amount payable, per Contract Year, for the on-Airport rental car concession rights and privileges granted to Operator under this Agreement.

“Concessionaire(s)” means all rental car businesses operating at the Airport pursuant to the terms of an agreement similar to this Agreement.

“Contract Year” means a twelve-month period beginning on January 1 and ending on December 31 within the Term.

“Customer” means anyone who enters into a vehicle rental contract that originates or ends at the Airport.

“Customer Facility Charge” or “CFC” means the charge established by Section 37.11 of the Revised Code of General Ordinances of the City of Dayton, which charge must be collected by Operator from its Customers and submitted to the City and is subject to change during this Agreement Term.

“Environmental Laws” means any federal, state, or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree or rule of common law, and any judicial or agency interpretation of any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future, that pertains to any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above ground tanks) and shall include, without limitation, the Solid Waste Disposal Act, 42 U.S.C. §6901 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 et seq. (“CERCLA”), as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”); the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; and the Safe Drinking Water Act, 42 U.S. C. §300f et seq.

“FAA” means the United States Department of Transportation, Federal Aviation Administration, or such other successor agency or agencies of the United States Government.

“Expiration Date” means December 31, 2024.

“Fees” means all amounts, including but not limited to, Premise Rent (including Counter, Office and Queuing Space Rent, Shared Common Space Rent), Concession Fee, and any other incidental fees and charges that are paid or payable by Operator to City pursuant to this Agreement.

“Gross Revenues” as used herein shall mean, as determined in the reasonable discretion of the City, all amounts charged to its customers by Operator for or in connection with contracts it secures through its operations and business at the Airport, regardless of whether such amount is actually paid to or received by Operator. Gross Revenues shall include all monies or other consideration of whatsoever nature paid or payable to Operator by customers for all sales made and services performed for cash, credit or consideration in connection with
automobile and vehicle rentals or other products or services provided to persons through Operator’s operations at the Airport without regard to the ownership, area, fleet, or location assignment of vehicles and without regard to the manner in which or place at which the vehicles or other products or services are furnished to Operator’s customers and without regard to whether the vehicles or other products are returned to the Airport or to some other location.

Gross Revenues may not be reduced by promotional or other discounts not given directly to the customer at the time of rental. The retroactive adjustment by Operator of Gross Revenues designated as volume discounts or rebates, corporate discounts or rebates, or any other designation of any nature, or for any other purpose, is prohibited.

Gross Revenues shall include anything and everything that is not specifically excluded. The only exclusions from Gross Revenues permitted under this Agreement shall be the specific exclusions set forth below:

1. Federal, state, county, city or municipal sales, use, or excise taxes now in effect or hereinafter levied on Operator’s operations which are separately stated on customers’ rental contracts and collected from customers of Operator;

2. Those fees referred to in this Agreement as Customer Facility Charges, “CFC’s” which for the purpose of this Agreement shall include all customer facility charges, authorized pursuant to City of Dayton RCGO § 37.11 (B), as may be amended;

3. Amounts received specifically for the actual loss of or damages of vehicles or other property of Operator;

4. Amounts received from the sale of vehicles off-airport premises; provided, however, any amounts paid in connection with automobile and vehicle rentals or other products or services provided to persons through Operator’s operations at the Airport that are applied to or otherwise reimbursed as a result of the sale of a vehicle shall not be excluded from Gross Revenues; and

5. Reimbursements for amounts actually paid for parking tickets, red light tickets, tolls and toll violations from its customers to pass through without markup to an independent third party with no amount being retained by Operator. However, any amounts collected above the pass-through amount shall be included as Gross Revenue under this Agreement.

“Hazardous Materials” means any substance, whether solid, liquid or gaseous, that is listed, defined or regulated as a “hazardous substance,” “hazardous waste,” “solid waste,” or pesticide, or is otherwise classified as hazardous or toxic, in or pursuant to any Environmental Law or that is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons; or that causes or poses a threat to cause a contamination or nuisance or a hazard to the environment or to the health or safety of any persons, except Operator may use, bring, and store household and commercial cleaners and chemicals in connection with the operation and
maintenance of the premises in commercially reasonable quantities, and may have fuel in the
tanks of its vehicles.

“Minimum Annual Guarantee” or “MAG” means that minimum amount to be paid to the
City, per Contract Year, for the concession privileges and rights stated in this Agreement, which
Operator specified in its response to the City’s RFP and provided in Article VIII(B).

“Percentage Concession Fee” means an amount equal to ten percent (10%) of Gross
Revenues.

“Premise Rent” means an amount paid the City for Operator’s occupancy of the Rental
Car Counter Facility.

“Ready/Return” means that area at the Airport identified by the Ready/Return Agreement
and consisting of parking blocks for use by Concessionaires as the location where Customers
pick-up and/or drop-off Vehicles.

“Ready/Return Agreement” means that certain Agreement between the City and Operator
pertaining to ready/return activities, attached hereto as Exhibit A and incorporated herein.

“Reallocation Date” means on or about March 1 during the term, beginning March 1,
2023.

“Rental Car Counter Facility” means the facility constructed adjacent to the lower
level of the parking garage for the purpose of providing an area for conducting rental car
transactions with customers.

“Term” means the effective period of this Agreement, beginning on the
Commencement Date and expiring on the Expiration Date.

“Terminal” means the main passenger terminal building located at the Airport.

“TSA” means the United States Department of Homeland Security, Transportation
Security Administration, or such other successor agency or agencies of the United States
government.

“Transaction Day(s)” means a twenty-four (24) hour period or fraction thereof for which
a Customer is charged rental for a vehicle which is paid in the form of currency, credit, or
promotional coupon for which a Customer is given complimentary use of a vehicle, regardless of
the duration or length of the rental term. Late return (after twenty-four (24) hours) shall be
considered a Transaction Day.

“Vehicle(s)” means any automobiles, trucks, vans, and all accessories and appurtenances
thereto provided by the Operator (and/or other Concessionaires, as the context would dictate) to
meet the transportation needs of Customers.
ARTICLE II
NON-EXCLUSIVE AGREEMENT

The rights and privileges granted under this Agreement are non-exclusive. By entering into this Agreement, Operator acknowledges that the City is or will be entering into non-exclusive agreements with other Concessionaires. The City reserves the right to enter into agreements with other companies providing rental car services from off-Airport locations, if the City determines that it is in its best interest to do so. However, such agreements with off-Airport rental car businesses/operators shall not include the right to staff or operate a rental car concession from an on-Airport Counter and Office area (or other area on the Airport) and/or occupy and use the Ready/Return. Such off-Airport agreements may be at terms and conditions more or less favorable than this Agreement.

ARTICLE III
TERM

A. This Agreement is effective for a period of three (3) years ("Term"), beginning January 1, 2022 ("Commencement Date") and expiring December 31, 2024 ("Expiration Date"), unless terminated earlier or renewed in accordance with the provisions of this Agreement.

B. In the event that Operator holds over and remains in possession of the Premises, in whole or part, and the rights and obligations granted herein after the Expiration Date, such holding over shall only constitute a month-to-month license on the same terms and conditions specified in this Agreement, except that it may be terminated at any time by the City or Operator. Further, Operator agrees and shall continue to pay during the holding over period all Fees that were effective on the Expiration Date.

ARTICLE IV
PREMISES

A. The City leases to Operator the following areas in the Rental Car Counter Facility described herein together with any substitutions or additions thereto, but less any removals therefrom, from time to time as provided in this Agreement (hereinafter all areas leased to Operator shall be collectively referred to herein as the "Premises"): approximately eight hundred forty-two (842) square feet of counter, office, storage, queuing and shared common area identified as position #2B depicted on Exhibit B.

B. By the execution of this Agreement, Operator accepts the Premises "AS IS". Operator also understands and agrees that the occupant of the Premises prior to the Commencement Date may remove trade fixtures prior to the delivery of possession of the Premises to Operator. Except as expressly provided in this Agreement, the City shall have no obligation or responsibility whatsoever to do any work or furnish any improvements of any kind to the Premises or perform any maintenance or repair on the Premises. CITY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PREMISES OR THAT THE PREMISES ARE SUITABLE FOR OPERATOR'S USE, PURPOSES OR NEEDS. Upon expiration or termination of the Agreement, Operator shall promptly and peaceably surrender to City its Premises and all improvements thereon to which
City is entitled in good and fit condition, reasonable wear and tear excepted; provided, however, nothing in the Article shall be construed to modify the obligations of the parties set forth elsewhere in the Agreement.

C. Priority of choice for location of Operator’s block in the Ready/Return area during the Term is based on the cumulative MAG (the MAG for each of the three years added together) Proposal by each Concessionaire in response to the RFP, with the Concessionaire having the highest cumulative MAG given first priority for choice of location of Operator’s block in the Ready/Return.

The allocation of the block of Ready/Return parking area to Operator for the first Contract Year of this Agreement, commencing on the Commencement Date, is based on the sum of the three years minimum annual guarantee proposed by the Operator divided by the sum of the three years minimum annual guarantees proposed by all successful operators. The City may, on not less than thirty (30) days advance notice to Operator and/or on each Reallocation Date, reduce or increase the size and layout of the parking block in the Ready/Return area allocated for use by Operator based on Operator’s market share for the immediately preceding Contract Year. If the calculation of the reallocation of the parking area does not result in a change to any operator of an increase or decrease of block size of more than 10%, the City will not reallocate the parking blocks for that Contract Year.

In general, each parking block will be a general rectangle shape, with at least one side providing for terminal frontage (east) side and the opposite side providing for the entrance/exit driveway (west) side. However, when allocating or reallocating the Ready/Return parking area, the City has full discretion on the shape of each Concessionaire’s block based on the geometry or any physical characteristics of the garage (such as support columns and common use sidewalks).

On the date designated for deletion or increase of the parking blocks in the Ready/Return:
1. Operator shall surrender such portion of the parking block in the Ready/Return to the City, if a deletion;
2. Operator will be permitted to use any additional parking block assigned to Operator in the Ready/Return, if an addition;
3. Exhibit 1 shall be revised accordingly, which shall not require a formal written amendment to this Agreement.

Notwithstanding the allocation and reallocation process outlined above, the parking block assigned to Operator shall not be fewer than fifteen (15) spaces, except in the event that the Ready/Return area is reduced in size twenty-five percent (25%) or more as required by the FAA and/or TSA for security purposes or construction activities upon or near the Ready/Return. In the event Operator’s block must be reduced in order to allocate fifteen (15) spaces to the smallest Concessionaire, the City will propose a plan to reduce the space to Operator for comment; however, the City shall retain final authority as to the reduction of blocks.

All expenses for the Operator’s block configuration upon commencement of this Agreement and/or upon any reallocation of Ready/Return area will be the sole responsibility of the Operator.
D. Notwithstanding any other provision of this Agreement, the City may adjust the boundaries of the Premises as may be required by the City for its purposes by adding to or deleting space from such portion of the Premises from time to time. The City shall notify Operator not less than sixty (60) days in advance of such adjustment, and Operator shall remove all personal property and fixtures located on the area(s) being deleted no later than the date such adjustment is to occur. In such instances, the Premises Rent (as applicable) may be adjusted, based on the new area comprising the Premises.

E. City reserves the right to relocate the Premises to other space in the Terminal and/or on Airport grounds, as applicable, on the terms and conditions hereinafter set forth:

1. If the City elects to relocate all or part of the Premises the City will give Operator at least sixty (60) days' prior written notice of the relocation date. The City agrees to provide substitute space of comparable square footage and shall provide improvements of comparable condition and utility (if not then existing at the new location). City shall pay all reasonable out-of-pocket moving costs for moving Operator's personal property to the substitute premises. Operator shall cooperate with the City in connection with the relocation, including, without limitation, responding in a timely manner to any requests for information or for review and comment on proposed plans for improvements to the substitute premises. Operator shall surrender possession of the portion of the Premises for which the substitution is being made and move from such portion of the Premises to the substitute premises on the relocation date.

2. On the relocation date, the substitute premises shall be deemed for the purposes of this Agreement to be the portion of the Premises being relocated. The Premises Rent, as applicable, shall be recalculated and adjusted based on the new area of the substitute Premises. The MAG, however, shall not be adjusted.

The City's exercise of its relocation right under this Subsection (E) shall not constitute a constructive eviction or interference with the right of quiet enjoyment, nor shall the City's exercise of such right subject the City to damages for loss of profits or business.

F. Operator’s use of the Premises shall be subject to any and all easements, licenses and other rights with respect to the Premises granted to or vested in itself or any other governmental entities or agencies, such as the FAA and TSA. Operator acknowledges that there may currently exist, and that City may grant in the future, easements and rights on, over or under the Premises for the benefit of suppliers or owners of utilities that service the Airport, and Operator hereby consents to any such utility easements whether now in existence or later granted.

**ARTICLE V**

**USE OF THE PREMISES**

A. Subject to the terms and provisions contained in this Agreement, and all applicable rules, regulations, laws, ordinances, codes and orders of any federal, state or local government or
subdivision thereof in connection with the conduct of activities by Operator at the Airport, Operator shall use the Premises for the following purposes only and for no other purpose:

1. Arranging and administering the rental of Vehicles and the related incidental provision of loss and collision damage waiver protection, insurance (including but not limited to personal injury insurance), children’s car seats, GPS devices, mobile telephones and such other incidental services, items and equipment not being provided by Operator at the Airport prior to the Commencement Date and equipment reasonably associated with the rental of automobiles (but not including any items for which any exclusive right to provide such services, items or equipment has been or may in the future be granted to others at the Airport), which are approved in advance in writing by the City; and

2. For such other uses only as the City may approve in writing in its sole and absolute discretion.

B. If Operator parks its Vehicles in public parking lots on the Airport or permits its employees, contractors or agents to park automobiles in such lots, Operator must pay the posted parking rates.

C. Operator shall not use, bring, store, or dispose of any Hazardous Materials on the Premises, except Operator may use, bring, and store household and commercial cleaners and chemicals in connection with the operation and maintenance of the premises in commercially reasonable quantities, provided such is permitted by the Airport Rules and Regulations. Operator may have fuel in the tanks of its vehicles. Operator shall comply with all applicable Environmental Laws in its use of the Premises and the conduct of its concession business at the Airport.

ARTICLE VI
OPERATOR’S CONCESSION RIGHTS AND OBLIGATIONS

A. Operator shall have the non-exclusive right and obligation to conduct a rental car (a.k.a. rent-a-car) concession at the Airport from the Premises under the terms and conditions described herein.

B. During the Term of this Agreement, Operator shall operate its concession and maintain all signage under the brand(s) or trade name(s) of Byers Car Rentals LLC DBA Thrifty. Operator is prohibited from operating at Airport under any other brand name(s) or trade name(s). No other brand name(s) or trade name(s) shall be used or displayed by Operator at the Airport or upon the Premises during the Term of this Agreement. During the term of this Agreement Operator shall operate and maintain all signage under the brand(s) or trade name(s) stated above. No additional brand or trade name may be added to this Agreement during the Term.

If Operator uses any particular brand or trade name under a license or franchise contract, Operator represents and warrants that it has been granted the right to use such brand or trade name for the entire term of this Agreement. At the City’s request, Operator agrees to provide a
copy of such franchise or license agreement as evidence that the same is in full force and effect. Operator shall immediately notify the City if such agreement is terminated.

C. Operator shall occupy the Ready/Return block assigned for its use only for the parking of rental Vehicles by Operator for pick-up or drop-off by its Customers, in a manner consistent with the terms of the Ready/Return Agreement. Vehicles returned by customers must be removed to the Operator’s service facility within one hour of return. Returned vehicles which have not been cleaned and are not immediately available for rental shall not be stored in the Ready/Return. Operator understands that returned vehicles cannot be cleaned and/or serviced in the Ready/Return, including the removal of trash. Operator employees are permitted to park personal vehicles in the Ready/Return which are properly displaying an Airport-issued vehicle permit issued to the employee for that specific personal vehicle. Upon notification by the City, Operator shall immediately remove any employee vehicle parked in the Ready/Return that does not display an Airport-issued vehicle permit. Operator’s employees shall only park personal vehicles in the Ready/Return while on duty at the Airport and shall not be permitted to park in the Ready/Return at any other time, including during personal or business travel, see Article IV(M) below.

D. In operating the rental car concession permitted hereunder, Operator shall comply with the following:

1. Operator shall offer for rental only Vehicles of recent manufacture (not more than two (2) model years old and less than 40,000 miles), except as may be allowed under (D) (2) below. All Vehicles provided by Operator shall be maintained at Operator’s expense in good and safe operating order, free from any known mechanical defects and be in clean, neat, and attractive condition inside and out. Operator shall furnish good, prompt and efficient service and shall at all times have available a sufficient number of Vehicles (a fleet of no fewer than fifty (50)) to meet all reasonably foreseeable demands of the traveling public.

2. Operator may offer for rental antique, vintage, classic or other luxury or prestige automobile or handicapped operated vehicles of good quality, free from any known defect and clean and attractive both inside and out. The City shall have the right to prohibit Operator from offering for rental any such automobile which the City reasonably determines not to meet the standards described in (D) (1) above.

3. Operator shall provide the following services for its Customers at the Airport: (i) accept at least three (3) nationally recognized credit cards and at least one (1) locally named credit or debit cards for payment of Vehicle rental; (ii) provide for a national reservation system for services of Operator at the Airport, and (iii) will rent motor vehicles to customers who are local walk-up customers, ticketed Airline passengers and any other customer who so chooses to rent.
4. Operator shall maintain a sufficient number of trained personnel to ensure that Operator’s Customers will receive prompt and courteous service at all times. All personnel of Operator, while on or about the Premises, shall be polite, clean and neat in appearance and appropriately attired. The City shall have the right to complain to Operator as to the demeanor, conduct or appearance of Operator’s employees, invitees and those doing business with it, or regarding the Operator’s staffing levels, and Operator agrees to take all reasonable steps necessary to resolve such complaint(s).

5. Without limiting any other requirement set forth in this Agreement, Operator shall conduct its concession business operations within the Airport in such manner as shall reduce to a minimum the emanation of noise, vibration, dust, fumes and odors, so as not to interfere with the use of adjacent areas on the Airport.

6. Operator’s rights to use the Premises for the purposes provided in this Agreement are subject to the rights of the City, as City, to monitor compliance with this Agreement to ensure that the Premises are used and operated as required by Operator.

7. If Operator receives (or the City receives and forwards to Operator) any written complaint concerning Operator’s operation of the business at the Airport, Operator shall promptly respond to such complaint in writing within thirty (30) days of its’ receipt and make a good-faith attempt to explain, resolve or rectify the cause of such complaint. Without further notice or demand, Operator shall keep a copy of each such complaint and Operator’s written response for a period of one (1) year from the date of the complaint and shall make the complaint and the written response available to the City upon its request.

8. Operator shall respond in writing to complaints registered by the Airport’s police with respect to violations of traffic regulations committed in the course of Operator’s business by Operator’s agents, employees, invitees and licensees, setting forth such action as have been taken or are immediately contemplated to remedy said violations.

9. Operator shall keep the Premises open for service for such periods during each day and on such days during each week as may be necessary to meet reasonable demands for such services and to properly and adequately serve the public, as determined by the City; provided, Operator shall provide rental car services to Airport customers during all hours of air carrier operations at the Airport. Should the Operator operate more than one concession location in the Rental Car Counter Facility, Operator is not permitted to close one location and direct customers to its other location.

10. Counters will be adequately staffed and open one hour before the first scheduled flight departure and one hour after the last scheduled flight arrival.

11. Operator shall comply with the Airports Rules & Regulations and any amendments to that shall be approved.
12. Operations Violations. Operator's failure to adhere to the operating requirements set forth in this Agreement is reasonably anticipated to result in significant inconvenience to the public, adversely affect the overall commercial business of the Airport, and reduce the amount of rent to be paid to the City. Additionally, City resources will be expended in dealing with violations of this Agreement by Operator. The parties hereby agree that total damages sustained by the City for violations of the provisions of this Agreement addressing this subject matter could be significant, but would be difficult to determine and to track. Therefore, the parties hereto agree that the liquidated damages amounts, set forth below for violation of Agreement terms addressing the referenced subject matter three (3) business days from a notice/occurrence, for the first occurrence only, are reasonable estimates of the loss anticipated to be suffered or incurred by the City. Operator, therefore, hereby agrees that imposition of the liquidated damages set forth below is fair and reasonable and Operator agrees to pay immediately upon demand by the City the following amounts as liquidated damages upon the occurrence of breaches, in any Contract Year, related to the following operation violations:

- $100 per occurrence - first occurrence
- $200 per occurrence - second occurrence
- $300 per occurrence - third occurrence
- $1,000 per occurrence thereafter

For hours of operations violations, liquidated damages are as follows:

- $100 per hour or portion thereof during which location is not open - first occurrence
- $200 per hour or portion thereof during which location is not open - first occurrence
- $300 per hour or portion thereof during which location is not open - first occurrence
- $1,000 per occurrence thereafter

E. Operator shall, at its expense, obtain all permits, licenses, certificates or other authorizations required for conduct of its concession business at the Airport, shall register all Vehicles as may be required by laws and ordinances and display all permits or stickers as may be required. Upon execution of this Agreement and thereafter annually or at the City's request, Operator shall provide evidence to the City that Operator has obtained such permits, licenses, certificates, other authorizations and registrations.

F. Operator shall not use or occupy or permit the Premises to be used or occupied, or do or permit anything to be done in or on the Premises, in whole or in part, in a manner which would in any way violate any certificate of occupancy affecting the Premises, or make void or voidable any insurance then in force with respect thereto, or which may make it impossible to obtain fire or other insurance thereon required to be furnished by Operator under this Agreement, or which will constitute a public or private nuisance, or which will disrupt the safe, efficient and normal operations of the Airport.
G. Operator shall not use or occupy or permit the Premises to be used or occupied, in whole or in part, in a manner which may violate and shall comply with any present or future, ordinary or extraordinary, foreseen or unforeseen, laws, regulations, ordinances or requirements of the federal, state or municipal governments or of any other governmental, public or quasi-public authorities now existing or hereafter created, having jurisdiction in the Premises, whether or not City also is liable for compliance.

H. Operator shall not sell or give away food or beverages on the Premises. Operator may not install vending machines on the Premises for sale of food, beverages or any other items.

I. Operator may, at its own expense and only after receiving written approval from the City, erect and maintain informational signs within and upon the Premises in addition to those provided by City; the size and type of signs are subject to City’s standards and prior written approval.

J. Operator shall not erect, allow or permit to be maintained on the Premises, or upon the exterior or any improvement on the Premises, any billboard or advertising signs, except those which have the prior written approval of the City.

K. Throughout the Term of this Agreement Operator shall employ a qualified, full-time, local resident manager having experience in the management of this type of concession, who shall be available during normal business hours, and be delegated sufficient authority to ensure the competent performance and fulfillment of the responsibilities of Operator under this Agreement, and to accept service of all notices provided for herein. Operator shall provide the City with emergency telephone numbers at which Operator’s local manager or designated local employee with authority to speak for Operator may be reached on a 24-hour basis.

L. Operator shall at its sole expense, provide and use suitable receptacles for the storing of all trash, garbage, and other refuse created in the conduct of its business or operations in the Premises, or arising from Operator’s exercise of any right or obligation under this Agreement. Trash receptacles in the Ready/Return are provided for customers disposal of trash. These receptacles shall not be used for trash generated from Operator’s activities or employees and shall not be used for disposing of trash left in returned vehicles. Such cleaning shall take place at the Operator’s service facility.

M. Operator’s employees shall be required to obtain an Airport-issued identification badge conditioned upon successful completion of a background check and other requirements as stated in the Airport Rules and Regulations. Such badge must be obtained within thirty (30) days of execution of this Agreement. At that time, Operator’s employees may request a parking sticker for their personal vehicle. See Article IV(C) above.

N. Operator shall repair or pay for any and all damages to City and its property caused by any wrongful, intentional or negligent acts or omissions by Operator, its agents, contractors or employees arising out of Operator’s use or occupancy of the Premises or in the exercise of any right or obligation granted herein.
O. Operator shall operate or cause to be operated all its Vehicles in a safe manner and in accordance with all applicable rules and regulations, and with all federal, state and local laws and to strictly observe all posted speed limits.

P. Operator shall be a party to a Ready/Return Agreement at all times this Agreement is effective.

Q. Operator’s employees shall be required to obtain an Airport-issued vehicle permit for any personal vehicle which Operator’s employees intend to park in the Ready/Return.

R. All of Operator’s computer software, hardware, firmware, payment card processing policies, procedures and related services utilized to process City of Dayton revenue transactions shall be:
   1. Completed by a qualified professional payment card processing firm acceptable and approved by the City of Dayton; and,

Operator shall provide and agrees to maintain the PCI compliance reporting Attestation of Compliance (“AOC”) Form(s) in its/their latest version(s), or within the year of record as requested and/or in an annual transmittal to the City of Dayton. (https://www.pcisecuritystandards.org/documents/PCI-DSS-v3_2-AOC-Merchant.docx?agreement=true&time=1493826893795 or https://www.pcisecuritystandards.org/documents/PCI-DSS-v3-AOC-Offeror.docx?agreement=true&time=1493826893795).

ARTICLE VII
CITY RIGHTS AND OBLIGATIONS

A. The City agrees to provide normal heating, air conditioning and electrical service to the Rental Car Counter Facility as reasonably required. Operator shall pay for its own telephone service and installation of any telephone or computer connections or equipment or for extension of any electrical facilities to provide service. The City reserves the right to interrupt temporarily the heating, air conditioning or electrical services furnished to the Premises to make emergency repairs or for other reasonable purposes, and the City shall restore said services as soon as reasonably possible. The City shall endeavor to provide Operator with reasonable notice of such interruptions when possible. The City shall have no responsibility or liability for any failure of heating, air conditioning, electrical or any other service to the Premises, the Rental Car Counter Facility or to the Airport for any other reason whatsoever.

B. All rights not expressly granted to Operator herein are reserved by the City, including, without limitation, the following rights (which may be exercised by the City's officers, employees, agents, licensees, contractors or designees):
1. to have, at any and all reasonable times, and with reasonable notice to Operator when possible, the full and unrestricted access to the Premises for the purpose of inspecting the Premises and doing any and all things, which the City is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport and in the exercise of the City’s police power;

2. to enter the Premises at any time;

3. to enter the Premises to maintain, replace, repair, alter, construct or reconstruct existing and future utility, mechanical, electrical and other systems or portions thereof on the Airport, including without limitation, systems for the supply of heat, water, gas, fuel, electricity, and for the furnishing of sprinkler, sewage, drainage, and telephone service, including all related lines, pipes, mains, wires, conduits and equipment, and;

4. to adopt and enforce reasonable rules and regulations with respect to the use of the Airport and facilities thereon, which Operator agrees to observe and obey; and

5. to exercise such other rights as may be granted the City elsewhere in this Agreement.

Except in the case of an emergency or previous arrangement with the Operator, City’s entry into the Premises shall be during reasonable business hours after providing reasonable advance notice, and in the presence of Operator’s representative.

All rights in this Subsection (B) shall be exercisable without notice (except as expressly provided in this Section) and without liability to Operator for damage or injury to property, person or business, and without effecting an eviction or disturbance of Operator’s use or possession or giving rise to any claim for setoff or abatement of Fees or affecting any of Operator’s obligations under this Agreement. Notices under this Subsection (B) may be given verbally in an emergency or where entry does not materially affect Operator’s use and occupancy. Reasonable notice shall in no event require more than twenty-four (24) hours’ notice.

C. City warrants quiet enjoyment of the rights and privileges granted herein, during the term hereof, upon the performance of Operator’s covenants contained herein, subject to Subsection (B) of this Article VII.

D. City will remove, during normal business hours, all collected trash, garbage, and refuse from the Premises with the exception of any construction, renovation, Ready/Return area or relocation debris.

E. In an emergency situation or upon occurrence of an Event of Default, the City may (but shall not be obligated so to do), and without waiving or releasing Operator from any obligation of Operator hereunder, make any payment or perform any other act which Operator is obligated to make or perform under this Agreement in such manner and to such extent as the City may deem desirable; and in so doing the City shall also have the right to enter upon the Premises for any purpose reasonably necessary in connection therewith and to pay or incur any other
necessary and incidental costs and expenses, including reasonable attorneys' fees. All sums so paid and all liabilities so incurred by the City, together with interest thereon, shall be deemed additional fees hereunder and shall be payable to the City upon demand. The performance of any such obligation by the City shall not constitute a waiver of Operator’s default in failing to perform the same. Inaction of the City shall not be considered as a waiver of any right accruing to it pursuant to this Agreement. The City shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business or other damage of Operator any other occupant of the Premises or any part thereof, by reason of exercise of its rights under this Subsection (E).

**ARTICLE VIII**

**RENTS, FEES, PAYMENTS AND PERFORMANCE BOND**

A. Premises Rent. Operator shall pay to the City, in advance on the 1st day of each month, a premise rent for the Premises described in Article IV(A). For the period commencing January 1, 2022 through December 31, 2022, the Operator will pay the sum of what will be adopted as stated below for 2022. The sum of Sixty-Six Dollars and Sixty-Four Cents ($66.64) per square foot per year (the rate for 2021) is inserted into this Agreement for purposes of planning only. This rate is subject to updating annually upon adoption of the Airlines Rates and Charges Resolution by the Commission of the City of Dayton.

B. Concession Fee. As consideration for the privilege of operating the concession hereunder, Operator shall pay to the City each Contract Year, for the full term of this Agreement, a Concession Fee. The Concession Fee is the greater of:

1. The Percentage Concession Fee as defined in Article I;

   OR

2. The respective amount shown below as the Operator’s Minimum Annual Guarantee:

   - January 1, 2022 to December 31, 2022: $250,000.00
   - January 1, 2023 to December 31, 2023: $250,000.00
   - January 1, 2024 to December 31, 2024: $250,000.00

The MAG shall be paid in equal monthly installments, in advance, on the first day of each month during the Term.

C. Additional Fees. City may invoice Operator additional fees for items including, but not limited to, employee parking, badging fees, background checks and additional vehicle storage. The City may assess reasonable, non-discriminatory charges for these items. Operator shall pay for such additional fees within thirty (30) days of invoicing by the City.

D. In the event of termination of this Agreement on a date other than December 31st in any year of the Agreement, the MAG and Premises Rent shall be prorated. Proration for a fractional Contract Year shall be determined by multiplying the number of days that have transpired that year by 1/365th of the annual MAG and Premises Rent.
E. On or before the twentieth (20th) day of each month, Operator shall furnish to the City a sworn or verified statement of its total Gross Revenues for the preceding month, with the Concession Fee calculated. No additional payment is due at this time. The Concession Fee will be reconciled at Contract Year end, as described in Paragraph G below. This statement shall be in the format (as given to Operator by the City) acceptable to the City and shall contain detailed financial information, broken down by categories of items representing Gross Revenues.

F. Operator shall furnish each year during the term of this Agreement, a written statement, certified by an independent Certified Public Accountant, to the City stating that in his or her opinion the percentage fees paid by Operator to City during the preceding year pursuant to this Agreement were made in accordance with the terms of this Agreement. Said statement shall be submitted by Operator, to be received by the City within ninety (90) days of the end of each Contract Year. Such statement shall also contain a list of the Gross Revenue receipts, by month, as shown on the books and records of the Operator and which were used to compute the percentage fee payments made to City during the period covered by such statement.

G. The Concession Fee will be reconciled at the end of each Contract Year. In the event an annual report indicates Operator’s underpayment of the Concession Fee during said annual report Contract Year, the amount of such underpayment shall be remitted from Operator to the City not later than thirty (30) days from the date the annual report was submitted to the City. In the event an annual report indicates overpayment of Concession Fees to the City, Operator shall subtract the amount of such overpayment from its next monthly MAG payment; except that, if, after the last Contract Year of this Agreement, Operator is no longer a Concessionaire at Airport, such settlement shall be remitted from the City to Operator, provided Operator is not then in default under the terms of this Agreement. This provision shall survive the expiration or termination of this Agreement.

H. Prior to the Commencement Date, Operator 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, a performance bond for the payments required hereunder, in an amount equivalent to one half (1/2) the MAG for the first Contract Year. The City may draw upon the Performance Bond if Operator 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.

I. Except as provided in Subsection (J) below, all rental and fees payable hereunder shall be remitted by Operator to the following address or at such other address as City shall direct in writing:

    City of Dayton, Ohio
    P. O. Box 632094
    Cincinnati, OH 45263-2094
J. All annual reports and monthly statements of Gross Revenues together with the associated payments to the City, as described 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

K. In the event Operator fails to make any payments as required to be paid under the provisions of this Agreement within ten (10) calendar days of the due date, late charges at the rate of two percent (2%) per month shall accrue against all such delinquent payment(s) from the original due date until City actually receives payment. The right of City to require payment of such late charges and the obligation of City to pay same shall be in addition to and not in lieu of the right of the City to enforce other provisions herein, including termination of this Agreement, or to pursue other remedies provided by Law.

L. In the event that the following condition exists during the term of this Agreement, the MAG hereinabove provided for in Article VIII(B)(2) shall be subject to proportional abatement for the period of time the condition exists:

1. A major traffic reduction at the Airport. A major traffic reduction shall be defined as a greater than twenty five percent (25%) reduction in the number of passengers deplaning on scheduled airline flights at the Airport during any period of three (3) consecutive calendar months as compared to the number of such deplaning passengers in the same calendar months during the preceding calendar year.

2. The abatement amount for those months that are abated as defined in Article VIII(L)(1) will be the prorated reduction of that month’s 1/12th payment of the MAG. For example, if May, June and July have a traffic reduction of 27%, 30% and 26% respectively, then the 1/12th MAG payment for May would be reduced by 27%, June would be reduced by 30%, and July would be reduced by 26%.

3. If the major traffic reduction continues for additional months, the proportional abatement will continue as well, until there is a month when traffic does not fall below the 25% threshold, at which time the full MAG payment shall be made for such month.

This major traffic reduction can only be identified after any three-month period ends; however, the major traffic reduction exists for any three-month period when all three months had a not less than 25% reduction in passenger deplanements. Overpayments of the MAG will be credited to the Operator during the year-end reconciliation process described in Article VIII(G).
ARTICLE IX
CUSTOMER FACILITY CHARGE

Operator shall comply with Section 37.11 of the Revised Code of General Ordinances of the City of Dayton, as may be amended, during the term of this Agreement regarding the imposition and collection of a CFC on all vehicle rental transactions originating at the Airport.

ARTICLE X
INDEMNIFICATION

A. Operator shall defend, indemnify, save and hold harmless the City, its elected officials, officers, employees, agents and volunteers, from and against any and all claims and actions, and all expenses incidental to the investigation and defense thereof, based upon or arising out of any accident or damages arising from, or in any way connected with, Operator's use or occupancy of the Premises or any condition of the Premises and/or Operator's exercise of any right granted herein (including operation of its concession), and/or Operator's performance for breach or default in the performance of any obligation to be performed pursuant to this Agreement, and/or any wrongful, intentional or negligent act or omission of Operator, its agents, contractors and employees.

B. In the event Operator, its agents, contractors or employees violate any security measure at the Airport, including, but not limited to, any Federal Aviation Administration or Transportation Security Administration security laws, rules, regulations, orders or directives, Operator 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.

C. Operator shall defend, indemnify and hold harmless the City, its elected officials, officers, employees, agents and volunteers, from and against any mechanics or other lien or order for the payment of money filed against the Premises, the City or any property of the City, arising out of any act or omission of Operator or anyone claiming through or under Operator. Operator shall, at Operator's expense, cause the same to be cancelled or discharged of record and shall save and hold harmless the City from and against any and all costs, expense, claims, losses or damages including reasonable attorney fees resulting therefrom or by reason thereof.

D. City shall not be liable to Operator or to Operator's agents, representatives, contractors or employees, for any injury to, or death of, any of them or of any other person or for any damage to any of Operator's property or loss of revenue, caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport; nor, to the extent permitted by law, shall City have any liability whatsoever to Operator, Operator's agents, representatives, contractors or employees, for any damage, destruction, injury, loss or claim of any kind arising out of the use by any of the aforementioned of any parking lot located on the Airport. City shall not be liable to Operator for damage to property of Operator or any loss of revenues to Operator resulting from City's acts or omissions in the maintenance and operation of the Airport or failure to operate the Airport.
E. The obligations of Operator under this Article X shall survive expiration or termination of this Agreement, and, shall not be affected in any way by the amount of or the absence in any case of covering insurance, or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any part thereof.

F. The City's elected officials, officers, agents and employees shall have no personal liability with respect to any provision of this Agreement or any obligation or liability arising from this Agreement or in connection with this Agreement or the Premises in the event of a breach or default by City of any of its obligations.

G. Notwithstanding any other provision of this Agreement to the contrary, to the extent permitted by law, Operator waives any and every claim for recovery from the City for any and all loss or damage to the Premises or to the contents thereof, which loss or damage is covered by valid and collectable physical damage insurance policies maintained by Operator or which would have been recoverable if the insurance required hereunder had been maintained by Operator, to the extent that such loss or damage is recoverable, or would have been recoverable, as applicable, under said insurance policies. As this waiver will preclude the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), Operator agrees to give each insurance company which has issued, or in the future may issue, its policies of physical damage insurance, written notice of the terms of this waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverage by reason of said waiver. Operator shall require any subtenant to include similar waivers of subrogation in favor of the City.

ARTICLE XI
INSURANCE

A. Operator, at its sole cost and expense, shall procure and maintain, or cause to be maintained, at all times during the Term, the following insurance, with insurance companies authorized to do business in the State of Ohio and having at least an “A” rating from A.M. Best and covering all operations under this Agreement, whether performed by Operator or by persons or entities retained by Operator:

1. Worker's Compensation and Occupational Disease Insurance

Worker's Compensation and Occupational Disease Insurance, in accordance with the laws of the State of Ohio, or any other applicable jurisdiction, covering all employees who are to provide a service under this Agreement, and Employer's liability coverage with limits of not less than Five Hundred Thousand Dollars ($500,000) for each accident or illness. Coverage extensions shall include other states endorsement, alternate employer and voluntary compensation endorsement, when applicable.
2. **Commercial General Liability Insurance** (Primary and Umbrella)

Commercial General Liability Insurance with limits of not less than Five Million Dollars ($5,000,000) per occurrence combined single limit, for bodily injury and property damage liability. Coverage extensions shall include the following: All Premises and operations, products/completed operations, explosion, collapse, underground, independent contractors, broad form property damage, separation of insured and contractual liability (with no limitation endorsement). The City, its elected officials, officers, agents, volunteers and employees, shall be named as additional insureds, on a primary, non-contributory basis for any liability arising directly or indirectly from this Agreement.

3. **All Risk Property Insurance**

Operator shall obtain an “All Risk Property” policy, including improvements and betterments covering damage to building, machinery, equipment or supplies in the amount of full replacement value of the property constituting within the Premises. Coverage extensions shall include business interruptions/loss of rents (in an amount not less than the sum of Fees then payable under this Agreement for a period of one year), and flood. City is to be named as a loss payee.

The Operator shall be responsible for all loss or damage to personal property (including but not limited to material, equipment, tools and supplies), owned or rented by Operator.

4. **Automobile Liability Insurance**

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, Operator shall provide Comprehensive Automobile Liability Insurance with limits of not less than Five Million Dollars ($5,000,000) per occurrence combined single limit, for bodily injury and property damage. City is to be named as an additional insured on a primary, non-contributory basis.

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B. Original certificates of insurance evidencing the required coverage to be in force on the Commencement Date, and all renewal certificates of such insurance, shall be provided to City. At the City’s request, Operator shall furnish complete copies of all policies of insurance. The receipt of any certificate or policy does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Agreement. The failure of the City to obtain certificates or other insurance evidence from Operator shall not be deemed to be a waiver by the City. Operator shall advise all insurers of these Agreement provisions regarding insurance. Non-conforming insurance shall not relieve Operator of its obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Agreement, and the City retains the right to terminate this Agreement as provided in Article XIII until proper evidence of insurance is provided. All policies of insurance...
shall provide for a minimum of thirty (30) days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

C. If Operator fails to obtain or maintain any of the insurance policies under this Agreement or to pay any premium in whole or in part when due, City may (without waiving or releasing any obligation or default by Operator hereunder) obtain and maintain such insurance policies and take any other action which City, including reasonable attorney’s fees, court costs and expenses, shall be reimbursed by the Operator upon demand by City.

D. Operator shall require all contractors to carry the insurance required herein, or Operator or its contractors may provide the coverage for any or all contractors, and, if so, the evidence of insurance submitted shall so stipulate. Any and all deductibles or self-insured retentions on referenced insurance coverages shall be borne by Operator or its contractors. Operator and its contractors agree that insurers shall waive their rights of subrogation against the City, its employees, elected official, agents, or representatives. Operator and its contractors expressly understand and agree that any coverages and limits furnished by Operator or its contractors shall in no way limit the Operator or its contractors’ liabilities and responsibilities specified within this Agreement or by law. Operator and its contractors expressly understand and agree that any insurance or self-insurance programs maintained by the City shall not contribute with insurance provided by the Operator or its contractors under this Agreement.

E. The insurance required hereunder shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law. The City maintains the right to modify, delete alter or change these requirements.

F. The insurance required by this Agreement, at the option of Operator, may be effected by blanket or umbrella policies issued to Operator covering the Premises and other properties owned or leased by Operator, provided that the policies otherwise comply with the provisions of this Agreement and allocate to the Premises the specified coverage, without possibility of reduction or coinsurance by reason of, or damage to, any other premises covered therein.

ARTICLE XII
DAMAGE AND DESTRUCTION OF PREMISES

A. If improvements on a portion of the Premises are damaged, in whole or in part, by fire or casualty, and there is not substantial damage to the Rental Car Counter Facility in which such portion of the Premises is located, or material damage to such Rental Car Counter Facility as described in Subsection (B), Operator may use insurance proceeds from insurance it carried to pay for the work as it progresses, and the City shall permit any such proceeds to be made available.

B. If there is material damage to a portion of the Rental Car Counter Facility or damage to a material access point or building system(s) serving such portion of the Rental Car Counter Facility, by a fire or casualty, rendering such portion of the Rental Car Counter Facility not usable, whether or not improvements on the Premises are damaged, then where operations in the Premises are severely curtailed or such portions of the Premises are unusable, such portion of the
Premises shall be deleted from the Premises unless and until the City repairs and restores the damage to the Rental Car Counter Facility within the Term of this Agreement so that the affected portion of the Rental Car Counter Facility is again usable. Operator shall repair and restore any damaged improvements to the Premises at its expense (but it may use insurance proceeds from insurance it carried for the work as the work progresses, and the City shall permit any such proceeds to be made available) if the City repairs and restores the damage to the Rental Car Counter Facility during the Term.

Notwithstanding the foregoing, the City shall not be obligated to repair or restore the Rental Car Counter Facility, and the space deleted shall not be re-included in the Premises if the City determines not to include space for car rental counters in the portion of the Rental Car Counter Facility previously rendered unusable.

C. In the event the Terminal is substantially damaged or destroyed, whether or not improvements to the Premises are substantially damaged or destroyed, and as a result of such damage or destruction, flight operations with respect to the Terminal are terminated or substantially curtailed for ninety (90) days or more, then either the City or the Operator may delete the portion of the Premises located in the Terminal from the Premises or terminate this Agreement.

D. During any period in which Operator is unable to use the portion of the Premises in the Rental Car Counter Facility because of damage or destruction to the improvements on the Premises or the Rental Car Counter Facility, the rent payable for that portion of the Premises in the damaged or destroyed Rental Car Counter Facility shall be abated for the period during which such damage to the Rental Car Counter Facility renders the Premises unusable or operations are so curtailed or terminated. Except for such abatement of rents due, the Operator shall have no claim against the City for any damage suffered by reason of any such damage, destruction, repair or restoration. There shall be no abatement of Concession Fees. Upon any deletion of a portion of the Premises from this Agreement Operator shall surrender such portion of the Premises to the City.

E. If any improvements to the Premises are not diligently repaired by Operator where required within forty-five (45) days or if any space is deleted from the Premises, then the City shall be entitled to all insurance proceeds payable on account of improvements in such space. Where the Operator is obligated to repair or restore improvements, Operator must do so notwithstanding that insurance proceeds may be insufficient.

**ARTICLE XIII**

**TERMINATION BY CITY**

A. For purposes of this Agreement, the occurrence of any of the following shall constitute an "Event of Default":

1. The failure by Operator to pay any Fees as required under this Agreement when due and/or the failure of Operator to and to remit all CFCs as required by Section 37.11 of
the Revised Code of General Ordinances, and the failure to cure same within ten (10) days after the receipt of written notice thereof by Operator;

2. The failure by Operator on or after the date of this Agreement to perform any other representation, warranty or covenant or contract required to be performed by Operator in this Agreement and the failure of Operator to remedy such default within a period of thirty (30) days after receipt of written notice by the Operator;

B. If an Event of Default occurs, and after the expiration of the applicable period cure period specified for such Event of Default, the City may terminate this Agreement. In the event of termination and in addition to any and all rights and remedies provided elsewhere herein or at law or equity, the City may repossess the Premises and shall be entitled to recover as damages: (i) all of the Fees accrued and unpaid for the period up to and including such termination date; and (ii) any other sums for which Operator is liable or in respect of which Operator has agreed to indemnify City under any provisions of this Agreement which may be then due and owing.

ARTICLE XIV
TERMINATION BY OPERATOR

A. Operator may terminate this Agreement and all of its obligations hereunder, after the happening and during the continuance of any one of the following events (none of which, however, shall result in any liability to the City or provide Operator with any remedy other than an option to terminate as set forth herein):

1. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport or any part thereof so as to prevent Operator’s use of the Premises in its conduct of its car rental business and the remaining in force of such injunction, not stayed by way of appeal or otherwise, for a period of at least six (6) months;

2. The substantial restriction of City’s operation of the Airport by action of any governmental agency or department (other than the City or its agencies and departments) and continuance thereof for a period of not less than six (6) months, provided such restriction adversely affects all of Operator’s operations at the Airport.

B. Any termination by Operator pursuant to this Article shall not occur unless the Operator notifies the City of its election to terminate at least thirty (30) days prior to the effective date of such termination, together with a statement of the grounds for termination. If Operator does not give such notice during the period that any of the above events is occurring, then Operator’s right to terminate this Agreement as provided in this Article shall not be available to Operator until another happening of any one of said events.
ARTICLE XV
SURRENDER AND RETURN OF THE PREMISES

Upon termination of this Agreement or on the Expiration Date, whichever is earlier, Operator shall return the Premises in as good condition and repair as at the Commencement Date, subject to ordinary wear and tear, and Operator shall remove all personal property and trade fixtures of Operator from such portion of the Premises prior to the date of expiration or termination. Further, at the City's request, Operator shall also remove all movable, non-permanent improvements installed by or for Operator prior to or within ten (10) days after the expiration or termination of the Agreement, and Operator shall repair any damage to the Premises caused by Operator's removal of the personal property, trade fixtures and improvements. All such removal and repair required of Operator pursuant to this Section shall be at Operator's sole cost and expense. If Operator fails to remove any items required to be removed by it hereunder or fails to repair any resulting damage prior to or within ten (10) days after expiration or termination of the Agreement, then the City may remove said items, including the improvements, and repair any resulting damage and Operator shall pay the cost of any such removal and repair, together with interest thereon.

ARTICLE XVI
NON-DISCRIMINATION AND AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM (ACDBE)

A. The Operator agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Operator transfers its obligation to another, the transferee is obligated in the same manner as the Operator.

The provision obligates the Operator for the period during which the property is owned, used, or possessed by the Operator and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

B. During the performance of this Agreement, the Operator, for itself, its assignees and successors in interest agrees as follows:

1. Compliance with Regulations: Operator will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are attached as Exhibit C and which are herein incorporated by reference and made a part of this Agreement.

2. Nondiscrimination: Operator, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. Operator will not participate directly or
indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Operator for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Operator of the Operator’s obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color or national origin.

4. Information and Reports: Operator will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Operator is in the exclusive possession of another who fails or refuses to furnish the information, the Operator will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of Operator’s noncompliance with the non-discrimination provisions of this Agreement, the City will impose such Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending this Agreement, in whole or in part.

6. Incorporation of Provisions: The Operator will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Operator will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Operator becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Operator may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Operator may request the United States to enter into the litigation to protect the interests of the United States.

C. Operator shall abide by all U. S. Department of Transportation requirements regarding DBE and ACDBE requirements and reporting procedures.
D. It is the goal of the City to encourage participation by organizations classified as Airport Concession Disadvantaged Business Enterprises (ACDBE) as defined in 49 CFR Part 23 for a concession at the Airport. The City established an overall goal for ACDBE participation in Airport Concessions of 13.46% of the total gross revenues of all Airport Concessions for federal fiscal years 2022, 2023 and 2024. A new goal will be established for subsequent federal fiscal years per the FAA requirements, and will be reported to the Operator upon its’ adoption. Operator shall provide information under this Article XVI as requested by City for City’s reporting requirements for FAA or any other governmental entity. Operator is required to submit quarterly statements, provided in Exhibit D (subject to change), to the City regarding their participation in their ACDBE participation goal.

E. This Agreement is subject to the requirements of the U.S. Department of Transportation’s regulations, 49 CFR Part 23. The Operator 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 Operator 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.

ARTICLE XVII
ASSIGNMENT AND SUBLETTING

A. Except with the consent of City and as the result of a merger or acquisition, Operator shall not, (a) assign, transfer, mortgage, pledge, hypothecate or encumber or subject to or permit to exist upon or be subjected to any lien or charge, this Agreement or any interest under it; (b) allow to exist or occur any transfer of or lien upon the Premises, this Agreement or Operator’s interest herein by operation of law; (c) sublease the Premises or any part thereof; or (d) permit the use or occupancy of the Premises or any part thereof for any purpose not provided for herein or by anyone other than Operator. The City may withhold its consent to the foregoing in its sole discretion. The requirements of this Article shall apply to any transaction or series of transactions that shall have the same effect as any of the aforementioned occurrences, and in no event shall this Agreement be assigned or assignable by voluntary or involuntary bankruptcy proceedings or otherwise, and in no event shall this Agreement or any rights or privileges hereunder be an asset of Operator under any bankruptcy, insolvency or reorganization proceedings.

B. If Operator desires, as a result of an acquisition or merger, to assign its interest under this Agreement or sublease any part of Premises, Operator shall make a written request for authorization in a notice to the City. Such notice shall state the name and address of the proposed sub-Operator or assignee and include a copy of the proposed sublease or assignment and all related documents, and, including a financial statement of the sub-Operator or assignee, disclosures and information required by City.

C. Consent by City to any assignment or sublease shall not operate to relieve, release or discharge Operator of or from any obligations, whether past, present or future, under this
Agreement, and Operator shall continue fully liable hereunder except to the extent, if any, expressly provided for in such consent. Consent by City in any one instance shall not be deemed to be consent to or relieve Operator from obtaining City's consent to any subsequent assignment or sublease. Consent by City shall be conditioned upon agreement by the sub-Operator or assignees to comply with and be bound by all of terms, covenants, conditions, provisions and agreements of this Agreement to the extent of the space subleased or assigned, and an agreement that City shall have the right, but not the obligation, to enforce the terms and provisions of any such assignment or sublease affecting City's interests and Operator shall deliver to City within thirty (30) days after execution, an executed copy of each such sublease or assignment containing an agreement of compliance by each such sub-Operator and assignee. Operator shall pay all of City's costs, charges and expenses, including attorney's fees, incurred in connection with any assignment or sublease requested or made by Operator.

**ARTICLE XVIII**
**GENERAL PROVISIONS**

A. The term 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.

B. Notices to the City provided for in this Agreement shall be sufficient if sent by certified or registered U. S. mail, postage prepaid, addressed to:

Department of Aviation  
James M. Cox Dayton International Airport  
3600 Terminal Drive, Suite 300  
Vandalia, Ohio 45377  
Attn: Director of Aviation

or such other address as the City shall direct in writing.

C. Notices to Operator provided for in this Agreement shall be sufficient if sent by certified or registered U. S. mail, postage prepaid, addressed to:

Byers Car Rentals, LLC dba  
Thrifty  
4185 E. 5th Ave.  
Columbus, OH 43219  
Attn: Josh Pierre

or such other address as Operator shall direct in writing.

D. Operator 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 the Agreement.

E. Any headings of 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 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.

F. By execution of this Agreement, Operator 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.

G. Operator shall, upon its execution and delivery of the required copies of this Agreement to the City, deliver to the City the following instruments and documents:

1. Certificates of insurance evidencing the insurance required by this Agreement;
2. Performance Bond.

H. Operator (and any person claiming by or through Operator) 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 whatsoever.

I. Neither Operator nor any contractor of Operator 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 Premises.

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

K. The City may amend or modify this Agreement, at any time, provided that such amendment or modification makes specific reference to this Agreement, is executed in writing, signed by a duly authorized representative of City and Operator and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.

L. This Agreement, including the incorporated Ready/Return Agreement and any executed service facility lease, represents the entire and integrated agreement between City and Operator. This Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreement or contracts, whether oral or written, relating to the subject matter of this Agreement.
M. A waiver by the City of any breach of this Agreement shall be in writing. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it is given and shall not affect the City’s rights with respect to any other or further breach.

N. 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.

O. 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.

(BALANCE OF THIS PAGE INTENTIONALY LEFT BLANK)
IN WITNESS WHEREOF, the City and Operator, each by a duly authorized representative, have executed this Agreement as of the date first set forth above.

WITNESSED BY:

Byers Car Rentals, LLC dba Thrifty

By:

Its: 11/1/2021

CITY OF DAYTON, OHIO

City Manager

APPROVED AS TO FORM AND CORRECTNESS:

City Attorney

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

__________________________, 2021

Min/Bk. ___________ Pg. ___________

Clerk of the Commission
EXHIBIT 1 to the Rental Car Ready/Return Agreement

Ready Return Block Layout.
EXHIBIT B to the NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT

Rental Car Counter Facility Layout
EXHIBIT C to the NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Agreement, the Operator, for itself, its assignees, and successors in interest (hereinafter referred to as the “Operator”) agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).
EXHIBIT D to the NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT

ACDBE Rental Car Annual Participation Report - Quarterly Reporting

Fiscal Year: October 1, 20____ - September 30, 20____

ACDBE Participation Contract Goal: ___%  
Prime Concessionaire Total Gross Revenue: $____________
Total ACDBE Participation: $____________

Annual Reports are required to be submitted by the 30th day of the month following the end of each fiscal year. The information received will be compiled and reported to the FAA in accordance with 49 CFR Part 23.

PART I: CONTACT INFORMATION

<table>
<thead>
<tr>
<th>Concessionaire:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td></td>
</tr>
<tr>
<td>Contact Person/Email:</td>
<td></td>
</tr>
<tr>
<td>Phone No./Fax No.:</td>
<td></td>
</tr>
</tbody>
</table>

PART II: ACDBE Participation

In order to count toward goal achievement, the listed firm(s) must be certified as Airport Concession Disadvantaged Business Enterprises ("ACDBE") by the State of Ohio's certification program. (Certification can be verified at http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/DBEDirectory.aspx)

<table>
<thead>
<tr>
<th>ACDBE Firm Name Address &amp; Phone No.</th>
<th>Total ACDBE Participation to Date in Dollars (for Fiscal Year Oct. 1 – Sept. 30)</th>
<th>Nature of Relationship with ACDBE Firm</th>
<th>Race/Gender of Disadvantaged Owner with Largest Ownership Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name:</td>
<td>$_________________________</td>
<td>□ Prime Concession</td>
<td>□ Black</td>
</tr>
<tr>
<td>Address:</td>
<td></td>
<td>□ Subcontractor</td>
<td>□ Hispanic</td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ Management Contract</td>
<td>□ Asian-Pacific American</td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ Goods/Services</td>
<td>□ Asian-Indian American</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>□ Non-Minority Women</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>□ Other</td>
</tr>
<tr>
<td>Phone No.:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Email:</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Business Type:</th>
<th>Shortfall Explained:</th>
<th>Does this vendor have a lease or sublease?</th>
<th>Does the agreement have an option to renew?</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Car- Rental- Insurance</td>
<td>Does this vendor have a lease or sublease?</td>
<td>□ Yes</td>
<td>□ Yes</td>
</tr>
<tr>
<td>□ Car- Rental- Vending</td>
<td>□ Yes Agreement Dates:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>□ Car- Rental- Office Supplies</td>
<td>□ No</td>
<td></td>
<td></td>
</tr>
<tr>
<td>□ Car- Rental- Uniforms</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>□ Car- Rental- Gas: Oil</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>□ Car- Rental- Other (Explain business type below)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

34
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE ("ACDBE")
RENTAL CAR ANNUAL PARTICIPATION REPORT
QUARTERLY REPORTING

<table>
<thead>
<tr>
<th>NON-ACDBE Subconcession(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAME</td>
</tr>
<tr>
<td>------</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

PART III: QUARTERLY REPORTING - PRIME CONCESSIONAIRE

Quarterly Reports are required to be submitted by the 30th day of the month following the end of each annual quarter. The information received will be compiled and reported on the below graph.

<table>
<thead>
<tr>
<th>Quarter</th>
<th>Gross Receipts</th>
<th>ACDBE Participation</th>
<th>Actual %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Quarter</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Jan 1, 20__ - Mar 30, 20__)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2nd Quarter</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Apr 1, 20__ - Jun 30, 20__)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3rd Quarter</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Jul 1, 20__ - Sep 30, 20__)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4th Quarter</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Oct 1, 20__ – Dec 31, 20__)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

I hereby certify that the information contained in this report is true and correct:

__________________________
Signature of Authorized Representative

__________________________
Print Name/Title

__________________________
Date

For BOTH Annual and Quarterly Reporting:

In the event the Prime Concessionaire has not achieved the ACDBE participation contract goal, this report must be accompanied by a corrective action plan and written documentation evidencing the Prime Concessionaire’s good faith efforts to achieve the ACDBE participation contract goal.
City Manager’s Report

From 3210 - Aviation/AP Admin & Finance
Supplier, Vendor, Company, Individual
EAN Holdings, LLC dba Alamo Rent A Car and Enterprise Rent-A-Car
Address 4600 McAuley Place
Cincinnati, OH 45242

Date December 29, 2021
Expense Type Lease Agreement
Total Amount $1,890,306.64 thru 12/31/2024

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aviation Operating-MAG</td>
<td>51000-3216-23344-43</td>
<td>$1,721,974.00</td>
</tr>
<tr>
<td>Aviation Operating-Rent</td>
<td>51000-3216-23344-43</td>
<td>$168,332.64</td>
</tr>
</tbody>
</table>

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

Description

NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT
AT THE DAYTON INTERNATIONAL AIRPORT

The Department of Aviation requests permission to enter into an Agreement with EAN Holdings, LLC dba Alamo Rent A Car and Enterprise Rent-A-Car. A Request for Proposals (RFP) was issued in June 2020 for six available rental car locations at the Dayton International Airport. Five responses were received with all five companies being recommended for agreements with the City.

EAN Holdings, LLC dba Alamo Rent A Car and Enterprise Rent-A-Car is an incumbent operator, will dual brand leasing one (1) counter. They will pay 10% of gross revenues or the Minimum Annual Guarantee (MAG), whichever is greater, plus rents for counter, office, queuing and common space in the Rental Car Counter Facility building.

Rents to the City are anticipated to be $1,721,974.00 for the 3-year MAG and $168,332.64 for the 3-year counter rent, totaling $1,890,306.64.

This Concession and Lease Agreement is effective for a three (3) year period, commencing on January 1, 2022 and terminating/expiring on December 31, 2024. There are no options for renewal.

The Department of Law has reviewed and approved the Agreement as to form and correctness. Two (2) Certificates of Revenue 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 EAN Holdings, LLC dba Alamo Rent A Car and Enterprise Rent-A-Car 
Attn Controller, Mike Cullen

Address 3700 Park 42 drive, Suite 100A

City Cincinnati State OH Zip+4 45241 - 2083

Customer # ___________________ Address Location # ___________________

Federal ID# 26-4086616

Revenue Information: Fund 51000 Organization 3216 Revenue 23344 Program 43

Contract Information: Contract Start Date 01/01/2022 Contract Expiration Date 12/31/2024

Billing Information: Rate: $4,675.91 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 __________________ Rate Change Amount __________________

Description of Services (wording on invoice): Effective 1/1/2022.

Terminal space rent at Dayton International Airport

842 sf counter, office, queuing and common space in the rental car facility @ 66.64/sf per year for

2021-2022, subject to change in January 2022

Departmental Approval __________________

TO BE COMPLETED BY FINANCE

Revenue Contract Number 1-60384 Auditor D Billy Date 12/22/2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

Director of Finance __________________ 12/22/2021
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

**Customer Information:**
- **Name:** EAN Holdings, LLC dba Alamo Rent A Car and Enterprise Rent-A-Car
  - Attn. Controller, Mike Cullen
- **Address:** 3700 Park 42 Drive, Suite 100A
- **City:** Cincinnati
- **State:** OH
- **Zip+4:** 45241
- **Zip Code:** 2083
- **Customer #:**
- **Add Type/Seq #:**
- **Federal ID #:** 26-4086616

**Revenue Information:**
- **Fund:** 51000
- **Orgn:** 3216
- **Rev:** 23344
- **Prog:** 43
- **Actv:**

**Contract Information:**
- **Contract Start Date:** 1/1/2022
- **Contract Expiration Date:** 12/31/2024

**Billing Information:**
- **Rate:** $42,551.83
- **Arrears:**
- **Pre-bill:** X
- **Monthly (1st month of billing):** Jan
- **Quarterly (1st month of quarter):**
- **Semi-annual (1st month of half):**
- **Annual (1st month of billing):**
- **Other (explain):**
- **Rate Change Date:** 1/1/2023
- **Rate Change Amount:** $49,098.25

**Description of Services (wording on invoice):**
- Effective 1/1/2022
- Pre-Bill MAG (Minimum monthly Rental Car Concession Guarantee) at Dayton Intl Airport
- Annual Settle-up (the greater of annual MAG and 10% Gross Revenue)

---

**Departmental Approval:**

![Signature]

---

**TO BE COMPLETED BY FINANCE**

<table>
<thead>
<tr>
<th>City Reference Number</th>
<th>Auditor</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-6038-3</td>
<td>DBilby</td>
<td>12-16-2021</td>
</tr>
</tbody>
</table>

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

**Director of Finance:**

![Signature]

12/14/2021
NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT AT THE JAMES M. COX DAYTON INTERNATIONAL AIRPORT

THIS NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT ("Agreement") is made and entered into this ______ day of ______________, 2021 between the City of Dayton, Ohio ("City"), a political subdivision in and of the State of Ohio, and EAN Holdings, LLC dba Alamo Rent A Car and Enterprise Rent-A-Car ("Operator").

WITNESSETH THAT:

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, State of Ohio; and

WHEREAS, On June 9, 2021, the City submitted a Request for Proposal, titled “Request for Proposal for Non–Exclusive Rental Car Concessions at the James M. Cox International Airport No. 21-018AOAD” (“RFP”); and

WHEREAS, Operator responded to the RFP on August 18, 2021, setting forth its desire and qualifications to operate a rental car concession at and from the Airport; and

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

WHEREAS, The parties enter into this Agreement to set forth the terms and conditions for the non-exclusive right and privilege to operate an on-Airport rental car concession.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and the mutual benefits to be derived, IT IS AGREED AS FOLLOWS:

ARTICLE I
DEFINITIONS

For the purposes of this Agreement, the following words and phrases shall have the meanings ascribed to them respectively regardless of whether the word(s) or phrase(s) is capitalized, unless otherwise clearly indicated by the context in which it is used:

“Airport Rules and Regulations” means the rules and regulations of the Dayton International Airport as adopted and as the same may be updated from time to time.

“Assigned Areas” means the areas at the Airport designated by the City, from time to time, for occupancy and use by Concessionaires.

“Commencement Date” means January 1, 2022.

“Concession Fee” means the amount payable, per Contract Year, for the on-Airport rental car concession rights and privileges granted to Operator under this Agreement.
“Concessionaire(s)” means all rental car businesses operating at the Airport pursuant to the terms of an agreement similar to this Agreement.

“Contract Year” means a twelve-month period beginning on January 1 and ending on December 31 within the Term.

“Customer” means anyone who enters into a vehicle rental contract that originates or ends at the Airport.

“Customer Facility Charge” or “CFC” means the charge established by Section 37.11 of the Revised Code of General Ordinances of the City of Dayton, which charge must be collected by Operator from its Customers and submitted to the City and is subject to change during this Agreement Term.

“Environmental Laws” means any federal, state, or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree or rule of common law, and any judicial or agency interpretation of any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future, that pertains to any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above ground tanks) and shall include, without limitation, the Solid Waste Disposal Act, 42 U.S.C. §6901 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 et seq. (“CERCLA”), as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”); the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; and the Safe Drinking Water Act, 42 U.S.C. §300f et seq.

“FAA” means the United States Department of Transportation, Federal Aviation Administration, or such other successor agency or agencies of the United States Government.

“Expiration Date” means December 31, 2024.

“Fees” means all amounts, including but not limited to, Premise Rent (including Counter, Office and Queuing Space Rent, Shared Common Space Rent), Concession Fee, and any other incidental fees and charges that are paid or payable by Operator to City pursuant to this Agreement.

“Gross Revenues” as used herein shall mean, as determined in the reasonable discretion of the City, all amounts charged to its customers by Operator for or in connection with contracts it secures through its operations and business at the Airport, regardless of whether such amount is actually paid to or received by Operator. Gross Revenues shall include all monies or other consideration of whatsoever nature paid or payable to Operator by customers for all sales made and services performed for cash, credit or consideration in connection with automobile and vehicle rentals or other products or services provided to persons through Operator’s operations at the Airport without regard to the ownership, area, fleet, or location
assignment of vehicles and without regard to the manner in which or place at which the vehicles or other products or services are furnished to Operator’s customers and without regard to whether the vehicles or other products are returned to the Airport or to some other location.

Gross Revenues may not be reduced by promotional or other discounts not given directly to the customer at the time of rental. The retroactive adjustment by Operator of Gross Revenues designated as volume discounts or rebates, corporate discounts or rebates, or any other designation of any nature, or for any other purpose, is prohibited.

Gross Revenues shall include anything and everything that is not specifically excluded. The only exclusions from Gross Revenues permitted under this Agreement shall be the specific exclusions set forth below:

1. Federal, state, county, city or municipal sales, use, or excise taxes now in effect or hereinafter levied on Operator’s operations which are separately stated on customers’ rental contracts and collected from customers of Operator;

2. Those fees referred to in this Agreement as Customer Facility Charges, “CFC’s” which for the purpose of this Agreement shall include all customer facility charges, authorized pursuant to City of Dayton RCGO § 37.11 (B), as may be amended;

3. Amounts received specifically for the actual loss of or damages of vehicles or other property of Operator;

4. Amounts received from the sale of vehicles off-airport premises; provided, however, any amounts paid in connection with automobile and vehicle rentals or other products or services provided to persons through Operator’s operations at the Airport that are applied to or otherwise reimbursed as a result of the sale of a vehicle shall not be excluded from Gross Revenues; and

5. Reimbursements for amounts actually paid for parking tickets, red light tickets, tolls and toll violations from its customers to pass through without markup to an independent third party with no amount being retained by Operator. However, any amounts collected above the pass-through amount shall be included as Gross Revenue under this Agreement.

“Hazardous Materials” means any substance, whether solid, liquid or gaseous, that is listed, defined or regulated as a “hazardous substance,” “hazardous waste,” “solid waste,” or pesticide, or is otherwise classified as hazardous or toxic, in or pursuant to any Environmental Law or that is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons; or that causes or poses a threat to cause a contamination or nuisance or a hazard to the environment or to the health or safety of any persons, except Operator may use, bring, and store household and commercial cleaners and chemicals in connection with the operation and maintenance of the premises in commercially reasonable quantities, and may have fuel in the tanks of its vehicles.
“Minimum Annual Guarantee” or “MAG” means that minimum amount to be paid to the City, per Contract Year, for the concession privileges and rights stated in this Agreement, which Operator specified in its response to the City’s RFP and provided in Article VIII(B).

“Percentage Concession Fee” means an amount equal to ten percent (10%) of Gross Revenues.

“Premise Rent” means an amount paid the City for Operator’s occupancy of the Rental Car Counter Facility.

“Ready/Return” means that area at the Airport identified by the Ready/Return Agreement and consisting of parking blocks for use by Concessionaires as the location where Customers pick-up and/or drop-off Vehicles.

“Ready/Return Agreement” means that certain Agreement between the City and Operator pertaining to ready/return activities, attached hereto as Exhibit A and incorporated herein.

“Reallocation Date” means on or about March 1 during the term, beginning March 1, 2023.

“Rental Car Counter Facility” means the facility constructed adjacent to the lower level of the parking garage for the purpose of providing an area for conducting rental car transactions with customers.

“Term” means the effective period of this Agreement, beginning on the Commencement Date and expiring on the Expiration Date.

“Terminal” means the main passenger terminal building located at the Airport.

“TSA” means the United States Department of Homeland Security, Transportation Security Administration, or such other successor agency or agencies of the United States government.

“Transaction Day(s)” means a twenty-four (24) hour period or fraction thereof for which a Customer is charged rental for a vehicle which is paid in the form of currency, credit, or promotional coupon for which a Customer is given complimentary use of a vehicle, regardless of the duration or length of the rental term. Late return (after twenty-four (24) hours) shall be considered a Transaction Day.

“Vehicle(s)” means any automobiles, trucks, vans, and all accessories and appurtenances thereto provided by the Operator (and/or other Concessionaires, as the context would dictate) to meet the transportation needs of Customers.
ARTICLE II
NON-EXCLUSIVE AGREEMENT

The rights and privileges granted under this Agreement are non-exclusive. By entering into this Agreement, Operator acknowledges that the City is or will be entering into non-exclusive agreements with other Concessionaires. The City reserves the right to enter into agreements with other companies providing rental car services from off-Airport locations, if the City determines that it is in its best interest to do so. However, such agreements with off-Airport rental car businesses/operators shall not include the right to staff or operate a rental car concession from an on-Airport Counter and Office area (or other area on the Airport) and/or occupy and use the Ready/Return. Such off-Airport agreements may be at terms and conditions more or less favorable than this Agreement.

ARTICLE III
TERM

A. This Agreement is effective for a period of three (3) years ("Term"), beginning January 1, 2022 ("Commencement Date") and expiring December 31, 2024 ("Expiration Date"), unless terminated earlier or renewed in accordance with the provisions of this Agreement.

B. In the event that Operator holds over and remains in possession of the Premises, in whole or part, and the rights and obligations granted herein after the Expiration Date, such holding over shall only constitute a month-to-month license on the same terms and conditions specified in this Agreement, except that it may be terminated at any time by the City or Operator. Further, Operator agrees and shall continue to pay during the holding over period all Fees that were effective on the Expiration Date.

ARTICLE IV
PREMISES

A. The City leases to Operator the following areas in the Rental Car Counter Facility described herein together with any substitutions or additions thereto, but less any removals therefrom, from time to time as provided in this Agreement (hereinafter all areas leased to Operator shall be collectively referred to herein as the "Premises"): approximately eight hundred forty-two (842) square feet of counter, office, storage, queuing and shared common area identified as position #4 depicted on Exhibit B.

B. By the execution of this Agreement, Operator accepts the Premises "AS IS". Operator also understands and agrees that the occupant of the Premises prior to the Commencement Date may remove trade fixtures prior to the delivery of possession of the Premises to Operator. Except as expressly provided in this Agreement, the City shall have no obligation or responsibility whatsoever to do any work or furnish any improvements of any kind to the Premises or perform any maintenance or repair on the Premises. CITY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PREMISES OR THAT THE PREMISES ARE SUITABLE FOR OPERATOR'S USE, PURPOSES OR NEEDS. Upon expiration or termination of the Agreement, Operator shall promptly and peaceably surrender to City its Premises and all improvements thereon to which
City is entitled in good and fit condition, reasonable wear and tear excepted; provided, however, nothing in the Article shall be construed to modify the obligations of the parties set forth elsewhere in the Agreement.

C. Priority of choice for location of Operator’s block in the Ready/Return area during the Term is based on the cumulative MAG (the MAG for each of the three years added together) Proposal by each Concessionaire in response to the RFP, with the Concessionaire having the highest cumulative MAG given first priority for choice of location of Operator’s block in the Ready/Return.

The allocation of the block of Ready/Return parking area to Operator for the first Contract Year of this Agreement, commencing on the Commencement Date, is based on the sum of the three years minimum annual guarantee proposed by the Operator divided by the sum of the three years minimum annual guarantees proposed by all successful operators. The City may, on not less than thirty (30) days advance notice to Operator and/or on each Reallocation Date, reduce or increase the size and layout of the parking block in the Ready/Return area allocated for use by Operator based on Operator’s market share for the immediately preceding Contract Year. If the calculation of the reallocation of the parking area does not result in a change to any operator of an increase or decrease of block size of more than 10%, the City will not reallocate the parking blocks for that Contract Year.

In general, each parking block will be a general rectangle shape, with at least one side providing for terminal frontage (east) side and the opposite side providing for the entrance/exit driveway (west) side. However, when allocating or reallocating the Ready/Return parking area, the City has full discretion on the shape of each Concessionaire’s block based on the geometry or any physical characteristics of the garage (such as support columns and common use sidewalks).

On the date designated for deletion or increase of the parking blocks in the Ready/Return:

1. Operator shall surrender such portion of the parking block in the Ready/Return to the City, if a deletion;
2. Operator will be permitted to use any additional parking block assigned to Operator in the Ready/Return, if an addition;
3. Exhibit 1 shall be revised accordingly, which shall not require a formal written amendment to this Agreement.

Notwithstanding the allocation and reallocation process outlined above, the parking block assigned to Operator shall not be fewer than fifteen (15) spaces, except in the event that the Ready/Return area is reduced in size twenty-five percent (25%) or more as required by the FAA and/or TSA for security purposes or construction activities upon or near the Ready/Return. In the event Operator’s block must be reduced in order to allocate fifteen (15) spaces to the smallest Concessionaire, the City will propose a plan to reduce the space to Operator for comment; however, the City shall retain final authority as to the reduction of blocks.

All expenses for the Operator’s block configuration upon commencement of this Agreement and/or upon any reallocation of Ready/Return area will be the sole responsibility of the Operator.
D. Notwithstanding any other provision of this Agreement, the City may adjust the boundaries of the Premises as may be required by the City for its purposes by adding to or deleting space from such portion of the Premises from time to time. The City shall notify Operator not less than sixty (60) days in advance of such adjustment, and Operator shall remove all personal property and fixtures located on the area(s) being deleted no later than the date such adjustment is to occur. In such instances, the Premises Rent (as applicable) may be adjusted, based on the new area comprising the Premises.

E. City reserves the right to relocate the Premises to other space in the Terminal and/or on Airport grounds, as applicable, on the terms and conditions hereinafter set forth:

1. If the City elects to relocate all or part of the Premises the City will give Operator at least sixty (60) days' prior written notice of the relocation date. The City agrees to provide substitute space of comparable square footage and shall provide improvements of comparable condition and utility (if not then existing at the new location). City shall pay all reasonable out-of-pocket moving costs for moving Operator's personal property to the substitute premises. Operator shall cooperate with the City in connection with the relocation, including, without limitation, responding in a timely manner to any requests for information or for review and comment on proposed plans for improvements to the substitute premises. Operator shall surrender possession of the portion of the Premises for which the substitution is being made and move from such portion of the Premises to the substitute premises on the relocation date.

2. On the relocation date, the substitute premises shall be deemed for the purposes of this Agreement to be the portion of the Premises being relocated. The Premises Rent, as applicable, shall be recalculated and adjusted based on the new area of the substitute Premises. The MAG, however, shall not be adjusted.

The City's exercise of its relocation right under this Subsection (E) shall not constitute a constructive eviction or interference with the right of quiet enjoyment, nor shall the City's exercise of such right subject the City to damages for loss of profits or business.

F. Operator's use of the Premises shall be subject to any and all easements, licenses and other rights with respect to the Premises granted to or vested in itself or any other governmental entities or agencies, such as the FAA and TSA. Operator acknowledges that there may currently exist, and that City may grant in the future, easements and rights on, over or under the Premises for the benefit of suppliers or owners of utilities that service the Airport, and Operator hereby consents to any such utility easements whether now in existence or later granted.

**ARTICLE V**

**USE OF THE PREMISES**

A. Subject to the terms and provisions contained in this Agreement, and all applicable rules, regulations, laws, ordinances, codes and orders of any federal, state or local government or
subdivision thereof in connection with the conduct of activities by Operator at the Airport, Operator shall use the Premises for the following purposes only and for no other purpose:

1. Arranging and administering the rental of Vehicles and the related incidental provision of loss and collision damage waiver protection, insurance (including but not limited to personal injury insurance), children’s car seats, GPS devices, mobile telephones and such other incidental services, items and equipment not being provided by Operator at the Airport prior to the Commencement Date and equipment reasonably associated with the rental of automobiles (but not including any items for which any exclusive right to provide such services, items or equipment has been or may in the future be granted to others at the Airport), which are approved in advance in writing by the City; and

2. For such other uses only as the City may approve in writing in its sole and absolute discretion.

B. If Operator parks its Vehicles in public parking lots on the Airport or permits its employees, contractors or agents to park automobiles in such lots, Operator must pay the posted parking rates.

C. Operator shall not use, bring, store, or dispose of any Hazardous Materials on the Premises, except Operator may use, bring, and store household and commercial cleaners and chemicals in connection with the operation and maintenance of the premises in commercially reasonable quantities, provided such is permitted by the Airport Rules and Regulations. Operator may have fuel in the tanks of its vehicles. Operator shall comply with all applicable Environmental Laws in its use of the Premises and the conduct of its concession business at the Airport.

ARTICLE VI
OPERATOR’S CONCESSION RIGHTS AND OBLIGATIONS

A. Operator shall have the non-exclusive right and obligation to conduct a rental car (a.k.a. rent-a-car) concession at the Airport from the Premises under the terms and conditions described herein.

B. During the Term of this Agreement, Operator shall operate its concession and maintain all signage under the brand(s) or trade name(s) of Alamo Rent A Car and Enterprise Rent-A-Car. Operator is prohibited from operating at Airport under any other brand name(s) or trade name(s). No other brand name(s) or trade name(s) shall be used or displayed by Operator at the Airport or upon the Premises during the Term of this Agreement. During the term of this Agreement Operator shall operate and maintain all signage under the brand(s) or trade name(s) stated above. No additional brand or trade name may be added to this Agreement during the Term.

If Operator uses any particular brand or trade name under a license or franchise contract, Operator represents and warrants that it has been granted the right to use such brand or trade name for the entire term of this Agreement. At the City’s request, Operator agrees to provide a
copy of such franchise or license agreement as evidence that the same is in full force and effect. Operator shall immediately notify the City if such agreement is terminated.

C. Operator shall occupy the Ready/Return block assigned for its use only for the parking of rental Vehicles by Operator for pick-up or drop-off by its Customers, in a manner consistent with the terms of the Ready/Return Agreement. Vehicles returned by customers must be removed to the Operator’s service facility within one hour of return. Returned vehicles which have not been cleaned and are not immediately available for rental shall not be stored in the Ready/Return. Operator understands that returned vehicles cannot be cleaned and/or serviced in the Ready/Return, including the removal of trash. Operator employees are permitted to park personal vehicles in the Ready/Return which are properly displaying an Airport-issued vehicle permit issued to the employee for that specific personal vehicle. Upon notification by the City, Operator shall immediately remove any employee vehicle parked in the Ready/Return that does not display an Airport-issued vehicle permit. Operator’s employees shall only park personal vehicles in the Ready/Return while on duty at the Airport and shall not be permitted to park in the Ready/Return at any other time, including during personal or business travel, see Article IV(M) below.

D. In operating the rental car concession permitted hereunder, Operator shall comply with the following:

1. Operator shall offer for rental only Vehicles of recent manufacture (not more than two (2) model years old and less than 40,000 miles), except as may be allowed under (D) (2) below. All Vehicles provided by Operator shall be maintained at Operator’s expense in good and safe operating order, free from any known mechanical defects and be in clean, neat, and attractive condition inside and out. Operator shall furnish good, prompt and efficient service and shall at all times have available a sufficient number of Vehicles (a fleet of no fewer than fifty (50)) to meet all reasonably foreseeable demands of the traveling public.

2. Operator may offer for rental antique, vintage, classic or other luxury or prestige automobile or handicapped operated vehicles of good quality, free from any known defect and clean and attractive both inside and out. The City shall have the right to prohibit Operator from offering for rental any such automobile which the City reasonably determines not to meet the standards described in (D) (1) above.

3. Operator shall provide the following services for its Customers at the Airport: (i) accept at least three (3) nationally recognized credit cards and at least one (1) locally named credit or debit cards for payment of Vehicle rental; (ii) provide for a national reservation system for services of Operator at the Airport, and (iii) will rent motor vehicles to customers who are local walk-up customers, ticketed Airline passengers and any other customer who so chooses to rent.
4. Operator shall maintain a sufficient number of trained personnel to ensure that Operator's Customers will receive prompt and courteous service at all times. All personnel of Operator, while on or about the Premises, shall be polite, clean and neat in appearance and appropriately attired. The City shall have the right to complain to Operator as to the demeanor, conduct or appearance of Operator's employees, invitees and those doing business with it, or regarding the Operator’s staffing levels, and Operator agrees to take all reasonable steps necessary to resolve such complaint(s).

5. Without limiting any other requirement set forth in this Agreement, Operator shall conduct its concession business operations within the Airport in such manner as shall reduce to a minimum the emanation of noise, vibration, dust, fumes and odors, so as not to interfere with the use of adjacent areas on the Airport.

6. Operator’s rights to use the Premises for the purposes provided in this Agreement are subject to the rights of the City, as City, to monitor compliance with this Agreement to ensure that the Premises are used and operated as required by Operator.

7. If Operator receives (or the City receives and forwards to Operator) any written complaint concerning Operator’s operation of the business at the Airport, Operator shall promptly respond to such complaint in writing within thirty (30) days of its receipt and make a good-faith attempt to explain, resolve or rectify the cause of such complaint. Without further notice or demand, Operator shall keep a copy of each such complaint and Operator’s written response for a period of one (1) year from the date of the complaint and shall make the complaint and the written response available to the City upon its request.

8. Operator shall respond in writing to complaints registered by the Airport’s police with respect to violations of traffic regulations committed in the course of Operator’s business by Operator’s agents, employees, invitees and licensees, setting forth such action as have been taken or are immediately contemplated to remedy said violations.

9. Operator shall keep the Premises open for service for such periods during each day and on such days during each week as may be necessary to meet reasonable demands for such services and to properly and adequately serve the public, as determined by the City; provided, Operator shall provide rental car services to Airport customers during all hours of air carrier operations at the Airport. Should the Operator operate more than one concession location in the Rental Car Counter Facility, Operator is not permitted to close one location and direct customers to its other location.

10. Counters will be adequately staffed and open one hour before the first scheduled flight departure and one hour after the last scheduled flight arrival.

11. Operator shall comply with the Airports Rules & Regulations and any amendments to that shall be approved.
12. Operations Violations. Operator’s failure to adhere to the operating requirements set forth in this Agreement is reasonably anticipated to result in significant inconvenience to the public, adversely affect the overall commercial business of the Airport, and reduce the amount of rent to be paid to the City. Additionally, City resources will be expended in dealing with violations of this Agreement by Operator. The parties hereby agree that total damages sustained by the City for violations of the provisions of this Agreement addressing this subject matter could be significant, but would be difficult to determine and to track. Therefore, the parties hereto agree that the liquidated damages amounts, set forth below for violation of Agreement terms addressing the referenced subject matter three (3) business days from a notice/occurrence, for the first occurrence only, are reasonable estimates of the loss anticipated to be suffered or incurred by the City. Operator, therefore, hereby agrees that imposition of the liquidated damages set forth below is fair and reasonable and Operator agrees to pay immediately upon demand by the City the following amounts as liquidated damages upon the occurrence of breaches, in any Contract Year, related to the following operation violations:

- $100 per occurrence - first occurrence
- $200 per occurrence - second occurrence
- $300 per occurrence - third occurrence
- $1,000 per occurrence thereafter

For hours of operations violations, liquidated damages are as follows:

- $100 per hour or portion thereof during which location is not open - first occurrence
- $200 per hour or portion thereof during which location is not open - first occurrence
- $300 per hour or portion thereof during which location is not open - first occurrence
- $1,000 per occurrence thereafter

E. Operator shall, at its expense, obtain all permits, licenses, certificates or other authorizations required for conduct of its concession business at the Airport, shall register all Vehicles as may be required by laws and ordinances and display all permits or stickers as may be required. Upon execution of this Agreement and thereafter annually or at the City’s request, Operator shall provide evidence to the City that Operator has obtained such permits, licenses, certificates, other authorizations and registrations.

F. Operator shall not use or occupy or permit the Premises to be used or occupied, or do or permit anything to be done in or on the Premises, in whole or in part, in a manner which would in any way violate any certificate of occupancy affecting the Premises, or make void or voidable any insurance then in force with respect thereto, or which may make it impossible to obtain fire or other insurance thereon required to be furnished by Operator under this Agreement, or which will constitute a public or private nuisance, or which will disrupt the safe, efficient and normal operations of the Airport.
G. Operator shall not use or occupy or permit the Premises to be used or occupied, in whole or in part, in a manner which may violate and shall comply with any present or future, ordinary or extraordinary, foreseen or unforeseen, laws, regulations, ordinances or requirements of the federal, state or municipal governments or of any other governmental, public or quasi-public authorities now existing or hereafter created, having jurisdiction in the Premises, whether or not City also is liable for compliance.

H. Operator shall not sell or give away food or beverages on the Premises. Operator may not install vending machines on the Premises for sale of food, beverages or any other items.

I. Operator may, at its own expense and only after receiving written approval from the City, erect and maintain informational signs within and upon the Premises in addition to those provided by City; the size and type of signs are subject to City’s standards and prior written approval.

J. Operator shall not erect, allow or permit to be maintained on the Premises, or upon the exterior or any improvement on the Premises, any billboard or advertising signs, except those which have the prior written approval of the City.

K. Throughout the Term of this Agreement Operator shall employ a qualified, full-time, local resident manager having experience in the management of this type of concession, who shall be available during normal business hours, and be delegated sufficient authority to ensure the competent performance and fulfillment of the responsibilities of Operator under this Agreement, and to accept service of all notices provided for herein. Operator shall provide the City with emergency telephone numbers at which Operator’s local manager or designated local employee with authority to speak for Operator may be reached on a 24-hour basis.

L. Operator shall at its sole expense, provide and use suitable receptacles for the storing of all trash, garbage, and other refuse created in the conduct of its business or operations in the Premises, or arising from Operator’s exercise of any right or obligation under this Agreement. Trash receptacles in the Ready/Return are provided for customers disposal of trash. These receptacles shall not be used for trash generated from Operator’s activities or employees and shall not be used for disposing of trash left in returned vehicles. Such cleaning shall take place at the Operator’s service facility.

M. Operator’s employees shall be required to obtain an Airport-issued identification badge conditioned upon successful completion of a background check and other requirements as stated in the Airport Rules and Regulations. Such badge must be obtained within thirty (30) days of execution of this Agreement. At that time, Operator’s employees may request a parking sticker for their personal vehicle. See Article IV(C) above.

N. Operator shall repair or pay for any and all damages to City and its property caused by any wrongful, intentional or negligent acts or omissions by Operator, its agents, contractors or employees arising out of Operator’s use or occupancy of the Premises or in the exercise of any right or obligation granted herein.
O. Operator shall operate or cause to be operated all its Vehicles in a safe manner and in accordance with all applicable rules and regulations, and with all federal, state and local laws and to strictly observe all posted speed limits.

P. Operator shall be a party to a Ready/Return Agreement at all times this Agreement is effective.

Q. Operator’s employees shall be required to obtain an Airport-issued vehicle permit for any personal vehicle which Operator’s employees intend to park in the Ready/Return.

R. All of Operator’s computer software, hardware, firmware, payment card processing policies, procedures and related services utilized to process City of Dayton revenue transactions shall be:
   1. Completed by a qualified professional payment card processing firm acceptable and approved by the City of Dayton; and,

Operator shall provide and agrees to maintain the PCI compliance reporting Attestation of Compliance (“AOC”) Form(s) in its/their latest version(s), or within the year of record as requested and/or in an annual transmittal to the City of Dayton, (https://www.pcisecuritystandards.org/documents/PCI-DSS-v3_2-AOC-Merchant.docx?agreement=true&time=1493826893795 or https://www.pcisecuritystandards.org/documents/PCI-DSS-v3-AOC-Officer.docx?agreement=true&time=1493826893795).

ARTICLE VII
CITY RIGHTS AND OBLIGATIONS

A. The City agrees to provide normal heating, air conditioning and electrical service to the Rental Car Counter Facility as reasonably required. Operator shall pay for its own telephone service and installation of any telephone or computer connections or equipment or for extension of any electrical facilities to provide service. The City reserves the right to interrupt temporarily the heating, air conditioning or electrical services furnished to the Premises to make emergency repairs or for other reasonable purposes, and the City shall restore said services as soon as reasonably possible. The City shall endeavor to provide Operator with reasonable notice of such interruptions when possible. The City shall have no responsibility or liability for any failure of heating, air conditioning, electrical or any other service to the Premises, the Rental Car Counter Facility or to the Airport for any other reason whatsoever.

B. All rights not expressly granted to Operator herein are reserved by the City, including, without limitation, the following rights (which may be exercised by the City's officers, employees, agents, licensees, contractors or designees):
1. to have, at any and all reasonable times, and with reasonable notice to Operator when possible, the full and unrestricted access to the Premises for the purpose of inspecting the Premises and doing any and all things, which the City is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport and in the exercise of the City’s police power;

2. to enter the Premises at any time;

3. to enter the Premises to maintain, replace, repair, alter, construct or reconstruct existing and future utility, mechanical, electrical and other systems or portions thereof on the Airport, including without limitation, systems for the supply of heat, water, gas, fuel, electricity, and for the furnishing of sprinkler, sewage, drainage, and telephone service, including all related lines, pipes, mains, wires, conduits and equipment, and;

4. to adopt and enforce reasonable rules and regulations with respect to the use of the Airport and facilities thereon, which Operator agrees to observe and obey; and

5. to exercise such other rights as may be granted the City elsewhere in this Agreement.

Except in the case of an emergency or previous arrangement with the Operator, City’s entry into the Premises shall be during reasonable business hours after providing reasonable advance notice, and in the presence of Operator’s representative.

All rights in this Subsection (B) shall be exercisable without notice (except as expressly provided in this Section) and without liability to Operator for damage or injury to property, person or business, and without effecting an eviction or disturbance of Operator’s use or possession or giving rise to any claim for setoff or abatement of Fees or affecting any of Operator’s obligations under this Agreement. Notices under this Subsection (B) may be given verbally in an emergency or where entry does not materially affect Operator’s use and occupancy. Reasonable notice shall in no event require more than twenty-four (24) hours’ notice.

C. City warrants quiet enjoyment of the rights and privileges granted herein, during the term hereof, upon the performance of Operator’s covenants contained herein, subject to Subsection (B) of this Article VII.

D. City will remove, during normal business hours, all collected trash, garbage, and refuse from the Premises with the exception of any construction, renovation, Ready/Return area or relocation debris.

E. In an emergency situation or upon occurrence of an Event of Default, the City may (but shall not be obligated so to do), and without waiving or releasing Operator from any obligation of Operator hereunder, make any payment or perform any other act which Operator is obligated to make or perform under this Agreement in such manner and to such extent as the City may deem desirable; and in so doing the City shall also have the right to enter upon the Premises for any purpose reasonably necessary in connection therewith and to pay or incur any other
necessary and incidental costs and expenses, including reasonable attorneys' fees. All sums so paid and all liabilities so incurred by the City, together with interest thereon, shall be deemed additional fees hereunder and shall be payable to the City upon demand. The performance of any such obligation by the City shall not constitute a waiver of Operator’s default in failing to perform the same. Inaction of the City shall not be considered as a waiver of any right accruing to it pursuant to this Agreement. The City shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business or other damage of Operator any other occupant of the Premises or any part thereof, by reason of exercise of its rights under this Subsection (E).

**ARTICLE VIII**

**RENTS, FEES, PAYMENTS AND PERFORMANCE BOND**

A. Premises Rent. Operator shall pay to the City, in advance on the 1st day of each month, a premise rent for the Premises described in Article IV(A). For the period commencing January 1, 2022 through December 31, 2022, the Operator will pay the sum of what will be adopted as stated below for 2022. The sum of Sixty-Six Dollars and Sixty-Four Cents ($66.64) per square foot per year (the rate for 2021) is inserted into this Agreement for purposes of planning only. This rate is subject to updating annually upon adoption of the Airlines Rates and Charges Resolution by the Commission of the City of Dayton.

B. Concession Fee. As consideration for the privilege of operating the concession hereunder, Operator shall pay to the City each Contract Year, for the full term of this Agreement, a Concession Fee. The Concession Fee is the greater of:

1. The Percentage Concession Fee as defined in Article I;

OR

2. The respective amount shown below as the Operator’s Minimum Annual Guarantee:

<table>
<thead>
<tr>
<th>Period</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1, 2022 to December 31, 2022</td>
<td>$510,622.00</td>
</tr>
<tr>
<td>January 1, 2023 to December 31, 2023</td>
<td>$589,179.00</td>
</tr>
<tr>
<td>January 1, 2024 to December 31, 2024</td>
<td>$622,173.00</td>
</tr>
</tbody>
</table>

The MAG shall be paid in equal monthly installments, in advance, on the first day of each month during the Term.

C. Additional Fees. City may invoice Operator additional fees for items including, but not limited to, employee parking, badging fees, background checks and additional vehicle storage. The City may assess reasonable, non-discriminatory charges for these items. Operator shall pay for such additional fees within thirty (30) days of invoicing by the City.

D. In the event of termination of this Agreement on a date other than December 31st in any year of the Agreement, the MAG and Premises Rent shall be prorated. Proration for a fractional Contract Year shall be determined by multiplying the number of days that have transpired that year by 1/365th of the annual MAG and Premises Rent.
E. On or before the twentieth (20th) day of each month, Operator shall furnish to the City a sworn or verified statement of its total Gross Revenues for the preceding month, with the Concession Fee calculated. No additional payment is due at this time. The Concession Fee will be reconciled at Contract Year end, as described in Paragraph G below. This statement shall be in the format (as given to Operator by the City) acceptable to the City and shall contain detailed financial information, broken down by categories of items representing Gross Revenues.

F. Operator shall furnish each year during the term of this Agreement, a written statement, certified by an independent Certified Public Accountant, to the City stating that in his or her opinion the percentage fees paid by Operator to City during the preceding year pursuant to this Agreement were made in accordance with the terms of this Agreement. Said statement shall be submitted by Operator, to be received by the City within ninety (90) days of the end of each Contract Year. Such statement shall also contain a list of the Gross Revenue receipts, by month, as shown on the books and records of the Operator and which were used to compute the percentage fee payments made to City during the period covered by such statement.

G. The Concession Fee will be reconciled at the end of each Contract Year. In the event an annual report indicates Operator’s underpayment of the Concession Fee during said annual report Contract Year, the amount of such underpayment shall be remitted from Operator to the City not later than thirty (30) days from the date the annual report was submitted to the City. In the event an annual report indicates overpayment of Concession Fees to the City, Operator shall subtract the amount of such overpayment from its next monthly MAG payment; except that, if, after the last Contract Year of this Agreement, Operator is no longer a Concessionaire at Airport, such settlement shall be remitted from the City to Operator, provided Operator is not then in default under the terms of this Agreement. This provision shall survive the expiration or termination of this Agreement.

H. Prior to the Commencement Date, Operator 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, a performance bond for the payments required hereunder, in an amount equivalent to one half (1/2) the MAG for the first Contract Year. The City may draw upon the Performance Bond if Operator 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.

I. Except as provided in Subsection (J) below, all rental and fees payable hereunder shall be remitted by Operator to the following address or at such other address as City shall direct in writing:

    City of Dayton, Ohio
    P. O. Box 632094
    Cincinnati, OH 45263-2094
J. All annual reports and monthly statements of Gross Revenues together with the associated payments to the City, as described 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

K. In the event Operator fails to make any payments as required to be paid under the provisions of this Agreement within ten (10) calendar days of the due date, late charges at the rate of two percent (2%) per month shall accrue against all such delinquent payment(s) from the original due date until City actually receives payment. The right of City to require payment of such late charges and the obligation of City to pay same shall be in addition to and not in lieu of the right of the City to enforce other provisions herein, including termination of this Agreement, or to pursue other remedies provided by Law.

L. In the event that the following condition exists during the term of this Agreement, the MAG hereinabove provided for in Article VIII(B)(2) shall be subject to proportional abatement for the period of time the condition exists:

1. A major traffic reduction at the Airport. A major traffic reduction shall be defined as a greater than twenty five percent (25%) reduction in the number of passengers deplaning on scheduled airline flights at the Airport during any period of three (3) consecutive calendar months as compared to the number of such deplaning passengers in the same calendar months during the preceding calendar year.

2. The abatement amount for those months that are abated as defined in Article VIII(L)(1) will be the prorated reduction of that month’s 1/12th payment of the MAG. For example, if May, June and July have a traffic reduction of 27%, 30% and 26% respectively, then the 1/12th MAG payment for May would be reduced by 27%, June would be reduced by 30%, and July would be reduced by 26%.

3. If the major traffic reduction continues for additional months, the proportional abatement will continue as well, until there is a month when traffic does not fall below the 25% threshold, at which time the full MAG payment shall be made for such month.

This major traffic reduction can only be identified after any three-month period ends; however, the major traffic reduction exists for any three-month period when all three months had a not less than 25% reduction in passenger deplanements. Overpayments of the MAG will be credited to the Operator during the year-end reconciliation process described in Article VIII(G).
ARTICLE IX
CUSTOMER FACILITY CHARGE

Operator shall comply with Section 37.11 of the Revised Code of General Ordinances of the City of Dayton, as may be amended, during the term of this Agreement regarding the imposition and collection of a CFC on all vehicle rental transactions originating at the Airport.

ARTICLE X
INDEMNIFICATION

A. Operator shall defend, indemnify, save and hold harmless the City, its elected officials, officers, employees, agents and volunteers, from and against any and all claims and actions, and all expenses incidental to the investigation and defense thereof, based upon or arising out of any accident or damages arising from, or in any way connected with, Operator's use or occupancy of the Premises or any condition of the Premises and/or Operator's exercise of any right granted herein (including operation of its concession), and/or Operator's performance for breach or default in the performance of any obligation to be performed pursuant to this Agreement, and/or any wrongful, intentional or negligent act or omission of Operator, its agents, contractors and employees.

B. In the event Operator, its agents, contractors or employees violate any security measure at the Airport, including, but not limited to, any Federal Aviation Administration or Transportation Security Administration security laws, rules, regulations, orders or directives, Operator 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.

C. Operator shall defend, indemnify and hold harmless the City, its elected officials, officers, employees, agents and volunteers, from and against any mechanics or other lien or order for the payment of money filed against the Premises, the City or any property of the City, arising out of any act or omission of Operator or anyone claiming through or under Operator. Operator shall, at Operator's expense, cause the same to be cancelled or discharged of record and shall save and hold harmless the City from and against any and all costs, expense, claims, losses or damages including reasonable attorney fees resulting therefrom or by reason thereof.

D. City shall not be liable to Operator or to Operator's agents, representatives, contractors or employees, for any injury to, or death of, any of them or of any other person or for any damage to any of Operator's property or loss of revenue, caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport; nor, to the extent permitted by law, shall City have any liability whatsoever to Operator, Operator's agents, representatives, contractors or employees, for any damage, destruction, injury, loss or claim of any kind arising out of the use by any of the aforementioned of any parking lot located on the Airport. City shall not be liable to Operator for damage to property of Operator or any loss of revenues to Operator resulting from City's acts or omissions in the maintenance and operation of the Airport or failure to operate the Airport.
E. The obligations of Operator under this Article X shall survive expiration or termination of this Agreement, and, shall not be affected in any way by the amount of or the absence in any case of covering insurance, or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any part thereof.

F. The City’s elected officials, officers, agents and employees shall have no personal liability with respect to any provision of this Agreement or any obligation or liability arising from this Agreement or in connection with this Agreement or the Premises in the event of a breach or default by City of any of its obligations.

G. Notwithstanding any other provision of this Agreement to the contrary, to the extent permitted by law, Operator waives any and every claim for recovery from the City for any and all loss or damage to the Premises or to the contents thereof, which loss or damage is covered by valid and collectable physical damage insurance policies maintained by Operator or which would have been recoverable if the insurance required hereunder had been maintained by Operator, to the extent that such loss or damage is recoverable, or would have been recoverable, as applicable, under said insurance policies. As this waiver will preclude the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), Operator agrees to give each insurance company which has issued, or in the future may issue, its policies of physical damage insurance, written notice of the terms of this waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverage by reason of said waiver. Operator shall require any subtenant to include similar waivers of subrogation in favor of the City.

**ARTICLE XI**

**INSURANCE**

A. Operator, at its sole cost and expense, shall procure and maintain, or cause to be maintained, at all times during the Term, the following insurance, with insurance companies authorized to do business in the State of Ohio and having at least an “A” rating from A.M. Best and covering all operations under this Agreement, whether performed by Operator or by persons or entities retained by Operator:

1. 0 **Worker's Compensation and Occupational Disease Insurance**

Worker's Compensation and Occupational Disease Insurance, in accordance with the laws of the State of Ohio, or any other applicable jurisdiction, covering all employees who are to provide a service under this Agreement, and Employer's liability coverage with limits of not less than Five Hundred Thousand Dollars ($500,000) for each accident or illness. Coverage extensions shall include other states endorsement, alternate employer and voluntary compensation endorsement, when applicable.
2. **Commercial General Liability Insurance** (Primary and Umbrella)

Commercial General Liability Insurance with limits of not less than Five Million Dollars ($5,000,000) per occurrence combined single limit, for bodily injury and property damage liability. Coverage extensions shall include the following: All Premises and operations, products/completed operations, explosion, collapse, underground, independent contractors, broad form property damage, separation of insured and contractual liability (with no limitation endorsement). The City, its elected officials, officers, agents, volunteers and employees, shall be named as additional insureds, on a primary, non-contributory basis for any liability arising directly or indirectly from this Agreement.

3.0 **All Risk Property Insurance**

Operator shall obtain an “All Risk Property” policy, including improvements and betterments covering damage to building, machinery, equipment or supplies in the amount of full replacement value of the property constituting within the Premises. Coverage extensions shall include business interruptions/loss of rents (in an amount not less than the sum of Fees then payable under this Agreement for a period of one year), and flood. City is to be named as a loss payee.

The Operator shall be responsible for all loss or damage to personal property (including but not limited to material, equipment, tools and supplies), owned or rented by Operator.

4.0 **Automobile Liability Insurance**

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, Operator shall provide Comprehensive Automobile Liability Insurance with limits of not less than Five Million Dollars ($5,000,000) per occurrence combined single limit, for bodily injury and property damage. City is to be named as an additional insured on a primary, non-contributory basis.

B. Original certificates of insurance evidencing the required coverage to be in force on the Commencement Date, and all renewal certificates of such insurance, shall be provided to City. At the City’s request, Operator shall furnish complete copies of all policies of insurance. The receipt of any certificate or policy does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Agreement. The failure of the City to obtain certificates or other insurance evidence from Operator shall not be deemed to be a waiver by the City. Operator shall advise all insurers of these Agreement provisions regarding insurance. Non-conforming insurance shall not relieve Operator of its obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Agreement, and the City retains the right to terminate this Agreement as provided in Article XIII until proper evidence of insurance is provided. All policies of insurance
shall provide for a minimum of thirty (30) days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

C. If Operator fails to obtain or maintain any of the insurance policies under this Agreement or to pay any premium in whole or in part when due, City may (without waiving or releasing any obligation or default by Operator hereunder) obtain and maintain such insurance policies and take any other action which City, including reasonable attorney’s fees, court costs and expenses, shall be reimbursed by the Operator upon demand by City.

D. Operator shall require all contractors to carry the insurance required herein, or Operator or its contractors may provide the coverage for any or all contractors, and, if so, the evidence of insurance submitted shall so stipulate. Any and all deductibles or self-insured retentions on referenced insurance coverages shall be borne by Operator or its contractors. Operator and its contractors agree that insurers shall waive their rights of subrogation against the City, its employees, elected official, agents, or representatives. Operator and its contractors expressly understand and agree that any coverages and limits furnished by Operator or its contractors shall in no way limit the Operator or its contractors’ liabilities and responsibilities specified within this Agreement or by law. Operator and its contractors expressly understand and agree that any insurance or self-insurance programs maintained by the City shall not contribute with insurance provided by the Operator or its contractors under this Agreement.

E. The insurance required hereunder shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law. The City maintains the right to modify, delete alter or change these requirements.

F. The insurance required by this Agreement, at the option of Operator, may be effected by blanket or umbrella policies issued to Operator covering the Premises and other properties owned or leased by Operator, provided that the policies otherwise comply with the provisions of this Agreement and allocate to the Premises the specified coverage, without possibility of reduction or coinsurance by reason of, or damage to, any other premises covered therein.

ARTICLE XII
DAMAGE AND DESTRUCTION OF PREMISES

A. If improvements on a portion of the Premises are damaged, in whole or in part, by fire or casualty, and there is not substantial damage to the Rental Car Counter Facility in which such portion of the Premises is located, or material damage to such Rental Car Counter Facility as described in Subsection (B), Operator may use insurance proceeds from insurance it carried to pay for the work as it progresses, and the City shall permit any such proceeds to be made available.

B. If there is material damage to a portion of the Rental Car Counter Facility or damage to a material access point or building system(s) serving such portion of the Rental Car Counter Facility, by a fire or casualty, rendering such portion of the Rental Car Counter Facility not usable, whether or not improvements on the Premises are damaged, then where operations in the Premises are severely curtailed or such portions of the Premises are unusable, such portion of the
Premises shall be deleted from the Premises unless and until the City repairs and restores the
damage to the Rental Car Counter Facility within the Term of this Agreement so that the affected
portion of the Rental Car Counter Facility is again usable. Operator shall repair and restore any
damaged improvements to the Premises at its expense (but it may use insurance proceeds from
insurance it carried for the work as the work progresses, and the City shall permit any such
proceeds to be made available) if the City repairs and restores the damage to the Rental Car
Counter Facility during the Term.

Notwithstanding the foregoing, the City shall not be obligated to repair or restore the Rental Car
Counter Facility, and the space deleted shall not be re-included in the Premises if the City
determines not to include space for car rental counters in the portion of the Rental Car Counter
Facility previously rendered unusable.

C. In the event the Terminal is substantially damaged or destroyed, whether or not
improvements to the Premises are substantially damaged or destroyed, and as a result of such
damage or destruction, flight operations with respect to the Terminal are terminated or
substantially curtailed for ninety (90) days or more, then either the City or the Operator may
delete the portion of the Premises located in the Terminal from the Premises or terminate this
Agreement.

D. During any period in which Operator is unable to use the portion of the Premises in the
Rental Car Counter Facility because of damage or destruction to the improvements on the
Premises or the Rental Car Counter Facility, the rent payable for that portion of the Premises in
the damaged or destroyed Rental Car Counter Facility shall be abated for the period during
which such damage to the Rental Car Counter Facility renders the Premises unusable or
operations are so curtailed or terminated. Except for such abatement of rents due, the Operator
shall have no claim against the City for any damage suffered by reason of any such damage,
destruction, repair or restoration. There shall be no abatement of Concession Fees. Upon any
deletion of a portion of the Premises from this Agreement Operator shall surrender such portion
of the Premises to the City.

E. If any improvements to the Premises are not diligently repaired by Operator where
required within forty-five (45) days or if any space is deleted from the Premises, then the City
shall be entitled to all insurance proceeds payable on account of improvements in such space.
Where the Operator is obligated to repair or restore improvements, Operator must do so
notwithstanding that insurance proceeds may be insufficient.

**ARTICLE XIII**
**TERMINATION BY CITY**

A. For purposes of this Agreement, the occurrence of any of the following shall constitute an
"Event of Default":

1. The failure by Operator to pay any Fees as required under this Agreement when due
and/or the failure of Operator to and to remit all CFCs as required by Section 37.11 of
the Revised Code of General Ordinances, and the failure to cure same within ten (10) days after the receipt of written notice thereof by Operator;

2. The failure by Operator on or after the date of this Agreement to perform any other representation, warranty or covenant or contract required to be performed by Operator in this Agreement and the failure of Operator to remedy such default within a period of thirty (30) days after receipt of written notice by the Operator;

B. If an Event of Default occurs, and after the expiration of the applicable period cure period specified for such Event of Default, the City may terminate this Agreement. In the event of termination and in addition to any and all rights and remedies provided elsewhere herein or at law or equity, the City may repossess the Premises and shall be entitled to recover as damages: (i) all of the Fees accrued and unpaid for the period up to and including such termination date; and (ii) any other sums for which Operator is liable or in respect of which Operator has agreed to indemnify City under any provisions of this Agreement which may be then due and owing.

**ARTICLE XIV**

**TERMINATION BY OPERATOR**

A. Operator may terminate this Agreement and all of its obligations hereunder, after the happening and during the continuance of any one of the following events (none of which, however, shall result in any liability to the City or provide Operator with any remedy other than an option to terminate as set forth herein):

1. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport or any part thereof so as to prevent Operator’s use of the Premises in its conduct of its car rental business and the remaining in force of such injunction, not stayed by way of appeal or otherwise, for a period of at least six (6) months;

2. The substantial restriction of City's operation of the Airport by action of any governmental agency or department (other than the City or its agencies and departments) and continuance thereof for a period of not less than six (6) months, provided such restriction adversely affects all of Operator’s operations at the Airport.

B. Any termination by Operator pursuant to this Article shall not occur unless the Operator notifies the City of its election to terminate at least thirty (30) days prior to the effective date of such termination, together with a statement of the grounds for termination. If Operator does not give such notice during the period that any of the above events is occurring, then Operator's right to terminate this Agreement as provided in this Article shall not be available to Operator until another happening of any one of said events.
ARTICLE XV
SURRENDER AND RETURN OF THE PREMISES

Upon termination of this Agreement or on the Expiration Date, whichever is earlier, Operator shall return the Premises in as good condition and repair as at the Commencement Date, subject to ordinary wear and tear, and Operator shall remove all personal property and trade fixtures of Operator from such portion of the Premises prior to the date of expiration or termination. Further, at the City's request, Operator shall also remove all movable, non-permanent improvements installed by or for Operator prior to or within ten (10) days after the expiration or termination of the Agreement, and Operator shall repair any damage to the Premises caused by Operator's removal of the personal property, trade fixtures and improvements. All such removal and repair required of Operator pursuant to this Section shall be at Operator's sole cost and expense. If Operator fails to remove any items required to be removed by it hereunder or fails to repair any resulting damage prior to or within ten (10) days after expiration or termination of the Agreement, then the City may remove said items, including the improvements, and repair any resulting damage and Operator shall pay the cost of any such removal and repair, together with interest thereon.

ARTICLE XVI
NON-DISCRIMINATION AND AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM (ACDBE)

A. The Operator agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Operator transfers its obligation to another, the transferee is obligated in the same manner as the Operator.

The provision obligates the Operator for the period during which the property is owned, used, or possessed by the Operator and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

B. During the performance of this Agreement, the Operator, for itself, its assignees and successors in interest agrees as follows:

1. Compliance with Regulations: Operator will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are attached as Exhibit C and which are herein incorporated by reference and made a part of this Agreement.

2. Nondiscrimination: Operator, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. Operator will not participate directly or
indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Operator for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Operator of the Operator’s obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color or national origin.

4. Information and Reports: Operator will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Operator is in the exclusive possession of another who fails or refuses to furnish the information, the Operator will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of Operator’s noncompliance with the non-discrimination provisions of this Agreement, the City will impose such Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending this Agreement, in whole or in part.

6. Incorporation of Provisions: The Operator will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Operator will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Operator becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Operator may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Operator may request the United States to enter into the litigation to protect the interests of the United States.

C. Operator shall abide by all U. S. Department of Transportation requirements regarding DBE and ACDBE requirements and reporting procedures.
D. It is the goal of the City to encourage participation by organizations classified as Airport Concession Disadvantaged Business Enterprises (ACDBE) as defined in 49 CFR Part 23 for a concession at the Airport. The City established an overall goal for ACDBE participation in Airport Concessions of 13.46% of the total gross revenues of all Airport Concessions for federal fiscal years 2022, 2023 and 2024. A new goal will be established for subsequent federal fiscal years per the FAA requirements, and will be reported to the Operator upon its’ adoption. Operator shall provide information under this Article XVI as requested by City for City’s reporting requirements for FAA or any other governmental entity. Operator is required to submit quarterly statements, provided in Exhibit D (subject to change), to the City regarding their participation in their ACDBE participation goal.

E. This Agreement is subject to the requirements of the U.S. Department of Transportation’s regulations, 49 CFR Part 23. The Operator 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 Operator 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.

ARTICLE XVII
ASSIGNMENT AND SUBLETTING

A. Except with the consent of City and as the result of a merger or acquisition, Operator shall not, (1) assign, transfer, mortgage, pledge, hypothecate or encumber or subject to or permit to exist upon or be subjected to any lien or charge, this Agreement or any interest under it; (2) allow to exist or occur any transfer of or lien upon the Premises, this Agreement or Operator’s interest herein by operation of law; (3) sublease the Premises or any part thereof; or (4) permit the use or occupancy of the Premises or any part thereof for any purpose not provided for herein or by anyone other than Operator. The City may withhold its consent to the foregoing in its sole discretion. The requirements of this Article shall apply to any transaction or series of transactions that shall have the same effect as any of the aforementioned occurrences, and in no event shall this Agreement be assigned or assignable by voluntary or involuntary bankruptcy proceedings or otherwise, and in no event shall this Agreement or any rights or privileges hereunder be an asset of Operator under any bankruptcy, insolvency or reorganization proceedings.

B. If Operator desires, as a result of an acquisition or merger, to assign its interest under this Agreement or sublease any part of Premises, Operator shall make a written request for authorization in a notice to the City. Such notice shall state the name and address of the proposed sub-Operator or assignee and include a copy of the proposed sublease or assignment and all related documents, and, including a financial statement of the sub-Operator or assignee, disclosures and information required by City.

C. Consent by City to any assignment or sublease shall not operate to relieve, release or discharge Operator of or from any obligations, whether past, present or future, under this
Agreement, and Operator shall continue fully liable hereunder except to the extent, if any, expressly provided for in such consent. Consent by City in any one instance shall not be deemed to be consent to or relieve Operator from obtaining City's consent to any subsequent assignment or sublease. Consent by City shall be conditioned upon agreement by the sub-Operator or assignees to comply with and be bound by all of terms, covenants, conditions, provisions and agreements of this Agreement to the extent of the space subleased or assigned, and an agreement that City shall have the right, but not the obligation, to enforce the terms and provisions of any such assignment or sublease affecting City's interests and Operator shall deliver to City within thirty (30) days after execution, an executed copy of each such sublease or assignment containing an agreement of compliance by each such sub-Operator and assignee. Operator shall pay all of City's costs, charges and expenses, including attorney's fees, incurred in connection with any assignment or sublease requested or made by Operator.

ARTICLE XVIII
GENERAL PROVISIONS

A. The term 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.

B. Notices to the City provided for in this Agreement shall be sufficient if sent by certified or registered U. S. mail, postage prepaid, addressed to:

    Department of Aviation
    James M. Cox Dayton International Airport
    3600 Terminal Drive, Suite 300
    Vandalia, Ohio 45377
    Attn: Director of Aviation

or such other address as the City shall direct in writing.

C. Notices to Operator provided for in this Agreement shall be sufficient if sent by certified or registered U. S. mail, postage prepaid, addressed to:

    EAN Holdings, LLC dba
    Alamo Rent A Car and Enterprise Rent-A-Car
    4600 McAuley Place
    Cincinnati, OH 45242
    Attn: Mike Filomena

or such other address as Operator shall direct in writing.

D. Operator 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 the Agreement.

E. Any headings of 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", "hereo", "hereunder" and any similar terms used in this manner refer to this Agreement. All section 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.

F. By execution of this Agreement, Operator 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.

G. Operator shall, upon its execution and delivery of the required copies of this Agreement to the City, deliver to the City the following instruments and documents:

1. Certificates of insurance evidencing the insurance required by this Agreement;
2. Performance Bond.

H. Operator (and any person claiming by or through Operator) 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 whatsoever.

I. Neither Operator nor any contractor of Operator 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 Premises.

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

K. The City may amend or modify this Agreement, at any time, provided that such amendment or modification makes specific reference to this Agreement, is executed in writing, signed by a duly authorized representative of City and Operator and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.

L. This Agreement, including the incorporated Ready/Return Agreement and any executed service facility lease, represents the entire and integrated agreement between City and Operator. This Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreement or contracts, whether oral or written, relating to the subject matter of this Agreement.
M. A waiver by the City of any breach of this Agreement shall be in writing. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it is given and shall not affect the City’s rights with respect to any other or further breach.

N. 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.

O. 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.

(BALANCE OF THIS PAGE INTENTIONALY LEFT BLANK)
IN WITNESS WHEREOF, the City and Operator, each by a duly authorized representative, have executed this Agreement as of the date first set forth above.

WITNESSED BY:  

DAN NEWTON

EAN Holdings, LLC dba  
Alamo Rent A Car and  
Enterprise Rent-A-Car

By:  

Its:  

CITY OF DAYTON, OHIO

City Manager

APPROVED AS TO FORM  
AND CORRECTNESS:

City Attorney

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

, 2021

Min/Bk. Pg.

Clerk of the Commission
EXHIBIT 1 to the Rental Car Ready/Return Agreement

Ready Return Block Layout.
EXHIBIT B to the NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT

Rental Car Counter Facility Layout
Rental Car Facility Counter Layout

EXHIBIT K

Concession Agreement, Effective Jan 2022
Sept. 2021

Counter 1: N/A
Counter 2: Byers dba Thrifty
Counter 3: Byers dba Hertz and Dollar
Counter 4: EAN dba National
Counter 5: EAN dba Alamo/Enterprise
Counter 6: Avis Budget

Department Legend:
- COMMON
- COMMON VESTIBULE
- COUNTER 1
- COUNTER 2
- COUNTER 3
- COUNTER 4
- COUNTER 5
- COUNTER 6
- RAC CIRCULATION
- RAC VESTIBULE

Individual Office = 109 SF
Individual Storage = 50 SF
Individual Counter = 146 SF

Individual TOTAL = 305 SF

RAC Circulation = 2218 SF / 6 Counters = 370 SF per
RAC Vestibule = 847 SF / 6 Counters = 142 SF per
RAC Mechanical/Closet = 150 SF / 6 Counters = 25 SF per

RAC Shared TOTAL = 537 SF per

TOTAL EACH RAC = 842 SF
EXHIBIT C to the NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT

Title VI lists of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Agreement, the Operator, for itself, its assignees, and successors in interest (hereinafter referred to as the "Operator") agrees to comply with the following nondiscrimination statutes and authorities, including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 Stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effective date of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability), and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not;
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, or sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed Reg at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).
EXHIBIT D to the NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT
ACDBE Rental Car Annual Participation Report - Quarterly Reporting

Fiscal Year: October 1, 20__ September 30, 20__

ACDBE Participation Contract Goal: ___
Prime Concessionaire Total Gross Revenue: $___
Total ACDBE Participation: $___

Annual Reports are required to be submitted by the 30th day of the month following the end of each fiscal year. The information received will be compiled and reported to the FAA in accordance with 49 CFR Part 23.

PART I: CONTACT INFORMATION
Concessionaire:
Address:
Contact Person/Email:
Phone No. / Fax No.:

PART II: ACDBE Participation
In order to count toward goal achievement, the listed firm(s) must be certified as Airport Concession Disadvantaged Business Enterprises ("ACDBE") by the State of Ohio's certification program. (Certification can be verified at http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/DBE-Directory.aspx)

<table>
<thead>
<tr>
<th>ACDBE Firm Name</th>
<th>Total ACDBE Participation to Date in Dollars (for Fiscal Year Oct. 1 - Sept. 30)</th>
<th>Nature of Relationship with ACDBE Firm</th>
<th>Race/Gender of Disadvantaged Owner with Largest Ownership Interest</th>
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<tr>
<td>Address &amp; Phone No.</td>
<td>$___</td>
<td>☐ Prime Concession</td>
<td>☐ Black</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Subcontractor</td>
<td>☐ Hispanic</td>
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<td></td>
<td></td>
<td>☐ Management Contract</td>
<td>☐ Asian Pacific American</td>
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<td></td>
<td>☐ Goods/Services</td>
<td>☐ Asian Indian American</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>☐ Non Minority Women</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>☐ Other</td>
</tr>
</tbody>
</table>

Business Type:
☐ Car Rental Insurance
☐ Car Rental Vending
☐ Car Rental Office Supplies
☐ Car Rental Uniforms
☐ Car Rental Gas, Oil
☐ Car Rental Other (Explain business type below)

Shortfall Explained:

Does this vendor have a lease or sublease?
☐ Yes
☐ No

Agreement Dates:
☐ Yes
☐ No

Does the agreement have an option to renew?
☐ Yes
How many renewal options?
Length of time of renewal:
☐ No
## NON-ACDBE Subconcession(s)

<table>
<thead>
<tr>
<th>NAME</th>
<th>TYPE OF GOODS OR SERVICE</th>
<th>Total NON-ACDBE Subs Gross Receipts</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

## PART III: QUARTERLY REPORTING - PRIME CONCESSIONAIRE

Quarterly Reports are required to be submitted by the 30th day of the month following the end of each annual quarter. The information received will be compiled and reported on the below graph.

1st Quarter  
(Jan 1, 20__ - Mar 30, 20__)  

2nd Quarter  
(Apr 1, 20__ - Jun 30, 20__)  

3rd Quarter  
(Jul 1, 20__ - Sep 30, 20__)  

4th Quarter  
(Oct 1, 20__ - Dec 31, 20__)  

I hereby certify that the information contained in this report is true and correct.

__________________________  
Signature of Authorized Representative

__________________________  
Print Name/Title

__________________________  
Date

For BOTH Annual and Quarterly Reporting:  
In the event the Prime Concessionaire has not achieved the ACDBE participation contract goal, this report must be accompanied by a corrective action plan and written documentation evidencing the Prime Concessionaire's good faith efforts to achieve the ACDBE participation contract goal.
NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT
AT THE DAYTON INTERNATIONAL AIRPORT

The Department of Aviation requests permission to enter into an Agreement with EAN Holdings, LLC dba National Car Rental. A Request for Proposals (RFP) was issued in June 2020 for six available rental car locations at the Dayton International Airport. Five responses were received with all five companies being recommended for agreements with the City.

EAN Holdings, LLC dba National Rent A Car is an incumbent operator, and will lease one (1) counter. They will pay 10% of gross revenues or the Minimum Annual Guarantee (MAG), whichever is greater, plus rents for counter, office, queuing and common space in the Rental Car Counter Facility building.

Rents to the City are anticipated to be $1,451,736.00 for the 3-year MAG and $168,332.64 for the 3-year counter rent, totaling $1,620,068.64.

This Concession and Lease Agreement is effective for a three (3) year period, commencing on January 1, 2022 and terminating/expiring on December 31, 2024. There are no options for renewal.

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

TO BE COMPLETED BY THE DEPARTMENT

Customer Information:
Name: EAN Holdings, LLC dba National Car Rental
      Attn Controller, Mike Cullen
Address: 3700 Park 42 drive, Suite 100A
City: Cincinnati  State: OH  Zip+4: 45241  -  2083
Customer #:  Address Location #:  
Federal ID#: 26-4086616

Revenue Information:
Fund: 51000  Organization: 3216  Revenue: 23344  Program: 43

Contract Information:
Contract Start Date: 01/01/2022  Contract Expiration Date: 12/31/2024

Billing Information:
Rate: $4,675.91  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:  Rate Change Amount:

Description of Services (wording on invoice): Effective 1/1/2022.
Terminal space rent at Dayton International Airport
842 sf counter, office, queuing and common space in the rental car facility @ 66.64/sf per year for
2021-2022, subject to change in January 2022

Departmental Approval

TO BE COMPLETED BY FINANCE

Revenue Contract Number: 1-60382  Auditor: D. Buley  Date: 12/22/2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in
the Accounts Receivable data base and contains the terms and conditions necessary for collection.
Director of Finance
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name: EAN Holdings, LLC dba National Car Rental Attn. Controller, Mike Cullen

Address: 3700 Park 42 Drive, Suite 100A

City: Cincinnati State: OH Zip+4: 45241 - 2083

Customer #: ___________________ Add Type/Seq #: ___________________

Federal ID#: 26-4086616


Contract Information: Contract Start Date: 1/1/2022 Contract Expiration Date: 12/21/2024

Billing Information: Rate: $34,368.75 Arrears: _______ Pre-bill: X

Monthly (1st month of billing) Jan

Quarterly (1st month of quarter)

Semi-annual (1st month of half)

Annual (1st month of billing)

Other (explain) __________________

Rate Change Date: 1/1/2023 Rate Change Amount: $41,242.50

Description of Services (wording on invoice): Effective 1/1/2022

Pre-Bill MAG (Minimum monthly Rental Car Concession Guarantee) at Dayton Intl Airport

Annual Settle-up (the greater of annual MAG and 10% Gross Revenue)

Departmental Approval: ____________________

TO BE COMPLETED BY FINANCE

City Reference Number: 1-6038-1 Auditor: DBily Date: 12-16-2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

Director of Finance: ____________________

12/15/2021
NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT AT
THE JAMES M. COX DAYTON INTERNATIONAL AIRPORT

THIS NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT
("Agreement") is made and entered into this ______ day of ______________, 2021 between
the City of Dayton, Ohio ("City"), a political subdivision in and of the State of Ohio, and EAN
Holdings, LLC dba National Car Rental ("Operator").

WITNESSETH THAT:

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, State of Ohio; and

WHEREAS, On June 9, 2021, the City submitted a Request for Proposal, titled “Request
for Proposal for Non –Exclusive Rental Car Concessions at the James M. Cox International
Airport No. 21-018AOAD” (“RFP”); and

WHEREAS, Operator responded to the RFP on August 18, 2021, setting forth its desire
and qualifications to operate a rental car concession at and from the Airport; and

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

WHEREAS, The parties enter into this Agreement to set forth the terms and
conditions for the non-exclusive right and privilege to operate an on-Airport rental car
concession.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and
the mutual benefits to be derived, IT IS AGREED AS FOLLOWS:

ARTICLE I
DEFINITIONS

For the purposes of this Agreement, the following words and phrases shall have the meanings
ascribed to them respectively regardless of whether the word(s) or phrase(s) is capitalized, unless
otherwise clearly indicated by the context in which it is used:

“Airport Rules and Regulations” means the rules and regulations of the Dayton
International Airport as adopted and as the same may be updated from time to time.

“Assigned Areas” means the areas at the Airport designated by the City, from time to
time, for occupancy and use by Concessionaires.

“Commencement Date” means January 1, 2022.
“Concession Fee” means the amount payable, per Contract Year, for the on-Airport rental car concession rights and privileges granted to Operator under this Agreement.

“Concessionaire(s)” means all rental car businesses operating at the Airport pursuant to the terms of an agreement similar to this Agreement.

“Contract Year” means a twelve-month period beginning on January 1 and ending on December 31 within the Term.

“Customer” means anyone who enters into a vehicle rental contract that originates or ends at the Airport.

“Customer Facility Charge” or “CFC” means the charge established by Section 37.11 of the Revised Code of General Ordinances of the City of Dayton, which charge must be collected by Operator from its Customers and submitted to the City and is subject to change during this Agreement Term.

“Environmental Laws” means any federal, state, or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree or rule of common law, and any judicial or agency interpretation of any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future, that pertains to any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above ground tanks) and shall include, without limitation, the Solid Waste Disposal Act, 42 U.S.C. §6901 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 et seq. (“CERCLA”), as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”); the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; and the Safe Drinking Water Act, 42 U.S.C. §300f et seq.

“FAA” means the United States Department of Transportation, Federal Aviation Administration, or such other successor agency or agencies of the United States Government.

“Expiration Date” means December 31, 2024.

“Fees” means all amounts, including but not limited to, Premise Rent (including Counter, Office and Queuing Space Rent, Shared Common Space Rent), Concession Fee, and any other incidental fees and charges that are paid or payable by Operator to City pursuant to this Agreement.

“Gross Revenues” as used herein shall mean, as determined in the reasonable discretion of the City, all amounts charged to its customers by Operator for or in connection with contracts it secures through its operations and business at the Airport, regardless of whether such amount is actually paid to or received by Operator. Gross Revenues shall include all monies or other consideration of whatsoever nature paid or payable to Operator by customers for all sales made and services performed for cash, credit or consideration in connection with
automobile and vehicle rentals or other products or services provided to persons through Operator’s operations at the Airport without regard to the ownership, area, fleet, or location assignment of vehicles and without regard to the manner in which or place at which the vehicles or other products or services are furnished to Operator’s customers and without regard to whether the vehicles or other products are returned to the Airport or to some other location.

Gross Revenues may not be reduced by promotional or other discounts not given directly to the customer at the time of rental. The retroactive adjustment by Operator of Gross Revenues designated as volume discounts or rebates, corporate discounts or rebates, or any other designation of any nature, or for any other purpose, is prohibited.

Gross Revenues shall include anything and everything that is not specifically excluded. The only exclusions from Gross Revenues permitted under this Agreement shall be the specific exclusions set forth below:

1. Federal, state, county, city or municipal sales, use, or excise taxes now in effect or hereinafter levied on Operator’s operations which are separately stated on customers’ rental contracts and collected from customers of Operator;

2. Those fees referred to in this Agreement as Customer Facility Charges, “CFC’s” which for the purpose of this Agreement shall include all customer facility charges, authorized pursuant to City of Dayton RCGO § 37.11 (B), as may be amended;

3. Amounts received specifically for the actual loss of or damages of vehicles or other property of Operator;

4. Amounts received from the sale of vehicles off-airport premises; provided, however, any amounts paid in connection with automobile and vehicle rentals or other products or services provided to persons through Operator’s operations at the Airport that are applied to or otherwise reimbursed as a result of the sale of a vehicle shall not be excluded from Gross Revenues; and

5. Reimbursements for amounts actually paid for parking tickets, red light tickets, tolls and toll violations from its customers to pass through without markup to an independent third party with no amount being retained by Operator. However, any amounts collected above the pass-through amount shall be included as Gross Revenue under this Agreement.

“Hazardous Materials” means any substance, whether solid, liquid or gaseous, that is listed, defined or regulated as a “hazardous substance,” “hazardous waste,” “solid waste,” or pesticide, or is otherwise classified as hazardous or toxic, in or pursuant to any Environmental Law or that is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons; or that causes or poses a threat to cause a contamination or nuisance or a hazard to the environment or to the health or safety of any persons, except Operator may use, bring, and store household and commercial cleaners and chemicals in connection with the operation and
maintenance of the premises in commercially reasonable quantities, and may have fuel in the tanks of its vehicles.

“Minimum Annual Guarantee” or “MAG” means that minimum amount to be paid to the City, per Contract Year, for the concession privileges and rights stated in this Agreement, which Operator specified in its response to the City’s RFP and provided in Article VIII(B).

“Percentage Concession Fee” means an amount equal to ten percent (10%) of Gross Revenues.

“Premise Rent” means an amount paid the City for Operator’s occupancy of the Rental Car Counter Facility.

“Ready/Return” means that area at the Airport identified by the Ready/Return Agreement and consisting of parking blocks for use by Concessionaires as the location where Customers pick-up and/or drop-off Vehicles.

“Ready/Return Agreement” means that certain Agreement between the City and Operator pertaining to ready/return activities, attached hereto as Exhibit A and incorporated herein.

“Reallocation Date” means on or about March 1 during the term, beginning March 1, 2023.

“Rental Car Counter Facility” means the facility constructed adjacent to the lower level of the parking garage for the purpose of providing an area for conducting rental car transactions with customers.

“Term” means the effective period of this Agreement, beginning on the Commencement Date and expiring on the Expiration Date.

“Terminal” means the main passenger terminal building located at the Airport.

“TSA” means the United States Department of Homeland Security, Transportation Security Administration, or such other successor agency or agencies of the United States government.

“Transaction Day(s)” means a twenty-four (24) hour period or fraction thereof for which a Customer is charged rental for a vehicle which is paid in the form of currency, credit, or promotional coupon for which a Customer is given complimentary use of a vehicle, regardless of the duration or length of the rental term. Late return (after twenty-four (24) hours) shall be considered a Transaction Day.

“Vehicle(s)” means any automobiles, trucks, vans, and all accessories and appurtenances thereto provided by the Operator (and/or other Concessionaires, as the context would dictate) to meet the transportation needs of Customers.
ARTICLE II
NON-EXCLUSIVE AGREEMENT

The rights and privileges granted under this Agreement are non-exclusive. By entering into this Agreement, Operator acknowledges that the City is or will be entering into non-exclusive agreements with other Concessionaires. The City reserves the right to enter into agreements with other companies providing rental car services from off-Airport locations, if the City determines that it is in its best interest to do so. However, such agreements with off-Airport rental car businesses/operators shall not include the right to staff or operate a rental car concession from an on-Airport Counter and Office area (or other area on the Airport) and/or occupy and use the Ready/Return. Such off-Airport agreements may be at terms and conditions more or less favorable than this Agreement.

ARTICLE III
TERM

A. This Agreement is effective for a period of three (3) years (“Term”), beginning January 1, 2022 (“Commencement Date”) and expiring December 31, 2024 (“Expiration Date”), unless terminated earlier or renewed in accordance with the provisions of this Agreement.

B. In the event that Operator holds over and remains in possession of the Premises, in whole or part, and the rights and obligations granted herein after the Expiration Date, such holding over shall only constitute a month-to-month license on the same terms and conditions specified in this Agreement, except that it may be terminated at any time by the City or Operator. Further, Operator agrees and shall continue to pay during the holding over period all Fees that were effective on the Expiration Date.

ARTICLE IV
PREMISES

A. The City leases to Operator the following areas in the Rental Car Counter Facility described herein together with any substitutions or additions thereto, but less any removals therefrom, from time to time as provided in this Agreement (hereinafter all areas leased to Operator shall be collectively referred to herein as the “Premises”): approximately eight hundred forty-two (842) square feet of counter, office, storage, queuing and shared common area identified as position #5 depicted on Exhibit B.

B. By the execution of this Agreement, Operator accepts the Premises "AS IS". Operator also understands and agrees that the occupant of the Premises prior to the Commencement Date may remove trade fixtures prior to the delivery of possession of the Premises to Operator. Except as expressly provided in this Agreement, the City shall have no obligation or responsibility whatsoever to do any work or furnish any improvements of any kind to the Premises or perform any maintenance or repair on the Premises. CITY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PREMISES OR THAT THE PREMISES ARE SUITABLE FOR OPERATOR'S USE, PURPOSES OR NEEDS. Upon expiration or termination of the Agreement, Operator shall promptly and peaceably surrender to City its Premises and all improvements thereon to which
City is entitled in good and fit condition, reasonable wear and tear excepted; provided, however, nothing in the Article shall be construed to modify the obligations of the parties set forth elsewhere in the Agreement.

C. Priority of choice for location of Operator’s block in the Ready/Return area during the Term is based on the cumulative MAG (the MAG for each of the three years added together) Proposal by each Concessionaire in response to the RFP, with the Concessionaire having the highest cumulative MAG given first priority for choice of location of Operator’s block in the Ready/Return.

The allocation of the block of Ready/Return parking area to Operator for the first Contract Year of this Agreement, commencing on the Commencement Date, is based on the sum of the three years minimum annual guarantee proposed by the Operator divided by the sum of the three years minimum annual guarantees proposed by all successful operators. The City may, on not less than thirty (30) days advance notice to Operator and/or on each Reallocation Date, reduce or increase the size and layout of the parking block in the Ready/Return area allocated for use by Operator based on Operator’s market share for the immediately preceding Contract Year. If the calculation of the reallocation of the parking area does not result in a change to any operator of an increase or decrease of block size of more than 10%, the City will not reallocate the parking blocks for that Contract Year.

In general, each parking block will be a general rectangle shape, with at least one side providing for terminal frontage (east) side and the opposite side providing for the entrance/exit driveway (west) side. However, when allocating or reallocating the Ready/Return parking area, the City has full discretion on the shape of each Concessionaire’s block based on the geometry or any physical characteristics of the garage (such as support columns and common use sidewalks).

On the date designated for deletion or increase of the parking blocks in the Ready/Return:

1. Operator shall surrender such portion of the parking block in the Ready/Return to the City, if a deletion;
2. Operator will be permitted to use any additional parking block assigned to Operator in the Ready/Return, if an addition;
3. Exhibit 1 shall be revised accordingly, which shall not require a formal written amendment to this Agreement.

Notwithstanding the allocation and reallocation process outlined above, the parking block assigned to Operator shall not be fewer than fifteen (15) spaces, except in the event that the Ready/Return area is reduced in size twenty-five percent (25%) or more as required by the FAA and/or TSA for security purposes or construction activities upon or near the Ready/Return. In the event Operator’s block must be reduced in order to allocate fifteen (15) spaces to the smallest Concessionaire, the City will propose a plan to reduce the space to Operator for comment; however, the City shall retain final authority as to the reduction of blocks.

All expenses for the Operator’s block configuration upon commencement of this Agreement and/or upon any reallocation of Ready/Return area will be the sole responsibility of the Operator.
D. Notwithstanding any other provision of this Agreement, the City may adjust the boundaries of the Premises as may be required by the City for its purposes by adding to or deleting space from such portion of the Premises from time to time. The City shall notify Operator not less than sixty (60) days in advance of such adjustment, and Operator shall remove all personal property and fixtures located on the area(s) being deleted no later than the date such adjustment is to occur. In such instances, the Premises Rent (as applicable) may be adjusted, based on the new area comprising the Premises.

E. City reserves the right to relocate the Premises to other space in the Terminal and/or on Airport grounds, as applicable, on the terms and conditions hereinafter set forth:

1. If the City elects to relocate all or part of the Premises the City will give Operator at least sixty (60) days’ prior written notice of the relocation date. The City agrees to provide substitute space of comparable square footage and shall provide improvements of comparable condition and utility (if not then existing at the new location). City shall pay all reasonable out-of-pocket moving costs for moving Operator’s personal property to the substitute premises. Operator shall cooperate with the City in connection with the relocation, including, without limitation, responding in a timely manner to any requests for information or for review and comment on proposed plans for improvements to the substitute premises. Operator shall surrender possession of the portion of the Premises for which the substitution is being made and move from such portion of the Premises to the substitute premises on the relocation date.

2. On the relocation date, the substitute premises shall be deemed for the purposes of this Agreement to be the portion of the Premises being relocated. The Premises Rent, as applicable, shall be recalculated and adjusted based on the new area of the substitute Premises. The MAG, however, shall not be adjusted.

The City’s exercise of its relocation right under this Subsection (E) shall not constitute a constructive eviction or interference with the right of quiet enjoyment, nor shall the City’s exercise of such right subject the City to damages for loss of profits or business.

F. Operator’s use of the Premises shall be subject to any and all easements, licenses and other rights with respect to the Premises granted to or vested in itself or any other governmental entities or agencies, such as the FAA and TSA. Operator acknowledges that there may currently exist, and that City may grant in the future, easements and rights on, over or under the Premises for the benefit of suppliers or owners of utilities that service the Airport, and Operator hereby consents to any such utility easements whether now in existence or later granted.

**ARTICLE V**

**USE OF THE PREMISES**

A. Subject to the terms and provisions contained in this Agreement, and all applicable rules, regulations, laws, ordinances, codes and orders of any federal, state or local government or
subdivision thereof in connection with the conduct of activities by Operator at the Airport, Operator shall use the Premises for the following purposes only and for no other purpose:

1. Arranging and administering the rental of Vehicles and the related incidental provision of loss and collision damage waiver protection, insurance (including but not limited to personal injury insurance), children’s car seats, GPS devices, mobile telephones and such other incidental services, items and equipment not being provided by Operator at the Airport prior to the Commencement Date and equipment reasonably associated with the rental of automobiles (but not including any items for which any exclusive right to provide such services, items or equipment has been or may in the future be granted to others at the Airport), which are approved in advance in writing by the City; and

2. For such other uses only as the City may approve in writing in its sole and absolute discretion.

B. If Operator parks its Vehicles in public parking lots on the Airport or permits its employees, contractors or agents to park automobiles in such lots, Operator must pay the posted parking rates.

C. Operator shall not use, bring, store, or dispose of any Hazardous Materials on the Premises, except Operator may use, bring, and store household and commercial cleaners and chemicals in connection with the operation and maintenance of the premises in commercially reasonable quantities, provided such is permitted by the Airport Rules and Regulations. Operator may have fuel in the tanks of its vehicles. Operator shall comply with all applicable Environmental Laws in its use of the Premises and the conduct of its concession business at the Airport.

ARTICLE VI
OPERATOR’S CONCESSION RIGHTS AND OBLIGATIONS

A. Operator shall have the non-exclusive right and obligation to conduct a rental car (a.k.a. rent-a-car) concession at the Airport from the Premises under the terms and conditions described herein.

B. During the Term of this Agreement, Operator shall operate its concession and maintain all signage under the brand(s) or trade name(s) of National Car Rental. Operator is prohibited from operating at Airport under any other brand name(s) or trade name(s). No other brand name(s) or trade name(s) shall be used or displayed by Operator at the Airport or upon the Premises during the Term of this Agreement. During the term of this Agreement Operator shall operate and maintain all signage under the brand(s) or trade name(s) stated above. No additional brand or trade name may be added to this Agreement during the Term.

If Operator uses any particular brand or trade name under a license or franchise contract, Operator represents and warrants that it has been granted the right to use such brand or trade name for the entire term of this Agreement. At the City’s request, Operator agrees to provide a
copy of such franchise or license agreement as evidence that the same is in full force and effect. Operator shall immediately notify the City if such agreement is terminated.

C. Operator shall occupy the Ready/Return block assigned for its use only for the parking of rental Vehicles by Operator for pick-up or drop-off by its Customers, in a manner consistent with the terms of the Ready/Return Agreement. Vehicles returned by customers must be removed to the Operator’s service facility within one hour of return. Returned vehicles which have not been cleaned and are not immediately available for rental shall not be stored in the Ready/Return. Operator understands that returned vehicles cannot be cleaned and/or serviced in the Ready/Return, including the removal of trash. Operator employees are permitted to park personal vehicles in the Ready/Return which are properly displaying an Airport-issued vehicle permit issued to the employee for that specific personal vehicle. Upon notification by the City, Operator shall immediately remove any employee vehicle parked in the Ready/Return that does not display an Airport-issued vehicle permit. Operator’s employees shall only park personal vehicles in the Ready/Return while on duty at the Airport and shall not be permitted to park in the Ready/Return at any other time, including during personal or business travel, see Article IV(M) below.

D. In operating the rental car concession permitted hereunder, Operator shall comply with the following:

1. Operator shall offer for rental only Vehicles of recent manufacture (not more than two (2) model years old and less than 40,000 miles), except as may be allowed under (D) (2) below. All Vehicles provided by Operator shall be maintained at Operator’s expense in good and safe operating order, free from any known mechanical defects and be in clean, neat, and attractive condition inside and out. Operator shall furnish good, prompt and efficient service and shall at all times have available a sufficient number of Vehicles (a fleet of no fewer than fifty (50)) to meet all reasonably foreseeable demands of the traveling public.

2. Operator may offer for rental antique, vintage, classic or other luxury or prestige automobile or handicapped operated vehicles of good quality, free from any known defect and clean and attractive both inside and out. The City shall have the right to prohibit Operator from offering for rental any such automobile which the City reasonably determines not to meet the standards described in (D) (1) above.

3. Operator shall provide the following services for its Customers at the Airport: (i) accept at least three (3) nationally recognized credit cards and at least one (1) locally named credit or debit cards for payment of Vehicle rental; (ii) provide for a national reservation system for services of Operator at the Airport, and (iii) will rent motor vehicles to customers who are local walk-up customers, ticketed Airline passengers and any other customer who so chooses to rent.
4. Operator shall maintain a sufficient number of trained personnel to ensure that Operator's Customers will receive prompt and courteous service at all times. All personnel of Operator, while on or about the Premises, shall be polite, clean and neat in appearance and appropriately attired. The City shall have the right to complain to Operator as to the demeanor, conduct or appearance of Operator's employees, invitees and those doing business with it, or regarding the Operator's staffing levels, and Operator agrees to take all reasonable steps necessary to resolve such complaint(s).

5. Without limiting any other requirement set forth in this Agreement, Operator shall conduct its concession business operations within the Airport in such manner as shall reduce to a minimum the emanation of noise, vibration, dust, fumes and odors, so as not to interfere with the use of adjacent areas on the Airport.

6. Operator's rights to use the Premises for the purposes provided in this Agreement are subject to the rights of the City, as City, to monitor compliance with this Agreement to ensure that the Premises are used and operated as required by Operator.

7. If Operator receives (or the City receives and forwards to Operator) any written complaint concerning Operator's operation of the business at the Airport, Operator shall promptly respond to such complaint in writing within thirty (30) days of its receipt and make a good-faith attempt to explain, resolve or rectify the cause of such complaint. Without further notice or demand, Operator shall keep a copy of each such complaint and Operator's written response for a period of one (1) year from the date of the complaint and shall make the complaint and the written response available to the City upon its request.

8. Operator shall respond in writing to complaints registered by the Airport's police with respect to violations of traffic regulations committed in the course of Operator's business by Operator's agents, employees, invitees and licensees, setting forth such action as have been taken or are immediately contemplated to remedy said violations.

9. Operator shall keep the Premises open for service for such periods during each day and on such days during each week as may be necessary to meet reasonable demands for such services and to properly and adequately serve the public, as determined by the City; provided, Operator shall provide rental car services to Airport customers during all hours of air carrier operations at the Airport. Should the Operator operate more than one concession location in the Rental Car Counter Facility, Operator is not permitted to close one location and direct customers to its other location.

10. Counters will be adequately staffed and open one hour before the first scheduled flight departure and one hour after the last scheduled flight arrival.

11. Operator shall comply with the Airports Rules & Regulations and any amendments to that shall be approved.
12. Operations Violations. Operator’s failure to adhere to the operating requirements set forth in this Agreement is reasonably anticipated to result in significant inconvenience to the public, adversely affect the overall commercial business of the Airport, and reduce the amount of rent to be paid to the City. Additionally, City resources will be expended in dealing with violations of this Agreement by Operator. The parties hereby agree that total damages sustained by the City for violations of the provisions of this Agreement addressing this subject matter could be significant, but would be difficult to determine and to track. Therefore, the parties hereto agree that the liquidated damages amounts, set forth below for violation of Agreement terms addressing the referenced subject matter three (3) business days from a notice/occurrence, for the first occurrence only, are reasonable estimates of the loss anticipated to be suffered or incurred by the City. Operator, therefore, hereby agrees that imposition of the liquidated damages set forth below is fair and reasonable and Operator agrees to pay immediately upon demand by the City the following amounts as liquidated damages upon the occurrence of breaches, in any Contract Year, related to the following operation violations:

- $100 per occurrence - first occurrence
- $200 per occurrence - second occurrence
- $300 per occurrence - third occurrence
- $1,000 per occurrence thereafter

For hours of operations violations, liquidated damages are as follows:

- $100 per hour or portion thereof during which location is not open - first occurrence
- $200 per hour or portion thereof during which location is not open - first occurrence
- $300 per hour or portion thereof during which location is not open - first occurrence
- $1,000 per occurrence thereafter

E. Operator shall, at its expense, obtain all permits, licenses, certificates or other authorizations required for conduct of its concession business at the Airport, shall register all Vehicles as may be required by laws and ordinances and display all permits or stickers as may be required. Upon execution of this Agreement and thereafter annually or at the City’s request, Operator shall provide evidence to the City that Operator has obtained such permits, licenses, certificates, other authorizations and registrations.

F. Operator shall not use or occupy or permit the Premises to be used or occupied, or do or permit anything to be done in or on the Premises, in whole or in part, in a manner which would in any way violate any certificate of occupancy affecting the Premises, or make void or voidable any insurance then in force with respect thereto, or which may make it impossible to obtain fire or other insurance thereon required to be furnished by Operator under this Agreement, or which will constitute a public or private nuisance, or which will disrupt the safe, efficient and normal operations of the Airport.
G. Operator shall not use or occupy or permit the Premises to be used or occupied, in whole or in part, in a manner which may violate and shall comply with any present or future, ordinary or extraordinary, foreseen or unforeseen, laws, regulations, ordinances or requirements of the federal, state or municipal governments or of any other governmental, public or quasi-public authorities now existing or hereafter created, having jurisdiction in the Premises, whether or not City also is liable for compliance.

H. Operator shall not sell or give away food or beverages on the Premises. Operator may not install vending machines on the Premises for sale of food, beverages or any other items.

I. Operator may, at its own expense and only after receiving written approval from the City, erect and maintain informational signs within and upon the Premises in addition to those provided by City; the size and type of signs are subject to City’s standards and prior written approval.

J. Operator shall not erect, allow or permit to be maintained on the Premises, or upon the exterior or any improvement on the Premises, any billboard or advertising signs, except those which have the prior written approval of the City.

K. Throughout the Term of this Agreement Operator shall employ a qualified, full-time, local resident manager having experience in the management of this type of concession, who shall be available during normal business hours, and be delegated sufficient authority to ensure the competent performance and fulfillment of the responsibilities of Operator under this Agreement, and to accept service of all notices provided for herein. Operator shall provide the City with emergency telephone numbers at which Operator’s local manager or designated local employee with authority to speak for Operator may be reached on a 24-hour basis.

L. Operator shall at its sole expense, provide and use suitable receptacles for the storing of all trash, garbage, and other refuse created in the conduct of its business or operations in the Premises, or arising from Operator’s exercise of any right or obligation under this Agreement. Trash receptacles in the Ready/Return are provided for customers disposal of trash. These receptacles shall not be used for trash generated from Operator’s activities or employees and shall not be used for disposing of trash left in returned vehicles. Such cleaning shall take place at the Operator’s service facility.

M. Operator’s employees shall be required to obtain an Airport-issued identification badge conditioned upon successful completion of a background check and other requirements as stated in the Airport Rules and Regulations. Such badge must be obtained within thirty (30) days of execution of this Agreement. At that time, Operator’s employees may request a parking sticker for their personal vehicle. See Article IV(C) above.

N. Operator shall repair or pay for any and all damages to City and its property caused by any wrongful, intentional or negligent acts or omissions by Operator, its agents, contractors or employees arising out of Operator’s use or occupancy of the Premises or in the exercise of any right or obligation granted herein.
O. Operator shall operate or cause to be operated all its Vehicles in a safe manner and in accordance with all applicable rules and regulations, and with all federal, state and local laws and to strictly observe all posted speed limits.

P. Operator shall be a party to a Ready/Return Agreement at all times this Agreement is effective.

Q. Operator’s employees shall be required to obtain an Airport-issued vehicle permit for any personal vehicle which Operator’s employees intend to park in the Ready/Return.

R. All of Operator’s computer software, hardware, firmware, payment card processing policies, procedures and related services utilized to process City of Dayton revenue transactions shall be:
   1. Completed by a qualified professional payment card processing firm acceptable and approved by the City of Dayton; and,

Operator shall provide and agrees to maintain the PCI compliance reporting Attestation of Compliance (“AOC”) Form(s) in its/their latest version(s), or within the year of record as requested and/or in an annual transmittal to the City of Dayton. (https://www.pcisecuritystandards.org/documents/PCI-DSS-v3._2-AOC-Merchant.docx?aggreement=true&time=1493826893795 or https://www.pcisecuritystandards.org/documents/PCI-DSS-v3-AOC-Offeror.docx?aggreement=true&time=1493826893795).

**ARTICLE VII**

**CITY RIGHTS AND OBLIGATIONS**

A. The City agrees to provide normal heating, air conditioning and electrical service to the Rental Car Counter Facility as reasonably required. Operator shall pay for its own telephone service and installation of any telephone or computer connections or equipment or for extension of any electrical facilities to provide service. The City reserves the right to interrupt temporarily the heating, air conditioning or electrical services furnished to the Premises to make emergency repairs or for other reasonable purposes, and the City shall restore said services as soon as reasonably possible. The City shall endeavor to provide Operator with reasonable notice of such interruptions when possible. The City shall have no responsibility or liability for any failure of heating, air conditioning, electrical or any other service to the Premises, the Rental Car Counter Facility or to the Airport for any other reason whatsoever.

B. All rights not expressly granted to Operator herein are reserved by the City, including, without limitation, the following rights (which may be exercised by the City's officers, employees, agents, licensees, contractors or designees):
1. to have, at any and all reasonable times, and with reasonable notice to Operator when possible, the full and unrestricted access to the Premises for the purpose of inspecting the Premises and doing any and all things, which the City is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport and in the exercise of the City’s police power;

2. to enter the Premises at any time;

3. to enter the Premises to maintain, replace, repair, alter, construct or reconstruct existing and future utility, mechanical, electrical and other systems or portions thereof on the Airport, including without limitation, systems for the supply of heat, water, gas, fuel, electricity, and for the furnishing of sprinkler, sewage, drainage, and telephone service, including all related lines, pipes, mains, wires, conduits and equipment, and;

4. to adopt and enforce reasonable rules and regulations with respect to the use of the Airport and facilities thereon, which Operator agrees to observe and obey; and

5. to exercise such other rights as may be granted the City elsewhere in this Agreement.

Except in the case of an emergency or previous arrangement with the Operator, City’s entry into the Premises shall be during reasonable business hours after providing reasonable advance notice, and in the presence of Operator’s representative.

All rights in this Subsection (B) shall be exercisable without notice (except as expressly provided in this Section) and without liability to Operator for damage or injury to property, person or business, and without effecting an eviction or disturbance of Operator’s use or possession or giving rise to any claim for setoff or abatement of Fees or affecting any of Operator’s obligations under this Agreement. Notices under this Subsection (B) may be given verbally in an emergency or where entry does not materially affect Operator’s use and occupancy. Reasonable notice shall in no event require more than twenty-four (24) hours’ notice.

C. City warrants quiet enjoyment of the rights and privileges granted herein, during the term hereof, upon the performance of Operator’s covenants contained herein, subject to Subsection (B) of this Article VII.

D. City will remove, during normal business hours, all collected trash, garbage, and refuse from the Premises with the exception of any construction, renovation, Ready/Return area or relocation debris.

E. In an emergency situation or upon occurrence of an Event of Default, the City may (but shall not be obligated so to do), and without waiving or releasing Operator from any obligation of Operator hereunder, make any payment or perform any other act which Operator is obligated to make or perform under this Agreement in such manner and to such extent as the City may deem desirable; and in so doing the City shall also have the right to enter upon the Premises for any purpose reasonably necessary in connection therewith and to pay or incur any other
necessary and incidental costs and expenses, including reasonable attorneys' fees. All sums so paid and all liabilities so incurred by the City, together with interest thereon, shall be deemed additional fees hereunder and shall be payable to the City upon demand. The performance of any such obligation by the City shall not constitute a waiver of Operator’s default in failing to perform the same. Inaction of the City shall not be considered as a waiver of any right accruing to it pursuant to this Agreement. The City shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business or other damage of Operator any other occupant of the Premises or any part thereof, by reason of exercise of its rights under this Subsection (E).

ARTICLE VIII
RENTS, FEES, PAYMENTS AND PERFORMANCE BOND

A. Premises Rent. Operator shall pay to the City, in advance on the 1st day of each month, a premise rent for the Premises described in Article IV(A). For the period commencing January 1, 2022 through December 31, 2022, the Operator will pay the sum of what will be adopted as stated below for 2022. The sum of Sixty-Six Dollars and Sixty-Four Cents ($66.64) per square foot per year (the rate for 2021) is inserted into this Agreement for purposes of planning only. This rate is subject to updating annually upon adoption of the Airlines Rates and Charges Resolution by the Commission of the City of Dayton.

B. Concession Fee. As consideration for the privilege of operating the concession hereunder, Operator shall pay to the City each Contract Year, for the full term of this Agreement, a Concession Fee. The Concession Fee is the greater of:

1. The Percentage Concession Fee as defined in Article I;

OR

2. The respective amount shown below as the Operator’s Minimum Annual Guarantee:

<table>
<thead>
<tr>
<th>Period</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1, 2022 to December 31, 2022</td>
<td>$412,425.00</td>
</tr>
<tr>
<td>January 1, 2023 to December 31, 2023</td>
<td>$494,910.00</td>
</tr>
<tr>
<td>January 1, 2024 to December 31, 2024</td>
<td>$544,401.00</td>
</tr>
</tbody>
</table>

The MAG shall be paid in equal monthly installments, in advance, on the first day of each month during the Term.

C. Additional Fees. City may invoice Operator additional fees for items including, but not limited to, employee parking, badging fees, background checks and additional vehicle storage. The City may assess reasonable, non-discriminatory charges for these items. Operator shall pay for such additional fees within thirty (30) days of invoicing by the City.

D. In the event of termination of this Agreement on a date other than December 31st in any year of the Agreement, the MAG and Premises Rent shall be prorated. Proration for a fractional Contract Year shall be determined by multiplying the number of days that have transpired that year by 1/365th of the annual MAG and Premises Rent.
E. On or before the twentieth (20th) day of each month, Operator shall furnish to the City a sworn or verified statement of its total Gross Revenues for the preceding month, with the Concession Fee calculated. No additional payment is due at this time. The Concession Fee will be reconciled at Contract Year end, as described in Paragraph G below. This statement shall be in the format (as given to Operator by the City) acceptable to the City and shall contain detailed financial information, broken down by categories of items representing Gross Revenues.

F. Operator shall furnish each year during the term of this Agreement, a written statement, certified by an independent Certified Public Accountant, to the City stating that in his or her opinion the percentage fees paid by Operator to City during the preceding year pursuant to this Agreement were made in accordance with the terms of this Agreement. Said statement shall be submitted by Operator, to be received by the City within ninety (90) days of the end of each Contract Year. Such statement shall also contain a list of the Gross Revenue receipts, by month, as shown on the books and records of the Operator and which were used to compute the percentage fee payments made to City during the period covered by such statement.

G. The Concession Fee will be reconciled at the end of each Contract Year. In the event an annual report indicates Operator’s underpayment of the Concession Fee during said annual report Contract Year, the amount of such underpayment shall be remitted from Operator to the City not later than thirty (30) days from the date the annual report was submitted to the City. In the event an annual report indicates overpayment of Concession Fees to the City, Operator shall subtract the amount of such overpayment from its next monthly MAG payment; except that, if, after the last Contract Year of this Agreement, Operator is no longer a Concessionaire at Airport, such settlement shall be remitted from the City to Operator, provided Operator is not then in default under the terms of this Agreement. This provision shall survive the expiration or termination of this Agreement.

H. Prior to the Commencement Date, Operator 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, a performance bond for the payments required hereunder, in an amount equivalent to one half (1/2) the MAG for the first Contract Year. The City may draw upon the Performance Bond if Operator 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.

I. Except as provided in Subsection (J) below, all rental and fees payable hereunder shall be remitted by Operator to the following address or at such other address as City shall direct in writing:

City of Dayton, Ohio
P. O. Box 632094
Cincinnati, OH 45263-2094
J. All annual reports and monthly statements of Gross Revenues together with the associated payments to the City, as described 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

K. In the event Operator fails to make any payments as required to be paid under the provisions of this Agreement within ten (10) calendar days of the due date, late charges at the rate of two percent (2%) per month shall accrue against all such delinquent payment(s) from the original due date until City actually receives payment. The right of City to require payment of such late charges and the obligation of City to pay same shall be in addition to and not in lieu of the right of the City to enforce other provisions herein, including termination of this Agreement, or to pursue other remedies provided by Law.

L. In the event that the following condition exists during the term of this Agreement, the MAG hereinabove provided for in Article VIII(B)(2) shall be subject to proportional abatement for the period of time the condition exists:

1. A major traffic reduction at the Airport. A major traffic reduction shall be defined as a greater than twenty five percent (25%) reduction in the number of passengers deplaning on scheduled airline flights at the Airport during any period of three (3) consecutive calendar months as compared to the number of such deplaning passengers in the same calendar months during the preceding calendar year.

2. The abatement amount for those months that are abated as defined in Article VIII(L)(1) will be the prorated reduction of that month’s 1/12th payment of the MAG. For example, if May, June and July have a traffic reduction of 27%, 30% and 26% respectively, then the 1/12th MAG payment for May would be reduced by 27%, June would be reduced by 30%, and July would be reduced by 26%.

3. If the major traffic reduction continues for additional months, the proportional abatement will continue as well, until there is a month when traffic does not fall below the 25% threshold, at which time the full MAG payment shall be made for such month.

This major traffic reduction can only be identified after any three-month period ends; however, the major traffic reduction exists for any three-month period when all three months had a not less than 25% reduction in passenger deplanements. Overpayments of the MAG will be credited to the Operator during the year-end reconciliation process described in Article VIII(G).
ARTICLE IX
CUSTOMER FACILITY CHARGE

Operator shall comply with Section 37.11 of the Revised Code of General Ordinances of the City of Dayton, as may be amended, during the term of this Agreement regarding the imposition and collection of a CFC on all vehicle rental transactions originating at the Airport.

ARTICLE X
INDEMNIFICATION

A. Operator shall defend, indemnify, save and hold harmless the City, its elected officials, officers, employees, agents and volunteers, from and against any and all claims and actions, and all expenses incidental to the investigation and defense thereof, based upon or arising out of any accident or damages arising from, or in any way connected with, Operator's use or occupancy of the Premises or any condition of the Premises and/or Operator's exercise of any right granted herein (including operation of its concession), and/or Operator's performance for breach or default in the performance of any obligation to be performed pursuant to this Agreement, and/or any wrongful, intentional or negligent act or omission of Operator, its agents, contractors and employees.

B. In the event Operator, its agents, contractors or employees violate any security measure at the Airport, including, but not limited to, any Federal Aviation Administration or Transportation Security Administration security laws, rules, regulations, orders or directives, Operator 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.

C. Operator shall defend, indemnify and hold harmless the City, its elected officials, officers, employees, agents and volunteers, from and against any mechanics or other lien or order for the payment of money filed against the Premises, the City or any property of the City, arising out of any act or omission of Operator or anyone claiming through or under Operator. Operator shall, at Operator's expense, cause the same to be cancelled or discharged of record and shall save and hold harmless the City from and against any and all costs, expense, claims, losses or damages including reasonable attorney fees resulting therefrom or by reason thereof.

D. City shall not be liable to Operator or to Operator's agents, representatives, contractors or employees, for any injury to, or death of, any of them or of any other person or for any damage to any of Operator's property or loss of revenue, caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport; nor, to the extent permitted by law, shall City have any liability whatsoever to Operator, Operator's agents, representatives, contractors or employees, for any damage, destruction, injury, loss or claim of any kind arising out of the use by any of the aforementioned of any parking lot located on the Airport. City shall not be liable to Operator for damage to property of Operator or any loss of revenues to Operator resulting from City's acts or omissions in the maintenance and operation of the Airport or failure to operate the Airport.
E. The obligations of Operator under this Article X shall survive expiration or termination of this Agreement, and, shall not be affected in any way by the amount of or the absence in any case of covering insurance, or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any part thereof.

F. The City's elected officials, officers, agents and employees shall have no personal liability with respect to any provision of this Agreement or any obligation or liability arising from this Agreement or in connection with this Agreement or the Premises in the event of a breach or default by City of any of its obligations.

G. Notwithstanding any other provision of this Agreement to the contrary, to the extent permitted by law, Operator waives any and every claim for recovery from the City for any and all loss or damage to the Premises or to the contents thereof, which loss or damage is covered by valid and collectable physical damage insurance policies maintained by Operator or which would have been recoverable if the insurance required hereunder had been maintained by Operator, to the extent that such loss or damage is recoverable, or would have been recoverable, as applicable, under said insurance policies. As this waiver will preclude the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), Operator agrees to give each insurance company which has issued, or in the future may issue, its policies of physical damage insurance, written notice of the terms of this waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverage by reason of said waiver. Operator shall require any subtenant to include similar waivers of subrogation in favor of the City.

ARTICLE XI
INSURANCE

A. Operator, at its sole cost and expense, shall procure and maintain, or cause to be maintained, at all times during the Term, the following insurance, with insurance companies authorized to do business in the State of Ohio and having at least an “A” rating from A.M. Best and covering all operations under this Agreement, whether performed by Operator or by persons or entities retained by Operator:

1. 0 Worker's Compensation and Occupational Disease Insurance

Worker's Compensation and Occupational Disease Insurance, in accordance with the laws of the State of Ohio, or any other applicable jurisdiction, covering all employees who are to provide a service under this Agreement, and Employer's liability coverage with limits of not less than Five Hundred Thousand Dollars ($500,000) for each accident or illness. Coverage extensions shall include other states endorsement, alternate employer and voluntary compensation endorsement, when applicable.
2. Commercial General Liability Insurance (Primary and Umbrella)

Commercial General Liability Insurance with limits of not less than Five Million Dollars ($5,000,000) per occurrence combined single limit, for bodily injury and property damage liability. Coverage extensions shall include the following: All Premises and operations, products/completed operations, explosion, collapse, underground, independent contractors, broad form property damage, separation of insured and contractual liability (with no limitation endorsement). The City, its elected officials, officers, agents, volunteers and employees, shall be named as additional insureds, on a primary, non-contributory basis for any liability arising directly or indirectly from this Agreement.

3.0 All Risk Property Insurance

Operator shall obtain an “All Risk Property” policy, including improvements and betterments covering damage to building, machinery, equipment or supplies in the amount of full replacement value of the property constituting within the Premises. Coverage extensions shall include business interruptions/loss of rents (in an amount not less than the sum of Fees then payable under this Agreement for a period of one year), and flood. City is to be named as a loss payee.

The Operator shall be responsible for all loss or damage to personal property (including but not limited to material, equipment, tools and supplies), owned or rented by Operator.

4.0 Automobile Liability Insurance

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, Operator shall provide Comprehensive Automobile Liability Insurance with limits of not less than Five Million Dollars ($5,000,000) per occurrence combined single limit, for bodily injury and property damage. City is to be named as an additional insured on a primary, non-contributory basis.

B. Original certificates of insurance evidencing the required coverage to be in force on the Commencement Date, and all renewal certificates of such insurance, shall be provided to City. At the City’s request, Operator shall furnish complete copies of all policies of insurance. The receipt of any certificate or policy does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Agreement. The failure of the City to obtain certificates or other insurance evidence from Operator shall not be deemed to be a waiver by the City. Operator shall advise all insurers of these Agreement provisions regarding insurance. Non-conforming insurance shall not relieve Operator of its obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Agreement, and the City retains the right to terminate this Agreement as provided in Article XIII until proper evidence of insurance is provided. All policies of insurance
shall provide for a minimum of thirty (30) days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

C. If Operator fails to obtain or maintain any of the insurance policies under this Agreement or to pay any premium in whole or in part when due, City may (without waiving or releasing any obligation or default by Operator hereunder) obtain and maintain such insurance policies and take any other action which City, including reasonable attorney’s fees, court costs and expenses, shall be reimbursed by the Operator upon demand by City.

D. Operator shall require all contractors to carry the insurance required herein, or Operator or its contractors may provide the coverage for any or all contractors, and, if so, the evidence of insurance submitted shall so stipulate. Any and all deductibles or self-insured retentions on referenced insurance coverages shall be borne by Operator or its contractors. Operator and its contractors agree that insurers shall waive their rights of subrogation against the City, its employees, elected official, agents, or representatives. Operator and its contractors expressly understand and agree that any coverages and limits furnished by Operator or its contractors shall in no way limit the Operator or its contractors’ liabilities and responsibilities specified within this Agreement or by law. Operator and its contractors expressly understand and agree that any insurance or self-insurance programs maintained by the City shall not contribute with insurance provided by the Operator or its contractors under this Agreement.

E. The insurance required hereunder shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law. The City maintains the right to modify, delete alter or change these requirements.

F. The insurance required by this Agreement, at the option of Operator, may be effected by blanket or umbrella policies issued to Operator covering the Premises and other properties owned or leased by Operator, provided that the policies otherwise comply with the provisions of this Agreement and allocate to the Premises the specified coverage, without possibility of reduction or coinsurance by reason of, or damage to, any other premises covered therein.

ARTICLE XII
DAMAGE AND DESTRUCTION OF PREMISES

A. If improvements on a portion of the Premises are damaged, in whole or in part, by fire or casualty, and there is not substantial damage to the Rental Car Counter Facility in which such portion of the Premises is located, or material damage to such Rental Car Counter Facility as described in Subsection (B), Operator may use insurance proceeds from insurance it carried to pay for the work as it progresses, and the City shall permit any such proceeds to be made available.

B. If there is material damage to a portion of the Rental Car Counter Facility or damage to a material access point or building system(s) serving such portion of the Rental Car Counter Facility, by a fire or casualty, rendering such portion of the Rental Car Counter Facility not usable, whether or not improvements on the Premises are damaged, then where operations in the Premises are severely curtailed or such portions of the Premises are unusable, such portion of the
Premises shall be deleted from the Premises unless and until the City repairs and restores the damage to the Rental Car Counter Facility within the Term of this Agreement so that the affected portion of the Rental Car Counter Facility is again usable. Operator shall repair and restore any damaged improvements to the Premises at its expense (but it may use insurance proceeds from insurance it carried for the work as the work progresses, and the City shall permit any such proceeds to be made available) if the City repairs and restores the damage to the Rental Car Counter Facility during the Term.

Notwithstanding the foregoing, the City shall not be obligated to repair or restore the Rental Car Counter Facility, and the space deleted shall not be re-included in the Premises if the City determines not to include space for car rental counters in the portion of the Rental Car Counter Facility previously rendered unusable.

C. In the event the Terminal is substantially damaged or destroyed, whether or not improvements to the Premises are substantially damaged or destroyed, and as a result of such damage or destruction, flight operations with respect to the Terminal are terminated or substantially curtailed for ninety (90) days or more, then either the City or the Operator may delete the portion of the Premises located in the Terminal from the Premises or terminate this Agreement.

D. During any period in which Operator is unable to use the portion of the Premises in the Rental Car Counter Facility because of damage or destruction to the improvements on the Premises or the Rental Car Counter Facility, the rent payable for that portion of the Premises in the damaged or destroyed Rental Car Counter Facility shall be abated for the period during which such damage to the Rental Car Counter Facility renders the Premises unusable or operations are so curtailed or terminated. Except for such abatement of rents due, the Operator shall have no claim against the City for any damage suffered by reason of any such damage, destruction, repair or restoration. There shall be no abatement of Concession Fees. Upon any deletion of a portion of the Premises from this Agreement Operator shall surrender such portion of the Premises to the City.

E. If any improvements to the Premises are not diligently repaired by Operator where required within forty-five (45) days or if any space is deleted from the Premises, then the City shall be entitled to all insurance proceeds payable on account of improvements in such space. Where the Operator is obligated to repair or restore improvements, Operator must do so notwithstanding that insurance proceeds may be insufficient.

ARTICLE XIII
TERMINATION BY CITY

A. For purposes of this Agreement, the occurrence of any of the following shall constitute an "Event of Default":

1. The failure by Operator to pay any Fees as required under this Agreement when due and/or the failure of Operator to and to remit all CFCs as required by Section 37.11 of
the Revised Code of General Ordinances, and the failure to cure same within ten (10) days after the receipt of written notice thereof by Operator;

2. The failure by Operator on or after the date of this Agreement to perform any other representation, warranty or covenant or contract required to be performed by Operator in this Agreement and the failure of Operator to remedy such default within a period of thirty (30) days after receipt of written notice by the Operator;

B. If an Event of Default occurs, and after the expiration of the applicable period cure period specified for such Event of Default, the City may terminate this Agreement. In the event of termination and in addition to any and all rights and remedies provided elsewhere herein or at law or equity, the City may repossess the Premises and shall be entitled to recover as damages: (i) all of the Fees accrued and unpaid for the period up to and including such termination date; and (ii) any other sums for which Operator is liable or in respect of which Operator has agreed to indemnify City under any provisions of this Agreement which may be then due and owing.

**ARTICLE XIV**

**TERMINATION BY OPERATOR**

A. Operator may terminate this Agreement and all of its obligations hereunder, after the happening and during the continuance of any one of the following events (none of which, however, shall result in any liability to the City or provide Operator with any remedy other than an option to terminate as set forth herein):

1. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport or any part thereof so as to prevent Operator’s use of the Premises in its conduct of its car rental business and the remaining in force of such injunction, not stayed by way of appeal or otherwise, for a period of at least six (6) months;

2. The substantial restriction of City's operation of the Airport by action of any governmental agency or department (other than the City or its agencies and departments) and continuance thereof for a period of not less than six (6) months, provided such restriction adversely affects all of Operator’s operations at the Airport.

B. Any termination by Operator pursuant to this Article shall not occur unless the Operator notifies the City of its election to terminate at least thirty (30) days prior to the effective date of such termination, together with a statement of the grounds for termination. If Operator does not give such notice during the period that any of the above events is occurring, then Operator's right to terminate this Agreement as provided in this Article shall not be available to Operator until another happening of any one of said events.
ARTICLE XV
SURRENDER AND RETURN OF THE PREMISES

Upon termination of this Agreement or on the Expiration Date, whichever is earlier, Operator shall return the Premises in as good condition and repair as at the Commencement Date, subject to ordinary wear and tear, and Operator shall remove all personal property and trade fixtures of Operator from such portion of the Premises prior to the date of expiration or termination. Further, at the City's request, Operator shall also remove all movable, non-permanent improvements installed by or for Operator prior to or within ten (10) days after the expiration or termination of the Agreement, and Operator shall repair any damage to the Premises caused by Operator's removal of the personal property, trade fixtures and improvements. All such removal and repair required of Operator pursuant to this Section shall be at Operator's sole cost and expense. If Operator fails to remove any items required to be removed by it hereunder or fails to repair any resulting damage prior to or within ten (10) days after expiration or termination of the Agreement, then the City may remove said items, including the improvements, and repair any resulting damage and Operator shall pay the cost of any such removal and repair, together with interest thereon.

ARTICLE XVI
NON-DISCRIMINATION AND AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM (ACDBE)

A. The Operator agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Operator transfers its obligation to another, the transferee is obligated in the same manner as the Operator.

The provision obligates the Operator for the period during which the property is owned, used, or possessed by the Operator and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

B. During the performance of this Agreement, the Operator, for itself, its assignees and successors in interest agrees as follows:

1. Compliance with Regulations: Operator will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are attached as Exhibit C and which are herein incorporated by reference and made a part of this Agreement.

2. Nondiscrimination: Operator, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. Operator will not participate directly or
indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Operator for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Operator of the Operator’s obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color or national origin.

4. Information and Reports: Operator will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Operator is in the exclusive possession of another who fails or refuses to furnish the information, the Operator will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of Operator’s noncompliance with the non-discrimination provisions of this Agreement, the City will impose such Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending this Agreement, in whole or in part.

6. Incorporation of Provisions: The Operator will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Operator will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Operator becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Operator may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Operator may request the United States to enter into the litigation to protect the interests of the United States.

C. Operator shall abide by all U. S. Department of Transportation requirements regarding DBE and ACDBE requirements and reporting procedures.
D. It is the goal of the City to encourage participation by organizations classified as Airport Concession Disadvantaged Business Enterprises (ACDBE) as defined in 49 CFR Part 23 for a concession at the Airport. The City established an overall goal for ACDBE participation in Airport Concessions of 13.46% of the total gross revenues of all Airport Concessions for federal fiscal years 2022, 2023 and 2024. A new goal will be established for subsequent federal fiscal years per the FAA requirements, and will be reported to the Operator upon its’ adoption. Operator shall provide information under this Article XVI as requested by City for City’s reporting requirements for FAA or any other governmental entity. Operator is required to submit quarterly statements, provided in Exhibit D (subject to change), to the City regarding their participation in their ACDBE participation goal.

E. This Agreement is subject to the requirements of the U.S. Department of Transportation’s regulations, 49 CFR Part 23. The Operator 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 Operator 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 businesses to similarly include the statements in further Agreements.

ARTICLE XVII
ASSIGNMENT AND SUBLETTING

A. Except with the consent of City and as the result of a merger or acquisition, Operator shall not, (1) assign, transfer, mortgage, pledge, hypothecate or encumber or subject to or permit to exist upon or be subjected to any lien or charge, this Agreement or any interest under it; (2) allow to exist or occur any transfer of or lien upon the Premises, this Agreement or Operator’s interest herein by operation of law; (3) sublease the Premises or any part thereof; or (4) permit the use or occupancy of the Premises or any part thereof for any purpose not provided for herein or by anyone other than Operator. The City may withhold its consent to the foregoing in its sole discretion. The requirements of this Article shall apply to any transaction or series of transactions that shall have the same effect as any of the aforementioned occurrences, and in no event shall this Agreement be assigned or assignable by voluntary or involuntary bankruptcy proceedings or otherwise, and in no event shall this Agreement or any rights or privileges hereunder be an asset of Operator under any bankruptcy, insolvency or reorganization proceedings.

B. If Operator desires, as a result of an acquisition or merger, to assign its interest under this Agreement or sublease any part of Premises, Operator shall make a written request for authorization in a notice to the City. Such notice shall state the name and address of the proposed sub-Operator or assignee and include a copy of the proposed sublease or assignment and all related documents, and, including a financial statement of the sub-Operator or assignee, disclosures and information required by City.

C. Consent by City to any assignment or sublease shall not operate to relieve, release or discharge Operator of or from any obligations, whether past, present or future, under this
Agreement, and Operator shall continue fully liable hereunder except to the extent, if any, expressly provided for in such consent. Consent by City in any one instance shall not be deemed to be consent to or relieve Operator from obtaining City's consent to any subsequent assignment or sublease. Consent by City shall be conditioned upon agreement by the sub-Operator or assignees to comply with and be bound by all of terms, covenants, conditions, provisions and agreements of this Agreement to the extent of the space subleased or assigned, and an agreement that City shall have the right, but not the obligation, to enforce the terms and provisions of any such assignment or sublease affecting City's interests and Operator shall deliver to City within thirty (30) days after execution, an executed copy of each such sublease or assignment containing an agreement of compliance by each such sub-Operator and assignee. Operator shall pay all of City's costs, charges and expenses, including attorney's fees, incurred in connection with any assignment or sublease requested or made by Operator.

**ARTICLE XVIII**

**GENERAL PROVISIONS**

A. The term 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.

B. Notices to the City provided for in this Agreement shall be sufficient if sent by certified or registered U. S. mail, postage prepaid, addressed to:

   Department of Aviation  
   James M. Cox Dayton International Airport  
   3600 Terminal Drive, Suite 300  
   Vandalia, Ohio 45377  
   Attn: Director of Aviation

   or such other address as the City shall direct in writing.

C. Notices to Operator provided for in this Agreement shall be sufficient if sent by certified or registered U. S. mail, postage prepaid, addressed to:

   EAN Holdings, LLC dba  
   National Car Rental  
   4600 McAuley Place  
   Cincinnati, OH 45242  
   Attn: Mike Filomena

   or such other address as Operator shall direct in writing.

D. Operator 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 the Agreement.

E. Any headings of 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 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.

F. By execution of this Agreement, Operator 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.

G. Operator shall, upon its execution and delivery of the required copies of this Agreement to the City, deliver to the City the following instruments and documents:

1. Certificates of insurance evidencing the insurance required by this Agreement;
2. Performance Bond.

H. Operator (and any person claiming by or through Operator) 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 whatsoever.

I. Neither Operator nor any contractor of Operator 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 Premises.

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

K. The City may amend or modify this Agreement, at any time, provided that such amendment or modification makes specific reference to this Agreement, is executed in writing, signed by a duly authorized representative of City and Operator and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.

L. This Agreement, including the incorporated Ready/Return Agreement and any executed service facility lease, represents the entire and integrated agreement between City and Operator. This Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreement or contracts, whether oral or written, relating to the subject matter of this Agreement.
M. A waiver by the City of any breach of this Agreement shall be in writing. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it is given and shall not affect the City’s rights with respect to any other or further breach.

N. 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.

O. 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.

(BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK)
IN WITNESS WHEREOF, the City and Operator, each by a duly authorized representative, have executed this Agreement as of the date first set forth above.

WITNESSED BY:

EAN Holdings, LLC dba National Car Rental

By: [Signature]

Its: Vice President General Manager

CITY OF DAYTON, OHIO

City Manager

APPROVED AS TO FORM AND CORRECTNESS:

City Attorney

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

[Signature], 2021

Min/Bk. ________ Pg. ________

Clerk of the Commission
EXHIBIT 1 to the Rental Car Ready/Return Agreement
Ready Return Block Layout.
Rental Car Facility Counter Layout

EXHIBIT K
Concession Agreement, Effective Jan 2022
Sept, 2021

Counter 1: N/A
Counter 2: Byers dba Thrifty
Counter 3: Byers dba Hertz and Dollar
Counter 4: EAN dba National
Counter 5: EAN dba Alamo/Enterprise
Counter 6: Avis Budget

Individual Office = 109 SF
Individual Storage = 50 SF
Individual Counter = 146 SF
Individual TOTAL = 305 SF

RAC Circulation = 2218 SF / 6 Counters = 370 SF per
RAC Vestibule = 847 SF / 6 Counters = 142 SF per
RAC Mechanical/Closet = 150 SF / 6 Counters = 25 SF per
RAC Shared TOTAL = 537 SF per

Individual TOTAL = 305 SF
RAC Shared TOTAL = 537 SF per
TOTAL EACH RAC = 842 SF
Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 Stat. 252) (prohibits discrimination on the basis of race, color, national origin);

- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 U.S.C. § 471. Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients, and contractors, whether such programs or activities are Federally funded or not;
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 - 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, or sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74687 to 74700);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).
EXHIBIT D: NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT

ACDBE Rental Car Annual Participation Report - Quarterly Reporting

Fiscal Year: October 1, 20___ September 30, 20___

ACDBE Participation Contract Goal: __% 

Prime Concessionaire Total Gross Revenue: $__

Total ACDBE Participation: $__

Annual Reports are required to be submitted by the 30th day of the month following the end of each fiscal year. The information received will be compiled and reported to the FAA in accordance with 49 CFR Part 23.

PART I: CONTACT INFORMATION

Concessionaire:
Address:
Contact Person/Email:
Phone No. / Fax No.:

PART II: ACDBE Participation

In order to count toward goal achievement, the listed firm(s) must be certified as Airport Concession Disadvantaged Business Enterprises ("ACDBE") by the State of Ohio’s certification program. [Certification can be verified at http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/ DBE-Directory.aspx]

<table>
<thead>
<tr>
<th>ACDBE Firm Name</th>
<th>Total ACDBE Participation to Date in Dollars (for Fiscal Year Oct. 1 - Sept. 30)</th>
<th>Nature of Relationship with ACDBE Firm</th>
<th>Race/Gender of Disadvantaged Owner with Largest Ownership Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address &amp; Phone No.</td>
<td>$__</td>
<td>□ Prime Concession</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ Subcontractor</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ Management Contract</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ Goods/Services</td>
<td></td>
</tr>
<tr>
<td>Business Type:</td>
<td>Shortfall Explained:</td>
<td>Does this vendor have a lease or sublease ?</td>
<td></td>
</tr>
<tr>
<td>□ Car Rental Insurance</td>
<td></td>
<td>□ Yes</td>
<td></td>
</tr>
<tr>
<td>□ Car Rental Vending</td>
<td></td>
<td>□ Yes Agreement Dates:</td>
<td></td>
</tr>
<tr>
<td>□ Car Rental Office Supplies</td>
<td></td>
<td>□ No</td>
<td></td>
</tr>
<tr>
<td>□ Car Rental Uniforms</td>
<td></td>
<td>□ Does the agreement have an option to renew?</td>
<td></td>
</tr>
<tr>
<td>□ Car Rental Gas / Oil</td>
<td></td>
<td>□ Yes</td>
<td></td>
</tr>
<tr>
<td>□ Car Rental Other (Explain business type below)</td>
<td></td>
<td>□ No</td>
<td></td>
</tr>
</tbody>
</table>

□ Black
□ Hispanic
□ Asian Pacific American
□ Asian Indian American
□ Non-Minority Women
□ Other
### AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE ("ACDBE")
### RENTAL CAR ANNUAL PARTICIPATION REPORT
### QUARTERLY REPORTING

#### NON-ACDBE Subconcession(s)

<table>
<thead>
<tr>
<th>NAME</th>
<th>TYPE OF GOODS OR SERVICE</th>
<th>Total NON-ACDBE Subs Gross Receipts</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

**PART III: QUARTERLY REPORTING - PRIME CONCESSIONAIRE**

Quarterly Reports are required to be submitted by the 30th day of the month following the end of each annual quarter. The information received will be compiled and reported on the below graph.

<table>
<thead>
<tr>
<th>Quarter</th>
<th>Gross Receipts</th>
<th>ACDBE Participation</th>
<th>Actual %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Quarter (Jan 1, 20__ - Mar 30, 20__)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2nd Quarter (Apr 1, 20__ - Jun 30, 20__)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3rd Quarter (Jul 1, 20__ - Sep 30, 20__)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4th Quarter (Oct 1, 20__ - Dec 31, 20__)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

I hereby certify that the information contained in this report is true and correct:

__________________________________________
Signature of Authorized Representative

__________________________________________
Print Name/Title

__________________________________________
Date

**For BOTH Annual and Quarterly Reporting:**
In the event the Prime Concessionaire has not achieved the ACDBE participation contract goal, this report must be accompanied by a corrective action plan and written documentation evidencing the Prime Concessionaire's good faith efforts to achieve the ACDBE participation contract goal.
City Manager’s Report

From 3210 - Aviation/AP Admin & Finance
Supplier, Vendor, Company, Individual
Name EAN Holdings, LLC dba National Car Rental
Address 4600 McAuley Place
Cincinnati, OH 45242

Date December 29, 2021
Expense Type Lease Agreement
Total Amount $328,968 thru 12/31/2024

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aviation Operating-Rent</td>
<td>51000-3216-23203-43</td>
<td>$328,968.00</td>
</tr>
</tbody>
</table>

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

Description

RENTAL CAR SERVICE CENTER LEASE AGREEMENT

The Department of Aviation requests permission to enter into a Rental Car Service Center Lease Agreement with EAN Holdings, LLC dba National Car Rental. A Request for Proposals (RFP) was issued in June 2020 for six available rental car Concession locations at the Dayton International Airport, which included an option to lease one of 4 available Service Centers. Four Service Center Lease options were received with all four companies being recommended for lease agreements with the City.

EAN Holdings, LLC dba National Car Rental is an incumbent operator, and requests to lease Service Center site 3350 Valet Drive. They will pay a monthly fixed ground and building rent of $9,138.00 to the City, with total Rents to the City anticipated to be $109,656.00 per year, and $328,968.00 for the 3-year term.

This Lease Agreement is effective for a three (3) year period, commencing on January 1, 2022, and terminating/expiring on December 31, 2024. There are no options for renewal.

The Department of Law has reviewed and approved the Agreement as to form and correctness. Two (2) Certificates of Revenue 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  EAN Holdings, LLC dba Alamo Rent A Car and Enterprise Rent-A-Car
Address  4600 McAuley Place
City  Cincinnati  State  OH  Zip+4  45242  -  ______
Customer #  ________________  Address Location #  ________________
Federal ID#  ________________

Revenue Information:  Fund  51000  Organization  3216  Revenue  23203  Program  43

Contract Information:  Contract Start Date  Upon Execution  Contract Expiration Date  12/31/2024

Billing Information:  Rate:  $9,138.00  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  ________________  Rate Change Amount  ________________

Description of Services (wording on invoice): Service center lease for 3-years through 2024, lease is located at the service center, 3320 Valet Drive.

Departmental Approval  [Signature]

TO BE COMPLETED BY FINANCE

Revenue Contract Number  1 - 6038  Auditor  D. Babb  Date  12/16/2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.
Director of Finance  [Signature]  12/16/2021
RENTAL CAR SERVICE CENTER LEASE AGREEMENT

THIS RENTAL CAR SERVICE CENTER LEASE AGREEMENT, ("Lease") is made and entered into this ___ day of ____________, 2021, between the City of Dayton, Ohio ("Lessor"), a political subdivision in and of the State of Ohio, and EAN Holdings, LLC dba Alamo Rent A Car and Enterprise Rent-A-Car ("Lessee"), a limited liability company authorized to conduct business in the State of Ohio.

WITNESSETH THAT:

WHEREAS, Lessor is the owner and operator of 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, State of Ohio;

WHEREAS, Lessor heretofore acquired a rental car service center, which is located at 3320 Valet Road, Vandalia OH, and listed on Exhibit A as property C;

WHEREAS, Lessee operates a rental car concession at the Airport pursuant to a separate Non-Exclusive Rental Car Concession and Lease Agreement with Lessor ("Concession Agreement") to be dated January 1, 2022 and desires to lease the rental car service center to support its rental car operations at the Airport; and

WHEREAS, Lessor deems it advantageous to itself, to the operation of the Airport and in the best interest of the public to lease unto Lessee this rental car service center upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and the mutual benefits to be derived, IT IS AGREED AS FOLLOWS:

ARTICLE I - LEASED REAL PROPERTY

A. Lessor leases to Lessee the rental car service center located at the Airport and having the address of 3320 Valet Drive, which facility is situated on 66,000 square feet of ground space ("Ground Space") and containing a building containing approximately 2,960 square feet space ("Building", and collectively, the Ground Space and Building referred to herein as the "Premises"). The exact location of the Premises at the Airport is depicted in Exhibit A, property C, which is attached hereto and incorporated herein.

B. As part of this Lease and the Premises leased hereunder, Lessee shall have the right to use all appurtenances, equipment and fixtures located and/or situated upon the Premises. Lessor makes no representation or warranty as to such appurtenances, equipment and/or fixtures, their fitness for a particular purpose or merchantability or condition. By execution hereof, Lessee represents that it has inspected the Premises and all appurtenances, equipment and fixtures, and accepts same on an "as-is" basis.
C. From and after the date of execution of this Lease, Lessee shall be solely responsible for replacement, repair and maintenance for all appurtenances, equipment and fixtures.

**ARTICLE II - USE OF PREMISES**

A. Lessee shall have the exclusive use of the Premises for operating a rental car service center in support of its rental car concession at the Airport. It is agreed that the Premises will not be used for servicing any other rental car concessionaire, whether operating at the Airport or off the Airport, without the prior written approval of Lessor. Sales of vehicles at and/or from the Premises are strictly prohibited. Lessee shall only be permitted to operate the rental car service center under the trade name which shall be identical to that under the Concession Agreement for the Lessee.

B. Lessee shall not transport its Customers to or from the Terminal in Vehicles without prior written consent of the City, except to accommodate disabled Customers. All employees shall be required to obtain an airport-issued vehicle permit for any personal vehicle which the Lessees employees intend to park in the Premises.

C. If Lessee parks its Vehicles in public parking lots on the Airport or permits its employees, contractors or agents to park automobiles in such lots, Lessee must pay the posted parking rates.

D. Lessee shall actively use the Premises only for the purposes specified in this Lease at all times. Lessee shall not at any time leave the Premises vacant without the written consent of Lessor; provided, however, that failure to actively use the Premises as the result of (1) a work stoppage by Lessee’s employees, or (2) the repair or restoration or making of alterations, additions and changes to the Premises, will not constitute a default or breach of this Lease.

E. Lessee shall not do or permit anything to be done on or about the Premises which will in any way conflict with any applicable law, ordinance, rule or regulation issued by any competent governmental authority; or allow the Premises to be used for any improper, immoral or unlawful purpose.

F. Lessee may make any necessary minor alterations to the Premises required for its operations, upon obtaining the prior approval of Lessor.

G. Lessee shall, upon termination and/or expiration of this Lease, remove all personal property and trade fixtures and repair any damage or injury to the Premises resulting from such removal and deliver the Premises to Lessor in good condition, normal wear and tear excepted.

**ARTICLE III - RIGHTS AND OBLIGATIONS OF LESSEE**

A. As applicable or required by Lessor, Lessee shall, at its expense, arrange for and ensure that its employees and agents operating under this Lease are properly identified with an
Airport Identification Badge and that said badge is prominently displayed at all times. Lessee’s employees shall, at Lessee’s expense, be required to obtain an Airport-issued identification badge conditioned upon successful completion of a background check and other requirements as stated in the Airport Rules and Regulations.

B. Lessee shall, at its expense, obtain from all authorities having jurisdiction over the operations and activities to be conducted upon the Premises, including, but not limited to, the Federal Aviation Administration (“FAA”), Transportation Security Administration (“TSA”), Environmental Protection Agency (“EPA”), Ohio Environmental Protection Agency (“OEPA”), and state and local fire protection agencies, all licenses, certificates, permits, registrations or other authorizations which may be required for the conduct of its operations and activities, and/or necessary to comply with any requirements of this Lease and/or in the exercise of any right or obligation granted in this Lease, including, but not limited to, any licenses, permits, procedures, or sampling required for Lessor to comply with its National Pollutant Discharge Elimination System (“NPDES”) permit. In addition, the Airport holds the Ohio EPA NPDES permit for the Airport as a whole. In accordance with the Dayton International Airport Storm Water Pollution Prevention Plan, as required by the NPDES Permit, Lessee is required to submit a chemical inventory and implement Best Management Practices in accordance with the Dayton International Airport Storm Water Pollution Prevention Plan. Lessee, however, shall not be deemed to have waived any right to exhaust administrative and/or judicial remedies, which may be available to Lessee regarding any dispute or contest related to any authorizations required. Lessee will provide Lessor with complete information concerning any such dispute or contest.

C. Lessee shall fully comply with all current and future requirements of all regulatory agencies having jurisdiction over the fuel/oil storage tank systems, either underground or aboveground including, but not limited to, the Bureau of Underground Storage Tank Regulations (“BUSTR”), EPA, OEPA, the State Fire Marshall, and the Fire Department of the City of Dayton, Ohio, or their respective successors and designees. In the event of a conflict between regulatory agencies, the decision of Lessor’s Director of Aviation will be final. Lessee agrees to register the Premises’ underground storage tanks with BUSTR, its successor or any other regulatory agency having jurisdiction. Lessee further agrees to apply, maintain, and pay the annual assessment fee for coverage for the underground storage tanks with the Petroleum Underground Storage Tank Release Compensation Board. Lessee shall also at its sole expense, when required by law or when deemed necessary by the Lessor or his designee, test all storage tanks located on the Premises for structural integrity and leaks and shall maintain and repair the leak detection system provided by Lessor. Upon request, Lessee shall make available to the Lessor the results of such tests. Testing required herein shall be to the satisfaction of the Lessor and in conformance with all applicable federal, state or local laws, rules, regulations or ordinances as these provisions presently exist, or as they may be amended or enacted. If during the Lessee’s occupancy of the Premises, a tank leaks or the pipelines servicing a tank leak or are discovered to be leaking, Lessee shall immediately notify the Lessor and take all necessary steps to repair the tank and/or pipelines and clean up the contaminated area to the satisfaction of the Lessor and in accordance with this Lease and all applicable federal, state or local laws, rules, regulations or ordinances as these provisions presently
exist, or as they may be amended or enacted. Lessee agrees to maintain the existing storage tank system in operational condition at its sole expense and pay or reimburse Lessor for all licenses, inspections, fines, insurance and other fees and charges that may be incurred by or levied upon Lessor due to Lessee’s activities under this Lease. If the fuel facility must be removed through no fault or cause of Lessee, Lessor shall be responsible for the cost of the removal, but not previously existing environmental issues, of the fuel facility. This clause shall survive the termination of this Lease with respect to environmental issues caused by Lessee.

D. Lessee shall repair or pay for any and all damages to Lessor and its property caused by any wrongful or negligent acts or omissions of Lessee, its agents or employees arising out of Lessee's use or occupancy of the Premises or in the exercise of any right or obligation granted herein.

E. Lessee shall, at its expense, provide and use suitable covered receptacles for the storing of all trash, garbage and other refuse created in the conduct of its business or operations, or arising from Lessee's exercise of any right or obligation under this Lease. Lessee shall, at its expense, provide for the complete and proper removal and disposal away from the Airport of all refuse collected. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner on or about the Premises is forbidden.

F. The storage, handling and disposal of all Hazardous Materials, as defined by federal, state and local laws, shall be in compliance with all applicable licenses, permits, certificates or other authorizations obtained by Lessee and in compliance with all applicable federal, state and local laws governing the storage, handling and disposal of same.

G. Lessee, its agents, employees, patrons, guests, invitees and suppliers of service or furnishers of materials shall have the right of ingress to and egress from the Premises and shall have the right in common with others to use the public roadways serving the Airport.

H. In addition to rents and fees, Lessee shall, at its expense, pay all taxes and assessments that are now and may be levied or imposed upon the Premises and any real, leasehold and personal properties situate or placed thereon, provided, however, that real property taxes and assessments shall be prorated so as to require Lessee to pay such taxes and assessments only for the period of Lessee's tenancy. Real property taxes and assessments are assessed on the entire Airport parcel, of which the Premises are a portion thereof. The calculation for property taxes for the Premises shall be based on the Industrial Report of the Auditor of Montgomery County, Ohio (the “Report”), and any updates thereto or successor reports. Lessee shall be permitted to protest or contest in a manner specified by Lessor, the validity or amount of any such real property tax or assessment under this provision. Lessor retains the sole right and obligation to file such protest or contest with the taxing authority for Montgomery County, Ohio; however, Lessee shall provide all necessary information and required legal or appraisal services relating to such protest or contest to Lessor at Lessee’s sole cost and expense. Lessor shall bill Lessee and Lessee shall pay the invoiced amount to Lessor within thirty (30) days after receipt of invoice. Lessee’s right to protest or contest taxes and assessments
hereunder does not relieve Lessee of the obligation to pay taxes to Lessor unless Lessor receives a waiver from the taxing authority for Montgomery County, Ohio.

I. Except as otherwise provided in Article VI, Lessee is responsible for the complete and proper maintenance and repair of the Premises including any maintenance and repair of all building systems, including but not limited to:

   1. Vehicular parking and entrance drive snow removal, lighting repair, brooming, striping, sealing, replacement and overlay of all surfaces located on the Premises as required;
   2. Mowing, planting and maintenance of grass areas and landscaping on the Premises;
   3. Maintenance of all utility lines serving the Premises to lease line or metering or submetering point, whichever is larger. Access to such areas located outside the Premises shall be provided by Lessor;
   4. Maintenance of storm drainage structures and storm lines that solely serve the Premises and maintenance of oil separators in storm and sanitary sewer lines serving the Premises, if provided. Access to such areas located outside the Premises shall be provided by Lessor;
   5. Maintenance, test and service of the fire suppression system serving the Premises in accordance with applicable codes;
   6. Maintenance, test and service of the fire alarm system serving the Premises;
   7. Maintenance, test and service of existing Underground storage tank system, associated piping and associated leak detection system; and
   8. Complete interior and exterior maintenance.

J. Lessee shall not make any alterations, repairs, additions or undertake demolition activities (collectively, “modifications”) during the term of this Lease. In the event any such modification(s) are required or desired, the Lessee must first receive written approval for the modification(s) from Lessor.

K. Lessee shall have all utility accounts placed in its name and shall pay all utility charges (i.e., water, sanitary sewer, natural gas and electric) directly to the utility companies or municipalities providing such services. Lessee agrees to notify Lessor immediately upon termination of any utility account, except at the termination of this Lease. Lessor may, at its option, place such terminated account in its name. In the event Lessor, willingly or otherwise, assumes the responsibilities for providing water, sanitary sewer, natural gas or electric services to Lessee, Lessee shall pay to Lessor the higher of: i) the prevailing rates for similar type utility services offered by utility companies and/or municipalities providing utilities to similar utility users located in Dayton, Ohio or, ii) the actual cost incurred by the Lessor in providing the utility service to the Lessee.

L. Lessee shall not erect, allow or permit to be maintained on the Premises, or upon the exterior of any improvement on the Premises, any billboards or advertising signs, except those which have the prior written approval of Lessor. Lessee may maintain on the Premises, or on the exterior of any improvement on the Premises, its name, or trade name,
in neatly arranged electric, neon or other type sign or signs; the size and type of sign or 
signs subject to Lessor's approval.

M. Nothing contained in this Lease prohibits Lessor from granting easements, utility or 
otherwise, as long as said easements would not restrict Lessee’s use of the Premises for 
purposes stated herein.

**ARTICLE IV - TERM**

This Lease shall commence on January 1, 2022 and terminate on December 31, 2024, 
provided that the Concession Agreement has not been terminated and/or expired without 
a written renewal or written extension thereof and Lessee is not in default in any of the 
terms, conditions or promises set forth in the Concession Agreement.

**ARTICLE V - RENTAL**

A. During the term of this Lease, Lessee shall pay to Lessor as rent for the Premises the 
following monthly amount which Lessee specified in its response to the City’s RFP:
Nine-Thousand One-Hundred Thirty-Eight Dollars and Zero Cents ($9,138.00). Lessee 
shall pay the aforesaid monthly rentals on the first day of the month. All payments due 
hereunder shall be sent to Lessor at the following address:

City of Dayton, Ohio
P. O. Box 632094
Cincinnati, Ohio 45202

or at such other place as Lessor shall, in writing, direct.

B. Lessee shall pay a security deposit equivalent to the sum of three (3) months rental fee 
plus Two-Thousand Five-Hundred and Zero Cents ($2,500.00) dollars for utilities.

C. Without waiving any other right or action available to Lessor in the event of default in 
payment of rentals hereunder, if Lessee is delinquent for a period of thirty (30) days or 
more in paying to Lessor any rental due and owing to Lessor pursuant to this Lease, 
Lessee shall pay to Lessor a late charge thereon at the rate of two percent (2%) per 
month from the date such item was due and owing until full payment has been paid. 
The late charge shall not occur with respect to disputed items being contested in good 
faith by Lessee.

**ARTICLE VI - RIGHTS AND OBLIGATIONS OF LESSOR**

A. Lessor shall have the right to adopt and enforce reasonable rules and regulations, with 
respect to the use of the Airport and facilities thereon, which Lessee agrees to observe, 
obey and enforce.
B. Lessor's Director of Aviation or such designees shall have the full and unrestricted right, at all times during normal business hours and at all other times upon reasonable notice to Lessee, when possible, to enter the Premises for the purposes of inspecting the Premises and doing any and all things which the Lessor is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport and in the exercise of the Lessor's police power. This provision shall in no way limit or restrict Lessor's right to enter upon the Premises in the event of an emergency. Reasonable notice, as used in this subsection, shall in no event be interpreted to require more than twenty-four (24) hour notification.

C. Should Lessee fail to provide and maintain proper trash removal, mowing, snow removal or other required maintenance, Lessor shall have the right, but not the obligation, to provide or perform said services and to bill Lessee the costs of providing same plus a fifteen percent (15%) administrative service fee.

**ARTICLE VII - NON-DISCRIMINATION**

A. Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the Lessee.

The provision obligates the Lessee for the period during which the property is owned, used, or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

B. During the performance of this Agreement, the Lessee, for itself, its assignees and successors in interest agrees as follows:

1. Compliance with Regulations: Lessee will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are attached as Exhibit B and which are herein incorporated by reference and made a part of this Agreement.

2. Nondiscrimination: Lessee, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation
made by the Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Lessee of the Lessee’s obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color or national origin.

4. Information and Reports: Lessee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Lessee is in the exclusive possession of another who fails or refuses to furnish the information, the Lessee will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of Lessee’s noncompliance with the non-discrimination provisions of this Agreement, the City will impose such Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending this Agreement, in whole or in part.

6. Incorporation of Provisions: The Lessee will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Lessee will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Lessee becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Lessee may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Lessee may request the United States to enter into the litigation to protect the interests of the United States.

**ARTICLE VIII - INDEMNIFICATION**

A. Lessee shall defend, indemnify, save and hold harmless Lessor, its elected officials, officers, agents and employees, from and against any and all claims and actions, and all expenses incidental to the investigation and defense thereof, based upon or arising out of any accident or damages suffered by third persons and arising from, or in any way connected with, the use or occupancy of the Premises, or any condition of the Premises, fixtures, structures, equipment or other improvements thereon, or Lessee's exercise of any right granted herein, or Lessee's performance for breach or default in
the performance of any obligation to be performed pursuant to this Lease, or any wrongful or negligent act or omission of Lessee, its agents and employees.

It is agreed that, to the extent permitted by law, no agreement or covenant by Lessee under this Subsection A shall include liability or damages for injury to persons or damage to property caused by or resulting from the sole negligence of Lessor, its agents or employees.

B. Lessee shall defend, indemnify, save and hold harmless Lessor, its elected officials, officers, agents and employees, from and against any mechanics or other lien or order for the payment of money filed against the Premises, Lessor or any property of Lessor, arising out of any act or omission of Lessee, its tenants or subtenants or anyone claiming through or under Lessee. Lessee shall, at Lessee's expense, cause the same to be cancelled or discharged of record and shall save and hold harmless Lessor from and against any and all costs, expense, claims, losses or damages including reasonable counsel fees resulting therefrom or by reason thereof.

C. Lessor shall not be liable to Lessee or to Lessee's subtenants, agents, representatives, contractors or employees, for any injury to, or death of, any of them or of any other person or for any damage to any of Lessee's property or loss of revenue, caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport nor, to the extent permitted by law, shall Lessor have any liability whatsoever to Lessee, Lessee's subtenants, agents, representatives, contractors or employees, for any damage, destruction, injury, loss or claim of any kind arising out of the use by any of the aforementioned of any parking lot, including the future parking garage, located either on or off the Airport. Lessor shall not be liable to Lessee for damage to property of Lessee or any loss of revenues to Lessee resulting from Lessor's acts or omissions in the maintenance and operation of the Airport or failure to operate the Airport.

D. The obligations of Lessee under this Article VIII shall survive the termination or expiration date of this Lease and shall not be affected in any way by the amount of or the absence in any case of covering insurance, or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any part thereof.

E. The Lessor's elected officials, officers, agents and employees, shall, to the extent permitted by law, have absolutely no personal liability with respect to any provision of this Lease or any obligation or liability arising from this Lease or in connection with this Lease or the Premises in the event of a breach or default by Lessor of any of its obligations.

F. Notwithstanding any other provision of this Lease to the contrary, to the extent permitted by law, Lessee waives any and every claim for recovery from the Lessor for any and all loss or damage to the Premises or to the contents thereof, which loss or
damage is covered by valid and collectable physical damage insurance policies maintained by Lessee or which would have been recoverable if the insurance required hereunder had been maintained by Lessee, to the extent that such loss or damage is recoverable, or would have been recoverable, as applicable, under said insurance policies. As this waiver will preclude the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), Lessee agrees to give each insurance company which has issued, or in the future may issue, its policies of physical damage insurance, written notice of the terms of this waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverage by reason of said waiver. Lessee shall require any subtenant to include similar waivers of subrogation in favor of the Lessor.

**ARTICLE IX - INSURANCE**

A. Lessee, at its sole cost and expense, shall procure and maintain, or cause to be maintained, at all times during the term of this Lease, the following insurance, with insurance companies authorized to do business in the State of Ohio and having at least an “A” rating from A. M. Best and covering all operations under this Lease, whether performed by Lessee or by its contractors:

1. **Commercial Liability Insurance (Primary and Umbrella):**

   Commercial Liability Insurance with limits of not less than $5,000,000 per occurrence combined single limit, for bodily injury and property damage liability. Coverage extensions shall include the following: All Premises and operations, products/completed operations, explosion, collapse, underground, independent contractors, broad form property damage, separation of insured and contractual liability (with no limitation endorsement). The Lessor, its elected officials, officers, agents, volunteers and employees, shall be named as additional insureds, on a primary, non-contributory basis for any liability arising directly or indirectly from this Lease.

2. **All Risk Property Insurance:**

   i. Lessee shall obtain an “All Risk Property” policy, including improvements and betterments covering damage to building, machinery, equipment or supplies in the amount of full replacement value of the property constituting within the Premises. Coverage extensions shall include business interruptions/loss of rents (in an amount not less than the sum of rents then payable under this Lease for a period of one year), and flood. Lessor is to be named as a loss payee.

   ii. The Lessee shall be responsible for all loss or damage to personal property (including but not limited to material, equipment, tools and supplies), owned or rented by Lessee.
iii. When Lessee undertakes any improvement, construction or repair project to the Premises, All Risk Blanket Builders Risk Insurance shall be provided to cover at replacement cost the materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility. Coverage extensions shall include the following: right to partial occupancy, material stored off-site and in transit, earthquake, flood including surface water backup, collapse, faulty workmanship or materials, business interruption, extra expense, loss of revenue, and loss of use of property. The Lessor shall be named as loss payee.

3. Automobile Liability Insurance:

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, Lessee shall provide Comprehensive Automobile Liability Insurance with limits of not less than $5,000,000 per occurrence combined single limit, for bodily injury and property damage. Lessor is to be named as an additional insured on a primary, non-contributory basis.


Lessee will, at its expense, enroll the existing underground storage tank system in the Petroleum Underground Storage Tank Release Compensation Board (PUSTRCB).

B. Original certificates of insurance evidencing the required coverage to be in force on the effective date of this Lease, and all renewal certificates of such insurance, shall be provided to Lessor. Lessee shall provide the Lessor with a Certificate of Insurance on all required insurance prior to Lessee’s exercise of any privileges provided by this Lease within thirty (30) days of execution of this Lease. In the event of a claim or threatened claim against Lessor that could be covered under a policy of insurance required hereunder, Lessee agrees to promptly furnish, upon Lessor’s request, a copy of such policy or policies of insurance to Lessor. The receipt of any certificate or policy does not constitute agreement by the Lessor that the insurance requirements in the Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Lease. The failure of the Lessor to obtain certificates or other insurance evidence from Lessee or its contractors shall not be deemed to be a waiver by the Lessor. Lessee or its contractors shall advise all insurers of these Lease provisions regarding insurance. Non-conforming insurance shall not relieve Lessee or its contractors of their obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Lease, and the Lessor retains the right to terminate this Lease as provided in Article XIV until proper evidence of insurance is provided. All policies of insurance shall provide for a minimum of thirty (30) days prior written notice to be given to the Lessor in the event coverage is substantially changed, canceled, or non-renewed.
C. If Lessee fails to obtain or maintain any of the insurance policies under this Lease or to pay any premium in whole or in part when due, Lessor may (without waiving or releasing any obligation or default by Lessee hereunder) obtain and maintain such insurance policies and take any other action which Lessor, including reasonable attorney’s fees, court costs and expenses, shall be reimbursed by the Lessee upon demand by Lessor.

D. Lessee shall require all contractors to carry the insurance required herein, or Lessee or its contractors may provide the coverage for any or all contractors, and, if so, the evidence of insurance submitted shall so stipulate. Any and all deductibles or self-insured retentions on referenced insurance coverages shall be borne by Lessee or its contractors. Lessee and its contractors agree that insurers shall waive their rights of subrogation against the Lessor, its employees, elected official, agents, or representatives. Lessee and its contractors expressly understand and agree that any coverages and limits furnished by Lessee or its contractors shall in no way limit the Lessee or its contractors’ liabilities and responsibilities specified within this Lease or by law. Lessee and its contractors expressly understand and agree that any insurance or self insurance programs maintained by the Lessor shall not contribute with insurance provided by the Lessee or its contractors under this Lease. If Lessee or its contractors desire additional coverage, higher limits of liability, or other modifications for its own protection, then Lessee or its contractors shall each be responsible for the acquisition and cost of such additional protection.

E. The insurance required hereunder shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law. The Lessor maintains the right to modify, delete, alter or change these requirements.

F. The insurance required by this Lease, at the option of Lessee or contractors, may be effected by blanket or umbrella policies issued to Lessee or contractors covering the Premises and other properties owned or leased by Lessee or contractors, provided that the policies otherwise comply with the provisions of this Lease and allocate to the Premises the specified coverage, without possibility of reduction or coinsurance by reason of, or damage to, any other premises covered therein.

G. Lessee shall also maintain, at all times during the term hereof, Workers’ Compensation and Occupational Disease Insurance for its employees employed or providing service(s) upon the Premises in such amounts as prescribed under Ohio law, or of at least $1,000,000 each accident.

ARTICLE X – DAMAGE AND DESTRUCTION OF PREMISES

A. If improvements on a portion of the Premises are damaged, in whole or in part, by fire or casualty, Lessee shall repair the damage to the improvements as soon as reasonably possible at Lessee’s expense or, upon mutual agreement, shall take such other actions as is mutually agreed between Lessor and Lessee, which actions may include, but are not limited to, demolition and removal of the entire Building and all appurtenances and
fixtures. Lessee may use insurance proceeds from insurance it carried to pay for the work as it progresses, and the Lessor shall permit any such proceeds to be made available.

B. During any period in which Lessee is unable to use all or a substantial portion of the Premises due to damage or destruction of the Premises and which significantly impacts Lessee’s operations at the Airport, then the rent payable for the Premises shall be abated or appropriately adjusted for the period during which such damage renders the Premises unusable or operations are so curtailed or terminated. However, if Lessor determines that such damage resulting in inability to use all or a substantial portion of the Premises is caused by the acts, errors or omissions of Lessee, its employees, agents and/or contractors, Lessee shall not be entitled to an abatement of rents as provided herein. Except for such abatement of rents due, as applicable, Lessee shall have no claim against the Lessor for any damage suffered by reason of any such damage, destruction, repair or restoration.

C. If any improvements to the Premises are not diligently repaired by Lessee where required, or such action as mutually agreed by the Lessor and Lessee is not completed, or if any space is deleted from the Premises, then the Lessor shall be entitled to all insurance proceeds payable on account of improvements in such space. Where the Lessee is obligated to repair or restore or remove improvements or the entire Building structure, Lessee must do so notwithstanding that insurance proceeds may be insufficient.

ARTICLE XI - ASSIGNMENT AND SUBLETTING

The leasehold estate and rights granted herein are personal property of Lessee. Lessee may not sell, assign, transfer sublet or underlet the same, or any portion thereof. Any assignment in violation hereof shall be void.

ARTICLE XII - SUCCESSORS AND ASSIGNS BOUND BY COVENANTS

All covenants, stipulations and agreements in this Lease shall extend to and bind the legal representatives, successors and assigns of the respective parties hereto.

ARTICLE XIII - TERMINATION BY LESSEE

A. In addition to all other remedies available to the Lessee under this Lease or at law, this Lease shall be subject to termination by Lessee should any one or more of the following events occur:

1. The issuance by any court of competent jurisdiction of any injunction, order or decree preventing or restraining the use of the Airport for usual airport purposes in its entirety, or the use of any part thereof which is used by Lessee and which is necessary for Lessee's operations on the Airport, which remains in force unvacated or unstayed for a period of thirty (30) consecutive days and results in material interference with Lessee's normal business operations;
2. The default by Lessor in the performance of any material covenant or agreement required to be performed by it herein, and the failure of Lessor to remedy such default, or to take prompt action to remedy such default, within a period of thirty (30) days after receipt from Lessee of written notice to remedy the same; or if by reason of the nature of such default the same cannot be remedied within said thirty (30) days, then Lessee shall have the right to terminate this Lease if the Lessor shall have failed to commence the remediing of such default within said thirty (30) days following such written demand, or having so commenced, shall fail thereafter to continue with diligence the remediing thereof.

B. Lessee may exercise its rights of termination by prior written notice to Lessor at any time after the lapse of the applicable periods of time, and this Lease shall terminate as of the effective date of termination specified in such notice. Rentals due hereunder shall be payable only to the date of termination.

**ARTICLE XIV - TERMINATION BY LESSOR**

A. In addition to all other remedies available to Lessor under this Lease or at law, this Lease shall be subject to termination by Lessor should any one or more of the following events occur:

1. If Lessee shall file a voluntary petition of bankruptcy; or if proceedings in bankruptcy shall be instituted against it and it is thereafter adjudicated a bankrupt pursuant to proceedings; or if a court shall take jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act; or if a receiver for Lessee's assets is appointed by a court of competent jurisdiction; or if Lessee shall be divested of its rights, powers and privileges under this Lease by other operation of law.

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

3. If Lessee shall fail to perform, keep and observe all of the covenants and conditions contained in this Lease 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 Lessor notifies Lessee in writing of said failure;

4. Violations by Lessee, its agents or employees, of applicable laws, ordinances, codes, rules and regulations issued by any competent governmental authority, or revocations of permits or licenses required in the performance of this Lease, if the same shall not be corrected or action taken to correct, within thirty (30) days after Lessee's receipt of written notice, which shall state in detail the violation.
B. Lessor may terminate this Lease upon giving Lessee ninety (90) days prior written notice to Lessee in the event the Premises is needed for any municipal, airport or economic development purpose or project.

**ARTICLE XV - HOLDING OVER**

In the event that Lessee holds over and remains in possession of the Premises and the rights granted herein after expiration and/or termination of this Lease and without any written renewal thereof, such holding over shall not be deemed to operate as a renewal or extension of this Lease but shall only create an at will month-to-month tenancy that may be terminated at any time by Lessor or Lessee.

**ARTICLE XVI - INVALID PROVISIONS**

In the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision herein contained shall not constitute a material breach of this Lease; provided that the validity of any such covenant, condition or provision does not materially prejudice either the Lessor or Lessee in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Lease.

**ARTICLE XVII - WAIVER**

A. No waiver by either party at any time, of any of the terms, conditions, covenants or agreements of this Lease, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the other. Receipt by Lessor of rent with knowledge of the breach by Lessee of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by either party of any provisions of this Lease shall be deemed to have been made unless expressed in writing and signed by Lessor or Lessee, as the case may be.

B. No option, right, power, remedy or privilege of either party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to each party by this Lease are cumulative and no one of them shall be exclusive of the other or exclusive of any remedies provided by law except as specifically provided herein and that the exercise of one right, power, option or remedy by either party shall not impair its right or any other right, power, option or remedy, except as specifically provided herein.

**ARTICLE XVIII - GENERAL PROVISIONS**

A. The term Lessor, as used in this Lease, means the City of Dayton, Ohio, and where this Lease speaks of approval and consent by the Lessor, such approval is understood to be manifested by act of the Lessor’s Director of Aviation, except as otherwise expressly stated in this Lease. Whenever in this Lease, the approval or consent of Lessor is required, such approval or consent will not be unreasonably withheld.
B. Notices to the Lessor provided for in this Lease shall be sufficient if sent by registered mail, postage prepaid, addressed to:

City of Dayton, Ohio - Department of Aviation
James M. Cox Dayton International Airport
3600 Terminal Drive, Suite 300
Vandalia, Ohio 45377
Attn: Director of Aviation

or such other address as the Lessor shall direct in writing.

C. Notices to Lessee provided for in this Lease shall be sufficient if sent by registered mail, postage prepaid, addressed to:

EAN Holdings, LLC dba
Alamo Rent A Car and Enterprise Rent-A-Car
4600 McAuley Place
Cincinnati, OH 45242
Attn: Mike Filomena

or such other address as Lessee shall direct in writing.

D. Lessee represents that it has carefully reviewed the terms and conditions of this Lease 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 the Lease.

E. Any headings in this Lease are for convenience of reference only and do not define or limit the provisions thereof. In this Lease, unless the context otherwise requires, the terms "hereby", "herein", "hereof", "hereto", "hereunder" and any similar terms used in this manner refer to this Lease. All section references, unless otherwise expressly indicated, are to sections in this Lease. 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 Lease.

F. By execution of this Lease, Lessee hereby irrevocably submits to the original jurisdiction of the courts located within the County of Montgomery, State of Ohio, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Lease.

G. Lessee (and any person claiming by or through Lessee) shall look solely to legally available Airport discretionary funds for enforcement of any liability of the Lessor under this Lease, and not any other funds or assets of the City of Dayton, Ohio whatsoever.
H. Neither Lessee nor any contractor of Lessee shall be entitled to claim any exemption from sales or use taxes or similar taxes by reason of the Lessor’s ownership of fee title to the Premises.

I. By entering into this Lease, Lessor shall in no way be deemed a partner or joint venturer with Lessee, nor shall any term or provision hereof be construed in any way to grant, convey or create any rights or interests to any person or entity not a party to this Lease.

J. The parties may amend or modify this Lease, at any time, provided that no such amendment or modification shall be effective unless it is reduced to a writing, which makes specific reference to this Lease, executed by a duly authorized representative of Lessor and Lessee and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.

K. This Lease represents the entire and integrated agreement between Lessor and Lessee. This Lease supersedes all prior and contemporaneous communications, representations, understandings, agreements or contracts, whether oral or written, relating to the subject matter of this Lease.

L. This Lease shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws.

IN WITNESS WHEREOF, Lessor and Lessee, each by a duly authorized representative, have executed this Lease as of the date first set forth above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
WITNESSED BY:

DAVE

DAN NEUZIL

COTTONWOOD

EAN Holdings, LLC dba
Alamo Rent A Car and
Enterprise Rent-A-Car

By:  [Signature]
Its:  Vice President General Manager

WITNESSED BY:

CITY OF DAYTON, OHIO

City Manager

APPROVED AS TO FORM
AND CORRECTNESS:

[Signature]
City Attorney

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

_____________________________, 2021

Min/Bk. ___________ Pg. ___________

______________________________
Clerk of the Commission
EXHIBIT B - Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Agreement, the Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the “Lessee”) agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).
From 3210 - Aviation/AP Admin & Finance  
Supplier, Vendor, Company, Individual  
EAN Holdings, LLC dba Alamo Rent A Car and Enterprise Rent-A-Car  
Address 4600 McAuley Place  
Cincinnati, OH 45242  

Date December 29, 2021  
Expense Type Lease Agreement  
Total Amount $328,968 thru 12/31/2024  

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<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
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<td>$328,968.00</td>
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</table>

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

Description  

RENTAL CAR SERVICE CENTER LEASE AGREEMENT  
The Department of Aviation requests permission to enter into a Rental Car Service Center Lease Agreement with EAN Holdings, LLC dba Alamo Rent A Car and Enterprise Rent-A-Car. A Request for Proposals (RFP) was issued in June 2020 for six available rental car Concession locations at the Dayton International Airport, which included an option to lease one of 4 available Service Centers. Four Service Center Lease options were received with all four companies being recommended for lease agreements with the City.

EAN Holdings, LLC dba Alamo Rent A Car and Enterprise Rent-A-Car is an incumbent operator, and requests to lease Service Center site 3320 Valet Drive. They will pay a monthly fixed ground and building rent of $9,138.00 to the City, with total Rents to the City anticipated to be $109,656.00 per year, and $328,968.00 for the 3-year term.

This Lease Agreement is effective for a three (3) year period, commencing on January 1, 2022, and terminating/expiring on December 31, 2024. There are no options for renewal.

The Department of Law has reviewed and approved the Agreement as to form and correctness. Two (2) Certificates of Revenue are attached.

Signatures/Approval

Approved by City Commission

Division

Department

City Manager

FORM NO. MS-16

Clerk

Date

Updated 8/2016
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name  EAN Holdings, LLC dba National Car Rental
Address  4600 McAuley Place
City  Cincinnati State  OH  Zip+4  45242 -
Customer #  Address Location #  
Federal ID#  

Revenue Information: Fund  51000 Organization  3216 Revenue  23203 Program  43

Contract Information: Contract Start Date  Upon Execution Contract Expiration Date  12/31/2024

Billing Information: Rate:  $9,138.00 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  Rate Change Amount  

Description of Services (wording on invoice): Service center lease for 3-years through 2024, lease is located at the service center, 3350 Valet Drive

Departmental Approval

TO BE COMPLETED BY FINANCE

Revenue Contract Number 1- 6085  Auditor D. Bailey  Date 12/16/2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable database and contains the terms and conditions necessary for collection.
Director of Finance
RENTAL CAR SERVICE CENTER LEASE AGREEMENT

THIS RENTAL CAR SERVICE CENTER LEASE AGREEMENT, ("Lease") is made and entered into this __ day of ____________, 2021, between the City of Dayton, Ohio ("Lessor"), a political subdivision in and of the State of Ohio, and EAN Holdings, LLC dba National Car Rental ("Lessee"), a limited liability company authorized to conduct business in the State of Ohio.

WITNESSETH THAT:

WHEREAS, Lessor is the owner and operator of 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, State of Ohio;

WHEREAS, Lessor heretofore acquired a rental car service center, which is located at 3350 Valet Road, Vandalia OH, and listed on Exhibit A as property E;

WHEREAS, Lessee operates a rental car concession at the Airport pursuant to a separate Non-Exclusive Rental Car Concession and Lease Agreement with Lessor ("Concession Agreement") to be dated January 1, 2022 and desires to lease the rental car service center to support its rental car operations at the Airport; and

WHEREAS, Lessor deems it advantageous to itself, to the operation of the Airport and in the best interest of the public to lease unto Lessee this rental car service center upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and the mutual benefits to be derived, IT IS AGREED AS FOLLOWS:

ARTICLE I - LEASED REAL PROPERTY

A. Lessor leases to Lessee the rental car service center located at the Airport and having the address of 3350 Valet Drive, which facility is situated on 120,000 square feet of ground space ("Ground Space") and containing a building containing approximately 4,019 square feet space ("Building", and collectively, the Ground Space and Building referred to herein as the "Premises"). The exact location of the Premises at the Airport is depicted in Exhibit A, property E, which is attached hereto and incorporated herein.

B. As part of this Lease and the Premises leased hereunder, Lessee shall have the right to use all appurtenances, equipment and fixtures located and/or situated upon the Premises. Lessor makes no representation or warranty as to such appurtenances, equipment and/or fixtures, their fitness for a particular purpose or merchantability or condition. By execution hereof, Lessee represents that it has inspected the Premises and all appurtenances, equipment and fixtures, and accepts same on an "as-is" basis.
C. From and after the date of execution of this Lease, Lessee shall be solely responsible for replacement, repair and maintenance for all appurtenances, equipment and fixtures.

**ARTICLE II - USE OF PREMISES**

A. Lessee shall have the exclusive use of the Premises for operating a rental car service center in support of its rental car concession at the Airport. It is agreed that the Premises will not be used for servicing any other rental car concessionaire, whether operating at the Airport or off the Airport, without the prior written approval of Lessor. Sales of vehicles at and/or from the Premises are strictly prohibited. Lessee shall only be permitted to operate the rental car service center under the trade name which shall be identical to that under the Concession Agreement for the Lessee.

B. Lessee shall not transport its Customers to or from the Terminal in Vehicles without prior written consent of the City, except to accommodate disabled Customers. All employees shall be required to obtain an airport-issued vehicle permit for any personal vehicle which the Lessee’s employees intend to park in the Premises.

C. If Lessee parks its Vehicles in public parking lots on the Airport or permits its employees, contractors or agents to park automobiles in such lots, Lessee must pay the posted parking rates.

D. Lessee shall actively use the Premises only for the purposes specified in this Lease at all times. Lessee shall not at any time leave the Premises vacant without the written consent of Lessor; provided, however, that failure to actively use the Premises as the result of (1) a work stoppage by Lessee’s employees, or (2) the repair or restoration or making of alterations, additions and changes to the Premises, will not constitute a default or breach of this Lease.

E. Lessee shall not do or permit anything to be done on or about the Premises which will in any way conflict with any applicable law, ordinance, rule or regulation issued by any competent governmental authority; or allow the Premises to be used for any improper, immoral or unlawful purpose.

F. Lessee may make any necessary minor alterations to the Premises required for its operations, upon obtaining the prior approval of Lessor.

G. Lessee shall, upon termination and/or expiration of this Lease, remove all personal property and trade fixtures and repair any damage or injury to the Premises resulting from such removal and deliver the Premises to Lessor in good condition, normal wear and tear excepted.

**ARTICLE III - RIGHTS AND OBLIGATIONS OF LESSEE**

A. As applicable or required by Lessor, Lessee shall, at its expense, arrange for and ensure that its employees and agents operating under this Lease are properly identified with an
Airport Identification Badge and that said badge is prominently displayed at all times. Lessee’s employees shall, at Lessee’s expense, be required to obtain an Airport-issued identification badge conditioned upon successful completion of a background check and other requirements as stated in the Airport Rules and Regulations.

B. Lessee shall, at its expense, obtain from all authorities having jurisdiction over the operations and activities to be conducted upon the Premises, including, but not limited to, the Federal Aviation Administration (“FAA”), Transportation Security Administration (“TSA”), Environmental Protection Agency (“EPA”), Ohio Environmental Protection Agency (“OEPA”), and state and local fire protection agencies, all licenses, certificates, permits, registrations or other authorizations which may be required for the conduct of its operations and activities, and/or necessary to comply with any requirements of this Lease and/or in the exercise of any right or obligation granted in this Lease, including, but not limited to, any licenses, permits, procedures, or sampling required for Lessor to comply with its National Pollutant Discharge Elimination System (“NPDES”) permit. In addition, the Airport holds the Ohio EPA NPDES permit for the Airport as a whole. In accordance with the Dayton International Airport Storm Water Pollution Prevention Plan, as required by the NPDES Permit, Lessee is required to submit a chemical inventory and implement Best Management Practices in accordance with the Dayton International Airport Storm Water Pollution Prevention Plan. Lessee, however, shall not be deemed to have waived any right to exhaust administrative and/or judicial remedies, which may be available to Lessee regarding any dispute or contest related to any authorizations required. Lessee will provide Lessor with complete information concerning any such dispute or contest.

C. Lessee shall fully comply with all current and future requirements of all regulatory agencies having jurisdiction over the fuel/oil storage tank systems, either underground or aboveground including, but not limited to, the Bureau of Underground Storage Tank Regulations (“BUSTR”), EPA, OEPA, the State Fire Marshall, and the Fire Department of the City of Dayton, Ohio, or their respective successors and designees. In the event of a conflict between regulatory agencies, the decision of Lessor’s Director of Aviation will be final. Lessee agrees to register the Premises’ underground storage tanks with BUSTR, its successor or any other regulatory agency having jurisdiction. Lessee further agrees to apply, maintain, and pay the annual assessment fee for coverage for the underground storage tanks with the Petroleum Underground Storage Tank Release Compensation Board. Lessee shall also at its sole expense, when required by law or when deemed necessary by the Lessor or his designee, test all storage tanks located on the Premises for structural integrity and leaks and shall maintain and repair the leak detection system provided by Lessor. Upon request, Lessee shall make available to the Lessor the results of such tests. Testing required herein shall be to the satisfaction of the Lessor and in conformance with all applicable federal, state or local laws, rules, regulations or ordinances as these provisions presently exist, or as they may be amended or enacted. If during the Lessee’s occupancy of the Premises, a tank leaks or the pipelines servicing a tank leak or are discovered to be leaking, Lessee shall immediately notify the Lessor and take all necessary steps to repair the tank and/or pipelines and clean up the contaminated area to the satisfaction of the Lessor and in accordance with this Lease and all applicable federal, state or local laws, rules, regulations or ordinances as these provisions presently
exist, or as they may be amended or enacted. Lessee agrees to maintain the existing storage tank system in operational condition at its sole expense and pay or reimburse Lessor for all licenses, inspections, fines, insurance and other fees and charges that may be incurred by or levied upon Lessor due to Lessee’s activities under this Lease. If the fuel facility must be removed through no fault or cause of Lessee, Lessor shall be responsible for the cost of the removal, but not previously existing environmental issues, of the fuel facility. This clause shall survive the termination of this Lease with respect to environmental issues caused by Lessee.

D. Lessee shall repair or pay for any and all damages to Lessor and its property caused by any wrongful or negligent acts or omissions of Lessee, its agents or employees arising out of Lessee's use or occupancy of the Premises or in the exercise of any right or obligation granted herein.

E. Lessee shall, at its expense, provide and use suitable covered receptacles for the storing of all trash, garbage and other refuse created in the conduct of its business or operations, or arising from Lessee's exercise of any right or obligation under this Lease. Lessee shall, at its expense, provide for the complete and proper removal and disposal away from the Airport of all refuse collected. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner on or about the Premises is forbidden.

F. The storage, handling and disposal of all Hazardous Materials, as defined by federal, state and local laws, shall be in compliance with all applicable licenses, permits, certificates or other authorizations obtained by Lessee and in compliance with all applicable federal, state and local laws governing the storage, handling and disposal of same.

G. Lessee, its agents, employees, patrons, guests, invitees and suppliers of service or furnishers of materials shall have the right of ingress to and egress from the Premises and shall have the right in common with others to use the public roadways serving the Airport.

H. In addition to rents and fees, Lessee shall, at its expense, pay all taxes and assessments that are now and may be levied or imposed upon the Premises and any real, leasehold and personal properties situated or placed thereon, provided, however, that real property taxes and assessments shall be prorated so as to require Lessee to pay such taxes and assessments only for the period of Lessee’s tenancy. Real property taxes and assessments are assessed on the entire Airport parcel, of which the Premises are a portion thereof. The calculation for property taxes for the Premises shall be based on the Industrial Report of the Auditor of Montgomery County, Ohio (the “Report”), and any updates thereto or successor reports. Lessee shall be permitted to protest or contest in a manner specified by Lessor, the validity or amount of any such real property tax or assessment under this provision. Lessor retains the sole right and obligation to file such protest or contest with the taxing authority for Montgomery County, Ohio; however, Lessee shall provide all necessary information and required legal or appraisal services relating to such protest or contest to Lessor at Lessee’s sole cost and expense. Lessor shall bill Lessee and Lessee shall pay the invoiced amount to Lessor within thirty (30) days after receipt of invoice. Lessee’s right to protest or contest taxes and assessments
hereunder does not relieve Lessee of the obligation to pay taxes to Lessor unless Lessor receives a waiver from the taxing authority for Montgomery County, Ohio.

I. Except as otherwise provided in Article VI, Lessee is responsible for the complete and proper maintenance and repair of the Premises including any maintenance and repair of all building systems, including but not limited to:

1. Vehicular parking and entrance drive snow removal, lighting repair, brooming, striping, sealing, replacement and overlay of all surfaces located on the Premises as required;
2. Mowing, planting and maintenance of grass areas and landscaping on the Premises;
3. Maintenance of all utility lines serving the Premises to lease line or metering or submetering point, whichever is larger. Access to such areas located outside the Premises shall be provided by Lessor;
4. Maintenance of storm drainage structures and storm lines that solely serve the Premises and maintenance of oil separators in storm and sanitary sewer lines serving the Premises, if provided. Access to such areas located outside the Premises shall be provided by Lessor;
5. Maintenance, test and service of the fire suppression system serving the Premises in accordance with applicable codes;
6. Maintenance, test and service of the fire alarm system serving the Premises;
7. Maintenance, test and service of existing Underground storage tank system, associated piping and associated leak detection system; and
8. Complete interior and exterior maintenance.

J. Lessee shall not make any alterations, repairs, additions or undertake demolition activities (collectively, “modifications”) during the term of this Lease. In the event any such modification(s) are required or desired, the Lessee must first receive written approval for the modification(s) from Lessor.

K. Lessee shall have all utility accounts placed in its name and shall pay all utility charges (i.e., water, sanitary sewer, natural gas and electric) directly to the utility companies or municipalities providing such services. Lessee agrees to notify Lessor immediately upon termination of any utility account, except at the termination of this Lease. Lessor may, at its option, place such terminated account in its name. In the event Lessor, willingly or otherwise, assumes the responsibilities for providing water, sanitary sewer, natural gas or electric services to Lessee, Lessee shall pay to Lessor the higher of: i) the prevailing rates for similar type utility services offered by utility companies and/or municipalities providing utilities to similar utility users located in Dayton, Ohio or, ii) the actual cost incurred by the Lessor in providing the utility service to the Lessee.

L. Lessee shall not erect, allow or permit to be maintained on the Premises, or upon the exterior of any improvement on the Premises, any billboards or advertising signs, except those which have the prior written approval of Lessor. Lessee may maintain on the Premises, or on the exterior of any improvement on the Premises, its name, or trade name,
in neatly arranged electric, neon or other type sign or signs; the size and type of sign or signs subject to Lessor's approval.

M. Nothing contained in this Lease prohibits Lessor from granting easements, utility or otherwise, as long as said easements would not restrict Lessee’s use of the Premises for purposes stated herein.

**ARTICLE IV - TERM**

This Lease shall commence on January 1, 2022 and terminate on December 31, 2024, provided that the Concession Agreement has not been terminated and/or expired without a written renewal or written extension thereof and Lessee is not in default in any of the terms, conditions or promises set forth in the Concession Agreement.

**ARTICLE V - RENTAL**

A. During the term of this Lease, Lessee shall pay to Lessor as rent for the Premises the following monthly amount which Lessee specified in its response to the City’s RFP: Nine-Thousand One-Hundred Thirty-Eight Dollars and Zero Cents ($9,138.00). Lessee shall pay the aforesaid monthly rentals on the first day of the month. All payments due hereunder shall be sent to Lessor at the following address:

    City of Dayton, Ohio
    P. O. Box 632094
    Cincinnati, Ohio 45202

    or at such other place as Lessor shall, in writing, direct.

B. Lessee shall pay a security deposit equivalent to the sum of three (3) months rental fee plus Two-Thousand Five-Hundred and Zero Cents ($2,500.00) dollars for utilities.

C. Without waiving any other right or action available to Lessor in the event of default in payment of rentals hereunder, if Lessee is delinquent for a period of thirty (30) days or more in paying to Lessor any rental due and owing to Lessor pursuant to this Lease, Lessee shall pay to Lessor a late charge thereon at the rate of two percent (2%) per month from the date such item was due and owing until full payment has been paid. The late charge shall not occur with respect to disputed items being contested in good faith by Lessee.

**ARTICLE VI - RIGHTS AND OBLIGATIONS OF LESSOR**

A. Lessor shall have the right to adopt and enforce reasonable rules and regulations, with respect to the use of the Airport and facilities thereon, which Lessee agrees to observe, obey and enforce.
B. Lessor's Director of Aviation or such designees shall have the full and unrestricted right, at all times during normal business hours and at all other times upon reasonable notice to Lessee, when possible, to enter the Premises for the purposes of inspecting the Premises and doing any and all things which the Lessor is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport and in the exercise of the Lessor's police power. This provision shall in no way limit or restrict Lessor's right to enter upon the Premises in the event of an emergency. Reasonable notice, as used in this subsection, shall in no event be interpreted to require more than twenty-four (24) hour notification.

C. Should Lessee fail to provide and maintain proper trash removal, mowing, snow removal or other required maintenance, Lessor shall have the right, but not the obligation, to provide or perform said services and to bill Lessee the costs of providing same plus a fifteen percent (15%) administrative service fee.

**ARTICLE VII - NON-DISCRIMINATION**

A. Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the Lessee.

The provision obligates the Lessee for the period during which the property is owned, used, or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

B. During the performance of this Agreement, the Lessee, for itself, its assignees and successors in interest agrees as follows:

1. **Compliance with Regulations:** Lessee will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are attached as Exhibit B and which are herein incorporated by reference and made a part of this Agreement.

2. **Nondiscrimination:** Lessee, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation
made by the Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Lessee of the Lessee’s obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color or national origin.

4. Information and Reports: Lessee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Lessee is in the exclusive possession of another who fails or refuses to furnish the information, the Lessee will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of Lessee’s noncompliance with the non-discrimination provisions of this Agreement, the City will impose such Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending this Agreement, in whole or in part.

6. Incorporation of Provisions: The Lessee will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Lessee will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Lessee becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Lessee may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Lessee may request the United States to enter into the litigation to protect the interests of the United States.

**ARTICLE VIII - INDEMNIFICATION**

A. Lessee shall defend, indemnify, save and hold harmless Lessor, its elected officials, officers, agents and employees, from and against any and all claims and actions, and all expenses incidental to the investigation and defense thereof, based upon or arising out of any accident or damages suffered by third persons and arising from, or in any way connected with, the use or occupancy of the Premises, or any condition of the Premises, fixtures, structures, equipment or other improvements thereon, or Lessee's exercise of any right granted herein, or Lessee's performance for breach or default in
the performance of any obligation to be performed pursuant to this Lease, or any wrongful or negligent act or omission of Lessee, its agents and employees.

It is agreed that, to the extent permitted by law, no agreement or covenant by Lessee under this Subsection A shall include liability or damages for injury to persons or damage to property caused by or resulting from the sole negligence of Lessor, its agents or employees.

B. Lessee shall defend, indemnify, save and hold harmless Lessor, its elected officials, officers, agents and employees, from and against any mechanics or other lien or order for the payment of money filed against the Premises, Lessor or any property of Lessor, arising out of any act or omission of Lessee, its tenants or subtenants or anyone claiming through or under Lessee. Lessee shall, at Lessee's expense, cause the same to be cancelled or discharged of record and shall save and hold harmless Lessor from and against any and all costs, expense, claims, losses or damages including reasonable counsel fees resulting therefrom or by reason thereof.

C. Lessor shall not be liable to Lessee or to Lessee's subtenants, agents, representatives, contractors or employees, for any injury to, or death of, any of them or of any other person or for any damage to any of Lessee's property or loss of revenue, caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport nor, to the extent permitted by law, shall Lessor have any liability whatsoever to Lessee, Lessee's subtenants, agents, representatives, contractors or employees, for any damage, destruction, injury, loss or claim of any kind arising out of the use by any of the aforementioned of any parking lot, including the future parking garage, located either on or off the Airport. Lessor shall not be liable to Lessee for damage to property of Lessee or any loss of revenues to Lessee resulting from Lessor's acts or omissions in the maintenance and operation of the Airport or failure to operate the Airport.

D. The obligations of Lessee under this Article VIII shall survive the termination or expiration date of this Lease and shall not be affected in any way by the amount of or the absence in any case of covering insurance, or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any part thereof.

E. The Lessor's elected officials, officers, agents and employees, shall, to the extent permitted by law, have absolutely no personal liability with respect to any provision of this Lease or any obligation or liability arising from this Lease or in connection with this Lease or the Premises in the event of a breach or default by Lessor of any of its obligations.

F. Notwithstanding any other provision of this Lease to the contrary, to the extent permitted by law, Lessee waives any and every claim for recovery from the Lessor for any and all loss or damage to the Premises or to the contents thereof, which loss or
damage is covered by valid and collectable physical damage insurance policies maintained by Lessee or which would have been recoverable if the insurance required hereunder had been maintained by Lessee, to the extent that such loss or damage is recoverable, or would have been recoverable, as applicable, under said insurance policies. As this waiver will preclude the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), Lessee agrees to give each insurance company which has issued, or in the future may issue, its policies of physical damage insurance, written notice of the terms of this waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverage by reason of said waiver. Lessee shall require any subtenant to include similar waivers of subrogation in favor of the Lessor.

**ARTICLE IX - INSURANCE**

A. Lessee, at its sole cost and expense, shall procure and maintain, or cause to be maintained, at all times during the term of this Lease, the following insurance, with insurance companies authorized to do business in the State of Ohio and having at least an “A” rating from A. M. Best and covering all operations under this Lease, whether performed by Lessee or by its contractors:

1. **Commercial Liability Insurance (Primary and Umbrella):**

   Commercial Liability Insurance with limits of not less than \$5,000,000\ per occurrence combined single limit, for bodily injury and property damage liability. Coverage extensions shall include the following: All Premises and operations, products/completed operations, explosion, collapse, underground, independent contractors, broad form property damage, separation of insured and contractual liability (with no limitation endorsement). The Lessor, its elected officials, officers, agents, volunteers and employees, shall be named as additional insureds, on a primary, non-contributory basis for any liability arising directly or indirectly from this Lease.

2. **All Risk Property Insurance:**

   i. Lessee shall obtain an “All Risk Property” policy, including improvements and betterments covering damage to building, machinery, equipment or supplies in the amount of full replacement value of the property constituting within the Premises. Coverage extensions shall include business interruptions/loss of rents (in an amount not less than the sum of rents then payable under this Lease for a period of one year), and flood. Lessor is to be named as a loss payee.

   ii. The Lessee shall be responsible for all loss or damage to personal property (including but not limited to material, equipment, tools and supplies), owned or rented by Lessee.
iii. When Lessee undertakes any improvement, construction or repair project to the Premises, All Risk Blanket Builders Risk Insurance shall be provided to cover at replacement cost the materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility. Coverage extensions shall include the following: right to partial occupancy, material stored off-site and in transit, earthquake, flood including surface water backup, collapse, faulty workmanship or materials, business interruption, extra expense, loss of revenue, and loss of use of property. The Lessor shall be named as loss payee.

3. **Automobile Liability Insurance:**

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, Lessee shall provide Comprehensive Automobile Liability Insurance with limits of not less than $5,000,000 per occurrence combined single limit, for bodily injury and property damage. Lessor is to be named as an additional insured on a primary, non-contributory basis.

4. **Petroleum Underground Storage Tank Release Compensation Board (PUSTRCB):**

Lessee will, at its expense, enroll the existing underground storage tank system in the Petroleum Underground Storage Tank Release Compensation Board (PUSTRCB).

B. Original certificates of insurance evidencing the required coverage to be in force on the effective date of this Lease, and all renewal certificates of such insurance, shall be provided to Lessor. Lessee shall provide the Lessor with a Certificate of Insurance on all required insurance prior to Lessee’s exercise of any privileges provided by this Lease within thirty (30) days of execution of this Lease. In the event of a claim or threatened claim against Lessor that could be covered under a policy of insurance required hereunder, Lessee agrees to promptly furnish, upon Lessor’s request, a copy of such policy or policies of insurance to Lessor. The receipt of any certificate or policy does not constitute agreement by the Lessor that the insurance requirements in the Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Lease. The failure of the Lessor to obtain certificates or other insurance evidence from Lessee or its contractors shall not be deemed to be a waiver by the Lessor. Lessee or its contractors shall advise all insurers of these Lease provisions regarding insurance. Non-conforming insurance shall not relieve Lessee or its contractors of their obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Lease, and the Lessor retains the right to terminate this Lease as provided in Article XIV until proper evidence of insurance is provided. All policies of insurance shall provide for a minimum of thirty (30) days prior written notice to be given to the Lessor in the event coverage is substantially changed, canceled, or non-renewed.
C. If Lessee fails to obtain or maintain any of the insurance policies under this Lease or to pay any premium in whole or in part when due, Lessor may (without waiving or releasing any obligation or default by Lessee hereunder) obtain and maintain such insurance policies and take any other action which Lessor, including reasonable attorney’s fees, court costs and expenses, shall be reimbursed by the Lessee upon demand by Lessor.

D. Lessee shall require all contractors to carry the insurance required herein, or Lessee or its contractors may provide the coverage for any or all contractors, and, if so, the evidence of insurance submitted shall so stipulate. Any and all deductibles or self-insured retentions on referenced insurance coverages shall be borne by Lessee or its contractors. Lessee and its contractors agree that insurers shall waive their rights of subrogation against the Lessor, its employees, elected official, agents, or representatives. Lessee and its contractors expressly understand and agree that any coverages and limits furnished by Lessee or its contractors shall in no way limit the Lessee or its contractors’ liabilities and responsibilities specified within this Lease or by law. Lessee and its contractors expressly understand and agree that any insurance or self insurance programs maintained by the Lessor shall not contribute with insurance provided by the Lessee or its contractors under this Lease. If Lessee or its contractors desire additional coverage, higher limits of liability, or other modifications for its own protection, then Lessee or its contractors shall each be responsible for the acquisition and cost of such additional protection.

E. The insurance required hereunder shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law. The Lessor maintains the right to modify, delete, alter or change these requirements.

F. The insurance required by this Lease, at the option of Lessee or contractors, may be effected by blanket or umbrella policies issued to Lessee or contractors covering the Premises and other properties owned or leased by Lessee or contractors, provided that the policies otherwise comply with the provisions of this Lease and allocate to the Premises the specified coverage, without possibility of reduction or coinsurance by reason of, or damage to, any other premises covered therein.

G. Lessee shall also maintain, at all times during the term hereof, Workers’ Compensation and Occupational Disease Insurance for its employees employed or providing service(s) upon the Premises in such amounts as prescribed under Ohio law, or of at least $1,000,000 each accident.

**ARTICLE X – DAMAGE AND DESTRUCTION OF PREMISES**

A. If improvements on a portion of the Premises are damaged, in whole or in part, by fire or casualty, Lessee shall repair the damage to the improvements as soon as reasonably possible at Lessee’s expense or, upon mutual agreement, shall take such other actions as is mutually agreed between Lessor and Lessee, which actions may include, but are not limited to, demolition and removal of the entire Building and all appurtenances and
fixtures. Lessee may use insurance proceeds from insurance it carried to pay for the work as it progresses, and the Lessor shall permit any such proceeds to be made available.

B. During any period in which Lessee is unable to use all or a substantial portion of the Premises due to damage or destruction of the Premises and which significantly impacts Lessee’s operations at the Airport, then the rent payable for the Premises shall be abated or appropriately adjusted for the period during which such damage renders the Premises unusable or operations are so curtailed or terminated. However, if Lessor determines that such damage resulting in inability to use all or a substantial portion of the Premises is caused by the acts, errors or omissions of Lessee, its employees, agents and/or contractors, Lessee shall not be entitled to an abatement of rents as provided herein. Except for such abatement of rents due, as applicable, Lessee shall have no claim against the Lessor for any damage suffered by reason of any such damage, destruction, repair or restoration.

C. If any improvements to the Premises are not diligently repaired by Lessee where required, or such action as mutually agreed by the Lessor and Lessee is not completed, or if any space is deleted from the Premises, then the Lessor shall be entitled to all insurance proceeds payable on account of improvements in such space. Where the Lessee is obligated to repair or restore or remove improvements or the entire Building structure, Lessee must do so notwithstanding that insurance proceeds may be insufficient.

**ARTICLE XI - ASSIGNMENT AND SUBLETTING**

The leasehold estate and rights granted herein are personal property of Lessee. Lessee may not sell, assign, transfer sublet or underlet the same, or any portion thereof. Any assignment in violation hereof shall be void.

**ARTICLE XII - SUCCESSORS AND ASSIGNS BOUND BY COVENANTS**

All covenants, stipulations and agreements in this Lease shall extend to and bind the legal representatives, successors and assigns of the respective parties hereto.

**ARTICLE XIII - TERMINATION BY LESSEE**

A. In addition to all other remedies available to the Lessee under this Lease or at law, this Lease shall be subject to termination by Lessee should any one or more of the following events occur:

1. The issuance by any court of competent jurisdiction of any injunction, order or decree preventing or restraining the use of the Airport for usual airport purposes in its entirety, or the use of any part thereof which is used by Lessee and which is necessary for Lessee's operations on the Airport, which remains in force unvacated or unstayed for a period of thirty (30) consecutive days and results in material interference with Lessee's normal business operations;
2. The default by Lessor in the performance of any material covenant or agreement required to be performed by it herein, and the failure of Lessor to remedy such default, or to take prompt action to remedy such default, within a period of thirty (30) days after receipt from Lessee of written notice to remedy the same; or if by reason of the nature of such default the same cannot be remedied within said thirty (30) days, then Lessee shall have the right to terminate this Lease if the Lessor shall have failed to commence the remedying of such default within said thirty (30) days following such written demand, or having so commenced, shall fail thereafter to continue with diligence the remedying thereof.

B. Lessee may exercise its rights of termination by prior written notice to Lessor at any time after the lapse of the applicable periods of time, and this Lease shall terminate as of the effective date of termination specified in such notice. Rentals due hereunder shall be payable only to the date of termination.

**ARTICLE XIV - TERMINATION BY LESSOR**

A. In addition to all other remedies available to Lessor under this Lease or at law, this Lease shall be subject to termination by Lessor should any one or more of the following events occur:

1. If Lessee shall file a voluntary petition of bankruptcy; or if proceedings in bankruptcy shall be instituted against it and it is thereafter adjudicated a bankrupt pursuant to proceedings; or if a court shall take jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act; or if a receiver for Lessee's assets is appointed by a court of competent jurisdiction; or if Lessee shall be divested of its rights, powers and privileges under this Lease by other operation of law.

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

3. If Lessee shall fail to perform, keep and observe all of the covenants and conditions contained in this Lease 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 Lessor notifies Lessee in writing of said failure;

4. Violations by Lessee, its agents or employees, of applicable laws, ordinances, codes, rules and regulations issued by any competent governmental authority, or revocations of permits or licenses required in the performance of this Lease, if the same shall not be corrected or action taken to correct, within thirty (30) days after Lessee's receipt of written notice, which shall state in detail the violation.
B. Lessor may terminate this Lease upon giving Lessee ninety (90) days prior written notice to Lessee in the event the Premises is needed for any municipal, airport or economic development purpose or project.

**ARTICLE XV - HOLDING OVER**

In the event that Lessee holds over and remains in possession of the Premises and the rights granted herein after expiration and/or termination of this Lease and without any written renewal thereof, such holding over shall not be deemed to operate as a renewal or extension of this Lease but shall only create an at will month-to-month tenancy that may be terminated at any time by Lessor or Lessee.

**ARTICLE XVI - INVALID PROVISIONS**

In the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision herein contained shall not constitute a material breach of this Lease; provided that the validity of any such covenant, condition or provision does not materially prejudice either the Lessor or Lessee in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Lease.

**ARTICLE XVII - WAIVER**

A. No waiver by either party at any time, of any of the terms, conditions, covenants or agreements of this Lease, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the other. Receipt by Lessor of rent with knowledge of the breach by Lessee of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by either party of any provisions of this Lease shall be deemed to have been made unless expressed in writing and signed by Lessor or Lessee, as the case may be.

B. No option, right, power, remedy or privilege of either party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to each party by this Lease are cumulative and no one of them shall be exclusive of the other or exclusive of any remedies provided by law except as specifically provided herein and that the exercise of one right, power, option or remedy by either party shall not impair its right or any other right, power, option or remedy, except as specifically provided herein.

**ARTICLE XVIII - GENERAL PROVISIONS**

A. The term Lessor, as used in this Lease, means the City of Dayton, Ohio, and where this Lease speaks of approval and consent by the Lessor, such approval is understood to be manifested by act of the Lessor’s Director of Aviation, except as otherwise expressly
stated in this Lease. Whenever in this Lease, the approval or consent of Lessor is required, such approval or consent will not be unreasonably withheld.

B. Notices to the Lessor provided for in this Lease shall be sufficient if sent by registered mail, postage prepaid, addressed to:

    City of Dayton, Ohio - Department of Aviation
    James M. Cox Dayton International Airport
    3600 Terminal Drive, Suite 300
    Vandalia, Ohio 45377
    Attn: Director of Aviation

or such other address as the Lessor shall direct in writing.

C. Notices to Lessee provided for in this Lease shall be sufficient if sent by registered mail, postage prepaid, addressed to:

    EAN Holdings, LLC dba
    National Car Rental
    4600 McAuley Place
    Cincinnati, OH 45242
    Attn: Mike Filomena

or such other address as Lessee shall direct in writing.

D. Lessee represents that it has carefully reviewed the terms and conditions of this Lease 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 the Lease.

E. Any headings in this Lease are for convenience of reference only and do not define or limit the provisions thereof. In this Lease, unless the context otherwise requires, the terms "hereby", "herein", "hereof", "hereto", "hereunder" and any similar terms used in this manner refer to this Lease. All section references, unless otherwise expressly indicated, are to sections in this Lease. 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 Lease.

F. By execution of this Lease, Lessee hereby irrevocably submits to the original jurisdiction of the courts located within the County of Montgomery, State of Ohio, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Lease.
G. Lessee (and any person claiming by or through Lessee) shall look solely to legally available Airport discretionary funds for enforcement of any liability of the Lessor under this Lease, and not any other funds or assets of the City of Dayton, Ohio whatsoever.

H. Neither Lessee nor any contractor of Lessee shall be entitled to claim any exemption from sales or use taxes or similar taxes by reason of the Lessor’s ownership of fee title to the Premises.

I. By entering into this Lease, Lessor shall in no way be deemed a partner or joint venturer with Lessee, nor shall any term or provision hereof be construed in any way to grant, convey or create any rights or interests to any person or entity not a party to this Lease.

J. The parties may amend or modify this Lease, at any time, provided that no such amendment or modification shall be effective unless it is reduced to a writing, which makes specific reference to this Lease, executed by a duly authorized representative of Lessor and Lessee and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.

K. This Lease represents the entire and integrated agreement between Lessor and Lessee. This Lease supersedes all prior and contemporaneous communications, representations, understandings, agreements or contracts, whether oral or written, relating to the subject matter of this Lease.

L. This Lease shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws.

IN WITNESS WHEREOF, Lessor and Lessee, each by a duly authorized representative, have executed this Lease as of the date first set forth above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
WITNESSED BY:

DAVE HILL
Controller

EAN Holdings, LLC dba National Car Rental

By: Midel Fekane
Its: Vice President General Manager

CITY OF DAYTON, OHIO

City Manager

APPROVED AS TO FORM AND CORRECTNESS:

City Attorney

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

________________________, 2021

Min/Bk. __________ Pg. __________

Clerk of the Commission
EXHIBIT A – RENTAL CAR SERVICE CENTER PROPERTY

Service Center Site Map
2022

Rental Car Service Centers

EXHIBIT A
EXHIBIT B - Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Agreement, the Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the “Lessee”) agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).
City Manager’s Report

From 2100 - City Manager's Office

Date December 29, 2021
Expense Type Other, (See Description Below)
Total Amount $22,908.00 in Revenue

Name Electrada
Address 31 East 12th Street
Suite 2E
Cincinnati, OH 45202

<table>
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<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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</thead>
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<tr>
<td>Economic Development</td>
<td>10000-2105-29601-51</td>
<td>$22,908.00</td>
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</table>

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

Description

Host Agreement for Electric Vehicle Chargers

Electrada is a private company based in Cincinnati, Ohio whose mission is to provide turnkey electric vehicle charging solutions. In the spring of 2021, the City of Dayton successfully partnered with Electrada to apply for charging stations. Charging stations are to be installed at 3 downtown locations. Additional funds were secured for the Oregon District parking lot and at the Dayton Art Institute. Since the downtown area chargers are in the City Right-of-Way, Electrada is requesting that the City execute a Host Agreement with it. This action authorizes the City Manager to enter into such an Agreement.

The Agreement has a 10-year term and ensures that Electrada is responsible for the electricity used by the chargers, as well as their maintenance. The agreement also describes the revenue-sharing relationship between the company and the City. Electrada estimates the revenue, which is based on usage, is as follows:

Year 1 ................... $0       Year 2 ................... $120.00       Year 6 ................... $1,542.00
Year 3 ................... $360.00       Year 7 ................... $2,730.00       Year 8 ................... $3,846.00
Year 4 ................... $978.00       Year 9 ................... $5,268.00       Year 10 ................... $7,062.00
Year 5 ................... $1,002.00

The total revenue received over the course of the contract is projected at $22,908.00
The Law Department has approved the agreement for form and substance.
A certificate of revenue is attached.

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 10/2019
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name  Electrada
Address  31 East 12th Street, Suite 2E
City  Cincinnati  State  OH  Zip+4  45202
Customer #  #00016042  Address Location #  
Federal ID#  

Revenue Information: Fund  10000  Organization  2105  Revenue  29601  Program  51

Contract Information: Contract Start Date  Dec 2, 2021  Contract Expiration Date  Dec 1, 2031

Billing Information: Rate: Arrears  Pre-bill
Monthly (1st month of billing)  
Quarterly (1st month of quarter)  January, April, July, September
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):

Electrada is installing and operating electric vehicle charging stations in the City right of way and is charging users for this service. Part of the revenue from these charges is being split with the City. The actual amount depends on the frequency these charging stations are used.

Departmental Approval

TO BE COMPLETED BY FINANCE

Revenue Contract Number  Auditor  Date

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  

Mark  D. Charles
CHARGING SITE HOST AGREEMENT

THIS CHARGING SITE HOST AGREEMENT (this “Agreement”) is made effective and entered into as of this 2nd day of December, 2021 (the “Effective Date”), by and between the City of Dayton (“Host”), and ELECTRADA, LLC, a Delaware limited liability company (“Electrada”), under the following circumstances:

A. Host is the fee owner of certain real estate generally located as described on Exhibit A attached hereto and made a part hereof (the “Property”).

B. Electrada is in the business of procuring, owning and operating electric vehicle charging and related infrastructure and providing electric vehicle charging and related energy and consumer services to customers, including, but not limited to, individual vehicle owners, commercial, industrial, residential and government entities (collectively, the “Business”).

C. Host believes that the growth and expansion of the Business at the City of Dayton will promote the public welfare and offer more environmentally friendly transportation options;

D. Electrada desires to obtain right of way permits on the Property from Host consisting generally of parking and adjacent space, as such space is depicted on the Site Plan attached hereto as Exhibit A-1 and made a part hereof, including certain permits and appurtenances adjoining and adjacent to the Property, highways, roads, streets and lanes, whether public or private, reasonably required for the maintenance, operation and service of sewer, water, gas, power, and other utility lines, and for driveways and approaches to and from abutting highways and roadways, for the use and benefit of the Property (collectively and as depicted, the “Premises”), for the purpose of installing and operating hardware, communications, electrical conduit, metering, software, signage and related systems for electric vehicle charging (collectively, with all related utilities and equipment, the “EVSE”), all as generally shown on the Site Plan, in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the Property and mutual covenants and agreements contained herein, and in consideration of the Agreement payments provided in this Agreement, the parties agree as follows:

1. **Demise of Premises; Permits.**

   **Permits.** Upon proper application and approval, Host will grant to Electrada a right of way permit, for access and use of the Premises. The permit under this Agreement shall be on a rent-free basis in consideration of the mutual covenants and promises set forth in this Agreement and in accordance with the terms of Host’s right of way permit. In the event it is determined necessary by agreement of the Parties, Host agrees to grant to Electrada, its successors and assigns, for the benefit of the Premises during the Term (as hereinafter defined), a non-exclusive easement on, under, over and across, a portion of the Property for electrical utility lines and equipment and any other easements as reasonably necessary in order to provide electric vehicle charging and related services at the Premises as contemplated by this Agreement.

2. **Inspection Period; Records; Zoning and Permitting.**

   (a) **Inspection Period.** Electrada’s obligations under this Agreement are expressly contingent on Electrada’s determination, on or prior to the date that is thirty (30) days after the Effective Date (the “Inspection Period”), that the Premises are satisfactory, for the use and development intended
by Electrada under this Agreement. Host shall provide Electrada, its agents, employees and contractors with reasonable access to the Property for inspections Electrada deems appropriate. Electrada shall indemnify Host against any loss, damage or claim incurred by Host resulting from Electrada’s negligent actions or omissions in connection with such inspections. In the event that Electrada is not satisfied with its inspections, then Electrada may terminate this Agreement by providing written notice to Host on or before the expiration of the Inspection Period, in which event this Agreement shall terminate and neither party shall have any further rights or obligations hereunder.

(b) **Zoning and Permitting.** Host agrees, upon Electrada’s request and at Electrada’s sole cost, to cooperate with and join in any applications for zoning matters, building permits, and all other applications for licenses, permits and approvals for which the signature of Host or the Premises’ owner is required. Electrada shall be solely responsible for prosecuting such applications and obtaining any zoning, building permits, and all other licenses, permits and approvals sought by Electrada in connection with this Agreement.

3. **Term.** Provided that Electrada fulfills the obligations outlined in Section 19 herein, the initial term of this Agreement shall commence on the Satisfaction Date and continue for a period of ten (10) calendar years (the “**Initial Term**”). Provided that Electrada shall not be in default of this Agreement beyond any applicable notice and cure period, Electrada and Host shall mutually determine, no later than three (3) months prior to the expiration of the Initial Term, whether to renew this Agreement for up to two (2) additional, successive periods of five (5) years each (each, a “**Renewal Term**” and collectively, the “**Renewal Terms**”) by amending this Agreement for the Renewal Term. The Initial Term and any subsequent Renewal Term(s), as applicable, are collectively referred to in this Agreement as the “**Term**.”

4. **Permitted Use.** Electrada shall use the Premises for the sole purpose of constructing and installing the EVSE and the development and operation of the EVSE in order to provide electric vehicular charging and related Business services to users of the Premises (the “**Permitted Use**”). Electrada shall not use or permit the use of the Premises for any use or purpose which would constitute a nuisance, be in violation of any statute, ordinance, regulation, directive, order or other lawful enactment or pronouncement of any Federal, State, Municipal, County or other lawful authority affecting the Premises, or make void or voidable any policy of insurance required hereunder. Electrada shall not commit or permit any waste, damage, disfigurement or injury to the Premises, or to the improvements from time to time thereon made or fixtures or equipment located thereon. Host makes no (and does hereby expressly disclaim any) covenant, representation or warranty as to the Permitted Use being allowed by or being in compliance with any applicable laws, rules, ordinances or restrictive covenants now or hereafter affecting the Premises, Electrada hereby expressly acknowledging and agreeing that Electrada shall conduct and rely solely on its own due diligence and investigation with respect to the compliance of the Permitted Use with all such applicable laws, rules, ordinances and restrictive covenants and not on any such information provided by Host or any of its agents or employees.

5. **Charging Stations: Plans.** Except as otherwise set forth herein, Electrada shall be responsible for the costs and expenses of the initial construction and development of the EVSE on the Premises in accordance with the plans and specifications attached hereto as **Exhibit B** and made a part hereof (the “**Plans**”). Electrada shall construct and install the EVSE, or cause the EVSE to be constructed and installed by reputable contractors selected by Electrada and licensed in the state where the Premises is located, in a timely and good and workmanlike manner, and in accordance with all laws, codes, rules, regulations and ordinances and the Plans. Upon completing the EVSE as set forth in the Plans, Electrada shall have the right in its sole discretion to update, expand and otherwise modify the EVSE from time to time and to perform any work incidental hereto on the Premises, provided any such modifications to the EVSE is in accordance with the approved Plans. Any modifications to the Premises and EVSE which
Electrada desires to make which is not in accordance with the Plans shall be approved by Host in writing, which approval may be withheld in the sole discretion of Host.

6. **Financial Structure, User, Host and Electrada Costs and Value Sharing.** Electrada and Host agree that the revenue, value-sharing, operating cost and fee structures and obligations are described in Exhibit C and related attachments, and incorporated herein by reference.

7. **Electric Consumption Costs, Metering and Settlement.** Electrada shall be responsible for payment of all charges, assessments and fees for all electricity consumed on the Premises during the Term, including but not limited to all electric consumption costs ("Electric Consumption Costs") of the EVSE charging stations on the Premises once placed into service. Electric Consumption Costs are defined as the sum of the variable monthly distribution delivery charge and the variable monthly supplier energy charge. Electric Consumption Costs will be calculated for settlement in one of the following two ways, as determined by the method of measurement, which method is in the sole discretion of Electrada:

(a) Where Electrada has installed utility metering or sub-metering for the EVSE on the Premises, including a unique utility meter identification and billing number, the Electric Consumption Costs, as defined above, as presented on the monthly utility bill;

(b) Where Electrada is unable to, or elects not to, install utility metering or submetering, Electric Consumption Costs shall be the product of a) the aggregate electrical consumption for the month on the EVSE on the Premises, as measured by the EVSE hardware and reported through the EVSE network software, and b) the sum of the i) current distribution delivery rate and ii) current supplier energy rate, each expressed as: $/KWh on the Host electric utility bill for the month.

(c) Within sixty (60) days of the end of the operating quarter, Electrada, in accordance with Exhibit C, will provide the Electric Consumption Costs to the Host for its records and settlement for the prior three (3) months, if any.

8. **Insurance.**

During the performance of the Services under this Agreement, the Electrada 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, no less than the following insurance:

1. Commercial general liability insurance, with a combined single limit of One Million Dollars and Zero Cents ($1,000,000.00) per occurrence and One Million Dollars and Zero Cents ($1,000,000.00) aggregate.
2. Workers’ compensation Insurance in such amount as required by law, and employers’ liability insurance, with a limit of Five Hundred Thousand Dollars and Zero Cents ($500,000.00) per occurrence.
3. Professional liability insurance with a limit of One Million Dollars and Zero Cents ($1,000,000.00) per claim and Two Million Dollars and Zero Cents ($2,000,000.00) aggregate.

The Electrada shall name the City, and its elected officials, officers, employees, and agents, as an additional insured on all insurance policies furnished and maintained pursuant to items (1) and (2) above. The Electrada shall provide the City with a certificate of insurance before commencing work. The Electrada must maintain the policies in good standing for the duration of this Agreement. The Electrada shall provide the City certificates of insurance that include a provision that such insurance will not be canceled without at least thirty (30) days written notice to the City, demonstrating compliance with this Article. 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 the Electrada’s obligations under provisions hereof.

All contractors and subcontractors are required to include the City and the Electrada as additional insureds on their commercial liability insurance policies, and are required to defend, indemnify, and hold harmless the City and the Electrada from the contractor’s negligence.

9. **Maintenance.** Electrada or a subcontractor shall, at Electrada’s sole cost and expense, maintain the Premises in good order, condition and repair and shall be solely responsible for all maintenance, repairs and replacements, as necessary, of the EVSE. Notwithstanding the foregoing, Host shall, at its sole cost and expense, maintain the sidewalks, curbing, pavements, and parking at the Premises, any utility systems servicing the Premises, and any landscaping on the right-of-way in good working order, condition and repair and shall be solely responsible for all maintenance, repairs and replacements, as necessary, of the same, provided that if repairs to such items are required due to the negligence or wrongful act of Electrada, its agents, employees or customers, Electrada shall make such repairs or Host shall make such repairs at Electrada’s expense.

10. **Alterations.** After the initial construction and installation of the EVSE is completed pursuant to the Plans, Electrada may, at its sole cost and expense, make any reasonable governmentally approved alterations, improvements, additions or physical changes to the Premises consistent with the use of the Premises contemplated by this Agreement, as Electrada deems appropriate in its sole discretion, including, but not limited to, preparations for construction of the EVSE and any other improvements as determined by Electrada in its sole discretion (collectively, “Alterations”), but upon providing at least thirty (30) days advance notice to Host.

11. **Satisfaction of Liens.** Any claim to a lien upon the Property arising from any act or omission of Electrada or its authorized contractors shall be valid only against Electrada and shall in all respects be subordinate to the title and rights of Host in and to the Property. Electrada shall remove, by bond or otherwise, any lien or encumbrance filed against the Property arising out of the acts or omissions of Electrada or its contractors within ninety (90) days after Electrada has received written notice of the filing of the lien. In the alternative, Electrada may contest any such lien provided Electrada posts reasonable security for same with a title company or other third party and upon terms reasonably and mutually acceptable to the parties. If Electrada fails to do either of the foregoing, Host may, but need not, pay the amount necessary to discharge the lien or encumbrance without being responsible for making any investigation as to the validity thereof and the amount so paid shall be deemed additional rent reserved under this Agreement and shall be due and payable to Host immediately.

12. **Signage.** Electrada shall have the right, with Host’s prior written consent, to install, operate and remove, at Electrada’s sole cost and expense, any sign or signs on the Premises provided such signage comply with applicable law. Notwithstanding the foregoing, Electrada shall have the right to install and operate the signage generally depicted on Exhibit D, attached hereto, which signage has been approved by Host. Electrada shall have the right to promote the existence and availability of EVSE on the Host’s property via marketing materials and mobile applications, without the need for approval or consent from Host, but upon providing at least thirty (30) days advance notice to Host. Upon the expiration or earlier termination of this Agreement, Electrada shall remove any signage installed by it on the Premises and shall repair and restore any damage to the Premises caused by such installation and/or removal.
13. **Fire and Casualty.**

(a) In the event all or any portion of the Premises is damaged by fire or other casualty that is determined to have originated on the Property, but not as a result of the operation of the Business, Host shall repair and restore the damaged portion of the Premises to substantially the same condition prior to such casualty (exclusive of the repairs and restorations required to be made by Electrada as provided in Section 15(b) below) within one hundred-twenty (120) days after the date of such casualty. If Host fails to repair and restore the Premises within one hundred-twenty (120) days after the date of such casualty, then Electrada may elect to make or complete such repairs, alterations and restoration, and Host shall reimburse Electrada promptly upon demand for the reasonable costs thereof. Notwithstanding the foregoing, in the event the Premises cannot be restored within such one hundred-twenty (120) day period, as determined by Host in its sole discretion, then either Host or Electrada may terminate this Agreement by providing written notice to the other party.

(b) In the event that the right-of-way is damaged by fire or other casualty, unless this Agreement is otherwise terminated pursuant to the provisions of this Section 15, Electrada shall, at its sole cost and expense, forthwith repair and restore the EVSE and any other its furnishings, trade fixtures, equipment and contents therein and all improvements installed or constructed by Electrada.

14. **Right to Defend.** Electrada shall have the right to defend, appeal, challenge or otherwise contest, at its own expense and in its own name, to such extent as Electrada may deem necessary: (a) the application or validity of any legal requirement affecting the EVSE; (b) any suits, actions or claims filed or made by any third party which may in the judgment of Electrada threaten any rights of Electrada relating to the EVSE or in any way Electrada’s possession or right of possession of the EVSE; or (c) the assessment or levying of any taxes affecting the EVSE, but nothing herein contained shall restrict Host, at Host’s sole cost and expense, from defending, contesting or participating in the defense or contest of any such suit or action if in the reasonable judgment of Host the interests of Host shall so require. The provisions of this Section 14 shall survive the expiration or earlier termination of this Agreement.

15. Electrada shall indemnify, and hold harmless the City, and its elected officials, employees, and agents from and against all judgments, losses, damages, and expenses for bodily injury, death, and physical damage to real or tangible personal property, to the extent such judgments, losses, damages, or expenses are caused by the Electrada’s acts, errors, or omissions arising out of its performance herein.

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.

16. **Termination.**

(a) In the event that Electrada is unable to use the right-of-way for the purposes contemplated herein due to any action or inaction from any applicable public agency, then Electrada may terminate this Agreement by providing written notice to Host, which termination shall be effective immediately upon delivery of such written notice.

(b) In the event that either party breaches this Agreement and such breach continues for a period of thirty (30) days after written notice is provided to the breaching party, the non-breaching party may immediately terminate this Agreement by providing written notice to the breaching party.
(c) Host may terminate this agreement for convenience by providing thirty (30) days written notice to Electrada. If Host is to terminate this agreement for convenience the following termination fee schedule will apply:

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<th>Proposed Termination Fee Schedule</th>
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17. **Default.** Upon a breach of this Agreement, in addition to and cumulative of any other rights the non-breaching party may have at law and in equity, the non-breaching party shall have the right to any one or more of the following remedies:

(a) The non-breaching party shall have the right to terminate this Agreement subject to Section 17(b).

(b) The non-breaching party shall have the immediate right of re-entry to remove all of their property from the Premises. In such case where Host is the breaching party, Electrada agrees to use commercially reasonable efforts and due care to remove EVSE and related property.

18. **Host Representations and Warranties.** Host represents and warrants to Electrada, the following:

(a) As of the Effective Date, Host owns marketable fee title to the Premises, free and clear of any liens, encumbrances, restrictions and violations (or claims and notices thereof), except as expressly provided to Electrada in writing prior to the Effective Date.

(b) No property within the Property, to the extent owned or controlled by Host or its affiliates, is or will be used for the Exclusive Use (as defined in Section 20 below).

(c) To the best of Host’s knowledge, without further investigation, the Premises are in full compliance with all Environmental Laws (as hereinafter defined).

For purposes of this Agreement, Environmental Law shall be defined as follows:

“Environment” means any surface or groundwater, drinking water supply, soil, surface or subsurface strata or medium, or the ambient air.

“Environmental Law” means any applicable law, and any governmental order or binding agreement with any governmental authority relating to protection of the Environment or human

**“Site EV Charging Capacity Obligation.”** During the Term, Electrada shall maintain EVSE charging capacity at the Premises, as measured in KWh, that ranks in the top 25% of such site capacity as compared to similar properties (e.g. residential apartment communities) within a five-mile radius of the Property. Electrada shall, annually during the Term, provide a report that compares the EVSE charging capacity at the Property with EVSE charging capacity at similar properties within a ten-mile radius.

19. **Exclusive EV Charging Rights.** During the Term, Electrada shall have the first right to lease or otherwise provide the services of the Business on the Property. Accordingly, Host shall not enter into any other agreement, or otherwise consent to, allow or permit, the use and/or occupancy of by Electrada or occupant (other than Electrada) at the right of way locations listed in this agreement. Any such agreement between Host and Electrada for additional locations shall be substantially on the same terms and conditions as set forth in this Agreement.

20. **Capacity Attributes of Products.** Except as otherwise expressly permitted by this Agreement, Host hereby acknowledges and agrees that Electrada has exclusive ownership and control of the capacity and related energy and other attributes of the EVSE and any equipment, machinery, software and other products provided by Electrada in connection with the delivery of the EVSE solutions (collectively, the “Products”), for purposes of bidding the capacity into the capacity auctions or markets operated by PJM Interconnection LLC or any other regional transmission organization or similar entity, at Electrada’s sole discretion. Host represents and warrants that it does not have an agreement with any other entity to commit the capacity attributes of the Products to any other entity and will not enter into such an agreement. Host shall make all reasonable efforts to assist Electrada in verifying the capacity resources associated with the Products, including, but not limited to, responding promptly to Electrada queries as to whether the Products are properly installed and operating.

21. **Host’s Right of Entry.** Electrada agrees to permit Host and the authorized representatives of Host to enter upon the right-of-way at all reasonable times for the purposes of inspecting the Premises and Electrada’s compliance with this Agreement, and making any necessary repairs thereto. Nothing herein shall imply any duty upon the part of Host to do any work required of Electrada hereunder, and the performance thereof by Host shall not constitute a waiver of Electrada’s default in failing to perform it. Host shall not be liable for inconvenience, annoyance, disturbance or other damage to Electrada by reason of making such repairs or the performance of such work in the Premises or on account of bringing materials, supplies and equipment into or through the Premises during the course thereof, and the obligations of Electrada under this Agreement shall not thereby be affected; provided, however, that Host shall use reasonable efforts not to disturb or otherwise interfere with Electrada’s operations in the right-of-way in making such repairs or performing such work.

22. **Surrender.** At the expiration or earlier termination of this Agreement, Electrada shall vacate the right-of-way to Host in as good condition as on the Commencement Date, excepting ordinary wear and tear and casualty and condemnation damage. Not later than the expiration or earlier termination of this Agreement, Electrada shall remove all of its improvements (including the EVSE), signage, and trade fixtures from the Premises (except for any underground utilities, which shall be clipped and abandoned), and Electrada shall repair any damage to the Premises caused by the removal of such items. If Electrada fails to remove its improvements, and/or trade fixtures within thirty (30) days after the expiration or earlier
termination of this Agreement, any such improvements, and/or trade fixtures at the Premises shall be
deemed abandoned and become the property of Host or may be removed by Host at the expense of
Electrada.

23. **Notice.** All notices, demands and requests which may be or are required to be given by
either party to the other, shall be in writing and shall be sent by (i) United States mail, registered or certified,
return receipt requested, postage prepaid, or (ii) recognized overnight delivery service with receipted
delivery, or (iii) by any other electronic means, with a confirmed delivery receipt, or (iv) hand delivery to
the addresses set forth below:

**Host:**
City of Dayton, Ohio
Attn: Mark Charles
101 West Third Street
Dayton, Ohio 45402
Email: Mark.Charles@daytonohio.gov

**Electrada:**
Electrada, LLC
Attn: Irina Filippova, COO
151 W. 4th Street, #18
Cincinnati, OH 45202
Email: ifilippova@electrada.com

24. **Amendment.** This Agreement represents the entire agreement between Host and
Electrada, and can be amended, modified or changed only by an instrument in writing executed by the then
holders of the respective interests of Host and Electrada.

25. **Sophisticated Parties; Authorization.** Each of the parties to this Agreement
acknowledges and agrees that this Agreement was bargained for between sophisticated parties, this
Agreement has been diligently reviewed and negotiated by each party and each party fully understands the
terms herein, and each party has been represented by competent counsel. Accordingly, no presumption
shall apply against either party with respect to the drafting of any provisions contained herein and any
ambiguities shall not be construed against any party. Each signatory has full power and authority to execute
this Agreement and all necessary action has been taken by each party to authorize the execution of this
Agreement.

26. **Time is of the Essence.** Time is of the essence in every particular of this Agreement
including without limitation the obligations for the payment of all monies due hereunder.

27. **No Partnership.** This Agreement does not create any agency, partnership,
employer/employee, joint venture or other relationship between Host and Electrada.

28. **Partial Invalidity.** If any term, covenant or condition of this Agreement or the application
thereof to any part, person or circumstances shall, to any extent, be invalid or unenforceable, the remainder
of this Agreement or the application of such term, covenant or condition shall be valid and shall be enforced
to the fullest extent permitted by law.

29. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the
laws of the State of Ohio.
30. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one agreement. Signatures delivered electronically (by facsimile or electronic mail) shall be deemed originals for all intents and purposes. The signature of any party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart.

[Signature Page and Exhibits to Follow]
Host and Electrada have duly executed and entered into this Agreement as of the Effective Date.

HOST:

City of Dayton

By: ____________________________
Name: Shelley Dickstein
Title: City Manager
Date: __________________________

APPROVED AS TO FORM
AND CORRECTNESS:

E-SIGNED by Suzanne Beck for City Attorney
on 2021-11-23 15:56:35 GMT

City Attorney

ELECTRADA:

ELECTRADA, LLC,
a Delaware limited liability company

By: ____________________________
Name: Irina Filippova
Title: COO
Date: 05/24/21
EXHIBIT A

Property

1. E. 2nd at N. St. Clair Street (Cooper Park/Metro Library), 39°45'41.6"N 84°11'17.3"W (ROW on Cooper Park Side of the Road)

2. E. Monument Ave (Day Air Ballpark) ROW, 220 N Patterson Blvd, Dayton, OH 45402 (approximate)

3. E. 4th Street Right of Way (Levitt Pavilion), 44-98 E 4th St, Dayton, OH 45402 (approximate)
EXHIBIT B
EVSE Plans

- **E. 2nd at N. St. Clair Street (Cooper Park/Metro Library):**
  One (1) AddEnergie/FLO SmartTwo Level 2 (7.2kWh) Charging Stations, Dual Port and Pedestal Mounted Configuration

- **E. Monument Ave (Day Air Ballpark) ROW:**
  One (1) AddEnergie/FLO SmartTwo Level 2 (7.2kWh) Charging Stations, Dual Port and Pedestal Mounted Configuration

- **E. 4th Street Right of Way (Levitt Pavilion):**
  One (1) AddEnergie/FLO SmartTwo Level 2 (7.2kWh) Charging Stations, Dual Port and Pedestal Mounted Configuration
EXHIBIT C
Revenue, Costs and Value Share

1. **Revenue.** Electrada shall provide the services of the Business, via the EVSE and in accordance with the Service Level Agreement, to end-users to charge electric vehicles for a fee (the “**EVSE User Revenue**”). The EVSE User Revenue rates will be established by Electrada, and can be modified by Electrada, at any time, in Electrada’s sole discretion. Electrada, through the EVSE network mobile application, will enroll electric vehicle charging customers and collect payment for electric vehicle charging services.

2. **Costs.** Electrada will bear all capital and operating costs of the Business, including, but not limited to, EVSE capital costs, engineering and implementation costs, electricity costs, network and communication fees, network transaction fees, support and maintenance costs.

3. Prior to the first anniversary of the EVSE in-service date, defined as the first day of charging infrastructure fully operating on the property, Host will not share in Revenue.

4. Commencing with the first anniversary of the EVSE in-service date and thereafter during the Term, Electrada shall share **Net Revenues** with Host as generated by the EVSE User Revenue, based on the **System Utilization Rate (SUR)** in the following manner:

   a) **Net Revenues** for each quarter will be calculated as:

   The aggregate of the EVSE User Revenue for the prior quarter, less a) the aggregate Electric Consumption Costs, as either 1) measured as in Section 7(a) and paid directly by Electrada or 2) measured as in Section 7(b) and paid by Electrada to Host, for the same quarter, and less b) directly attributable to EVSE network and communication fees, as well as network transaction fees as invoiced to Electrada for the quarter.

   b) **System Utilization Rate (SUR)** for each quarter will be measured as the quotient of 1) the aggregate time of active EV charging at the Property and 2) the aggregate available Inservice Hours of the EVSE at the Property, as defined on Exhibit E.

   c) Host shall receive payment of the percentage of quarterly Net Revenues equivalent to the System Utilization Rate (SUR) for that quarter, as measured by the EVSE network management software.

**Example:** For the first quarter of the second year of operations, the EVSE network management software recorded 720 hours of total EV charging at the Property, out of a possible 4,320 In-service Hours of available EV charging (based on 2 electric vehicle charging ports). SUR for that quarter is 16.7%. Host will receive payment in the amount of 16.7% of Net Revenues for that quarter, as defined above.

   - Quarter SUR: 16.7%
   - Percentage of Net Revenue to Host: 16.7%
   - Quarterly Net Revenue: $1,500
   - Quarterly Net Revenue to Host: $250.50

5. **Licensing.** During the Term, if Host elects to use its own brand assets, images, colors, trademarks and related indicia to promote the services of the Business, Host hereby grants to Electrada a non-exclusive, non-transferrable, revocable license to use the names,
logos, trademarks, service names, trade names and other identifying indicia of Host attached hereto as **Exhibit C-1** and made a part hereof.

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(The **Trademarks**) for the purpose of branding the EVSE used on the Premises. Electrada shall be permitted to use the Trademarks on signage at the Premises, on the EVSE, in advertising or other marketing communication materials related to the Premises, on web-sites, in social media, in video clips or other mediums, or for display on promotional items for the Premises. Host shall be responsible for payment to Electrada for all costs and expenses associated with the use of the Trademarks arising hereunder, including, but not limited to, the cost of branding the EVSE, within ten (10) days after receipt of an invoice from Electrada, together with supporting documentation evidencing such costs incurred.
**EXHIBIT D**

**Signage**

- E. 2nd at N. St. Clair Street (Cooper Park/Metro Library): Two (2), aluminum, post-mounted signage
- E. Monument Ave (Day Air Ballpark) ROW: Two (2), aluminum, post-mounted signage
- E. 4th Street Right of Way (Levitt Pavilion): Two (2), aluminum, post-mounted signage
EXHIBIT E

SERVICE LEVEL AGREEMENT (“SLA”)

In connection with the Site Host Agreement, including all attached Exhibits (collectively, the “Agreement”), by and between Electrada, LLC, (“Electrada”) and the City of Dayton (“Host”), Electrada shall provide Host with and agrees to the following service level requirements for the duration of the Term:

1. DEFINITIONS

1.1. “Business Hours” shall mean 8 a.m. to 5 p.m. ET Monday through Friday, excluding statutory holidays. 1.2. “Charging Service” shall mean the service enabling End Users to charge their electric vehicles by using an EVSE installed on the Premises.
1.3. “Intended Operating Hours” shall mean 12:00am until 11:59pm every day.
1.4. “In-service Hours” of a given period shall mean the total number of Intended Operating Hours minus the total Outage Hours of that period.
1.5. “Major Malfunction Event” shall mean a situation at a specific Host Site where there is only one EVSE and such EVSE is experiencing a Malfunction.
1.6. “Malfunction” shall mean a situation during which an EVSE cannot provide the Charging Service due to equipment breakdown, or due to a failure of the central management system. Malfunction excludes Charging Service interruptions due to power outages or power shutdown to the breaker serving the EVSE, scheduled maintenance, Host Site access restrictions, interruption resulting from a joint agreement from both Parties to intentionally suspend the Charging Service, or inabilitys resulting from damages caused by an accident or vandalism.
1.7. “Minor Malfunction Event” shall mean a situation at a specific Host Site where one EVSE is experiencing a Malfunction, but where another EVSE installed at the same Host Site is still able to provide the Charging Service.
1.8. “Outage Hours” shall mean the total number of Intended Operating Hours during which a Charging Station is subject to a Malfunction.
1.9. “SAI” shall mean the Service Availability Index in a given period for a given EVSE or a group of EVSEs and shall refer to the percentage of time the EVSE(s) was (were) able to provide the Charging Service, and shall be calculated by dividing the total number of In-service Hours by the total number of Intended Operating Hours of that period.

2. SERVICE LEVELS

2.1. Electrada shall monitor EVSEs during Business Hours, for the purpose of monitoring operating conditions.
2.2. Electrada shall ensure to meet the following minimum SAI levels:
   2.2.1. On the first day of each quarter, the SAI calculated over the previous two (2) quarters of each EVSE shall be 96.00% or higher.
2.3. Electrada shall prepare and provide to Host, no later than sixty (60) days following the end of the previous quarter, a quality of service report outlining the SAI calculated as per Section 2.2 of this Appendix. 2.4. In the event that Electrada does not meet the SAI levels defined in Section 2.2 of this SLA for two consecutive quarters, Electrada shall replace the EVSE(s) that is (are) directly related to not meeting the minimum SAI level(s).
2.5 In the event that Host reports to Electrada, or Electrada detects a physically unsafe or hazardous condition present due to the Malfunction of an EVSE, that in the discretion of the Host, requires immediate attention, Electrada will dispatch a repair technician within 1 hour of the notice of such condition. In such an event, Electrada will de-energize and disconnect the EVSE from electrical service, pending the completion of the diagnostic, repair and reporting steps outlined in Sections 2.6 and 2.7 herein.
2.6. When an EVSE is subject to a Malfunction, Electrada shall: (i) make a first diagnosis of such Malfunction; (ii) notify Host at the time an issue is detected and provide an explanation of the problem and an estimate of the time it will take to repair the Malfunction; and (iii) proceed to repair within the following maximum repair delays:

2.3.1. When a Major Malfunction Event occurs that does not require a site visit to repair:

2.3.1.1. During Business Hours, repair shall take place within one (1) Business Day from the Malfunction identification.
2.3.1.2. Outside Business Hours, repair shall take place within two (2) Business Days from the identification of the Malfunction.
2.3.2. When a Major Malfunction Event occurs that does require a site visit to repair:

2.3.2.1. During or Outside Business Hours, repair shall take place within three (3) Business Days from Malfunction identification.
2.3.3. When a Minor Malfunction Event occurs, repair shall take place within five (5) Business Days from Malfunction identification.

2.7. Once a repair has been completed, Electrada shall provide Host with a follow-up report confirming the cause of the Malfunction and the actions taken to repair it.

2.8. For each Malfunction event, when Electrada fails to meet the repair delays specified in Section 2.6 of this document, Host shall be entitled to issue a default letter to Electrada within 30 days after the Malfunction was identified.

2.9. In the event that, during any given year of the Term, Host issues more two default letters to Electrada pursuant to Section 2.8 related to any individual EVSE, then it shall have the right to terminate the Site Host Agreement for that specific Site location.

3. SITE ACCESS AND NOTIFICATION

3.1. In the event that Electrada is required to provide routine scheduled on-site maintenance or upgrades, or to address EVSE Malfunctions or Minor Malfunctions not addressed in Section 2.5, Electrada shall:

3.1.1. Provide at least 4 hours’ notice, during Business Hours, to the designated Host point of contact prior to arriving on-site to the Property;
3.1.2. Check in with the designated Host point of contact upon arrival to the Property;
3.1.3. Require technicians to conduct themselves in a safe, professional and courteous manner;
3.1.4. Check out with the designated Host point of contact upon departure from Property

4. END USER ONBOARDING AND SUPPORT

4.1. All End Users of the Charging Services provided by the EVSE will interact with the EVSE using the mobile application provided by the technology partner of Electrada. Upon installation and provisioning of the EVSE on the Premises, the following will be provided to End Users by Electrada:
4.1.1. An introductory informational packet, describing the Charging Services and the relationship between Electrada, its technology platform and Host. The information packet will be approved by the Host prior to distribution to End Users.

4.1.2. A “How-To” guide to assist End Users in accessing the mobile application, establishing an account and confirming successful sign-up.

4.1.3. A Troubleshooting guide to End Users on how to notify Electrada, via the mobile app or phone support, of a need for assistance in using the Charging Services, reporting a Malfunction or difficulty in accessing the Charging Services or to resolve a payment issue.
Electrada Responses to Implementation Questions

September 22, 2021

• **Question:** Assuming customers can use a credit card to pay for their charge, will Electrada charge the customer a credit card fee on top of the charge fee? If so, will that fee be added to the total charge?

  **Answer:** The customers will be charged on a $/kWh basis that is clearly displayed on the charger and Flo app. Customers will only be charged for the period where they are plugged in and energy is transferred to a vehicle. The rate will always be based on dollars per kWh transferred. Since Electrada is the Owner and Operator of the charging equipment, it assumes all ancillary chargers within the price that the customers see.

• **Question:** Will Electrada’s statement break out this sub-charge?

  **Answer:** At the end of the customer’s session, Flo will email them a receipt following the charging session.

• **Question:** Will these additional fees, if any, affect the fee split with the City?

  **Answer:** The Value Share calculation is described in Exhibit C, and the amount the City would receive is primarily dependent on charger utilization, and the greater the utilization, the larger proportion of net revenues the City would receive once eligible (one year following placed in service date of the chargers).

• **Question:** Are there any credit cards that Electrada does not accept (e.g., American Express)?

  **Answer:** The payments are processed directly through Flo. Currently Visa, MasterCard and AMEX credit cards are accepted. This only excludes Discover cards.

• **Question:** If there is a complaint or customer billing issue (e.g., credit card rejection) who will handle such issues?

  **Answer:** These issues would be handled directly by Flo as the network provider. Flo has 24/7/365 customer service, and their number and a link to their website is displayed on the front of every charger. Additionally, Electrada’s Service Level Agreement (Exhibit E) describes the issue management process for major and minor issues.
• **Question:** Can the agreement briefly describe data security protections for credit card information, etc.?

**Answer:** Data security and protections are embedded within the Flo network, and all communications to or from the FLO system are done through TLS (Transport Layer Security) Internet connections (https connections). FLO does not use http-only (unsecured) connections. STRIPE is a Payment Service Provider that is fully PCI-DSS compliant. When customers sign up for the Flo app to utilize the public chargers and add payment methods, they have to agree to Flo’s Driver Terms of Use.

• **Question:** Exhibit C’s second sentence indicates Electrada can unilateral customer charges from time to time. Is there a way Dayton can be involved in such decisions or at the least informed when price increases are going to occur? Would these increases or decreases affect the City fee split?

**Answer:** Electrada would alert the City prior to any price increase. Value Share would be calculated as described in Exhibit C, and the City’s proportion of net revenues would be based on total charger utilization. In other words, if the utilization was the same, but the price to charge would increase, then yes, the City would receive a higher amount.

• **Question:** Can the agreement indicate that Electrada will provide documentation supporting each fee split amount transmitted to the City (e.g., charger usage rates, etc.)?

**Answer:** Within the Agreement Exhibit C, quarterly Site Host reporting documenting the chargers' utilization, revenues, and value share information will be included.

• **Question:** How does Electrada plan to transmit the fee split payment to the City? (Check, electronic payments, other)?

**Answer:** Electrada’s preferred method would be electronic payment transfer to the City.

• **Question:** Can these payments be made within 30 days of the end of each quarter?

**Answer:** In accordance with Section 7 and Exhibit C, any value share payments would be sent within 60 days of the previous quarter’s end, reflecting that previous quarter. That is Electrada’s standard processing period to ensure sufficient time to gather the usage data, prepare reports, and make payment to the host entity following the quarter’s end.
PAYMENT OF VOUCHER

The Clerk of Court requests approval for a payment of voucher to satisfy three invoices held with the Clerk’s contracted merchant services vendor National Processing Solutions (NPS). The invoices outside the encumbrance are for one-seventh of October 2021 ($1,615.97), November 2021 ($9,947.50) and an estimation of December 2021 ($10,000.00) totaling $21,563.47.

Due to the considerable increased ticketing with the use of hand-held speed enforcement cameras and mobile enforcement cameras, coupled with an increased preference for online credit card payments, the current encumbered funds are not sufficient to satisfy the invoices.

The delay in billing prohibits the Clerk of Court from encumbering the remainder of commission approval for the October, November, and December invoices. The billing cycles have occurred before the request for an encumbrance increase could be submitted. Moving forward, we are working with the vendor to modify communication of increased online payment volumes and with the police department for expected additional enforcement.

The Clerk of Court asks that the City Commission authorize payment to National Processing Solutions.

A Certificate of Funds is Attached.
December 16, 2021

TO: City Commission Office  
    City Manager’s Office  
    Department of Finance

FROM: Mark Owens, Clerk of Court

SUBJECT: Payment of Voucher

Please find attached the Clerk of Court’s packet requesting a Payment of Voucher to be paid to National Processing Services for credit card merchant services fees. In the packet you will find the City Manager’s Report, Certificate of Funds, Vendor Invoices, and the Original Certificate of Funds.

The increase in police ticketing with the use of hand-held speed camera enforcement devices and mobile camera enforcement devices, joined with the increased preference for online payments has outpaced our merchant services encumbrance.

The timeline we received the invoices prohibited our office from encumbering the remaining City Commission approved funds.

If you have any questions, please contact Meghan Thomas in my office at X4448.

Attachments (5)
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>Upon Execution</td>
<td>$ 21,563.47</td>
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<tr>
<td>Expiration Date</td>
<td></td>
<td></td>
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<tr>
<td>Original Commission Approval</td>
<td></td>
<td>$ 21,563.47</td>
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<tr>
<td>Initial Encumbrance</td>
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<tr>
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<td>Original CT/CF</td>
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<tr>
<td>Increase Encumbrance</td>
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<td>Decrease Encumbrance</td>
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<td></td>
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<tr>
<td>Remaining Commission Approval</td>
<td></td>
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</tr>
</tbody>
</table>

Required Documentation

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

| Amount: | $ 21,563.47 |
| Fund Code: | 10000 - 2500 - 1158 - 74 - - |

| Amount: | |
| Fund Code: | |

Attach additional pages for more FOAPALS

Vendor Name: National Processing Solutions
Vendor Address: 400 Sugar Camp Circle, STE 301 Dayton, OH 45409
Federal ID: 27-0088061
Commodity Code: 94635
Purpose: Payment of Voucher

Contact Person: Meghan Thomas
Clerk of Court
Department/Division
Date: 12/18/2021

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the 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] 12/21/2021
Date: 12/21/2021
CF Prepared by: [Signature] 12/30/2021
CF/CT Number: CF21-2258
# Certificate of Funds

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

- **New Contract**
- **Renewal Contract**
- **Change Order**

**Contract Start Date**: Upon Execution

**Expiration Date**: 03/31/22

**Original Commission Approval**: $120,000.00

**Initial Encumbrance**: $28,000.00

**Remaining Commission Approval**: $92,000.00

**Original CT/CF**: Increase Encumbrance

**Copy of City Manager's Report**:

**Copy of Original Certificate of Funds**:

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<th>Amount:</th>
<th></th>
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<tbody>
<tr>
<td>Fund Code</td>
<td></td>
</tr>
</tbody>
</table>

---

**Vendor Name**: National Processing Solutions

**Vendor Address**: 400 Sugar Camp Circle, STE 301 Dayton, OH 45409

**Federal ID**: 27-0088061

**Commodity Code**: 94835

**Purpose**: To encumber funds for credit card merchant service fees for 2019.

---

**Contact Person**: Meghan Thomas

**Clerk of Court**: Date 3/2/19

**Originating Department Director's Signature**:

---

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

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

**Finance Director's Signature**:

**Date**: 3-25-19

**CF Prepared by**: Tom Williams

**Date**: 3/2/19

**CF/CT Number**: CT19-2259

---

October 18, 2011
NATIONAL PROCESSING SOLUTIONS  
10 Sugar Camp Circle  
Dayton, Ohio 45409  
937-522-0032

Invoice Date: 25-Nov-21  
Service Period: Oct-21

SUMMARY INVOICE  
Due On Receipt

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<th>Merchant Number</th>
<th>Amt Due</th>
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<tbody>
<tr>
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<td>434171124887</td>
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<tr>
<td>434171120885</td>
<td>$174.46</td>
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</table>

Total Invoices for Service Period: $11,295.65

Please remit to:  
National Processing Solutions  
10 Sugar Camp Circle  
Dayton, Ohio 45409

PO/CT/CF ORDER # APPROVED AMT  
ACCOUNT DISTRIBUTION  
(Payment without order MUST have account codes)  
DATE GOODS/SVCS. REC'D  
FINAL PAY-YES/NO (Circle One)

DEPT APPROVAL (REQUIRED)

www.gonps.com
SUMMARY INVOICE

<table>
<thead>
<tr>
<th>Merchant Number</th>
<th>Amt Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>434171123889</td>
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<td>$190.54</td>
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Total Invoices for Service Period: $9,947.50

Please remit to:
National Processing Solutions
10 Sugar Camp Circle
Dayton, Ohio 45409

PO/CT/CF ORDER #     APPROVED AMT
ACCOUNT DISTRIBUTION

(Payment without order MUST have account codes)
DATE GOODS/SVCS. REC'D
FINAL PAY-YES/NO (Circle One)

DEPT APPROVAL (REQUIRED)

www.gonps.com
AN ORDINANCE

Enacting R.C.G.O. Section 137.20
Regarding the Ban of Fireworks in the City
of Dayton on Account of the Passage of
House Bill 172 into Law.

WHEREAS, Over the last several years, especially during the COVID-19 pandemic, the City
of Dayton has experienced a proliferation of fireworks use in its neighborhoods; and

WHEREAS, With the passage of House Bill 172 into law, the discharge of fireworks on some
holidays will now be legal, however with the discretion of cities within the state of Ohio to determine
their own laws for the benefit of their citizens; and

WHEREAS, The unsafe and illegal discharge of fireworks poses a significant danger to the
public and can cause serious injuries as well as significant property damage; and

WHEREAS, The City of Dayton receives numerous complaints every year from citizens
regarding illegal firework use on the grounds of noise and nuisance; and

WHEREAS, The use of fireworks disturbs the peace, tranquility, and wellbeing of residents
in the City of Dayton and their pets; and

WHEREAS, The Commission, in order to preserve the peace, tranquility, and wellbeing of
its residents and communities, wishes to maintain the prohibition on the discharge, ignition, or
explosion of fireworks within the City’s territorial limits, and;

WHEREAS, The Revised Code of General Ordinances must be amended to include the
aforementioned prohibition of the discharge, ignition, or explosion of fireworks within the City’s
territorial limits; now, therefore,

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

Section 1. That this Commission hereby prohibits the discharge, ignition, or explosion of
fireworks pursuant to its home rule authority and per Section 3743.45 of the Ohio Revised Code.

Section 2. That Section 137.20 of the Revised Code of General Ordinances of the City of
Dayton is hereby enacted to read as follows:

(A) No person shall discharge, ignite, or explode fireworks within the territorial limits of the
City.

(B) This prohibition is intended to operate to the furthest extent possible pursuant to Ohio
Revised Code Section 3743.45.
(C) As used herein, the term “fireworks” has the same meaning as “1.4G fireworks” as defined in R.C. 3743.01. This definition shall not include “novelties and trick noisemakers” or “wire sparklers” as those terms are defined in R.C. 3743.01.

(D) The prohibition described in subsection (A) shall not apply to a licensed fireworks exhibitor in the exhibition of a public fireworks display approved by the City.

ADOPTED BY THE COMMISSION......................, 2021

SIGNED BY THE MAYOR.............................., 2021

Mayor of the City of Dayton, Ohio

ATTEST:

__________________________
Clerk of Commission

APPROVED AS TO FORM:

__________________________
City Attorney