

Contract No. _____

PROFESSIONAL SERVICE AGREEMENT

Between

THE CITY OF CLEVELAND

And

COMPANY

THIS AGREEMENT for Professional Services is effective this ____ day of _____, 2024 (“Effective Date”), between the **CITY OF CLEVELAND** (“City”), a municipal corporation of the State of Ohio, through its Director of Port Control (“Director”), (under the authority of Ordinance No. ORDINANCE NUMBER passed by Cleveland City Council on DATE a copy of which is attached as Exhibit A-1; Board of Control Resolution No. BOC NUMBER approved DATE attached as Exhibit A-2), and **COMPANY** (“Consultant” or “Contractor”), a corporation with an office located at ADDRESS, through its duly authorized officer.

RECITALS:

1. The City desires to supplement regularly employed staff of the Department of Port Control (“Department”) at Cleveland Hopkins International Airport (“CLE”) in order to provide professional services necessary to DESCRIPTION OF SERVICES;
2. Consultant has submitted its proposal dated DATE (“Proposal”), relating to the provision of such professional services to the City; and
3. The City finds Consultant’s Proposal acceptable as amended by this Agreement and desires to hire Consultant to furnish such services under the terms, conditions and provisions contained in this Agreement.

In consideration of the foregoing, the payments and the mutual promises contained in this Agreement, the parties agree as follows:

Article I. SERVICES OF CONSULTANT

A. General

By execution of this Agreement, the City accepts and Consultant agrees to provide the services described in the City’s Request for Submissions (attached as Exhibit B) and Consultant’s Proposal (attached as Exhibit C) which was provided to the City and by reference both incorporated herein, except as may be changed, modified or supplemented hereby. The Consultant is hired to render professional services necessary

to provide the professional services described herein for the Department of Port Control (“Department”). In the event of a conflict or variance between the provisions of this Agreement and the provisions of any other agreement, including the Exhibits, such agreements shall have priority in the following order: (i) the main body of this Agreement; (ii) Exhibit B; (iii) Exhibit C.

B. Specific Services

Consultant shall render the specific services listed and identified in the attached Exhibits B and C (“Services” or “Project”).

C. Meetings and Reports

Consultant shall attend meetings and deliver reports in accordance with Exhibits B and C and any other reasonable meetings or reports as requested by the Department and reasonably agreed upon by the Consultant.

D. Changes

The City shall have the right at its sole option to request additional work and services to be provided by Consultant under this Agreement as may be necessary to accomplish the purpose and intent of this Agreement. Any such request for a change in scope and additional services shall be made to the Consultant and Consultant shall then provide the City with a quote for such additional services. Consultant shall not proceed with the provision of any changes prior to the amendment to this Agreement.

E. Equipment

Title to equipment, if any equipment is provided hereunder, excluding software, shall pass to the City upon payment in full. The risk of loss or damage for all equipment shall pass to the City upon delivery to the Department.

F. Rights In Results of Services

The results of Consultant's Services under this Agreement shall be the exclusive property of the Director, and all documents (including without limitation, all writings, drawings, blueprints, pictures, recordings, computer or machine-readable data, and all copies or reproductions) that describe or relate to the Services performed or to be performed under this Agreement or the results, including without limitation all notes, data, reports or other information received or generated in the performance of this Agreement, shall be CONFIDENTIAL and the exclusive property of the Director and shall be delivered to the Director upon request, except for one copy, which may be retained by Consultant for its confidential files.

Article II. ASSISTANCE OF THE CITY

City shall assist Consultant to the extent possible as necessary during the term of this Agreement. Office and working facilities shall be provided to the Consultant on a space available basis only.

Article III. TERM

The term of this Agreement shall begin upon the Effective Date and, unless extended by City or unless sooner canceled or terminated pursuant to the provisions of this Agreement shall expire one (1) year thereafter (“Initial Term”), with NUMBER (#) one-year options to renew (“Renewal Term”), exercisable by the Director of Port Control (collectively the “Term”).

Notwithstanding the foregoing, Consultant’s services hereunder shall not be deemed complete until any reports that may be described in the Proposal have been submitted and approved by the Director and any and all Consultant’s services have been approved by the Director.

Article IV. PAYMENTS

A. Amount

The City shall pay Consultant for accomplishment of the Project and Services required hereunder, for the Term of this Agreement a fee not to exceed \$AMOUNT, the total amount of this Agreement, no additional funds having been appropriated.

City shall pay approved portions of each progress invoice within thirty (30) days of the date of the invoice. The City asks that invoicing be effected electronically by sending digitalized invoices to the following address: invoices@clevelandairport.com. Where invoices cannot be sent electronically, hard copies are to be sent to the following address:

Cleveland Airport System
Attn: Accounts Payable
5300 Riverside Drive
P.O. Box 81009
Cleveland, Ohio 44181-0009

B. Payment

The City will be invoiced monthly, no sooner than on the first day of the month.

C. Acceptance

Approval by the Director of Services rendered under this Agreement shall constitute only acknowledgement of performance, but shall not relieve or excuse Consultant from responsibility for any errors or omissions, and no fee or compensation will be paid to Consultant for the cost of rectification of any part of the Services required on account of such errors or omissions.

D. Changes

Any changes, modifications or additions to this Agreement shall be made in a writing signed by both parties. Consultant shall, if so requested by City, perform and complete any extra services, and said extra services shall be performed and charges shall be due or payable only upon agreement in writing made prior to the commencement of said extra services.

Article V. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

This Agreement is not a work made for hire. Any interest of the Consultant or its subcontractors, in software purchased, delivered, and installed, drawings, plans specifications, studies, reports, memoranda, computation sheets or other documents prepared by the Consultant or its subcontractors in connection with the Project or Services to be performed under this Agreement, exclusive of the all plans, reports, and the like which are provided hereunder, portions thereof, or drafts of same, shall remain at all times the property of the Consultant, the hardware vendor(s), if any, or its subcontractors. To be clear, the City shall maintain ownership of all prepared items, inclusive of plans and specifications and CAD files, if any.

Article VI. CANCELLATION FOR CONVENIENCE

City may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of the notice of termination, except as explicitly directed by the City, the Consultant must immediately discontinue all services affected.

Upon termination of the Agreement, the Consultant must deliver to the City all non-proprietary data, surveys, models, drawings, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Consultant under this Agreement for the sole-use of City under this Agreement, whether complete or partially complete.

The City agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date of termination. Compensation will not include anticipated profit on non-performed services.

The City further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

Article VII. CANCELLATION FOR DEFAULT

Either Party may cancel or terminate this Agreement for cause if the other Party fails to fulfill its obligations that are essential to the completion of the Project per the terms and conditions of the Agreement.

The terminating party must provide the breaching party seven (7) days advance written notice of its intent to cancel the Agreement and allow the breaching party an opportunity to dispute or cure the breach ("Notice"). The Notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, the cure period and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

- A. Cancellation by The City: City may cancel this Agreement in whole or in part, for the failure of the Consultant to:
- i. Perform the services within the time specified in this Agreement or by City approved extension;
 - ii. Make adequate progress so as to endanger satisfactory performance of the Project; or
 - iii. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the Notice, Consultant must immediately discontinue all services affected unless the Notice directs otherwise. Upon termination of the Agreement, the Consultant must deliver to the City all non-proprietary data, surveys, models, drawings, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Consultant under this Agreement for the sole-use of City under this Agreement, whether complete or partially complete.

City agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date of termination. Compensation will not include anticipated profit on non-performed services.

- B. Termination by Consultant: Consultant may terminate this Agreement in whole or in part, if the City:
- i. Defaults on its obligations under this Agreement;
 - ii. Fails to make payment to the Consultant in accordance with the terms of this Agreement; or
 - iii. Suspends the Project for more than 180 days due to reasons beyond the control of the Consultant.

Upon receipt of a Notice from the Consultant, City agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If the City and Consultant cannot reach mutual agreement on the termination settlement, Consultant

may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the City's breach of the Agreement.

In the event of termination due to the City's breach, the Consultant is entitled to invoice the City and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of termination action. The City agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

Article VIII. SUBCONTRACTORS

- A. Consultant shall not sublet or subcontract nor shall any subcontractor or sub-consultant commence performance of any part of the Project or Services included in this Agreement without the previous written consent of the Board of Control. Sub-consulting shall not relieve Consultant of any of its obligations under this Agreement. All agreements with subcontractors must include the language and requirements of Articles V, VI, VII, XIX and XX of this Agreement and Exhibit F- FAA Mandatory Provisions without modification.
- B. Consultant shall be and remain solely responsible to the City for the acts or faults of Consultant's sub-consultants and subcontractors during the provision of Services under this Agreement and of such subcontractors/sub-consultants' officers, and employees. Consultant shall file a conformed copy of the applicable subcontractors or sub-consultants with the City. Consultant and any subcontractors/sub-consultant shall jointly and severally agree that the City of Cleveland is not obligated to pay or to be liable for the payment of any sums due any subcontractors/sub-consultant.
- C. The employment of the following subcontractors have been approved by the Board of Control.

<u>Sub-consultant</u>	<u>Amount</u>
SUB-CONSULTANT NAME	\$AMOUNT
SUB-CONSULTANT NAME	\$AMOUNT
SUB-CONSULTANT NAME	\$AMOUNT
SUB-CONSULTANT NAME	\$AMOUNT

Article IX. GENERAL INDEMNIFICATION

Consultant shall indemnify and hold harmless the City and its officers, employees, successors and assigns, for and from any and all suits, claims, fines, loss, cost, damage, expense and liability, including reasonable attorney fees, from loss of life or injury to any third party, including but not limited to the employees, invitees and licensees of the parties hereto, arising out of or connected with and to the extent proximately caused by negligent act, error or

omission of Consultant or its subconsultants in their performance of this Agreement. Consultant, at its own expense, shall satisfy and cause to be discharged such judgments as may be obtained against it or any of its officers, employees, successors or assigns, and pay such reasonable attorney fees, costs, and expenses arising out of such litigation proportionate to the extent such loss, cost, damage, expense and liability are proximately caused by the negligent act, error, or omission of Consultant. Consultant shall be responsible for any damage to City property which it has proximately caused. Nothing stated in this Agreement shall prevent Consultant from seeking indemnification from Consultant's subconsultants. This indemnification clause shall survive the completion of the services to be performed under this Agreement and the termination of this Agreement.

City shall not indemnify Consultant or any of its subcontractors or be liable for any attorney's fees, damages or other costs other than the costs of the Services rendered under this Agreement.

Neither the City nor the Contractor shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

Article X. INTELLECTUAL PROPERTY INDEMNIFICATION

Contractor must indemnify and hold harmless (including reasonable attorney fees) the City against all liability to third parties (other than liability solely the fault of the City) arising from or in connection with the violation of any third party's trade secrets, proprietary information, trademarks, copyright, patent rights, or other intellectual property rights in connection with the performance of services under this Agreement.

Consultant must indemnify and defend any suit or proceeding brought against the City to the extent the same is based on a claim for any software which Consultant may license to City in connection with its provision of Services hereunder, as used within the scope of the license granted, constitutes an infringement of any presently existing copyright, patent or trade secret. City shall promptly provide the Consultant with information and assistance (at the Consultant's expense) for the defense of such a suit or proceeding including any settlement thereof, and the Consultant will pay all damages and costs finally awarded therein against the City.

Article XI INSURANCE

Consultant shall take out and maintain, during the Term of this Agreement, all insurance policies listed in Exhibit B, if any. Contractor shall require any and all of its subcontractors to procure, maintain, and pay premiums for the insurance coverages and limits of liability outlined in Exhibit B with respect to products, services, work and/or operations performed in connection with this Agreement.

Article XII COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS

Consultant, its officers, agents, employees and any other persons over whom Consultant has control shall comply with all present and future laws and ordinances of the City, Federal, State, the Federal Aviation Administration, the Environmental Protection Agency and any other local governmental bodies, applicable to or affecting directly or indirectly Consultant or its operations and activities in connection with this Agreement.

Article XIII SOCIAL SECURITY ACT

Consultant shall be and remain an independent contractor with respect to all services performed under this Agreement and agrees to and does accept full and exclusive liability for the payment of any and all contributions or taxes for social security, unemployment benefits, pensions and annuities now or will be imposed under any state or federal laws which are measured by the wages, salaries or other remuneration paid to persons employed by Consultant on work performed under the terms of this Agreement and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or may be issued or promulgated under the respective laws by any duly authorized state or federal official. Consultant also agrees to indemnify and save harmless the City of Cleveland from any such contributions or taxes or liability.

Article XIV INTEREST OF CONSULTANT

Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Consultant further covenants that no person having any such interest shall be employed in the performance of this Agreement.

Article XV DEFAULT AND REMEDIES

- A. Consultant shall be in default of this Agreement upon the happening of any of the following events:
1. If Consultant fails to observe or perform any of the material covenants or agreements to be observed or performed by it under this Agreement and such failure continues for a period of thirty (30) days after written notice is given Consultant by the City;
 2. The filing, execution or occurrence of: (i) a petition or other proceeding by, or a finding against, Consultant for its dissolution, reorganization or liquidation; (ii) a petition in bankruptcy by Consultant; (iii) an adjudication of Consultant as bankrupt or insolvent; (iv) an assignment or petition for assignment for the benefit of creditors;

3. If Consultant abandons or discontinues its operations for the City except when such abandonment or discontinuance is caused by a force majeure event as defined in Article XXIII.
- B. Upon the occurrence of any one or more of the events set forth in Paragraph A of this Section or upon any other default or breach of this Agreement, the City may, at its option, exercise concurrently or successively any one or more of the following rights and remedies:
1. Without waiving the default to pay any sum required to be paid by Consultant to others than the City and that Consultant has failed to pay under the terms and conditions of this Agreement, and any amount paid by the City with interest at eight percent (8%) per annum from the date of the payment and all connected expenses, must be repaid by Consultant to the City on demand;
 2. To enjoy any breach or threatened breach by Consultant of any covenants, agreements, terms, provisions, or conditions of this Agreement;
 3. To sue for the performance of any obligation, promise, or agreement devolving upon Consultant for performance or for damages for nonperformance, all without terminating this Agreement; and
 4. To terminate this Agreement pursuant to the terms and conditions of Article VII of this Agreement.
- C. All rights and remedies granted to the Parties herein and any other rights and remedies which the Parties may have at law and in equity are declared to be cumulative and not exclusive and the fact that the Party may have exercised any remedy without terminating this Agreement shall not impair the Parties rights later to terminate or to exercise any other remedy granted or to which it may be otherwise entitled.

Article XVI ASSIGNMENT

Consultant may not assign, transfer, convey, sell, or pledge its rights or interest in this Agreement or any part of this Agreement, or any right or privilege created in this Agreement, and upon any attempt by Consultant to do so, this Agreement will immediately terminate.

Article XVII NOTICE AND PAYMENTS

All notices which may be proper or necessary to be served and payments to be made under this Agreement shall be sent by regular mail, postage prepaid, to the following addresses or to such other address as either party may later designate for such purpose.

To the City: c/o Director of Port Control
5300 Riverside Dr.
Cleveland, Ohio 44135

With a copy to: City of Cleveland
c/o Director of Law
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114

Jonathan McGory
Assistant Director of Law
jmcgory@clevelandairport.com

To the Consultant: COMPANY
COMPANY ADDRESS

Article XVIII EQUAL OPPORTUNITY

This Agreement is a “contract”, and Consultant is a “contractor” within the meaning of Chapter 187 of the Codified Ordinances of Cleveland, Ohio 1976. During the term, Consultant, as applicable, shall comply with all terms, conditions and requirements imposed on a “contractor” in the Equal Opportunity Clause, Section 187.22 C.O., attached hereto as Exhibit D and made a part of this Agreement. A copy of this Clause shall be made a part of every subcontract or agreement entered into for goods or services, and shall be binding on all persons, firms and corporations with whom Consultant may deal.

Article XIX EMPLOYEES ARE NOT PUBLIC EMPLOYEES

Consultant confirms that it either:

- A. operates a business comprised of five or more individuals and that all individuals employed by Consultant who provide personal services to the City are not public employees for purposes of Section 145.037 of the Ohio Revised Code; or
- B. operates a business comprised of fewer than five individuals and that each individual employed by Consultant will complete and return to the City within thirty (30) days of the effective date of this Agreement a completed PEDACKN form provided by the Ohio Public Employees Retirement System, attached as Exhibit E.

Article XX DEPARTMENT OF TRANSPORTATION REQUIREMENTS

If applicable, the Consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts, and failure by the Consultant to carry out

these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the City deems appropriate.

Article XXI FORCE MAJEURE

The Consultant shall not be liable for failure to provide the work and services under this Agreement nor shall the City be liable for delay in performing its obligations hereunder when such failures are due to causes beyond its respective reasonable control. Such events include but are not limited to, acts of God, acts of governmental or military authority, fires, strikes, floods, epidemics, quarantine, war, riot, and delays in transportation. However, in such event the party under obligation to perform shall promptly notify the other of the situation and undertake to perform as soon as such cause is removed.

Article XXII CONFIDENTIAL INFORMATION

- A. Confidential information: means nonpublic information that a party to this Agreement (“Disclosing Party”) designates as being confidential to the party that receives such information (“Receiving Party”) or which, under the circumstances surrounding disclosure ought to be treated as confidential by Receiving Party. Confidential Information includes, without limitation, any and all information in tangible and intangible form relating to and/or including software, services rendered under this Agreement, documentation, trade secrets embodied therein and any other written or electronic information whether or not marked as “confidential,” which, if disclosed to any third party, could reasonably and foreseeably cause competitive harm to Consultant.
- B. Disclosure: Both Parties will, and will cause their employees and agents to: (a) keep in confidence all Confidential Information; (b) not use any Confidential Information for any purpose other than the performance of each Party’s obligations under this Agreement; (c) not disclose any Confidential Information to any third party without the Disclosing Party’s prior written consent; and (d) return all Confidential Information, including all copies and analyses, to the Disclosing Party promptly after the expiration or termination of this Agreement. Confidential Information will not include information that: (i) was known to the public at the time of its disclosure or becomes known to the public after the disclosure through no action by Receiving Party; (ii) was in Receiving Party’s possession prior to the time of the disclosure; or (iii) was developed by Receiving Party independently of the disclosure by Disclosing Party.
- C. Public Records Compliance: Notwithstanding the above, disclosure of documents that are in the possession of the City shall be governed by the applicable federal, state and local laws. CITY SHALL CONSIDER ALL INFORMATION PROVIDED BY CONSULTANT UNDER THIS AGREEMENT TO BE A PUBLIC RECORD ABSENT CLEAR EVIDENCE THAT THE INFORMATION SUBMITTED IS NOT TO BE RELEASED UNDER OHIO REVISED CODE §149.43

Article XXIII DATA PRIVACY

In the event performance of Services under this Agreement includes the collection, transfer, storage, disclosure, or processing of “Personal Data,” Consultant shall comply with the requirements of this provision. For purposes of this Agreement, Personal Data shall be defined as any information relating to an identified or identifiable natural person (“data subject”); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.

A. City Responsibilities

1. The City represents and warrants that the City has the legal authority to authorize Consultant to implement, deploy, manage, maintain and monitor airport systems and services for the purposes of Data Processing Personal Data on behalf of the City and its airline customers. With respect to the City’s airport systems, the City has taken all appropriate and legally required technical, physical and organizational security measures to protect Personal Data against accidental or unlawful destruction, loss, damage, alteration or unauthorized access and against all unauthorized or unlawful forms of data processing.

B. Consultant Responsibilities

1. Consultant shall not use the Personal Data for any other purpose except what is necessary to perform the services contemplated under this Agreement. Consultant shall be permitted to disclose Personal Data to its third party contractors that are assigned to assist Consultant in the performance of the Services contemplated hereunder.
2. Consultant shall maintain the confidentiality of any such Personal Data and shall not permit access by unauthorized persons. Consultant shall take all appropriate and legally required technical, physical and organizational security measures to protect Personal Data against accidental or unlawful destruction, loss, damage, alteration or unauthorized access and against all unauthorized or unlawful forms of data processing.
3. Consultant shall notify the City if Consultant receives a request from a data subject to have access to his/her Personal Data under applicable data protection laws and shall cooperate with the City in responding to such request. Consultant shall not respond to any data subject request unless directed by the City or required by applicable law.

4. Consultant shall immediately notify the City of any accidental, unlawful or unauthorized processing of Personal Data and of any instances of which Consultant becomes aware in which the confidentiality of the Personal Data has been breached, and will mitigate, to the extent practicable, any harmful effect of such breach.
- C. Governmental Agencies. This subsection C shall only apply in the event that Personal Data is being transmitted, as a required part of the Consultant's services hereunder, to "Governmental Agencies" (defined below):

The City hereby acknowledges and agrees that, by the nature of the services provided hereunder, Consultant may be required to transmit Personal Data to various governmental and/or quasi-governmental agencies, including without limitation, airport authorities, passport agencies, customs officials, and such similar entities (hereinafter "Governmental Agencies") for the purposes of performing the Services contemplated under this Agreement. To the extent that such processing of Personal Data involves the onward processing to Governmental Agencies, the City hereby consents to the Consultant's processing of the Personal Data to the Governmental Agencies, to the extent such processing is necessary for Consultant to complete the Services hereunder.

Article XXIV FEDERAL AVIATION ADMINISTRATION MANDATORY PROVISIONS

Consultant is required and agrees to insert Exhibit F Federal Aviation Administration Mandatory Provisions in each lower tier contract, subcontract, sub-agreement, etc. Consultant is required to incorporate the applicable requirements of these provisions by reference for work done under any purchase orders, rental agreements, and other agreements for supplies or services. Consultant is responsible for compliance with these provisions by any subcontractor, lower-tier subcontractor or service provider.

Consultant itself is required to meet all of the terms and conditions set out below. Should Consultant fail to do so, this Agreement shall be subject to cancellation by the City.

Article XXV CONSTRUCTION OF AGREEMENT

A. Consultant agrees that no representation or warranties of any type shall be binding upon the City, unless authorized in writing in this Agreement.

B. Nothing contained in this Agreement shall be deemed to constitute the City or Department and Consultant as partners in a partnership or joint venture for any purpose whatsoever.

C. All terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number singular or plural, and any other gender, masculine, feminine or neuter, as the context or sense of this Agreement or any paragraph or clause in this Agreement may require, the same as if such words have been fully and properly written in the number and gender.

D. The headings of sections and paragraphs, if any, to the extent used are used for reference only, and in no way define, limit or describe the scope or intent of any provision of this Agreement.

E. In the event that any term(s) or provision(s) of this Agreement are held invalid, illegal or unenforceable, for any reason, by any court of competent jurisdiction, such invalidity, illegality or unenforceability should not affect any other term or provision of this Agreement, which shall be interpreted and construed as if such term(s) or provision(s) had never been contained in this Agreement, to the extent the same has been held to be invalid, illegal or unenforceable.

F. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, but such counterparts, together, shall constitute but one and the same instrument.

G. This Agreement constitutes the entire Agreement of the parties and shall not be deemed amended except by a writing signed by the parties.

H. This Agreement and any claims arising under this Agreement or related to this Agreement, whether in contract or tort shall be governed by the laws of the State of Ohio. Any suit regarding this Agreement must be brought in a court of competent jurisdiction in Cuyahoga County, Ohio.

The following attached documents are fully incorporated with and made a part of this Agreement:

1. Exhibit A-1 – Ordinance ORDINANCE NUMBER
2. Exhibit A-2 – Board of Control Resolution BOC NUMBER
3. Exhibit B – City’s Request for Submissions
4. Exhibit C – Consultant’s Proposal
5. Exhibit D – Equal Opportunity Clause
6. Exhibit E – PEDACKN Form
7. Exhibit F – FAA Mandatory Provisions

THE SIGNATURE PAGE IS ON THE NEXT PAGE

WHEREOF, the parties have caused this instrument to be executed as of the date and year first above written.

CITY OF CLEVELAND

By: _____

Bryant L. Francis, C.M.
Director of Port Control

Date: _____

COMPANY

By: _____

Name: _____

Date: _____

The legal form and correctness
of the within instrument is
approved.

Mark Griffin
Director of Law

By: _____
Jonathan Stone McGory, C.M.
Assistant Director of Law

Exhibit A-1 – Ordinance NUMBER

Exhibit A-2 – Board of Control Resolution NUMBER

Exhibit B – City’s Request for Submissions
Complete Exhibit available upon request to the City

Exhibit C – Consultant’s Proposal

Exhibit D - Equal Opportunity Clause
City of Cleveland Codified Ordinances Section 187.22(b)

“During the performance of this contract, the contractor agrees as follows:

(1) The contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity or expression, national origin, age, disability, ethnic group or Vietnam-era or disabled veteran status. The contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to race, religion, color, sex, sexual orientation, gender identity or expression, national origin, age, disability, ethnic group, or Vietnam-era or disabled veteran status. As used in this chapter, “treated” means and includes without limitation the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship, promoted, upgraded, demoted, downgraded, transferred, laid off and terminated. The contractor agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the hiring representatives of the contractor setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that the contractor is an equal opportunity employer.

(3) The contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract, or understanding, a notice advising the labor union or worker's representative of the contractor's commitments under the equal opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) It is the policy of the City that local businesses, minority-owned businesses and female-owned businesses shall have every practicable opportunity to participate in the performance of contracts awarded by the City subject to the applicable provisions of the Cleveland Area Business Code.

(5) The contractor shall permit access by the Director or his or her designated representative to any relevant and pertinent reports and documents to verify compliance with the Cleveland Area Business Code, and with the Regulations. All such materials provided to the Director or designee by the contractor shall be considered confidential.

(6) The contractor will not obstruct or hinder the Director or designee in the fulfillment of the duties and responsibilities imposed by the Cleveland Area Business Code.

(7) The contractor agrees that each subcontract will include this Equal Opportunity Clause, and the contractor will notify each subcontractor, material supplier and supplier that the subcontractor must agree to comply with and be subject to all applicable provisions of the Cleveland Area Business Code. The contractor shall take any appropriate action with respect to any subcontractor as a means of enforcing the provisions of the Code.”

(Ord. No. 1260-08. Passed 11-30-09, eff. 12-3-09)

Exhibit E - PEDACKN Form



INDEPENDENT CONTRACTOR/WORKER
ACKNOWLEDGMENT

Ohio Public Employees Retirement System
277 East Town Street, Columbus, Ohio 43215-4642

Employer Outreach: 1-888-400-0965
www.opers.org

This form is to be completed if you are an individual who begins providing personal services to a public employer on or after Jan. 7, 2013 but are not considered by the public employer to be a public employee and will not have contributions made to OPERS. This form must be completed not later than 30 days after you begin providing personal services to the public employer.

STEP 1: Personal Information

Social Security Number

Grid for Social Security Number

First Name

MI

Last Name

Grid for First Name, MI, and Last Name

Name of Current Employer

Grid for Name of Current Employer

STEP 2: Public Employment Information

Name of Public Employer for Which You Are Providing Personal Services

Grid for Name of Public Employer

Employer Contact

First Name

MI

Last Name

Grid for Employer Contact First Name, MI, and Last Name

Employer Code

Grid for Employer Code

Employer Contact Phone Number

Grid for Employer Contact Phone Number

Service Provided to Public Employer

Grid for Service Provided to Public Employer

Grid for Service Provided to Public Employer

Start Date of Service

Month Day Year

Grid for Start Date of Service

End Date of Service

Month Day Year

Grid for End Date of Service

STEP 3: Acknowledgment

The public employer identified in Step 2 has identified you as an independent contractor or another classification other than a public employee. Ohio law requires that you acknowledge in writing that you have been informed that the public employer identified in Step 2 has classified you as an independent contractor or another classification other than a public employee for the services described in Step 2 and that you have been advised that contributions to OPERS will not be made on your behalf for these services.

If you disagree with the public employer's classification, you may contact OPERS to request a determination as to whether you are a public employee eligible for OPERS contributions for these services. Ohio law provides that a request for a determination must be made within five years after you begin providing personal services to the public employer, unless you are able to demonstrate through medical records to the Board's satisfaction that at the time the five-year period ended, you were physically or mentally incapacitated and unable to request a determination.

By signing this form, you are acknowledging that the public employer for whom you are providing personal services has informed you that you have been classified as an independent contractor or another classification other than a public employee and that no contributions will be remitted to OPERS for the personal services you provide to the public employer. This acknowledgment will remain valid as long as you continue to provide the same services to the same employer with no break in service regardless of whether the initial contract period is extended by any additional agreement of the parties. You also acknowledge that you understand you have the right to request a determination of your eligibility for OPERS membership if you disagree with the public employer's classification.

This form must be retained by the public employer and a copy sent to OPERS. The public employer's failure to retain this acknowledgment may extend your right to request a determination beyond the five years referenced above.

Signature _____ Today's Date ____/____/____
Do not print or type name

Exhibit F – FEDERAL AVIATION ADMINISTRATION MANDATORY PROVISIONS