



## ATTACHMENT 12 – CONTRACT BOILER PLATE

**3.01 TAX EXEMPTION.** All items purchased under this contract will be exempt from the State of Ohio Sales Tax as provided for in Section 5739-02(b)(1) of the Revised Code of Ohio and will be exempt from the State of Ohio Use Tax, Section 5741.02(C)(2). Blanket Certification of Exemption Forms will be furnished to the Proposer by the Division of Purchasing.

**3.02 PROPOSER AFFIDAVIT.** If the successful proposer should be a corporation not incorporated under the laws of the State of Ohio, a certificate from the Secretary of State showing the rights of the successful proposer to do business in the State of Ohio shall be furnished. Each proposer is required to submit with their bid, an Affidavit stating that neither the proposer nor agents thereof, nor any other party of the proposer has paid or agreed to pay directly or indirectly, any person, Firm or corporation, any money or valuable consideration for assistance in procuring or attempting to procure the contract herein referred to, and further agreeing that no such money or reward will hereafter be paid.

**3.03 PROCUREMENT ENHANCEMENT PROGRAM.** It is the policy of the City to promote full and equal business opportunity to all persons doing business with the City. The City must ensure that businesses seeking to participate in contracting and procurement activities with the City are not prevented from doing so based on the race or gender of their owners. The City is committed to ensuring that it is not engaged in passive participation in any form of discrimination. (R.C.G.O. Section 35.32)

**3.04 PROPOSER'S FINANCIAL OBLIGATION TO THE CITY.** No bid may be accepted, or contract awarded to any person, Firm or corporation that is in arrears or in default to the City, or that is a defaulter of surety or otherwise upon any obligation to the City or has failed to perform faithfully any previous contract with the City.

**3.05 PROPOSER'S INCURRED COSTS.** Each proposer shall be responsible for all costs incurred in preparing a response to this RFP. All materials and documents submitted by the proposer in response to this RFP shall become the property of the City and shall not be returned. Respondents selected for further negotiations, as well as the proposer ultimately selected to enter into a contractual agreement with the City, shall be responsible for all costs incurred by it during negotiations.

**3.06 AFFIRMATIVE ACTION ASSURANCE (AAA).** It is encouraged that the selected Firm must electronically submit an Affirmative Action Assurance application via the City's online vendor portal ([citybots.com](http://citybots.com)) and obtain approval from the Human Relations Council (HRC). For the purposes of this contract, a temporary allowance will be put in the system noting the exclusion if it is needed. You may contact the HRC for the Rules and Regulations regarding AAA certification at:

Human Relations Council  
371 West Second Street, Suite 100  
Dayton, Ohio 45402  
(937) 333-1403 (Office)  
(937) 222-4589 (Fax)

Failure to maintain active AAA certification/or exclusion, with the HRC may result in difficulty of contract and payment due to financial system requirement; therefore, although this is not a requirement; it is a recommendation. . AAA certification must be updated annually via [citybots.com](http://citybots.com).

**3.07 STANDARD AGREEMENT TERMS FOR PROFESSIONAL SERVICES – These are standard terms are subject to change by the City prior to the award of the contract.**



## 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, 2027, whichever date is earlier (“Original Term”).

## ARTICLE 2. SERVICES TO BE PERFORMED BY FIRM

Firm shall provide all services necessary to complete the Services that are described in the Scope of Work above, which is incorporated herein by reference.

## ARTICLE 3. COMPENSATION

Firm 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 undisputed amounts of invoices within thirty (30) days from receipt thereof.

## ARTICLE 4. CITY’S RESPONSIBILITIES

The City will furnish Firm, 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

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

## ARTICLE 6. INDEMNIFICATION

Firm 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 Firm and its agents, employees, Firms, sub-Firms 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, Firm 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 \$2,000,000 for each occurrence and \$2,000,000 in the aggregate.
- (2) Automobile Liability Insurance, having a combined single limit of \$2,000,000 for each person and \$2,000,000 for each accident.
- (3) Employers’ Liability Insurance, having a limit of \$1,000,000 for each occurrence.
- (4) Professional Liability Insurance, having a limit of \$2,000,000 annual aggregate.



(5) Firm shall maintain errors and omissions insurance in the amount of \$2,000,000.00.

Current certificates of insurance for all policies and concurrent policies required to be maintained by Firm 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. Firm also shall maintain Workers' Compensation Insurance in such amounts as required by law for all employees and shall furnish to the City evidence of same.

## ARTICLE 8. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

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

Firm 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 Firm.

## ARTICLE 9. TERMINATION

This Agreement may be terminated by the City upon written notice in the event of substantial failure by Firm to perform in accordance with the terms of this Agreement. Firm shall have fifteen (15) calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the other party. The City may terminate or suspend performance of this Agreement for the City's convenience upon thirty (30) days prior written notice to Firm. In the event of termination by the City hereunder, the City will pay Firm for Services provided up to the date of termination.

Any such termination shall not relieve the vendor of any liability to the City for damages sustained by any breach by the vendor. The City will be under no further monetary obligation or commitment to the vendor. The City may terminate this contract at any time upon 30 days written notice to the vendor. In the event of termination, the City may, at its option, exercise any remedy available to it, including the Uniform Commercial Code, according to Ohio law.

## ARTICLE 10. STANDARD TERMS

### A. DELAY IN PERFORMANCE

Neither the City nor Firm 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 Firm 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, Firms, sub-Firms 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:

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State Zip Code \_\_\_\_\_

Attention: \_\_\_\_\_

Title: \_\_\_\_\_

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

**D. EQUAL EMPLOYMENT OPPORTUNITY**

Firm 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 Firm from receiving future City contracts.

**E. WAIVER**

A waiver by the City or Firm 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 portion or provision.

**G. INDEPENDENT FIRM**

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



Firm, its employees and any persons retained or hired by Firm 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, Firm shall be responsible to withhold and pay, or cause such agents, Firms and sub-Firms to withhold and pay, all applicable local, state and federal taxes. Firm acknowledges its employees are not public employees for purposes of Ohio Public Employees Retirement System (“OPERS”) membership.

#### H. ASSIGNMENT

Firm 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 Firm from employing independent Firms, associates, and subfirms 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 Firm.

#### 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

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

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#### M. PCI COMPLIANCE

Bidder/proposer (“Offeror”) represents and warrants that, for the entirety of any agreement resulting from this solicitation that involves processing credit and/or debit card revenue transactions on behalf of the City of Dayton that the solution is clearly defined to warrant the following:

1. All computer software, hardware, firmware, payment card processing policies, procedures and related services proposed to be utilized to process City of Dayton revenue transactions shall be:
  - a. Completed by a qualified professional payment card processing Firm acceptable and approved by the City of Dayton; and,
  - b. Fully compliant with standards established by the PCI Security Standards Council (<https://www.pcisecuritystandards.org/index.shtml>).

Offeror 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://docs-prv.pcisecuritystandards.org/PCI%20DSS/Reporting%20Template%20or%20Form/PCI-DSS-v4-0-1-ROC-AOC-Merchants.docx>

<https://docs-prv.pcisecuritystandards.org/PCI%20DSS/Reporting%20Template%20or%20Form/PCI-DSS-v4-0-1-ROC-AOC-Service-Providers.docx>

2. Selection one of the following and initial on the adjacent line:

Not Applicable (“N/A”) \_\_\_\_\_

Offeror, reviewed, understands and hereby acknowledges and affirms that its offer to the City of Dayton satisfies these requirements and shall continue to satisfy these requirements for the duration of any resulting agreement; current and relevant AOC’s are attached to demonstrate satisfaction of these requirements at the time of offer to the City of Dayton. \_\_\_\_\_

**N. LIVING WAGE ORDINANCE**

“I certify the proposing entity complies with the City of Dayton Ordinance #30829-09 and the City’s Revised Code of General Ordinances Section 35.70 through 35.74 regarding Living Wages.”

YES     NO                     Not Applicable (“N/A”) \_\_\_\_\_