



**CITY COMMISSION MEETING
AGENDA FOR OCTOBER 12, 2021
5:00 PM
CITY HALL COMMISSION CHAMBERS
300 SOUTH FIFTH STREET**

*Any member of the public who wishes to make comments to the Board of Commissioners is asked to fill out a Public Comment Sheet and place it in the box located at the end of the Commissioner's desk on the left side of the Commission Chambers. The Mayor will call on you to speak during the **Public Comments** section of the Agenda.*

ROLL CALL

INVOCATION

PLEDGE OF ALLEGIANCE

ADDITIONS/DELETIONS

PROCLAMATION National Arts and Humanities Month - Cindy Ragland, Creative & Cultural Council & Mary Hammond, Paducah Convention & Visitors Bureau

PRESENTATION McCracken County Emergency Operations Plan - Rob Estes, Emergency Management Director

Items on the Consent Agenda are considered to be routine by the Board of Commissioners and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Board member so requests, in which event the item will be removed from the Consent Agenda and considered separately. The City Clerk will read the items recommended for approval.

	I.	<u>CONSENT AGENDA</u>
	A.	Approve Minutes for September 28, 2021
	B.	Receive & File Documents
	C.	Personnel Actions
	D.	Purchase of One (1) Knuckle Boom Truck for use by Public Works Refuse Department in an amount of \$155,793- C YARBER
	E.	Purchase of One (1) Windrow Turner for use by Public Works Compost Department in an amount of \$389,000 - C YARBER
	F.	Purchase of Rollout Containers, Lids, and Additional Replacement Parts from Toter, Inc. in an amount Not to Exceed \$140,000 - C YARBER
	G.	Contract with Routeware, Inc to purchase GPS hardware, software and related products and services for use by the Public Works Refuse division in an amount not to exceed \$166,930 - C YARBER

	II.	<u>ORDINANCE(S) - ADOPTION</u>	
		A. Approve a New Lease Agreement with Seamen's Church Institute of New York and New Jersey - D JORDAN	
		B. Approve Contract Modification to Professional Services Contract with HDR, Inc. for the Paducah Floodwall Pump Station #2 Project in the amount of \$55,315.00 - R MURPHY	
	III.	<u>ORDINANCE(S) - INTRODUCTION</u>	
		A.	Approve Condemnation and Acquisition of a Permanent Utility Easement and Temporary Construction Easement for Paducah Water - J PETERSEN
	IV.	<u>COMMENTS</u>	
		A.	Comments from the City Manager
		B.	Comments from the Board of Commissioners
		C.	Comments from the Audience
	V.	<u>EXECUTIVE SESSION</u>	

September 28, 2021

At a Regular Meeting of the Paducah Board of Commissioners held on Tuesday, September 28, 2021, at 5:00 p.m., in the Commission Chambers of City Hall located at 300 South 5th Street, Mayor Bray presided. Upon call of the roll by the City Clerk, the following answered to their names: Commissioners Gault, Guess, Henderson, Wilson and Mayor Bray (5).

INVOCATION:

Commissioner Guess led the invocation.

PLEDGE OF ALLEGIANCE

Mayor Bray led the pledge.

PRESENTATION

Communications Manager Pam Spencer offered the following summary:

Employee Benefit Plans Briefing

“Benefits Advisor DJ Story with Peel & Holland provided an overview of the City of Paducah’s 2022 health insurance plan through Anthem Blue Cross Blue Shield as the City’s third-party administrator. Those who participate in the City’s health plan will have no change to their health insurance, dental, or vision premiums as compared to this current year. The City has maintained the same health insurance premium rates consecutively for a decade which is quite unusual and an indication of the good management of the health plan and the City’s dedication to employee wellness. The City of Paducah has a self-insured health insurance plan which means the premiums paid into the plan by the employees are used to pay the claims.”

MAYOR’S REMARKS

Mayor Bray recently received an email from a citizen who was concerned about the dangerous traffic intersection near the Coke plant. The Mayor has spoken with representatives of the State Highway Department and they have long-term plans to improve that area. He was encouraged by the State’s response and stressed the importance of citizen involvement and collaboration.

CONSENT AGENDA

Mayor Bray asked if the Board wanted any items on the Consent Agenda removed for separate consideration. Mayor Bray requested that Items “E” and “G” be removed. Mayor Bray asked the City Clerk to read the items on the Consent Agenda.

I(A)	Approve Minutes for the September 14, 2021 Paducah Board of Commissioners Meeting
I(B)	RECEIVE AND FILE DOCUMENTS: <i>Minute File:</i> 1. 09-09-2021 - Letter terminating contract with Miracle Works Lawn and Maintenance for breach of contract <i>Contract File:</i> 1. Contract For Services FY2022 – Hotel Metropolitan (Uppertown Heritage)

September 28, 2021

	2. Contract For Services FY2022 – Maiden Alley (Paducah Art House Alliance) 3. Contract For Services FY2022 – Market House Theatre 4. Contract For Services FY2022 – Paducah Arts Alliance 5. Contract For Services FY2022 – Housing Authority of Paducah 6. Contract For Services FY2022 – Yeiser Art Center 7. Contract For Services FY2022 – The National Quilt Museum 8. Contract For Services FY2022 – Paducah Symphony Orchestra 9. Contract For Services FY2022 – River Heritage Museum d/b/a River Discovery Center 10. Contract For Services FY2022 – Barkley Regional Airport Authority – MO #2497 11. Contract For Services FY2022 – Paducah Transit Authority – MO #2498 <u>Bids File:</u> 1. Paducah Floodwall Closure Project – ORD 2021-7-8695 a) Jim Smith Contracting Co., LLC b) Harold Coffey Construction Co., Inc.
I(C)	Appointment of Jim Chapman to the Board of Adjustment to replace Bill Baxter, who resigned. Said term shall expire August 31, 2022.
I(D)	Appointment of Charles “Chip” Bohle to the Paducah Area Transit System Board to replace Terrance Adams, who resigned. Said term shall expire June 30, 2024.
I(E)	Reappointment of Bill Paxton to the Paducah McCracken County Riverport Authority. Said term shall expire September 26, 2025. (REMOVED FOR SEPARATE DISCUSSION)
I(F)	Personnel Actions
I(G)	A MUNICIPAL ORDER AUTHORIZING AN EMERGENCY ROOF STABILIZATION ASSISTANCE GRANT FOR THE PROPERTY LOCATED AT 617-619 BROADWAY IN THE AMOUNT OF \$30,000 AND AUTHORIZING THE EXECUTION OF ALL DOCUMENTS RELATED TO SAME (REMOVED FOR SEPARATE DISCUSSION)
I(H)	A MUNICIPAL ORDER APPROVING A FLEET MAINTENANCE, MOTORIZED EQUIPMENT AND EMERGENCY APPARATUS SERVICE AGREEMENT WITH LEDBETTER FIRE DEPARTMENT TO PROVIDE FLEET MAINTENANCE SERVICES AT HOURLY RATES AND AUTHORIZING THE EXECUTION OF ALL DOCUMENTS RELATED TO SAME (MO #2500; BK 12)
I(I)	A MUNICIPAL ORDER APPROVING AND ADOPTING THE COMPREHENSIVE HEALTH INSURANCE BENEFIT PLAN PREMIUMS, THE VISION INSURANCE PLAN PREMIUMS, AND THE DENTAL INSURANCE PLAN PREMIUMS FOR CALENDAR YEAR 2022 FOR EMPLOYEES OF THE CITY OF PADUCAH, AND AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS RELATED TO SAME. (MO #2501; BK 12)
I(J)	A MUNICIPAL ORDER AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT FOR A STRATEGIC HEALTH RISK ADVISOR & STRATEGIC BENEFIT PLACEMENT SERVICES WITH PEEL & HOLLAND FINANCIAL GROUP FOR ADMINISTRATION OF THE CITY OF PADUCAH’S HEALTH INSURANCE IN AN AMOUNT OF \$78,900 PLUS

September 28, 2021

	\$200 PER HOUR, SUBJECT TO A MINIMUM RETAINER OF \$5,000, FOR REQUESTED SERVICES RELATED TO EMPLOYEE BARGAINING, LEGAL MATTERS, AND DISPUTES OR OTHER SIMILAR ISSUES AND AUTHORIZES THE EXECUTION OF THE ADVISORY AGREEMENT SERVICES ADDENDUM. (MO #2502; BK 12)
I(K)	A MUNICIPAL ORDER ACCEPTING THE RATES FOR STOP LOSS INSURANCE COVERAGE AND AUTHORIZING AN AGREEMENT FOR ADMINISTRATIVE SERVICES WITH ANTHEM BLUE CROSS BLUE SHIELD FOR THE GROUP HEALTH INSURANCE PLAN FOR THE CITY OF PADUCAH, KENTUCKY FOR THE 2022 CALENDAR YEAR AND AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS RELATING TO SAME. (MO #2503; BK 12)
I(L)	A MUNICIPAL ORDER ESTABLISHING POLICY FOR USE OF SPENDING CREDITS TOWARD THE PURCHASE OF CERTAIN BENEFITS SUCH AS HEALTH, DENTAL OR VISION PURSUANT TO THE CITY'S GROUP HEALTH INSURANCE PLAN FOR THE 2022 PLAN YEAR (MO #2504; BK 12)
I(M)	A MUNICIPAL ORDER DECLARING THE REAL PROPERTY LOCATED AT 1039 MADISON STREET TO BE SURPLUS PROPERTY, ACCEPTING THE BID OF MILLWORK PRODUCTS, LLC IN THE AMOUNT OF \$1,000 FOR PURCHASE OF SAID REAL PROPERTY AND AUTHORIZING THE MAYOR TO EXECUTE THE DEED AND ALL DOCUMENTS RELATED TO SAME. (MO #2505; BK 12)
I(N)	A MUNICIPAL ORDER DECLARING THE REAL PROPERTY LOCATED AT 1011 BROADWAY TO BE SURPLUS PROPERTY, ACCEPTING THE BID OF TRYTON PROPERTIES IN THE AMOUNT OF \$500 FOR PURCHASE OF SAID REAL PROPERTY AND AUTHORIZING THE MAYOR TO EXECUTE THE DEED AND ALL DOCUMENTS RELATED TO SAME (MO #2506; BK 12)
I(O)	A MUNICIPAL ORDER DECLARING THE REAL PROPERTY LOCATED AT 1243 NORTH 13TH STREET TO BE SURPLUS PROPERTY, ACCEPTING THE BID OF JAMFERT AND LETISHA BARBER IN THE AMOUNT OF \$400 FOR PURCHASE OF SAID REAL PROPERTY AND AUTHORIZING THE MAYOR TO EXECUTE THE DEED AND ALL DOCUMENTS RELATED TO SAME (MO #2507; BK 12)

Commissioner Gault offered Motion, seconded by Commissioner Guess that the items on the consent agenda be adopted as presented.

Adopted on call of the roll yeas, Commissioners Gault, Guess, Henderson, Wilson and Mayor Bray (5).

BOARD APPOINTMENT

REAPPOINTMENT OF BILL PAXTON TO THE PADUCAH-McCRACKEN COUNTY RIVERPORT AUTHORITY

September 28, 2021

Commissioner Guess offered Motion, seconded by Commissioner Gault that the Board of Commissioners approve the action of Mayor Bray in the reappointment of Bill Paxton to the Paducah-McCracken County Riverport Authority, said term shall expire September 26, 2025.

Adopted on call of the roll yeas, Commissioners Gault, Guess, Henderson, Wilson and Mayor Bray (5).

MUNICIPAL ORDERS

EMERGENCY ROOF GRANT FOR 619 BROADWAY

Commissioner Henderson offered Motion, seconded by Commissioner Wilson, that the Board of Commissioners adopt a Municipal Order entitled, "A MUNICIPAL ORDER AUTHORIZING AN EMERGENCY ROOF STABILIZATION ASSISTANCE GRANT FOR THE PROPERTY LOCATED AT 617-619 BROADWAY IN THE AMOUNT OF \$30,000 AND AUTHORIZING THE EXECUTION OF ALL DOCUMENTS RELATED TO SAME."

Adopted on call of the roll yeas, Commissioners Gault, Guess, Henderson, Wilson and Mayor Bray (5). (MO #2508; BK 12)

ROBERT CHERRY CIVIC CENTER RENOVATION PROJECT

Commissioner Wilson offered motion, seconded by Commissioner Henderson, that the Board of Commissioners adopt a Municipal Order entitled, "A MUNICIPAL ORDER AUTHORIZING THE CITY MANAGER TO ENTER INTO CONTRACT NEGOTIATIONS ON BEHALF OF THE CITY OF PADUCAH FOR THE ARCHITECTURAL DESIGN AND CONSTRUCTION ADMINISTRATIVE SERVICES RENOVATION OF THE ROBERT CHERRY CIVIC CENTER."

Adopted on call of the roll yeas, Commissioners Gault, Guess, Henderson, Wilson and Mayor Bray (5). (MO #2509; BK 12)

PUMP STATION #2 CLEAN WATER STATE REVOLVING FUND (CWSRF) LOAN ASSISTANCE AGREEMENT INCREASE - \$750,000

Commissioner Gault offered motion, seconded by Commissioner Guess, that the Board of Commissioners adopt a Municipal Order entitled, "A MUNICIPAL ORDER APPROVING AND AUTHORIZING A LOAN INCREASE REQUEST FOR THE PUMP STATION #2 CLEAN WATER STATE REVOLVING FUND LOAN IN THE AMOUNT OF \$750,000 AND AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS RELATED TO SAME."

Adopted on call of the roll yeas, Commissioners Gault, Guess, Henderson, Wilson and Mayor Bray (5). (MO #2510; BK 12)

ORDINANCE ADOPTION(S)

September 28, 2021

CONTRACT MODIFICATION - BFW ENGINEERING & TESTING – BUCKNER LANE BRIDGE REPLACEMENT PROJECT - \$74,345

Commission Guess offered motion, seconded by Commissioner Gault, that the Board of Commissioners adopt an Ordinance entitled: “AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE CONTRACT MODIFICATION NO. 1 WITH BFW ENGINEERING & TESTING, INC. TO INCREASE THE CONTRACT BY \$74,345 FOR THE BUCKNER LANE BRIDGE REPLACEMENT OVER CROOKED CREEK.”

This Ordinance is summarized as follows: On March 31, 2020, the City authorized a professional services contract with BFW Engineering & Testing, Inc, for \$154,036 for the Buckner Lane Bridge Replacement Over Crooked Creek. American Rescue Plan Act (ARPA) funding allowed for the appropriation of \$4,000,000 toward specific stormwater mitigation projects. The Buckner Lane Bridge Replacement project was identified as a Stormwater Project for which ARPA funding can be used. This ordinance authorizes Contract Modification No. 1 with BFW Engineering & Testing for additional services for an increase in the amount of \$74,345, adjusting the total construction project from \$154,036 to \$228,381.

Adopted on call of the roll yeas, Commissioners Gault, Guess, Henderson, Wilson and Mayor Bray (5). **(ORD 2021-09-8703; BK 36)**

CONTRACT MODIFICATION - BFW ENGINEERING & TESTING – S. 24th AND - S. 25th STREETS IMPROVEMENT PROJECT - \$106,500

Commissioner Henderson offered motion, seconded by Commissioner Wilson, that the Board of Commissioners adopt an Ordinance entitled: “AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE CONTRACT MODIFICATION NO. 2 WITH BFW ENGINEERING & TESTING, INC. TO INCREASE THE CONTRACT BY \$24,500 FOR THE BUILD ENVIRONMENTAL ASSESSMENT PROJECT.” This Ordinance is summarized as: On April 14, 2020, the City authorized a professional services contract with BFW Engineering & Testing, Inc, (BFW) in an amount of \$250,000 for environmental services for the Paducah Riverfront Improvement Project (BUILD Grant). On April 27, 2021, they City authorized Contract Amendment No. 1 adjusting the total contract to \$262,200. During consultation with the Kentucky State Historic Preservation Office, MARAD, and the Indians Tribes, the City of Paducah will be required to enter into an unforeseen Programmatic Agreement. BFW will be providing additional consulting services on behalf of the City to satisfy the Programmatic Agreement requirements. Contract Modification No. 2 with BFW is required for an increase in the amount of \$24,500 adjusting the total construction project from \$262,200 to \$286,700 for the BUILD Environmental Assessment Project.

Adopted on call of the roll yeas, Commissioners Gault, Guess, Henderson, Wilson and Mayor Bray (5). **(ORD 2021-09-8704; BK 36)**

CONTRACT MODIFICATION – BFW ENGINEERING & TESTING – BUILD GRANT ENVIRONMENTAL ASSESSMENT PROJECT - \$24,500

September 28, 2021

Commissioner Wilson offered motion, seconded by Commissioner Henderson, that the Board of Commissioners adopt an Ordinance entitled: “AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE CONTRACT MODIFICATION NO. 2 WITH BFW ENGINEERING & TESTING, INC. TO INCREASE THE CONTRACT BY \$24,500 FOR THE BUILD ENVIRONMENTAL ASSESSMENT PROJECT.” This Ordinance is summarized as: On April 14, 2020, the City authorized a professional services contract with BFW Engineering & Testing, Inc. (BFW) in an amount of \$250,000 for environmental services for the Paducah Riverfront Improvement Project (BUILD Grant). On April 27, 2021, they City authorized Contract Amendment No. 1 adjusting the total contract to \$262,200. During consultation with the Kentucky State Historic Preservation Office, MARAD, and the Indians Tribes, the City of Paducah will be required to enter into an unforeseen Programmatic Agreement. BFW will be providing additional consulting services on behalf of the City to satisfy the Programmatic Agreement requirements. Contract Modification No. 2 with BFW is required for an increase in the amount of \$24,500 adjusting the total construction project from \$262,200 to \$286,700 for the BUILD Environmental Assessment Project.

Adopted on call of the roll yeas, Commissioners Gault, Guess, Henderson, Wilson and Mayor Bray (5). **(ORD 2021-09-8705; BK 36)**

**APPROVE CONSTRUCTION CONTRACT FOR RIVERFRONT PARK LAND
MASS SCOUR PROJECT – WILKINS CONSTRUCTION CO., INC. - \$495,784**

Commissioner Gault offered Motion, seconded by Commissioner Guess, that the Board of Commissioners adopt an Ordinance entitled: “AN ORDINANCE ACCEPTING THE BID OF WILKINS CONSTRUCTION CO., INC., IN THE AMOUNT OF \$495,784 FOR RIVERFRONT PARK LAND MASS SCOUR PROJECT AND AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT FOR SAME.” This Ordinance is summarized as follows: The City of Paducah accepts the bid of Wilkins Construction Co., Inc., in the amount of \$495,784, for the Riverfront Land Mass Scour Project, said bid being in substantial compliance with bid specifications, and advertisement for bids, as contained in the bid of Wilkins Construction Co., Inc., of August 26, 2021.

Adopted on call of the roll yeas, Commissioners Gault, Guess, Henderson, Wilson and Mayor Bray (5). **(ORD 2021-09-8706; BK 36)**

SETTING TAX LEVIES: AD VALOREM PROPERTIES FY 2022

Commissioner Guess offered Motion, seconded by Commissioner Gault, that the Board of Commissioners adopt an Ordinance entitled: “AN ORDINANCE FIXING THE LEVIES AND RATES OF TAXATION ON ALL PROPERTY IN THE CITY OF PADUCAH, KENTUCKY, SUBJECT TO TAXATION FOR MUNICIPAL PURPOSES AND FOR SCHOOL PURPOSES FOR THE PERIOD FROM JULY 1, 2021, THROUGH JUNE 30, 2022, WITH THE PURPOSES OF SAID TAXES HEREUNDER DEFINED”.

PURPOSE

RATE PER \$100.00

September 28, 2021

General Fund of the City

Real Property	\$0.271
Personal Property	\$0.390
Motor Vehicles & watercraft	\$0.390

School Purposes

Paducah Junior College	
Real Estate	\$0.016
Personal Property	\$0.016
Motor Vehicles & watercraft	\$0.031

The City of Paducah shall collect the following taxes for the Board of Education:

Paducah Independent School District

Real Property	\$0.864
Personal Property	\$0.864
Inventory	\$0.864

Total Tax Rate per \$100 - real property	\$1.151
Total Tax Rate per \$100 - personal property	\$1.270
Total Tax Rate per \$100 – inventory	\$0.864
Total Tax Rate per \$100 – motor vehicle & watercraft	\$0.421

Property taxes levied herein shall be due and payable in the following manner:

In the case of tax bills which reflect an amount due of less than One Thousand Dollars (\$1,000.00), the payment shall be due on November 1, 2021, and shall be payable without penalty and interest until November 30, 2021.

In the case of all other tax bills, payment shall be in accordance with the following provisions:

- The first half payment shall be due on November 1, 2021, and shall be payable without penalty and interest until November 30, 2021.
- The second half payment shall be due on February 1, 2022, and shall be payable without penalty and interest until February 28, 2022.

Adopted on call of the roll yeas, Commissioners Gault, Guess, Henderson, Wilson and Mayor Bray (5). **(ORD 2021-09-8707; BK 36)**

ORDINANCE INTRODUCTION(S)

NEW LEASE AGREEMENT WITH SEAMEN’S CHURCH INSTITUTE OF NEW YORK AND NEW JERSEY

Commissioner Henderson, offered motion, seconded by Commissioner Wilson, that the Board of Commissioners introduce an Ordinance entitled, “AN ORDINANCE AUTHORIZING AND APPROVING A NEW LEASE AGREEMENT WITH SEAMEN’S CHURCH INSTITUTE OF NEW YORK AND NEW JERSEY.” This Ordinance is summarized as follows: That the Mayor is hereby authorized and directed to execute a renewed Lease Agreement between the City of Paducah and Seamen’s Church Institute of New York and New Jersey, for lease by Seamen’s of property located at 117 South First Street in the City of Paducah, McCracken County, Kentucky.

September 28, 2021

**APPROVE CONTRACT MODIFICATION TO PROFESSIONAL SERVICES
CONTRACT WITH HDR, INC. FOR THE PADUCAH FLOODWALL PUMP
STATION #2 PROJECT IN THE AMOUNT OF \$55,315**

Commissioner Wilson, offered motion, seconded by Commissioner Henderson, that the Board of Commissioners introduce an Ordinance entitled, “AN ORDINANCE OF THE CITY OF PADUCAH KENTUCKY, APPROVING A THIRD AMENDMENT TO THE PROFESSIONAL SERVICE AGREEMENT FOR ENGINEERING SERVICES FOR FLOOD CONTROL PUMP STATION #2 WITH HDR ENGINEERING, INC. TO REFLECT AN EXPANDED CONSTRUCTION ADMINISTRATION AND INSPECTION SCOPE AND TO INCREASE THE AGREEMENT IN AN AMOUNT OF \$55,315 AND AUTHORIZING THE EXECUTION OF ALL DOCUMENTS RELATED TO SAME.” This Ordinance is summarized as follows: This Ordinance approves and authorizes the execution on behalf of the City of the Third Amendment to the Professional Engineering Services Agreement with HDR Engineering, Inc., relating to the expansion of the scope of services to be rendered by HDR Engineering, Inc., in connection with the design, construction administration, inspection services of Flood Control Pump Station # 2 as required by the U.S. Department of the Army. This Third Amendment increases the Agreement in an amount not to exceed \$55,315 for a total Agreement cost of \$494,977.

COMMENTS

Mayor

Mayor Bray announced that he will be absent for the October 12th Commission meeting. Mayor Pro-Tem Sandra Wilson will preside over that meeting.

City Manager

There is another music event in Carson Park this weekend. Yactoberfest is sponsored by a non-profit; therefore, in accordance with City Ordinance, a noise variance is not required for the event.

Commissioner Henderson

Commissioner Henderson thanked Commissioner Wilson and the Chamber staff for the well planned D.C. Fly-in. The D.C. Fly-in was well organized and very informative.

Commissioner Wilson

The D.C. Fly-in has become an important event for our community.

Commissioner Gault

Presented members with Chocolate-dipped key lime pie from Highland Cumberland Presbyterian Church. BBQ Off the River was a successful event, even though it was on a much smaller scale. People have asked with it wasn't downtown this year. The decision had to be made in March. Given the COVID numbers and limited ability to get meat and other supplies, the decision was made to hold the event off the river again. Vendors have remarked that they made more money doing it off the river and were out a lot fewer expenses.

ADJOURN

September 28, 2021

Commissioner Henderson offered motion, seconded by Commissioner Wilson, to adjourn the meeting of the Paducah Board of Commissioners.

Adopted on call of the roll yeas, Commissioners Gault, Guess, Henderson, Wilson and Mayor Bray (5).

TIME ADJOURNED: 6:10 p.m.

ADOPTED: October 12, 2021

George P. Bray, Mayor

ATTEST:

Lindsay Parish, City Clerk

October 12, 2021

RECEIVE AND FILE DOCUMENTS:

Minutes File:

1. McCracken County Emergency Operations Plan – September 2021 and Executive Order signed by Mayor Bray 9-29-2021

Deed File:

1. Deed of Conveyance – City of Paducah to Paducah-McCracken County Habitat For Humanity – 2011 Guthrie Avenue – MO #2479
2. Deed of Conveyance – City of Paducah to Paducah-McCracken County Habitat For Humanity – 513 North 14th Street – MO #2480

Contract File:

1. Contract For Services – Paducah Quilt Murals, Inc. – CM Signed

Financials File:

1. Paducah Water Works – Month Ending August 31, 2021

CITY OF PADUCAH
October 12, 2021

Upon the recommendation of the City Manager's Office, the Board of Commissioners of the City of Paducah order that the personnel changes on the attached list be approved.



City Manager's Office Signature

10/7/2021

Date

**CITY OF PADUCAH
PERSONNEL ACTIONS
October 12, 2021**

NEW HIRES - FULL-TIME (FT)						
POLICE	POSITION	RATE OF PAY	NCS/CS	FLSA	EFFECTIVE DATE	
Gruner, Austin R.	Recruit Officer / Patrolman	\$24.14/hr	NCS	Non-Ex	November 4, 2021	
Kindred, Caleb, A.	Recruit Officer / Patrolman	\$24.14/hr	NCS	Non-Ex	November 4, 2021	

PAYROLL ADJUSTMENTS/TRANSFERS/PROMOTIONS/TEMPORARY ASSIGNMENTS - FULL-TIME (FT)

CUSTOMER EXPERIENCE	PREVIOUS POSITION AND BASE RATE OF PAY	CURRENT POSITION AND BASE RATE OF PAY	NCS/CS	FLSA	EFFECTIVE DATE	
Jackson, Donna	Customer Experience Representative \$20.43/hr	Customer Experience Representative \$20.84/hr	NCS	Non-Ex	October 7, 2021	

FINANCE	PREVIOUS POSITION AND BASE RATE OF PAY	CURRENT POSITION AND BASE RATE OF PAY	NCS/CS	FLSA	EFFECTIVE DATE	
Herndon, Audra	Controller \$46.37/hr	Controller \$47.76/hr	NCS	Ex	October 7, 2021	

FIRE - PREVENTION	PREVIOUS POSITION AND BASE RATE OF PAY	CURRENT POSITION AND BASE RATE OF PAY	NCS/CS	FLSA	EFFECTIVE DATE	
Willett, Franklin M.	Maintenance Technician \$21.66/hr	Code Enforcement Officer \$20.87/hr	NCS	Non-Ex	October 21, 2021	

PLANNING	PREVIOUS POSITION AND BASE RATE OF PAY	CURRENT POSITION AND BASE RATE OF PAY	NCS/CS	FLSA	EFFECTIVE DATE	
Upchurch, Nancy	Senior Administrative Assistant \$24.41/hr	Senior Administrative Assistant \$25.08/hr	NCS	Non-Ex	October 7, 2021	

PUBLIC WORKS	PREVIOUS POSITION AND BASE RATE OF PAY	CURRENT POSITION AND BASE RATE OF PAY	NCS/CS	FLSA	EFFECTIVE DATE	
Shaw, Jimi	ROW Maintenance \$20.80/hr	Truck Driver \$21.25/hr	NCS	Non-Ex	September 23, 2021	
Whorton, Jonathan	ROW Maintenance \$20.80/hr	Equipment Operator \$22.48/hr	NCS	Non-Ex	September 23, 2021	

TERMINATIONS - PART-TIME (PT)

PARKS & RECREATION	POSITION	REASON	EFFECTIVE DATE
Blakemore, Kaitlin	Coach	Seasonal	September 29, 2021
Hinton, Joshua	Sports Official	Seasonal	September 29, 2021
Green, Noah	Lifeguard	Seasonal	September 29, 2021
Owens, Avery	Lifeguard	Seasonal	September 29, 2021
Meier, Matthew	Lifeguard	Seasonal	September 29, 2021
Carruthers, Katie	Lifeguard	Seasonal	September 29, 2021
Tynes, Blaine	Lifeguard	Seasonal	September 29, 2021
Pugh, Chesleigh	Lifeguard	Seasonal	September 29, 2021
O'Donley, Gavin	Lifeguard	Seasonal	September 29, 2021
Haley, Madisyn	Lifeguard	Seasonal	September 29, 2021
Beard, Justice	Lifeguard	Seasonal	September 29, 2021
Harris, Jackson	Pool Attendant	Seasonal	September 29, 2021
Lindsey, Emma	Pool Attendant	Seasonal	September 29, 2021
Oliver, Tristan	Pool Attendant	Seasonal	September 29, 2021
Elrod, Aviona	Pool Attendant	Seasonal	September 29, 2021
Arellano, Yasmin	Pool Attendant	Seasonal	September 29, 2021
Pickett, Latajaya	Pool Attendant	Seasonal	September 29, 2021
Thompson, Molly	Recreation Leader	Seasonal	September 29, 2021
Miller, Hugh	Camp Coordinator	Seasonal	September 29, 2021
Owens, Elizabeth	Recreation Leader-Camp	Seasonal	September 29, 2021
Shannon, Mack	Recreation Leader-Athletics	Seasonal	September 29, 2021
Meyer, Lillian	Recreation Leader	Seasonal	September 29, 2021
Williams, Bernard	Parks Maintenance-Laborer	Seasonal	September 29, 2021

Agenda Action Form

Paducah City Commission

Meeting Date: October 12, 2021

Short Title: Purchase of One (1) Knuckle Boom Truck for use by Public Works Refuse Department in an amount of \$155,793- **C YARBER**

Category: Municipal Order

Staff Work By: Randy Crouch, Debbie Collins

Presentation By: Chris Yarber

Background Information: On September 17, 2021, received a quote from Tag Truck Center for One (1) Knuckle Boom Truck, 2023 Pac-Mac KBF-20H-ML, for use by the Public Works Refuse Department at the price of \$155,793.00 on state contract KY MA 6052000000447.

Does this Agenda Action Item align with a Commission Priority? No

If yes, please list the Commission Priority:

Communications Plan:

Funds Available: Account Name: Rolling Stock/Vehicle

Account Number: 50002209-540050

Staff Recommendation: Approve a municipal order for the mayor to sign an agreement with Tag Truck Enterprises of Missouri, LLC for the purchase of One (1) Knuckle Boom Truck, 2023 Pac-Mac KBF-20H-ML, for use by the Public Works Refuse Department at the price of \$155,793.00 on state contract KY MA 6052000000447.

Attachments:

1. Knuckle Boom Loader 10-2021
2. Tag Specification Proposal - MA6052000000447
3. Compliance with Technical Specs

MUNICIPAL ORDER NO. _____

A MUNICIPAL ORDER AUTHORIZING THE PURCHASE ONE (1) KNUCKLE BOOM TRUCK FROM TAG TRUCK CENTER IN AN AMOUNT OF \$155,793 FOR UTILIZATION BY THE PUBLIC WORKS DEPARTMENT

WHEREAS, this equipment is available under State Contract No. MA-6052000000447 and competitive bidding is not required.

NOW THEREFORE, BE IT ORDERED BY THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. That the City of Paducah hereby authorizes the Finance Director to make payment to Tag Truck Center for the purchase of one (1) knuckle boom truck, in an amount of \$155,793 and authorizes the Mayor to execute all documents related to same. This purchase is made in compliance with the Kentucky State Purchasing Contract.

SECTION 2. This expenditure shall be charged to Solid Waste Rolling Stock/Vehicle account number 50002209-540050.

SECTION 3. This order shall be in full force and effect from and after the date of its adoption.

George Bray, Mayor

ATTEST:

Lindsay Parish, City Clerk

Adopted by the Board of Commissioners, October 12, 2021
Recorded by Lindsay Parish, City Clerk, October 12, 2021
\\mo\ Knuckle Boom Loader 10-2021

Agenda Action Form

Paducah City Commission

Meeting Date: October 12, 2021

Short Title: Purchase of One (1) Windrow Turner for use by Public Works Compost Department in an amount of \$389,000 - **C YARBER**

Category: Municipal Order

Staff Work By: Randy Crouch, Jim Scutt, Debbie Collins

Presentation By: Chris Yarber

Background Information: On September 2, 2021 sealed bids were opened for the purchase of One (1) Windrow Turner for use by the Public Works Compost Department. Scarab International is the lowest responsive evaluated bidder at a price of \$389,000.00.

Does this Agenda Action Item align with a Commission Priority? No

If yes, please list the Commission Priority:

Communications Plan:

Funds Available: Account Name: Equipment - other

Account Number: 50002211-542190

Staff Recommendation: Approve a municipal order for the mayor to sign an agreement with Scarab International for the purchase of One (1) Windrow Turner for use by the Public Works Compost Department at the price of \$389,000.00.

Attachments:

1. Windrow Turner Purchase 10-2021
2. Bid Tab Windrow Turner
3. 00020 - Invitation to Bid
4. Official Bidder Spec Pick Up List
5. Scarab International bid
6. EcoVerse bid - non responsive bid
7. Agreement - signed by Scarab

MUNICIPAL ORDER NO. _____

A MUNICIPAL ORDER AUTHORIZING THE PURCHASE ONE (1) WINDROW TURNER FROM SCARAB INTERNATIONAL IN AN AMOUNT OF \$389,000 FOR UTILIZATION BY THE PUBLIC WORKS DEPARTMENT

NOW THEREFORE, BE IT ORDERED BY THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. The City of Paducah accepts the bid of Scarab International in the amount of \$389,000 for sale to the City of one (1) Windrow Turner for use by the Public Works Department Compost Division, said bid being in substantial compliance with bid specifications, and as contained in the bid of Scarab International of September 2, 2021.

SECTION 2. The Mayor is hereby authorized to execute a contract with Scarab International, for the purchase of one (1) Windrow Turner, authorized in Section 1 above, according to the specifications, bid proposal and all contract documents heretofore approved and incorporated in the bid.

SECTION 3. This purchase shall be charged to Equipment Other account number 5000-2211-542190.

SECTION 4. This Order shall be in full force and effect from and after the date of its adoption.

George Bray, Mayor

ATTEST:

Lindsay Parish, City Clerk

Adopted by the Board of Commissioners, October 12, 2021
Recorded by Lindsay Parish, City Clerk, October 12, 2021
\\mo\ Widrow Turner Purchase 10-2021

CITY OF PADUCAH
PUBLIC WORKS DEPARTMENT

One (1) Windrow Turner

LOWEST EVALUATED BID

BID OPENING: 2:00 p.m. CST - Sept 2 2021

OFFICIAL BIDDER OF RECORD Contact: Mailing Address:	Scarab International Richard Miller 1475 County Road W White Deer, Tx 79097	Eco Verse Lyndell Pate 1265 Lear Industrial Pkwy Avon, Oh 44011
1 (ONE) WINDROW TURNER	<u>\$389,000.00</u>	<u>\$401,000.00</u>

Delivery Time	120days	105days
Manufacturer	Scarab	Buckhus

REQUIRED DOCUMENTS:

1. Bidder's Required Certification	Yes	Yes
2. Manufacturer's Specifications	Yes	Yes
3. Warranty Information	Yes	Yes
4. Deviations with Information	No Deviations	Yes
6. Kentucky State Bidders	No	No

Responsive & Responsible Bidder:	Yes	No
Evaluation Score:	1000	
BID RECOMMENDED FOR ACCEPTANCE	Yes	

**CITY OF PADUCAH, KENTUCKY
PUBLIC WORKS DEPARTMENT**

AGREEMENT TO PURCHASE ONE (1) WINDROW TURNER

THIS AGREEMENT, made this _____ day of _____, 20____ by and between the **CITY OF PADUCAH**, hereinafter called the OWNER, and **Scarab International** hereinafter called the VENDOR, for the consideration hereinafter named, agree as follows:

ARTICLE 1. SCOPE OF WORK

The Vendor shall provide **ONE (1) WINDROW TURNER** to be used by **Compost Facility** in full compliance with the Bid Proposal Dated **September 2, 2021** and with this Agreement, the Specifications and any Addendum(s) issued.

ARTICLE 2. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

The Vendor hereby agrees to commence work under this Contract and to fully complete the delivery of the aforementioned Vehicle(s) within **120** consecutive calendar days thereafter from the date of this Agreement.

ARTICLE 3. THE CONTRACT SUM

The Owner agrees to pay the Vendor the following, subject to additions and deductions provided therein: **Three Hundred Eighty-Nine Thousand dollars (\$389,000.00)**, as quoted in the aforementioned Vendor's Bid Proposal and as approved by the Board of Commissioners on _____ by Municipal Order# _____.

ARTICLE 4. PAYMENTS

The Owner will make Payment in full upon satisfactory delivery in accordance with the Contract Documents and the Specifications. The Payment shall constitute full compensation for the work and services authorized herein.

ARTICLE 5. GOVERNING LAW

The Parties agree that this Agreement and any legal actions concerning its validity, interpretation and performance shall be governed by the laws of the Commonwealth of Kentucky. The parties further agree that the venue for any legal proceeding relating to this Agreement shall exclusively be in McCracken County, Kentucky.

ARTICLE 6. THE CONTRACT DOCUMENTS

The Specifications and any addendum that may have been issued are fully a part of this Contract as if thereto attached or herein repeated.

IN WITNESS WHEREOF: The parties hereto have executed this Agreement, the day and year first above written.

VENDOR

BY *Richard Miller*

TITLE *SALES MANAGER*

ADDRESS:

1475 County Rd W
WHITE DEER, TEXAS 79097

CITY OF PADUCAH, KENTUCKY

BY _____

George Bray, Mayor

ADDRESS:

Post Office Box 2267
Paducah, Kentucky 42002-2267

Agenda Action Form

Paducah City Commission

Meeting Date: October 12, 2021

Short Title: Purchase of Rollout Containers, Lids, and Additional Replacement Parts from Toter, Inc. in an amount Not to Exceed \$140,000 - **C YARBER**

Category: Municipal Order

Staff Work By: Latrisha Pryor

Presentation By: Chris Yarber

Background Information: Equipment available under National Intergovernmental Purchasing Alliance (IPA) Contract Number 171717, therefore, competitive bidding is not required. Thus requesting authorizations be given to allow purchases not to exceed \$140,000.00 for roll-out containers, lids, and additional replacement parts from Toter, Inc., throughout the fiscal year 2022 for the Solid Waste Division.

Does this Agenda Action Item align with a Commission Priority? No

If yes, please list the Commission Priority:

Communications Plan:

Funds Available: Account Name: Solid Waste Fund - Equipment Other

Account Number: 50002209-542190

Staff Recommendation: That the City of Paducah hereby authorizes the Finance Director to make payment to Toter, Inc., for the purchase of roll-out containers, lids, and replacement parts for the 2021-2022 fiscal year, in an amount not to exceed \$140,000.00 and authorizes the Mayor to execute all documents related to same. These containers and accessories will be used by customers within the City limits of Paducah served by the Solid Waste Division, Public Works Department. This purchase is made in compliance with the National Intergovernmental Purchasing Alliance (IPA) Contract Number 171717.

Attachments:

1. refuse-rollout containers 2022

MUNICIPAL ORDER NO. _____

A MUNICIPAL ORDER AUTHORIZING THE PURCHASE OF ROLL-OUT CONTAINERS, LIDS AND ADDITIONAL REPLACEMENT PARTS FROM TOTER, INC., IN AN AMOUNT NOT TO EXCEED \$140,000 FOR THE PUBLIC WORKS SOLID WASTE DIVISION

WHEREAS, the Public Works Solid Waste Division needs new roll-out solid waste containers for distribution to the citizens of Paducah as required for solid waste pick-up; and

WHEREAS, this equipment is available under National Intergovernmental Purchasing Alliance (IPA) Contract Number 171717, and, therefore, competitive bidding is not required; and

WHEREAS, in order to allow the purchase for additional roll-outs, lids and replacement parts as necessary throughout the fiscal year, the Solid Waste Division is requesting that authorization be given to allow purchases in an amount not to exceed \$140,000.

NOW, THEREFORE, BE IT ORDERED BY THE BOARD OF COMMISSIONERS OF THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. That the City of Paducah hereby authorizes the Finance Director to make payment to Toter Inc., for the purchase of roll-out refuse containers, lids and replacement parts for Fiscal Year 2022, in an amount not to exceed the City's budgeted amount of \$140,000 and authorizes the Mayor to execute all documents related to same. This purchase is made in compliance with the National Intergovernmental Purchasing Alliance (IPA) Contract Number 171717.

SECTION 2. This expenditure shall be charged to the Solid Waste Fund – Equipment Other, Account 50002209-542190.

SECTION 3. This order shall be in full force and effect from and after the date of its adoption.

Mayor George Bray

ATTEST:

Lindsay Parish, City Clerk

Adopted by the Board of Commissioners, October 12, 2021
Recorded by Lindsay Parish, City Clerk, October 12, 2021
\\mo\\refuse-rollout containers 2022

Agenda Action Form

Paducah City Commission

Meeting Date: October 12, 2021

Short Title: Contract with Routeware, Inc to purchase GPS hardware, software and related products and services for use by the Public Works Refuse division in an amount not to exceed \$166,930 - **C YARBER**

Category: Municipal Order

Staff Work By: Jim Scutt, Debbie Collins

Presentation By: Chris Yarber

Background Information: H-GAC Cooperative Purchasing Program procured Contract FL03-21 with Routeware, Inc. for a Global Positioning System (GPS) for use by the Public Works Solid Waste division in the amount not to exceed \$166,930.00. The not to exceed amount represents the purchase of GPS hardware, and twelve (12) months of software and related products and services.

Does this Agenda Action Item align with a Commission Priority? No

If yes, please list the Commission Priority:

Communications Plan:

Funds Available: Account Name: SW Admin - Equipment-Other

Account Number: 50002201-542190

Staff Recommendation: Approve a municipal order for the purchase through HGAC with Routeware, Inc. of a Global Positioning System (GPS) for use by the Public Works Solid Waste division in the amount not to exceed \$166,930.00.

Attachments:

1. Global Positioning System Routeware GPS 2021
2. HGAC Contract Pricing Sheet - City of Paducah 092121
3. Routeware Global Support Plan Agreement
4. Routeware - Master Sales and License Agreement
5. Routeware Global Cloud Hosting Service Level Agreement

MUNICIPAL ORDER NO. _____

A MUNICIPAL ORDER AUTHORIZING THE PURCHASE OF A GLOBAL POSITIONING SYSTEM FROM ROUTEWARE, INC., IN AN AMOUNT NOT TO EXCEED \$166,930 FOR THE PUBLIC WORKS SOLID WASTE DIVISION

WHEREAS, the Public Works Solid Waste Division desires to purchase and install a Global Positioning System for Solid Waste vehicles; and

WHEREAS, this equipment is available under H-GAC Cooperative Purchasing Program Contract Number FL03-21 with Routeware, Inc., and therefore, competitive bidding is not required; and

WHEREAS, in order to allow the purchase of the Global Positioning System, software and related products and services, the Solid Waste Division is requesting that authorization be given to allow the purchase in an amount not to exceed \$166,930.

NOW, THEREFORE, BE IT ORDERED BY THE BOARD OF COMMISSIONERS OF THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. That the City of Paducah hereby authorizes the Finance Director to make payment to Routeware, Inc., for the purchase of a Global Positioning System, in an amount not to exceed \$166,930 and authorizes the Mayor to execute all documents related to same. This purchase is made in compliance with H-GAC Cooperative Purchasing Program Contract Number FL03-21.

SECTION 2. This expenditure shall be charged to the Solid Waste Admin – Equipment Other Account No. 50002201-542190.

SECTION 3. This order shall be in full force and effect from and after the date of its adoption.

Mayor George Bray

ATTEST:

Lindsay Parish, City Clerk

Adopted by the Board of Commissioners, October 12, 2021
Recorded by Lindsay Parish, City Clerk, October 12, 2021
\\mo\Global Positioning System Routeware GPS 2021

**CONTRACT PRICING WORKSHEET**
For Catalog & Price Sheet Type Purchases**Contract No.:** FL03-21**Date Prepared:** 9/21/2021

This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents MUST be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.

Buying Agency:	City of Paducah KY	Contractor:	Routeware, Inc.
Contact Person:	Chris Yarber	Prepared By:	Rachel Goodwin
Phone:	270.444.8511 x2011	Phone:	503-906-8522
Fax:		Fax:	503-906-8544
Email:	Cyarber@paduchaky.gov	Email:	rgoodwin@routeware.com
Catalog / Price Sheet Name:	Routeware Premium G06		
General Description of Product:			

A. Catalog / Price Sheet Items being purchased - Itemize Below - Attach Additional Sheet If Necessary

Quan	Description	Unit Pr	Total
1	Routeware Control Center (Back Office Software, Front Office Software, Reporting Utilities & Tools)	15000	15,000
16	Perpetual OBC Software License	2456	39,296
1	Routeware Control Center Additional - Per Vehicle After First 15	188	188
16	Heavy Duty Android Tablet (On-board computer, Mounting Cradle & Accessories)	825	13,200
14	Proximity Switch for Windows and Heavy Duty Tablets	105	1,470
15	Camera Controller	475	7,125
30	Standard HD Camera	90	2,700
16	Vehicle Installation (Per Vehicle)	300	4,800
14	Prox Install	150	2,100
15	Camera System Installation (Per Vehicle)	300	4,500
15	Additional Camera Installation	150	2,250
1	PM&T - Package 1 (Project Management, Server SW Install, Training)	15000	15,000
14	Auto Pickup System Fee (Annual)	240	3,360
16	Cellular Data Charge Per Vehicle RD (Annual)	180	2,880
16	On-Board Computer Support Fee Per Vehicle (Annual)	900	14,400
15	Camera System Fee Per Vehicle (Annual)	360	5,400
14	Video System Fee Per Vehicle (Annual)	540	7,560
1	Routeware Control Center Software Support Fee (Annual)	3000	3,000
1	Routeware Control Center Software Support Fee - Per Vehicle After First 15 (Annual)	45	45
1	Cloud Hosting - Up to 50 vehicles (Annual)	7188	7,188
Total From Other Sheets, If Any:			-
Subtotal A:			151,462

B. Unpublished Options, Accessory or Service items - Itemize Below - Attach Additional Sheet If Necessary
(Note: Unpublished Items are any which were not submitted and priced in contractor's bid.)

Quan	Description	Unit Pr	Total
1	RouteMaker	5000	5,000
15	Camera Power Kit for Windows and Heavy Duty Tablet	30	450
14	Video Service Hardware	450	6,300
2	Monitor for Camera Controller	40	80
1	RouteMaker Support	950	950

14	Differential for Video System Fee Per Vehicle (Annual)	192	2,688
Total From Other Sheets, If Any:			
Subtotal B:			15,468
Check: Total cost of Unpublished Options (B) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B). For this transaction the percentage is:			10%
C. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges			
Subtotal C:			0
Delivery Date: TBD		D. Total Purchase Price (A+B+C):	
		166,930	



SUPPORT PLAN TERMS & CONDITIONS

1. DEFINITIONS

The definitions of terms set forth in the Order and the MSLA are incorporated herein by reference. In addition, the following terms shall have the following meanings:

“EOL” has the meaning set forth in Section 2.5.

“Order” means the Order to which this Support Plan and any other Incorporated Agreements are incorporated by reference.

“Reinstatement Fee” has the meaning set forth in Section 3.2.

“Company Rates” has the meaning set forth in Section 2.6.

“Officeware” means all server-based or desktop-based, Software that is provided to Customer by Company, whether installed at Customer’s site, hosted by Company or cloud-hosted, other than Truckware.

“Support” and **“Support Plan”** each mean all items designated as “Support” in the Order and includes Technical Support and Updates.

“Support Plan Commencement Date” has the meaning set forth in Section 2.1.

“Support Plan Period” means the term period listed on the Order, and any period of renewal (which shall be automatically renewing periods equivalent in length to the period listed on the Order), or if no such period is stated on the Order, for automatically renewing periods of one (1) year started from the Support Plan Commencement Date.

“Supported Third-Party Environment” has the meaning in Section 2.5.

“Technical Support” has the meaning set forth in Section 3.3.

“Truckware” means all Software that operates on hardware that is integrated into the Customer’s vehicle fleet, whether such hardware is sold by Company or certified and approved by Company in writing.

“Updates” has the meaning set forth in Section 3.4.

2. COMMENCEMENT AND BILLING

2.1 Plan Commencement. Support Plans commence the first day of the month following installation of hardware in the first vehicle of the Customer’s fleet or first access to the Truckware/Officeware or ninety (90) days after execution of the Order, whichever comes first. (the “Support Plan Commencement Date”).

2.2 Invoices. Support Plan Fees may be invoiced prior to, on, or after the Support Plan Commencement Date. Unless otherwise stated in the Order, Customer will pay all invoiced Fees in the currency set forth in the Order on the later of the Support Plan Commencement Date or within ten (10) days following the invoice date. Any Fee not paid when due will bear a late payment charge of 1.5% per month compounded daily from the due date until the date paid, or such lower rate as allowed by applicable law. All Fees are non-refundable. Customer will reimburse Company in full for any and all collection costs incurred by Company. In the event of non-payment by Customer of any Fees, Company may, at its option, suspend Support, or continue to provide all or part of the Support Plan at then-applicable Company Rates, in either case until such time as the Customer’s account is paid in full. If Company elects to suspend Support, in order to resume such Support, Company may, in its sole discretion, require payment by Customer of Reinstatement Fees.

2.3 Plan Duration. The Support Plan will continue in force for the Support Plan Period, subject to either party electing against renewal by notifying the other party in writing at least ninety (90) days prior to the end of the then-current Support Plan Period.

2.4 Billing. Unless otherwise stated in an Order, Customer may pay for an entire year of Support up front, or quarterly.

2.5 Third Party Vendor-Supported Third-Party Environment. Customer must remain on a Company-certified and supported third party application, hardware platform, framework, database, and/or operating system configuration ("Supported Third-Party Environment") to receive any Support. Customer may be required to upgrade to a current Supported Third-Party Environment to continue receiving Support. In the event of Customer's failure to remain on a Supported Third-Party Environment, Company may, at its option, suspend Support, or continue to provide all or part of the Support Plan at Company's then-applicable time and materials rates, in either case until such time as the Customer is on a Supported Third-Party Environment. Support Plans are not available on any hardware that Company has, in its sole discretion, declared as end-of-life ("EOL").

2.6 Time and Materials Rates. Company maintains a schedule of time and materials rates and spare-parts pricing, which Company may, in its sole discretion, revise and update from time to time ("Company Rates"). Any billing for time and materials or spare parts outside the scope of purchased Support will be at then-current Company Rates.

2.7 Customer Obligations. In the event Customer hosts the Software or it is installed on Customer's computers, Customer shall install any new versions or updates provided by Company as soon as reasonably practical. Should Customer fall more than six (6) months behind in the installation of versions and/or updates, then Company may require Customer to install all versions and updates and may refuse to provide any Support until such installation is complete, but Customer's obligation to pay Fees will continue.

3. SUPPORT PLAN

3.1. Coverage. A Support Plan covers all Software (e.g. Truckware and Officeware) and Hardware purchased or licensed by Customer from Company (excluding any Software or Hardware that has reached EOL). It includes the provision of Technical Support and Updates. Customers who do not have a Support Plan in place will not have access to the listed coverages, until reinstatement.

3.2. Reinstatement. Should Customer decide to add Support following a period in which a Support Plan was not in place, in addition to paying applicable Fees for such Support, Customer will be required to pay Company the lesser of (a) a fee covering the lapse period (prorated daily) at a price equal to 150% of Company's Support Plan pricing in effect at the time of reinstatement or (b) the then-current cost of a new License (a "Reinstatement Fee").

3.3. Technical Support. A Software Support Plan includes technical support by phone and email, as more fully described in the Order, Appendix 1 to the Order and this Section 3.3 ("Technical Support"). Any Technical Support outside of time frames set forth in the Order and Appendix 1 to the Order is subject to Company discretion and will be further subject to an additional charge at then-current Company Rates. Any on-site support will require a professional services engagement, as documented in a statement of work.

Technical Support may also include the following:

- Certification with third-party products/versions
- Assistance with service requests during published support hours
- Access to on-line support
- A diagnosis of problems or issues of the supported Software

3.4. Updates. A Software Support Plan includes the provision of updates, as more fully described in

this Section 3.4 (“Updates”). Updates are defined as a subsequent release of Software which Company generally makes available to its customers who have purchased a Support Plan. Updates typically include bug fixes, patches, and feature enhancements. Updates typically do not include any new functionality that constitutes a new product (which is so designated at Company’s sole discretion) for which Company charges a separate fee. Updates are provided as and when available (as determined by Company) and may not include all previously available supported features. Company develops Updates in its discretion and has no obligation to develop any specific feature or functionality. Updates are made available by delivery (which may be subject to a shipping and handling charge) or by download, in Company’s discretion. If delivered, Customer will receive one copy for each supported operating system for which Software licenses were ordered. Customer shall be responsible for copying, downloading, and installing any Updates. Updates are subject to the terms and conditions of the Agreement and are covered by the same license as the Software to which the Updates pertain.

3.5. Customer Obligations. Software Support is conditioned on Customer doing the following: (a) using commercially reasonable efforts to provide Company with the necessary access (e.g., access to server files, log files, application software or database extracts) required to provide Software Support; (b) designating and identifying by name, phone number, e-mail address, and other appropriate contact methods, Customer contacts, whom shall be the only personnel authorized to communicate with Company regarding Software Support; (c) applying all Updates, bug fixes, critical patches and configuration recommendations according to Company’s instructions promptly following delivery; and (d) providing Company with remote online access via the Internet to all Hardware (including all on-board units), Software and servers for the purposes of troubleshooting, general assistance, and verification of compliance with licensing terms.

3.6. Exclusions. Company is not obligated to provide Support Services when: (a) Company products have been changed, modified or damaged by anyone other than Company; (b) the issue is caused by Customer negligence or misuse of software or hardware, or other causes outside of Company’s control; (c) the issue is caused by third party hardware or software, or by Customer network infrastructure; or (d) Customer’s Company products are EOL or are otherwise not currently supported, as determined by Company’s announced policies.

MASTER SALES AND LICENSE AGREEMENT

1. DEFINITIONS

The definitions of terms set forth in the Order are incorporated by reference herein. In addition, the following terms shall have the following meanings in the Order and in all Incorporated Agreements.

“Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity.

“Company” Routeware, Inc. and its subsidiaries

“Control” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“Confidential Information” has the meaning set forth in Section 9.

“Data Sets” mean digital data set(s) including, but not limited to, geographic, vector data coordinates, raster, or associated tabular attributes in Software compatible format(s) supplied by Company or as part of Third-Party Products.

“Designated Computer System” means a computer system and/or central processing units with associated network and licensed users, as set forth in the Order.

“Dispute” has the meaning set forth in Section 10.8.

“Documentation” means user guides, user manuals, specifications, and other documentation provided by Company for specific Truckware or Officeware, as such documentation may from time to time be amended or modified by Company.

“Fees” means the amounts due for all Products and Services under the Order.

“Hardware” means all items designated in the Order as “Hardware”.

“License Period” means the period listed on the Order, and any period of renewal (which shall be automatically renewing periods equivalent in length to the period listed on the Order), or if no such period is stated on the Order, for automatically renewing periods of one (1) year started from the Effective Date.

“MSLA” means this Master Sales and License Agreement.

“Officeware” means all server-based or desktop-based, Software that is provided to Customer by Company under this Agreement, whether installed at Customer’s site, hosted by Company or cloud-hosted, other than Truckware.

“Order” means the order to which this MSLA and any other Incorporated Agreements are incorporated by reference.

“Products” means Hardware and Software.

“Services” means all items designated in the Order as “Services” and “Support”.

“Software” means all items designated in the Order as “Software” and includes all Updates.

“Support” means all items designated as “Support” in the Order and as further defined in the Support Plan.

“Taxes” has the meaning set forth in Section 2.3.

“Third-Party Products” means hardware and software sold by Company that is manufactured, developed or made available by other companies and distributed by Company for use in conjunction with the Products, including but not limited to products from Microsoft, Google, and open source or “free” software.

“Third-Party Terms” has the meaning set forth in Section 4.

“Truckware” means all Software that operates on hardware that is integrated into the Customer’s vehicle fleet, whether such hardware is sold by Company or certified and approved by Company in writing.

“Updates” has the meaning set forth in the Support Plan.

2. GENERAL ORDERING PROCESS AND PAYMENT

2.1 Delivery. Company will use reasonable efforts to meet the delivery dates for Products and Services that are specified in the Order. All Product shipments are delivered F.O.B. Company's facility, with title and risk of loss passing at that time. All Products are deemed accepted upon delivery. Delivery delay or default of any instalment shall not relieve the Customer of its obligation to pay for Products or Services provided by Company or accept remaining deliveries of Product.

2.2 Payment Terms and Remedies. Unless otherwise stated in the Order, Customer will pay all invoiced Fees in the currency set forth in the Order within ten (10) days following invoice date. Any Fee not paid when due will bear a late payment charge of 1.5% per month compounded daily from the due date until the date paid, or such lower rate as allowed by applicable law. All Fees are non-refundable. Fees for Software are based on parameters set forth in the Order (such as number of trucks or users) and not actual usage, and cannot be reduced or refunded during the License Period based on non-use. Customer will reimburse Company in full for any and all collection costs incurred by Company. In the event of non-payment by Customer of any Fees, Company may, at its option, delay the delivery of Products and/or suspend Services and Support until all overdue Fees and late charges have been paid in full. If Company permits delayed payment or otherwise finances any purchases of Products by Customer, (a) Customer grants to Company a first priority, purchase money security interest in such Products as collateral until payment is made in full, (b) Company will enjoy all rights and remedies available to it with respect to such collateral under applicable law, (c) Customer will take all steps reasonably requested by Company to facilitate such security interest, and (d) Customer will not transfer nor permit any other security interests or liens to be applied to such Products until payment is made in full.

2.3 Taxes and Duties. Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, but not limited to, any sales, value added or goods and services tax, or other governmental charges or tariffs imposed or payable in connection with the rights granted to Customer under this Agreement, or in connection with the payment of Fees (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its purchases hereunder. If Company has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, Company will invoice Customer and Customer will pay that amount, unless Customer provides Company with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Company is solely responsible for taxes assessable against it based on its income, property and employees.

2.4 Price Adjustment. Beginning on the first full calendar year commencing after the Effective Date or on the one year anniversary of the Effective Date, Company may, upon thirty (30) calendar days' prior notice to Customer, prospectively increase any Fees, effective on the first day of the subsequent year.

3. SOFTWARE LICENSES; SUPPORT

3.1 License. Subject to the provisions of the Agreement (including any geographical or location restrictions set forth in the Order), subject to the Customers payment of the Fees described in the Order, Company grants a limited, personal, non-transferrable, non-sublicensable, non-exclusive license during the License Period (which can be for a period certain or perpetual) to Customer:

- (a) To operate the Officeware and Data Sets for Customer's internal purposes as set forth and subject to the limitations in the Order, in accordance with the Documentation.
- (b) To operate the Truckware on up to the number of trucks authorized on the Order, in accordance with the Documentation. Under no circumstances may Customer load Truckware on hardware (including computers and peripherals) that is not sold or certified and approved by Company.
- (c) To use the Documentation in connection with the licenses described in subsections (a) and (b).

3.2 Period of License. The license described in Section 3.1 will continue in force for the License Period,

subject to, in the case of a subscription, either party electing against renewal by notifying the other party in writing at least ninety (90) days prior to the end of the then-current License Period.

3.3 Restrictions; Reservation of Rights. Customer agrees not to (and to not enable any third party to): (a) reverse engineer or otherwise attempt to discover the source code of or trade secrets embodied in the Software (except to the extent required by law or as necessary for interoperability purposes as required under terms and conditions required by the providers of Third-Party Products); (b) distribute, transfer, grant sublicenses to, or otherwise make available the Software or Documentation to third parties, including making the Software or Documentation available (i) through resellers or other distributors, or (ii) as an application service provider, service bureau, or rental source; (c) embed or incorporate in any manner all or part of the Software into other applications of Customer or third parties other than as authorized in applicable Documentation; (d) create modifications to or derivative works of the Software; (e) reproduce the Software (except that Customer may make up to two archival copies of the Officeware solely for backup purposes); (f) attempt to modify, alter, or circumvent any license control and protection mechanisms within the Software; (g) use or transmit the Software in violation of any applicable law, rule or regulation, including any export/import laws; (h) if the Order sets forth a Designated Computer System, use the Software on a computer system other than a Designated Computer System; (i) remove, obscure or alter any copyright notices or any name, trademark, service mark, tagline, hyperlink or other designation included on any display screen within the Software; (j) create any software that competes with the Software or provides substantially the same functions as the Software; or (k) use the Software in a country other than as indicated in the Order. All Software is a “commercial item,” as that term is defined at 48 C.F.R. 2.101 (OCT 1995), and more specifically is “commercial computer software” and “commercial computer software documentation,” as such terms are used in 48 C.F.R. 12.212 (SEPT 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (JUNE 1995), Software is provided to U.S. Government End Users (i) only as a commercial end item and (ii) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Other than as stated in this Agreement, Company grants Customer no other right, title or interest in any Software.

- 4. THIRD PARTY PRODUCTS.** Third-Party Products may be subject to additional license terms and restrictions (“Third-Party Terms”), which Company will make available to Customer as required by the suppliers of such Third-Party Products. In the event of a conflict between the terms of this Agreement and any Third-Party Terms, the Third-Party Terms shall control to the extent of the conflict. Company hereby assigns to Customer (to the extent assignable) all warranties given by the supplier(s) of Third-Party Products; provided, however, that Customer agrees to look to the supplier(s) for any Third-Party Products warranty, service and other post-purchase issues. Customer is solely responsible for obtaining any and all components, updates, new versions, and releases for any Third-Party Products necessary for use in connection with the Products.
- 5. AUDITS.** During the term of the Agreement and for a period of one year thereafter, Company will have the right to perform an audit not more than once each year to verify that Customer is using the Products in compliance with the Agreement. The audit will include at a minimum Company having access to all Software, Hardware, Documentation and related Customer equipment (including all servers and personal computers that contain Officeware, and any hardware that contains Truckware). The audit will be performed from Monday through Friday, between 8:00 a.m. and 5:00 p.m. local time, and upon not less than 15 days’ prior written notice to Customer. The audit will be conducted virtually or onsite at the Customers premises, at Company’s sole cost and expense, subject to reasonable security and access restrictions. Customer will be permitted to have Customer personnel present during the audit. If an audit conducted under this Section discloses that Customer has underpaid by more than 3% any amounts payable under this Agreement during the period covered by the audit, Customer will pay Company the amount of that underpayment and, in addition, will (1) reimburse Company’s reasonable and actual costs

for that audit and (2) be subject to legal remedies available to Company for Customer's breach of the Agreement.

6. REPRESENTATIONS AND WARRANTIES; DISCLAIMER

6.1 Mutual. Each party represents and warrants to the other party that: (a) it has the full corporate right, power and authority to enter into this Agreement and to perform the acts this Agreement requires of it; (b) the execution of this Agreement and performance of its obligations under this Agreement do not and shall not violate any other agreement to which it is a party; (c) when executed and delivered this Agreement constitutes the legal, valid and binding obligation of such party; and (d) any and all activities it undertakes in connection with this Agreement shall be performed in compliance with all applicable laws, rules and regulations.

6.2 Hardware and Software Warranties. (a) Subject to the exceptions listed below in part (b), Company warrants (i) that the Hardware will be free from material defects in materials and workmanship and will operate in all material respects in accordance with its applicable Documentation (the "Hardware Warranty") for one year from the date of initial delivery (the "Hardware Warranty Period"); and (ii) that the Software will be free from material defects and workmanship and will operate in all material respects in substantial conformance with the Documentation (the "Software Warranty") for a period of ninety (90) days from the date of initial delivery (the "Software Warranty Period"). Customer may purchase renewals of the Hardware Warranty Period through extended service plans made available by Company in its discretion. Following the end of the Hardware Warranty Period, Company will have no further obligation to repair or support the applicable Hardware.

(b) Company's entire liability and Customer's exclusive remedy for any reported breach of the Hardware Warranty or Software Warranty will be repair or replacement of the defective Product. All claims must be received by Company promptly upon discovery of any defect, and in no event after expiration of the applicable Warranty Period. The foregoing Hardware and Software Warranties do not apply to any defect or failure to operate that is attributable to: (i) Customer's misuse or abuse of or failure to maintain the Product; (ii) Customer's failure to operate the Product in accordance with the Documentation; (iii) input errors, data conversion errors or other such errors, such as Customer's failure to sequence route stops independently or through a Company professional services agreement; (iv) any change made to the Product by Customer without Company's written approval; (v) any defect, limitation or incompatibility in any equipment or other component installed by Customer; (vi) any accident, catastrophe, act of God, or interruption or fluctuation in electrical power supplies; (vii) any material change in Customer's business or in the operating conditions under which the Product is used; (viii) translations; or (ix) Third-Party Products.

6.3 Disclaimer. THE WARRANTIES OF SECTION 6.2 ARE THE EXCLUSIVE WARRANTIES OFFERED BY COMPANY AND COMPANY MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. ALL OTHER CONDITIONS AND WARRANTIES, INCLUDING ANY CONDITIONS OR WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, MERCHANTABILITY, SUITABILITY AND THOSE THAT ARISE FROM ANY COURSE OF DEALING OR COURSE OF PERFORMANCE, ARE HEREBY DISCLAIMED.

7. LIMITATION OF LIABILITY

7.1 INDIRECT DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY LAW AND EXCEPT WITH RESPECT TO THE FAILURE TO PAY AMOUNTS PROPERLY OWED, SECTION 9 (CONFIDENTIALITY), OR VIOLATIONS OF COMPANY'S INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY, WHETHER UNDER THEORY OF CONTRACT, TORT OR OTHERWISE,

FOR ANY INDIRECT DAMAGES THAT ARISE FROM OR RELATE TO THIS AGREEMENT (INCLUDING LOST PROFITS, LOST DATA AND ANY OTHER INCIDENTAL, PUNITIVE, CONSEQUENTIAL, OR SPECIAL DAMAGES), WHETHER FORESEEABLE OR NOT AND WHETHER ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.2 TOTAL LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY LAW AND EXCEPT WITH RESPECT TO THE FAILURE TO PAY AMOUNTS PROPERLY OWED, BREACHES OF SECTION 9 (CONFIDENTIALITY), OR VIOLATIONS OF COMPANY'S INTELLECTUAL PROPERTY RIGHTS, EACH PARTY'S AGGREGATE CUMULATIVE LIABILITY TO THE OTHER IN CONNECTION WITH THIS AGREEMENT (INCLUDING ANY WARRANTY CLAIMS) WILL NOT EXCEED, IN THE AGGREGATE AND REGARDLESS OF WHETHER UNDER THEORY OF CONTRACT, TORT OR OTHERWISE, THE TOTAL AMOUNT PAID OR PAYABLE BY CUSTOMER TO COMPANY IN THE 12 MONTHS PRIOR TO THE EVENT THAT GAVE RISE TO LIABILITY. EXCEPT WITH RESPECT TO THE FAILURE TO PAY AMOUNTS PROPERLY OWED, BREACHES OF SECTION 9 (CONFIDENTIALITY), OR VIOLATIONS OF COMPANY'S INTELLECTUAL PROPERTY RIGHTS, NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE TRANSACTIONS UNDER THIS AGREEMENT MAY BE BROUGHT BY EITHER PARTY HERETO MORE THAN TWO YEARS AFTER THE CAUSE OF ACTION HAS OCCURRED.

7.3 ALLOCATION OF RISK. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE RISK BETWEEN THE PARTIES. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT, AND EACH OF THESE PROVISIONS WILL APPLY EVEN IF THE REMEDIES IN THIS AGREEMENT HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

8. TERM AND TERMINATION

8.1 Term of Agreement. The Agreement begins on the Effective Date and continues until terminated pursuant to this Section 8.

8.2 Termination Rights. The Agreement (including any of the Incorporated Agreements) may only be terminated as follows: (a) by mutual, written agreement of the parties; (b) by either party if the other party materially breaches the Agreement, and does not cure the breach within 30 days after receiving written notice from the non-breaching party; (c) at the end of the License Period; or (d) by either party if the other party makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of or becomes subject to any proceeding under the U.S. Federal Bankruptcy Act or any other foreign or domestic statute, law, rule or regulation relating to insolvency or the protection of rights of creditors, which proceeding is not dismissed within 60 days.

8.3 Effect of Termination. Upon any termination of this Agreement, without prejudice to any other rights or remedies which the parties may have, the following applies: (a) Customer shall immediately cease all use of all Hardware and all Software and delete or return to Company all copies of Software in Customer's possession; (b) all other rights and obligations immediately cease, except that Sections 2.2, 3.3, 5, 6.3, 7, 8.3, 9, 10 of the MSLA, Section 2.2 of the Support Plan (if the Support Plan is an Incorporated Agreement), and Sections 5.1, 6, 7, 8, 9, and 10 of the PS Agreement (if the PS Agreement is an Incorporated Agreement) shall survive termination; (c) upon written demand, each party as a receiving party will return or destroy all of the other party's Confidential Information; and (d) Customer will immediately pay Company any undisputed amounts still outstanding. For clarity, undisputed amounts include all payments owed by Customer during the entire term of the Agreement.

9. CONFIDENTIAL INFORMATION; PUBLICITY

9.1 Confidential Information. Both parties recognize that they may each receive (as a “Recipient”) from the other (as a “Discloser”) certain confidential and valuable proprietary information that is identified pursuant to the terms of this Section 9 as confidential (collectively, the “Confidential Information”). Both parties agree to identify any Confidential Information as follows: if written, with a written legend that says “confidential” or a similar term; or if verbal, by identifying the information as confidential when disclosed, and then sending the Recipient a written confirmation of that confidential status within 30 days after disclosure. Notwithstanding the foregoing, all pricing, Documentation and Software are Company Confidential Information. A Recipient will not, without the Discloser’s prior written consent, disclose Confidential Information to any person other than those of its employees, independent contractors or consultants who need to know it for the purposes of this Agreement and who are bound by confidentiality agreements with the Recipient that are at least as protective as this section. A Recipient may only use Confidential Information for the purpose of this Agreement. A Recipient will handle any Confidential Information with the same care as it does its own confidential information, but in any event no less than reasonable care. None of the provisions of this section, however, apply to any Confidential Information that meets any one of the following criteria: (a) information possessed by the Recipient without restriction prior to receiving it from the Discloser, provided that the Recipient can demonstrate such possession was obtained lawfully; (b) information that the Recipient developed independently and without use of or reference to the Confidential Information, as documented by its written records; (c) information that the Recipient receives from another party who is not in breach of any of that party’s obligations as a result of that disclosure; or (d) information that the Discloser intentionally discloses to any other party without any restriction on confidentiality. Additionally, a Recipient may disclose Discloser’s Confidential Information to the extent that a court or other governmental body orders such Confidential Information disclosed by the Recipient, provided that the Recipient promptly notifies the Discloser of such order and provides the Discloser with notice and opportunity to contest it, if possible. These obligations shall survive the termination of this Agreement for a period of five (5) years, except with respect to any source code, which will remain protected until it is no longer Confidential Information. This Section does not intend to grant a Recipient any ownership interest or license or right to any intellectual property rights of the Discloser.

9.2 Terms; Publicity. The parties will keep the terms and conditions of this Agreement confidential and will not divulge any of this information to any third party except as follows: (a) with the prior written consent of the other party; (b) as otherwise may be required by law or legal process; (c) during the course of litigation, so long as the disclosure is restricted in the same manner as is the confidential information of other litigating parties; and (d) in confidence to its legal counsel, accountants, banks, and financing sources and their advisors solely in connection with complying with or administering its obligations with respect to this Agreement; provided that, in (b) and (c) above, to the extent permitted by law, the disclosing party will use all legitimate and legal means available to minimize the disclosure to third parties, including seeking a confidential treatment request or protective order whenever appropriate or available, and the disclosing party will provide the other party with at least 10 days’ prior written notice of such disclosure. Neither party may use the other party’s trade names, trademarks or service marks, or engage in any publicity regarding this Agreement or its subject matter, without the other party’s express written consent, which will not be unreasonably withheld or delayed.

10. MISCELLANEOUS

10.1 Independent Contractors. The parties are independent contractors with respect to each other, and nothing in this Agreement shall be construed as creating an employer-employee relationship, a partnership, agency relationship or a joint venture between the parties.

10.2 Insurance. Each party will maintain, at its own expense during the term of this Agreement, insurance appropriate to its obligations under this Agreement, including as applicable general commercial liability, errors and omissions, employer liability, automobile insurance, and worker’s compensation

insurance as required by applicable law.

10.3 Customer Responsibility. Customer is solely responsible under the Agreement for all actions of its officers, directors, employees and contractors. Customer is solely responsible for the use of the Software, including but not limited to: assuring proper installation and configuration (if not installed and configured by Company); audit controls and methods; establishing adequate backup plans; converting data to and from the data structures used by the Software; assuring adequate data input and retrieval; and using the Software as set forth in the Documentation. Company is not responsible for any loss of data by Customer resulting from improper conversion Customer's data to or from the data formats and data structures used by the Software. Customer has sole responsibility for the accuracy, quality, integrity, reliability and appropriateness of all Customer data. Customer is solely responsible to prevent unauthorized access to, or use of, Products or Services hereunder, and will notify Company promptly of any such unauthorized access or use. Customer will comply with all applicable laws in its use of Products and Services hereunder.

10.4 Force Majeure. Each party will be excused from any delay or failure in performance hereunder, other than the payment of money, caused by reason of any occurrence or contingency beyond its reasonable control, including but not limited to acts of God, earthquake, flood, labor disputes and strikes, riots, war, pandemics, telecommunications failures (including any systemic Internet failures and any interruptions in services of internet service providers), and governmental requirements. The obligations and rights of the party so excused will be extended on a day-to-day basis for the period of time equal to that of the underlying cause of the delay.

10.5 Assignment. Neither party may assign its rights or obligations under this Agreement to any other person or entity, except for assignment and transfer of all of a party's rights and obligations under the following circumstances: (a) with the express written consent of the other party, which in the case of consent requested of Company, may not be unreasonably delayed or withheld; or (b) in the case of Company, to an Affiliate of the assigning party. Any transaction (or series of related transactions) that results in a change of Control of Customer is deemed to be an assignment for purposes of this Agreement. Any attempted assignment or delegation in violation of this section is void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties and their respective successors and assigns.

10.6 Waivers. No waiver of any breach of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach, and no waiver is effective unless made in writing and signed by an authorized representative of the waiving party.

10.7 Governing Law. The laws of the State of Oregon, without regard to conflict of laws rules, govern the interpretation and enforcement of this Agreement.

10.8 Dispute Resolution.

(a) The parties desire to resolve certain disputes, controversies and claims arising out of this Agreement without litigation. Accordingly, the parties agree to use the following alternative dispute procedure as their initial recourse with respect to any dispute, controversy or claim arising out of or relating to this Agreement or its breach. The term "Dispute" means any dispute, controversy or claim to be resolved in accordance with this dispute resolution procedure.

(b) At the written request of a party, each party shall appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any Dispute. These negotiations shall be conducted by non-lawyer, business representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures, such as mediation, to assist in the negotiations.

(c) If the negotiations do not resolve the Dispute within ten (10) business days of their commencement or such negotiations do not commence within seven (7) days of request by the other party in writing, then either party shall be free to pursue all rights and remedies as set forth in this Section 10.8.

(d) Any and all controversies, claims, or disputes arising out of this Agreement, including any breach of this Agreement, shall be subject to binding arbitration under the Arbitration Rules set forth by the American Arbitration Association (the “**Rules**”) and pursuant to Oregon law. Disputes that Customer agrees to arbitrate, and thereby agrees to waive any right to a trial by jury, include any statutory claims under state or federal law. The place of arbitration shall be Portland, Oregon. Oregon State law shall apply. The arbitrator shall have no authority to award any punitive, exemplary, special or consequential damages of any kind. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The number of arbitrators shall be one (1). The arbitrator shall have the power to decide any motions brought by any party to the arbitration, including motions for summary judgment and/or adjudication and motions to dismiss and demurrers, prior to any arbitration hearing. The arbitrator shall issue a written decision including findings of fact and conclusions of law on the merits of its award. The arbitrator shall have the power to award any remedies, including attorneys’ fees and costs, available under applicable law.

10.9 Attorney Fees. The prevailing party in any arbitration or litigation between the parties regarding this Agreement shall be entitled to recover reasonable attorney’s fees and other costs from the other party. These fees and other costs are in addition to any other relief to which the prevailing party may be entitled.

10.10 Conflicts. In the event that any term of this Agreement conflicts with governing law or is held to be ineffective or invalid by a court of competent jurisdiction, such term will be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law, and the remaining terms of this Agreement shall remain in full force and effect.

10.11 Notices. Unless stated otherwise, all notices, consents and approvals under this Agreement must be delivered in writing by courier, by facsimile, by email or by certified or registered mail (postage prepaid and return receipt requested) to the other party at the address set forth on at the beginning of this Agreement, and are deemed delivered when received. Either party may change its address for notices by notice to the other party given in accordance with this Section 10.11. Customer is responsible for providing Company with its complete and accurate billing and contact information and notifying Company of any changes to such information.

10.12 Counterparts. The Agreement may be executed in counterparts, each of which will be deemed to be an original and together will constitute one and the same agreement. This Agreement may also be executed and delivered by electronic signature or facsimile and such execution and delivery will have the same force and effect of an original document with original signatures.

10.13 Headings; Interpretation. Headings are used in the Agreement for reference only and will not be considered when interpreting this Agreement. As used in this Agreement, “includes” (or “including”) means without limitation.

10.14 Export Compliance. The Products may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. Neither party will access or use any Products or Confidential Information provided to it hereunder in a U.S.-embargoed country or region (currently the Crimea region, Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or governmental regulation.

10.15 Anti-Corruption. Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

10.16 No Third-Party Beneficiaries. There are no third-party beneficiaries under this Agreement.

10.17 Integration. This Agreement and the Orders together constitute the entire agreement between the parties with respect to the Products and Services and supersede all prior and contemporaneous discussions, negotiations, communications or agreements regarding the same subject matter. The terms on any purchase order, invoice, or other ordering document will have no effect and are hereby rejected.

CLOUD HOSTING SERVICE LEVEL AGREEMENT

1. DEFINITIONS

The definitions of terms set forth in the Order and the MSLA are incorporated herein by reference. In addition, the following terms shall have the following meanings:

“Access Credentials” means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual’s identity and authorization to access and use Company Cloud Hosting.

“Customer Data” means information, data and other content, in any form or medium, that is collected, downloaded or otherwise received, directly or indirectly, from Customer by or through Company Cloud Hosting or that incorporates or is derived from the processing of such information, data or content by or through Company Cloud Hosting. **“Monthly Uptime Percentage”** is calculated by subtracting from 100% the percentage of minutes during a calendar month in which Company Cloud Hosting was in the state of **“Region Unavailable.”** Monthly Uptime Percentage measurements exclude downtime resulting directly or indirectly from any Company Cloud Hosting SLA Exclusion (defined below).

“Region Unavailable” and **“Region Unavailability”** mean that the Company Cloud Hosted Service is **“Unavailable”** to Customer.

“Company Cloud Hosting” shall mean the provision by Company of hosting services of Software, as described in the Order and more fully defined in this Cloud Hosting SLA.

“Company Cloud Hosting SLA Exclusions” has the meaning set forth in Section 5.

“Service Commitment” has the meaning set forth in Section 2.

“Service Credit” means a dollar credit, calculated as set forth in Section 4, that Company may credit back to an eligible account.

“Unavailable” and **“Unavailability”** means when Customer has no connectivity to its Company Cloud Hosted Service.

2. **SERVICE COMMITMENT.** Company will use commercially reasonable efforts to make Company Cloud Hosting available with a Monthly Uptime Percentage of at least 99.5%. (the **“Service Commitment”**). In the event Company Cloud Hosting does not meet the Service Commitment, Customer will be eligible to receive a Service Credit as described below. Company may use the services of a third-party cloud hosting service to perform services hereunder.

3. **SERVICE COMMITMENTS AND SERVICE CREDITS.** Service Credits are calculated as a percentage of the total charges paid by Customer (excluding one-time payments) for Company Cloud Hosting for the monthly billing cycle in which the Unavailability occurred in accordance with the following schedule:

Monthly Uptime Percentage	Service Credit Percentage
Less than 99.95% but equal to or greater than 99.0%	5%
Less than 99.0%	15%

Company will apply any Service Credits only against future Company Cloud Hosting payments otherwise due from Customer. Service Credits will not entitle Customer to any refund or other payment from Company. A Service Credit will be applicable and issued only if the credit amount for the applicable monthly billing cycle is greater than one dollar (\$1 USD). Unless otherwise provided in the Agreement, Customer's sole and exclusive remedy for any unavailability, non-performance, or other failure by Company to provide Company Cloud Hosting is the receipt of a Service Credit (if eligible) in accordance with the terms of this Cloud Hosting SLA.

4. **CREDIT REQUEST AND PAYMENT PROCEDURES.** To receive a Service Credit, Customer must submit a claim by email to the Support email address set forth in the Order. To be eligible, the claim must be received by Company by the 60th day after the incident occurred and must include:
1. the words "SLA Credit Request" in the subject line;
 2. the dates and times of each Unavailability incident that Customer is claiming; and
 3. Customer's request logs that document the errors and corroborate Customer's claimed outage (any confidential or sensitive information in these logs should be removed or replaced with asterisks).

If the Monthly Uptime Percentage of such request is confirmed by Company and is less than the Service Commitment, then Company will issue the Service Credit to Customer within one billing cycle following the month in which Customer's request is confirmed by Company. Customer's failure to provide the request and other information as required above will disqualify Customer from receiving a Service Credit.

5. **COMPANY CLOUD HOSTING SLA EXCLUSIONS.** The Service Commitment does not apply to any unavailability, suspension or termination of Company Cloud Hosting, or any other Company Cloud Hosting performance issues: (i) caused by factors outside of Company's reasonable control, including any force majeure event or Internet access or related problems beyond the demarcation point of Company Cloud Hosting; (ii) that result from Customer's equipment, software or other technology and/or third party equipment, software or other technology, such as, for example, billing systems, customer records management systems, 311 systems, and route management systems, but excluding third party equipment within Company's direct control; (iii) that result from any scheduled maintenance or security-related reasons; or (iv) arising from our suspension and termination of Customer's right to use Company Cloud Hosting in accordance with the Agreement (collectively, the "Company Cloud Hosting SLA Exclusions").
6. **SECURITY AND CUSTOMER DATA.** Customer Data is owned exclusively by Customer. Company will make commercially reasonable efforts to ensure the privacy and security of Customer Data by utilizing industry standard practices, including data encryption and password protection, and by making regular scheduled data backups. Customer shall employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of Company Cloud Hosting; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data. NOTWITHSTANDING ANYTHING HEREIN APPARENTLY TO THE CONTRARY, COMPANY HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION OR RECOVERY OF CUSTOMER DATA.

Agenda Action Form

Paducah City Commission

Meeting Date: October 12, 2021

Short Title: Approve a New Lease Agreement with Seamen's Church Institute of New York and New Jersey -
D JORDAN

Category: Ordinance

Staff Work By: James Arndt, Michelle Smolen, Lindsay Parish

Presentation By: Daron Jordan

Background Information: The City of Paducah currently leases certain real property known as 117 South First Street, Paducah, KY to Seamen's Church Institute of New York and New Jersey. The existing lease agreement will expire on September 30, 2021. The City and Seamen's Church Institute wish to continue their lease relationship in accordance with the terms and provisions of a new Lease Agreement. The primary term of the lease agreement begins October 1, 2021 and continues for a period of five (5) years unless terminated by either party, pursuant to the agreement. The agreement will automatically renew for one (1) successive renewal terms of five (5) years each. The annual rental fee is \$60,123 which will be paid in monthly installments. The agreement allows for Seamen's Church Institute to sublease a portion of the space. In the event that Seamen's Church Institute receives rentals from its sublessees in an amount that exceeds their monthly rental payment, all excess amounts shall be split equally between Lessee and Lessor.

Does this Agenda Action Item align with a Commission Priority? No

If yes, please list the Commission Priority:

Communications Plan: N/A

Funds Available: Account Name:
Account Number:

Staff Recommendation: Approval.

Attachments:

1. Seamen's Church Institute Lease Agreement 2021

ORDINANCE NO. 2021 - _____

**AN ORDINANCE AUTHORIZING AND APPROVING A
NEW LEASE AGREEMENT WITH
SEAMEN'S CHURCH INSTITUTE OF NEW YORK AND NEW JERSEY**

WHEREAS, the City of Paducah currently leases certain real property known as 117 South First Street, Paducah, KY to Seamen's Church Institute of New York and New Jersey for specified annual rental amounts, and

WHEREAS, the existing lease agreement will expire on September 30, 2021, and

WHEREAS, the parties desire to continue their lease relationship in accordance with the terms and provisions of a new Lease Agreement.

NOW, THEREFORE, BE IT ORDAINED by the City of Paducah, Kentucky, that:

SECTION 1. The City hereby approves the Lease Agreement with Seamen's Church Institute of New York and New Jersey in substantially the form attached hereto as Exhibit A and made a part hereof. It is further determined that it is necessary and desirable and in the best interest of the City to enter into this Lease Agreement for the purposes therein specified, and the execution and delivery of this Lease Agreement is hereby authorized and approved. The Mayor is hereby authorized to execute this Lease Agreement with such changes not inconsistent with this Ordinance and not substantially adverse to the City as may be approved by the Mayor.

SECTION 2. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 3. The City Commission hereby finds and determines that all formal actions relative to the adoption of this Ordinance were taken in an open meeting of this City Commission, and that all deliberations of this City Commission and of its committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with applicable legal requirements.

SECTION 4. All ordinances, resolutions, orders or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed and the provisions of this Ordinance shall prevail and be given effect.

SECTION 5. This Ordinance shall be read on two separate days and will become effective upon summary publication pursuant to KRS Chapter 424.

MAYOR

ATTEST:

City Clerk

Introduced by the Board of Commissioners, September 28, 2021.

Adopted by the Board of Commissioners, _____, 2021.

Recorded by City Clerk, _____, 2021.

Published by The Paducah Sun, _____, 2021

ORD\Seamen's Church Institute Lease Agreement 2021
Ordinance prepared by Holly Homra – Denton Law Firm
233496

LEASE AGREEMENT

THIS LEASE AGREEMENT, is entered into by and between the CITY OF PADUCAH, KENTUCKY ("Lessor") and SEAMAN'S CHURCH INSTITUTE OF NEW YORK AND NEW JERSEY, INC. ("Lessee") as of the 1st day of October, 2021. This Agreement shall supersede and replace all prior lease agreements entered into by and between the parties for the lease of the subject Premises.

WITNESSETH:

WHEREAS, Lessor is the owner of various buildings located at 129 Water Street (formerly 117 South First Street); and

WHEREAS, Lessee currently leases portions of said property for the purpose of operating maritime simulator facility/training school;

WHEREAS, it is now the express intent of the parties hereto to enter into a new lease, the terms of which will supersede and replace the terms of all prior lease agreements entered into between the parties;

NOW, THEREFORE, for and in consideration of the terms, covenants, and conditions herein set forth and contained, Lessor and Lessee contract and agree as follows:

ARTICLE I PREMISES - USE

1.1 Leased Premises. Lessor hereby leases, demises and lets unto Lessee and Lessee hereby leases and lets from Lessor the tract of real property, together with all improvements, generally located between Water Street and Maiden Alley and Broadway Street and Kentucky Avenue, consisting of approximately 40,042 square feet, as further described on Exhibit A hereto, all of which is hereinafter referred to as the "Premises". The parties agree that Lessee shall occupy approximately 20,041 square feet of the Premises, with the remaining portion being sublet by Lessee in accordance with Article IV.

1.2 Condition of Premises. Lessee has inspected the Premises and has found the same to be in good condition and repair. Subject to Lessor's repair and maintenance obligations hereunder, Lessee shall accept the Premises "AS IS."

1.3 Use of Premises. The Premises shall be occupied and used by the Lessee as a maritime simulator facility/training school, for such other uses as may further the nonprofit religious and educational purposes and objectives of the Seamen's Church Institute, or for any other lawful use as may be approved by Lessor. Lessee shall have the right to sublease certain portions of the Premises to the River Heritage Museum d/b/a River Discovery Center and Paducah Film Society d/b/a Maiden Alley Cinema for use as a museum and a cinema. The

Premises shall not be used for any other purpose without the prior written consent of the Lessor, which consent shall not be unreasonably withheld.

1.4 Compliance with Law. Lessee covenants that any, every, and all uses of the Premises hereunder shall comply with all applicable federal, state, and local laws. Lessor covenants that as of the date possession is granted to Lessee, the premises are in full compliance with all applicable federal, state and local laws and regulations.

1.5 Date of Possession. Lessee shall be entitled to possession of the Premises on the Commencement Date, as identified below.

1.6 Quiet Enjoyment. Lessor warrants that it has good and marketable title to the premises in fee simple absolute, unencumbered. It shall be an express condition of Lessee's obligation to perform hereunder that, prior to the effective date of this lease either (a) any mortgage of the premises by Lessor shall be subordinated to Lessee's interest under this lease by execution of a subordination agreement in a form satisfactory to Lessee; or (b) the mortgagee shall have furnished to Lessee a nondisturbance agreement in recordable form reasonably satisfactory to Lessee.

Lessor covenants that upon Lessee's timely payment of the rent and performance of the terms, covenants and conditions to be performed by it hereunder, Lessee shall peaceably and quietly have, hold and enjoy the premises during the term subject to the terms hereof.

1.7 Local Land Use Law. Lessor warrants that the Lessee's intended use of the premises as a maritime simulator facility and training school is a permitted use under applicable zoning and land use regulations. Lessor shall indemnify Lessee and hold Lessee harmless for any loss arising from any claim that (a) the intended use of the premises is not permitted under such regulations, or (b) this lease constitutes a subdivision violation under KRS Chapter 100.

ARTICLE II LEASE TERM

2.1 Primary Term. The primary term of this Agreement shall commence on October 1, 2021 ("Commencement Date") and continue for a period of five (5) years, unless otherwise terminated as provided herein.

2.2 Renewal Terms. Provided Lessee is not in default and this Agreement is otherwise in full force and effect, this Agreement shall automatically renew upon the terms and conditions set forth herein for one (1) successive renewal term of (5) years, unless either party shall deliver to the other party written notice of its intent not to renew at least sixty (60) days prior to the expiration of the primary term or first renewal term as the case may be.

ARTICLE III RENTALS

3.1 Rentals. Lessee agrees to pay to Lessor as annual rental Three and 00/100 Dollars (\$3.00) per square foot of Premises which is actually occupied by Lessee (currently 20,041 square feet), for a total annual rental of \$60,123.00. Annual rentals shall be paid in monthly installments of Five Thousand Ten and 25/100 Dollars (\$5,010.25) with the first monthly installment to be paid on or before the Commencement Date, and with successive monthly installments to be paid on or before the first day of each month.

ARTICLE IV SUBLESSEES

4.1 Sublessees. Lessee currently sublets rent-free approximately 10,856 square feet of the premises to the River Heritage Museum d/b/a River Discovery Center and approximately 5,485 square feet to Paducah Film Society d/b/a Maiden Alley Cinema. In addition to the subleases with the River Heritage Museum and Maiden Alley Cinema, Lessee may sublet a portion of the premises to other sublessees. However, in the event that Lessee receives rentals from its sublessees in an amount that exceeds Lessee's monthly rental payment as determined under Section 3.1 (\$5,010.25), all excess amounts shall be split equally between Lessee and Lessor.

Any sublease which is executed by Lessee shall be subject to the review and approval of Lessor. All sublessees shall agree to abide by the terms and conditions contained herein and to comply with any and all applicable state, local, and federal law.

ARTICLE V MAINTENANCE, REPAIRS, AND IMPROVEMENTS

5.1 Maintenance and Repair. Except as otherwise set forth herein, Lessee shall at its costs keep the Premises in good condition and repair. Additionally, Lessee shall at its cost keep all improvements constructed upon the Premises in good condition and repair. Lessee shall also keep the entire leased Premises and improvements clear, orderly, and free of debris and waste materials. In particular, Lessee shall remove from the Premises and improvements as soon as reasonably possible all garbage, trash, and any and all other waste materials and by-products from its business, and shall at all times keep the leased Premises and improvements in a clean and sanitary condition.

Lessor shall at its cost keep the roof in a good and watertight condition and perform all necessary maintenance thereto. Lessor shall be responsible for Major Repairs to the HVAC, sprinkler system, water heaters, and plumbing. Major Repairs are defined as repairs or replacements of the HVAC system, water heaters, and/or plumbing the cumulative cost of which in a given year of this lease (from October 1 to September 30) exceeds \$7,500.00. Any dispute regarding a Major Repair which cannot be resolved by the administrative staff of the Lessor and Lessee will be decided unilaterally by the Paducah City Commission. Lessor shall be responsible for maintenance and repair of the electrical system from the service transformer to Lessee's

meter. Lessee shall be responsible for all other portions of the electrical system on the premises.

All repairs, replacements, maintenance, and restoration required hereunder shall be promptly commenced and diligently prosecuted to completion. All repairs and replacements shall be made in a good and workmanlike manner, and the responsible party shall use materials at least equal in quality to the replaced materials when new.

5.2 Utilities and Services. Lessee shall be responsible for servicing the Premises and the improvements constructed thereon with all utilities that Lessee may desire and Lessee shall be responsible for all monthly charges for the utilities which are provided to the Premises, including water, gas and electricity. Lessee shall fully indemnify and save Lessor harmless from and against any and all liability for any such costs or charges. Lessee shall promptly pay all monthly charges as the same become due.

5.3 Notice and Submission of Plans for Improvements. Lessee may make, or cause to be made, on the herein leased Premises such improvements as may be necessary or appropriate in connection with the carrying on and efficient operation of Lessee's business, subject to the reasonable approval of the Lessor. Prior to the commencement of any construction at or upon the Premises, Lessee shall first cause Lessor to be given written notice of the nature and extent of the specific improvements to be undertaken.

5.4 Signs. Lessee shall be entitled to erect, maintain, and install upon the Premises identification and advertising signs appropriate to its business and use of the premises.

ARTICLE VI LIEN CLAIMS

6.1 Lien Claims. Lessee hereby covenants to unconditionally indemnify Lessor against and save them harmless from any and all lien claims of any nature whatsoever arising out of the use and occupancy of the Premises and the improvements located thereon or in any manner connected with the construction, installation, erection, maintenance, and/or repair of any improvements, facilities and/or equipment and fixtures effectuated by Lessee, or its sublessees on or about the Premises and Lessee further agrees that it shall, in the event of any such liens are filed to forthwith effect the removal and/or satisfaction thereof. At the request of Lessor, Lessee shall furnish Lessor with written proof of payment of any item which would or might constitute the basis for such lien if not paid.

ARTICLE VII RIGHT TO RESTORE OR REPAIR

7.1 Lessee's Right to Repair. In the event that Lessor fails to promptly effectuate any repair or maintenance it has assumed herein within a reasonable time from when such need arose, or to timely pay and satisfy any cost or expense relating thereto, Lessee may, at its option, and in addition to any other remedy Lessee may have, effectuate such restoration or repair or maintenance, or pay and satisfy the costs and expenses, with all costs of such restoration, repair, maintenance or payments made to be the sole responsibility of Lessor. Upon demand, Lessor

shall pay promptly to Lessee all costs incurred for such repair, maintenance or payments made for same. Any unpaid cost and expense incurred by Lessee shall accrue interest at the legal rate of eight percent (8%).

7.2 Lessor's Right to Repair. In the event that Lessee fails to promptly effectuate any repair or maintenance it has assumed herein within a reasonable time from when such need arose, or to timely pay and satisfy any cost or expense relating thereto, Lessor may, at its option, and in addition to any other remedy Lessor may have, effectuate such restoration or repair or maintenance, or pay and satisfy the costs and expenses, with all costs of such restoration, repair, maintenance or payments made to be the sole responsibility of Lessee. Upon demand, Lessee shall pay promptly to Lessor all costs incurred for such repair, maintenance or payments made for same. Any unpaid cost and expense incurred by Lessor shall accrue interest at the legal rate of eight percent (8%).

ARTICLE VIII INSURANCE AND INDEMNIFICATION

8.1 Insurance.

- (a.) Lessee shall maintain fire and casualty insurance on the leased Premises and the improvements located thereon in an amount of not less than the replacement values of same as reasonably determined by the Lessor, which coverage shall insure the Lessor as its interest may appear. If Lessee disagrees with the replacement value as determined by Lessor, Lessee may request that an insurance appraisal be performed on the leased premises and the improvements. If the replacement value as determined by the insurance appraisal is equal to or greater than the replacement value determined by Lessor, then Lessee shall pay the expense of the appraisal. Otherwise, Lessor shall bear the expense of the appraisal and Lessee shall be required to maintain fire and casualty insurance in the amount of the replacement value as determined by the insurance appraisal.
- (b.) Lessee also shall maintain comprehensive general liability coverage covering the leased Premises and improvements located thereon, under which the Lessor will be held harmless and named as a loss payee, stipulating limits of liability of not less than One Million Dollars (\$1,000,000.00) for an accident affecting any one person, Two Million Dollars (\$2,000,000.00) per aggregate, and not less than Five Hundred Thousand Dollars (\$500,000.00) for property damage. Lessee shall also provide adequate and sufficient workers' compensation coverage at statutory limits.
- (c.) The coverage to be provided hereunder shall be in such form and amounts as are acceptable to Lessor and with such insurers as may be satisfactory to the Lessor and shall name the Lessor and the Lessee as named insureds as their respective interests may appear. Such policies shall contain a provision whereby they cannot be canceled except after thirty (30) days' written notice to the Lessor. The Lessee hereby agrees that, in the event of Lessee's failure to pay any premiums for

such insurance, the Lessor may do so and be immediately reimbursed by the Lessee. Any unpaid cost and expense incurred by Lessor for any premium shall accrue interest at the legal rate of eight percent (8%).

- (d.) Certificates evidencing the herein referenced insurance coverage which Lessee shall be responsible for shall be furnished to the Lessor upon Lessor's reasonable request.

8.2 Indemnification. Lessee hereby releases and discharges Lessor from and shall fully protect, indemnify and keep and save Lessor harmless from any and all costs, charges, expenses, penalties and damages imposed for the violation of any law or regulation of the United States, or the Commonwealth of Kentucky or McCracken County, incurred by any act or omission of Lessee or Lessee's representatives, assigns, agents, servants, employees, licensees, invitees, and any other person or persons occupying under Lessee; and Lessee shall further protect, fully indemnify and save forever harmless Lessor from any and all claims, liability, costs, damage and expense, incident to injury (including injury resulting in death) of persons or damage to or destruction of property incident to, arising out of or in any way connected with Lessee's (and the others as herein referenced) use and occupancy or right of use and occupancy of the Premises, and the improvements located thereon, whether by omission or commission and irrespective of exclusive or nonexclusive rights therein, including but not limited to the operation of Lessee's business, the construction, erection, installation, existence, repair, maintenance, alteration and/or demolition of any improvements, facilities and/or equipment or the conduct of any other activities.

Lessor hereby releases and discharges Lessee from and shall fully protect, indemnify and keep and save Lessee harmless from any and all costs, charges, expenses, penalties and damage imposed for the violation of any law or regulation of the United States, or the Commonwealth of Kentucky or McCracken County, or incurred by any act or omission of Lessor or Lessor's representatives, assigns, agents, servants, employees, licensees, and invitees; and Lessor shall further protect, fully indemnify and save forever harmless Lessee from any and all claims, liability, costs, damage and expense, incident or injury (including injury resulting in death) of persons or damage to or destruction of property incident to, arising out of or in any way connected with Lessor's (and the others' as herein referenced) obligations undertaken pursuant to this lease.

ARTICLE IX TAXES

9.1 Ad Valorem and Personal Property Taxes. Lessor and Lessee anticipate that because of Lessee's status and operation as both a religious organization and an educational institution which the IRS has determined to be tax exempt as a 501(c)(3) corporation, no ad valorem real estate or personal property taxes shall be owed by Lessee arising from Lessee's occupation and use of the leased premises. Lessor covenants that it shall cooperate with Lessee in any reasonable efforts deemed necessary by Lessee to be recognized by the applicable taxing authorities as exempt from such ad valorem taxes. In the event taxes are owed and Lessee fails to pay such taxes, Lessor may do so on Lessee's behalf and Lessor shall be entitled to

reimbursement. Amounts expended by Lessor for such taxes on Lessee's behalf shall bear interest at the legal rate of eight percent (8%), except that no interest shall accrue during such period of time that Lessee may challenge the imposition of any such tax upon it through available court or administrative proceedings.

9.2 Other Taxes and Assessments. The Lessee shall pay any and all other taxes and assessments relating to the leased Premises and improvements located thereon and Lessee's operations thereon.

ARTICLE X LESSEE'S REPRESENTATIONS AND WARRANTIES

10.1 Corporate Standing. The Lessee is a corporation duly organized and validly existing and in good standing under the laws of the state of New York and is authorized to do business in the Commonwealth of Kentucky.

10.2 Authorized Act. The Lessee has the power and authority to enter into and perform this Lease Agreement and to incur the obligations herein provided, and has taken all action necessary to authorize the execution, delivery, and performance of this Lease Agreement. This Agreement when delivered will be valid, binding, and enforceable in accordance with the respective terms.

10.3 Adverse Proceedings. There is no pending order, notice, claim, litigation, proceeding or investigation against or affecting the Lessee, whether or not covered by insurance.

10.4 Accurateness of Representations. No representation or warranty by the Lessee contained herein or in any certificate, financial statement, or other document furnished by it pursuant hereto contains any untrue statement of material fact or omits to state a material fact necessary to make such representation or warranty not misleading in light of the circumstances under which it was made.

ARTICLE XI HAZARDOUS WASTE

11.1 Hazardous Material Prohibited. Lessee shall not cause or permit any Hazardous Material to be located or disposed of on, under or at the leased Premises or any part thereof. For the purpose of this agreement, "Hazardous Material" shall mean any hazardous, toxic or dangerous waste, substance or material defined as such in, or for purposes of, any Environmental Law. "Environmental Law" shall mean any federal, state, or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Material, as now or at any time hereafter in effect.

11.2 Indemnification. Lessee agrees to indemnify and hold Lessor harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses (including without limitation reasonable attorney and consultant fees), claims for damage to the environment, claims for fines or civil penalties, costs of any settlement or judgment, and claims of any and every kind

whatsoever, paid, incurred or suffered by Lessor or asserted against Lessor by any person, entity or governmental agency for, with respect to, or as a direct or indirect result of, the presence on or under the leased Premises of, or the actual or threatened escape, spillage, discharge, emission, or release from the leased Premises of, or transportation of, any Hazardous Material or any noncompliance with any Environmental Law, which such referenced presence, escape, spillage, discharge, emission, release or transportation first occurs during the Lessee's occupancy of the premises under this lease or the prior lease between the parties.

Lessor agrees to indemnify and hold Lessee harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses (including without limitation reasonable attorney and consultant fees), claims for damage to the environment, claims for fines or civil penalties, costs of any settlement or judgment, and claims of any and every kind whatsoever, paid, incurred or suffered by Lessee or asserted against Lessee by any person, entity or governmental agency for, with respect to, or as a direct or indirect result of, the presence on or under the leased premises of, or the actual or threatened escape, spillage, discharge, emission or release from the leased premises of, or transportation of, any Hazardous Material or any noncompliance with any Environmental Law, which such referenced presence, escape, spillage, discharge, emission, release or transportation occurred prior to Lessee's occupancy of the premises.

ARTICLE XII TERMINATION

12.1 Termination. Upon the termination of this Agreement, however such termination may be brought about, whether by expiration of the terms hereof, or by cancellation or otherwise, Lessee shall quit and surrender said Premises to Lessor in good condition and repair excepting ordinary wear and tear, and any damages within Lessor's repair obligation or due to casualty.

It is the express understanding of the parties hereto that upon termination of this Agreement, Lessee shall remove from the Premises all of Lessee's equipment brought upon or erected upon the Premises. In the event Lessee shall fail to remove same from the Premises within a period of ninety (90) days following the date of termination, the Lessor shall have the following rights: (a) declare the aforesaid property to be abandoned by Lessee, in which event it is agreed that said property shall be deemed the exclusive property of Lessor; or (b) cause said property to be removed from the Premises, and all costs and expenses incurred by Lessor by reason of said removal shall be reimbursed by Lessee immediately upon demand of Lessor. Reasonable costs or expense incurred by Lessor shall accrue interest at the legal rate of eight percent (8%).

12.2 Events of Default. The following shall be "events of default" under this Agreement, and the terms "event of default" or "default" shall mean whenever they are used in the agreement any one or more of the following events:

- (a) The failure or refusal of Lessee to pay or cause to be paid any rental payment when the same becomes due or the failure or refusal of Lessee to timely pay or cause to be paid any insurance premiums, taxes, costs of repairs or maintenance, or any other charges as herein assumed by Lessee, unless such failure to pay rent

or other charge as described herein is cured within ten (10) days after written notice from Lessor is received by Lessee;

- (b) Failure by the Lessee to perform any agreement, covenant, condition, obligation and/or undertaking herein contained or to observe or comply with any of the terms, provisions and conditions of this Agreement, unless such failure is cured within thirty (30) days after written notice thereof by Lessor is received by Lessee, which notice shall sufficiently describe such failure to enable Lessee to determine an appropriate cure.
- (c) Proceedings in bankruptcy by or against Lessee, or for reorganization of Lessee's debts, or for the readjustment of any of its respective debts, under any other laws, whether state or federal, for the relief of debtors, now or hereafter existing, be commenced by it or commenced against it;
- (d) The insolvency, assignment for the benefit of creditors, adjudication as a bankrupt or the appointment of a receiver for substantially all of either Lessee's property and/or Lessee's interest in this Agreement;
- (e) The issuance of execution against either Lessee's interest in this Agreement or any legal process which by operation of law would cause Lessee's interest in this Agreement to pass to any persons other than Lessee;
- (f) In the event Lessee removes, attempts to remove or permits to be removed from said Premises, the improvements located thereon, or in the event Lessee otherwise ceases its business operations on the Premises; and
- (g) Any financial statement, representation, warranty, or certificate made or furnished by Lessee to the Lessor in connection with this Agreement, or as inducement to the Lessor to enter into this Agreement, or in any separate statement or document to be delivered hereunder to the Lessor, shall be materially false, incorrect, or incomplete when made.

Upon termination of this Agreement, either in lapse pursuant to the terms of the same, or in the event of default as defined herein, after written notice of default sent by Lessor to Lessee is received by Lessee, and subject to Lessee's right pursuant to Section 12.1 above to remove personal property, trade fixtures and equipment from the premises, Lessor may immediately, or at any time thereafter reenter the Premises without notice or demand, and remove all persons and things therefrom with or without legal process and without prejudice to any of Lessor's other legal rights, using such force as may be necessary or proper for the purpose.

Notwithstanding any such reentry, upon default by Lessee or a termination of this Agreement occasioned by reason thereof, the lease rentals due hereunder for the remainder of the then current lease term and such other charges and/or obligations if any as may otherwise be payable under this Agreement shall be and become immediately due and payable, and the

liability of the Lessee for the full amount provided herein shall not be extinguished for the balance of the term of this lease.

12.3 Holding Over. If Lessee shall, with the consent of Lessor, hold over after the expiration or sooner termination of any term of this lease, the resulting tenancy shall, unless otherwise mutually agreed, be for an indefinite period of time on a month-to-month basis. During such month-to-month tenancy, Lessee shall pay to Lessor the rate of rental as agreed upon, and shall be bound by all of the provisions of this lease agreement. Such holding over period may be terminated by either party upon thirty (30) days written notice of intent to so terminate.

12.4 Casualty Damage to Premises. In the event that the Premises and improvements located thereon shall be totally destroyed by fire or the elements, or from any cause whatsoever, either party may elect within thirty (30) days after such destruction to terminate this lease, and if either party shall so elect, by giving to the other a written notice of termination, both parties shall stand released of and from further liability under the terms hereof. If the Premises and improvements located thereon shall thereby only suffer partial destruction to any degree, and Lessee determines in its reasonable discretion that it is able to continue on with its business operations, Lessee's obligations hereunder shall continue and all terms and provisions of this Agreement shall be in full force and effect. In the event that by reason of the partial destruction of the Premises, Lessee must temporarily discontinue its business operations, rental payments shall be abated during such temporary period, and shall resume when Lessee resumes its operations.

12.5 Waiver. Waiver by Lessor of any breach or default of this Agreement by Lessee shall not be deemed a waiver of similar or other breaches or defaults, nor shall the failure of Lessor to take any action by reason of any such breach or default deprive Lessor of the right to take action at any time when such breach or default continues. The rights and remedies created by this Agreement shall be cumulative and nonexclusive of those to which Lessor may be entitled at law and equity. Right of exercise of all such rights and remedies is hereby reserved by Lessor. The use and availability of one remedy shall not be taken to exclude or waive the right to use of another. In order to entitle any party to exercise any remedy reserved by it in this Agreement, it shall not be necessary to file any notice other than such notice as herein expressly required.

12.6 Extended Period to Cure. The period of time permitted for Lessee to cure hereunder shall be extended if the default cannot be cured within the time period allowed herein, so long as the Lessee is diligently and continuously attempting to cure. The cure periods shall also be extended for any period of time during which the Lessee is delayed in, or prevented from, curing due to fire or other casualty, or acts of God, and other causes beyond the Lessee's reasonable control. Notwithstanding the foregoing, there shall be no extended period in which Lessee may cure a monetary default.

ARTICLE XIII
CONDEMNATION

13.1 Condemnation. Lessor warrants to Lessee that as of the effective date hereof, Lessor has no plans to acquire by eminent domain any portion of the premises or Lessee's interest in the premises. Lessor further warrants to Lessee that to the best of Lessor's knowledge, no other governmental authority possessing the power of eminent domain has plans or has indicated any interest in acquiring by eminent domain any portion of the premises.

In the event of any governmental condemnation of any part or all of the Premises, should the portion of the Premises taken in the condemnation in Lessee's reasonable discretion substantially and adversely affect Lessee's business thereon, Lessee may, at its option, terminate this Agreement upon 30 days written notice to Lessor, and thereafter, shall not be further liable for any subsequent rentals. Should the portion of the Premises taken in the condemnation action not substantially and adversely affect Lessee's use and occupancy and their business operations, this Agreement shall continue in full force and effect according to the terms and provisions herein. Any compensation paid for the condemnation of the Premises shall be deemed the property of Lessor, except that Lessee shall be entitled to any separate claim available to Lessee for any taking of Lessee's personal property, equipment and fixtures belonging to Lessee upon the expiration of the term of the lease, and for moving expenses. If any part of the premises shall be taken and this lease shall not be terminated as provided above, the rent shall be proportionately abated and Lessor shall restore the remaining portion of the premises to substantially its former condition.

ARTICLE XIV
MISCELLANEOUS

14.1 Notices. All notices to be sent hereunder shall be sent to the following addresses:

LESSOR:
Attn: City Manager
City of Paducah
P.O. Box 2267
Paducah, KY 42002-2267

LESSEE:
Attn: Executive Director
Seamen's Church Institute of
New York and New Jersey
241 Water Street
New York, NY 10038

14.2 Inspection of the Premises. Lessor, or its appointed employees or agents, shall have the right to come upon the Premises upon reasonable notice and at reasonable times to examine and inspect the Premises for purposes of insuring Lessee's compliance with the terms and provisions of this Agreement.

14.3 Compliance with Laws. The Lessee shall at all times fully and promptly comply with all laws, ordinances and regulations and every lawful authority having jurisdiction of the Premises, and as such shall relate to the cleanliness and use of the Premises in the character and manner or operation of the business conducted on the Premises.

14.4 Entire Agreement. This Agreement embodies the entire agreement between the parties with respect to the leasing and use of the Premises. There are no representations, terms, conditions, covenants or agreements between the parties relating thereto which are not contained herein. This Agreement shall completely and fully supersede all other prior agreements, both written and oral, between the parties.

14.5 Captions. The article and paragraph headings and captions contained hereunder are included for convenience only and shall not be considered a part hereof or effect in any manner the construction or interpretation of this Agreement.

14.6 Severability. In the event any provisions of this Agreement shall be deemed null and void or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any of the remaining provisions hereof.

14.7 Assignment. This Agreement may not be assigned by the Lessee without the express prior written consent of Lessor, which consent shall not be unreasonably held. It is agreed, however, that any assignee shall have substantially the same or greater financial worth and condition as the Lessee.

14.8 Successors and Assigns. The covenants, terms, and conditions and obligations set forth and contained in this Agreement shall be binding upon and inure to the benefit of the Lessor and the Lessee and their respective heirs, successors, and assigns.

14.9 Effective Date. The effective date of this Agreement shall be October 1, 2021.

14.10 Right of First Refusal. To the extent permitted by applicable law, Lessor agrees not to transfer or convey all or any part of Lessor's interest in the premises without first offering Lessee the right to purchase such interest for the same amount and otherwise in accordance with the terms of any bona fide contract which Lessor has entered into. Lessor shall give Lessee written notice disclosing any intent of Lessor to transfer or convey all or any part of Lessor's interest in the premises. Lessee shall, on or before 30 days after receipt of such notice from Lessor, notify Lessor in writing that Lessee either does or does not agree to acquire the interest to be conveyed by Lessor on the terms and conditions set forth in the contract which accompanied the notice from Lessor to Lessee. If Lessee notifies Lessor that Lessee elects to exercise the right of first refusal with respect to the contract, Lessor and Lessee automatically thereupon shall be deemed to have entered into a binding and enforceable agreement for the conveyance of the interest on the same terms and conditions as set forth in the contract, except that the closing of the conveyance to Lessee of the interest to be conveyed by Lessor shall occur on the first business day which occurs 90 days after Lessee gives notice to Lessor of Lessee's election to exercise the right of first refusal.

14.11 Lessee's Interest. All rights and interests with respect to use and occupation of the premises not specifically reserved by Lessor herein, shall inhere in Lessee for the duration of Lessee's tenancy.

14.12 Memorandum of Lease. Lessor and Lessee shall execute a Memorandum of

Lease in recordable form. Lessee may record said Memorandum of Lease in the McCracken County Clerk's office, which recording shall provide record notice of Lessee's interest in the premises.

WITNESS signatures of the parties as of the year and date first above written.

LESSOR:

CITY OF PADUCAH

By:_____

Title:_____

STATE OF KENTUCKY)

COUNTY OF MCCRACKEN)

The foregoing instrument was acknowledged before me on this _____ day of _____, 2021, by _____, _____ (title) of the City of Paducah, on behalf of the City.

My commission expires _____.

NOTARY PUBLIC, STATE AT LARGE

LESSEE:

SEAMEN'S CHURCH INSTITUTE OF
NEW YORK AND NEW JERSEY

By:_____

Title:_____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me on this _____ day of September, 2021, by Mark Nestlehutt, President & Executive Director of Seamen's Church Institute of New York and New Jersey, on behalf of Seamen's Church Institute of New York and New Jersey.

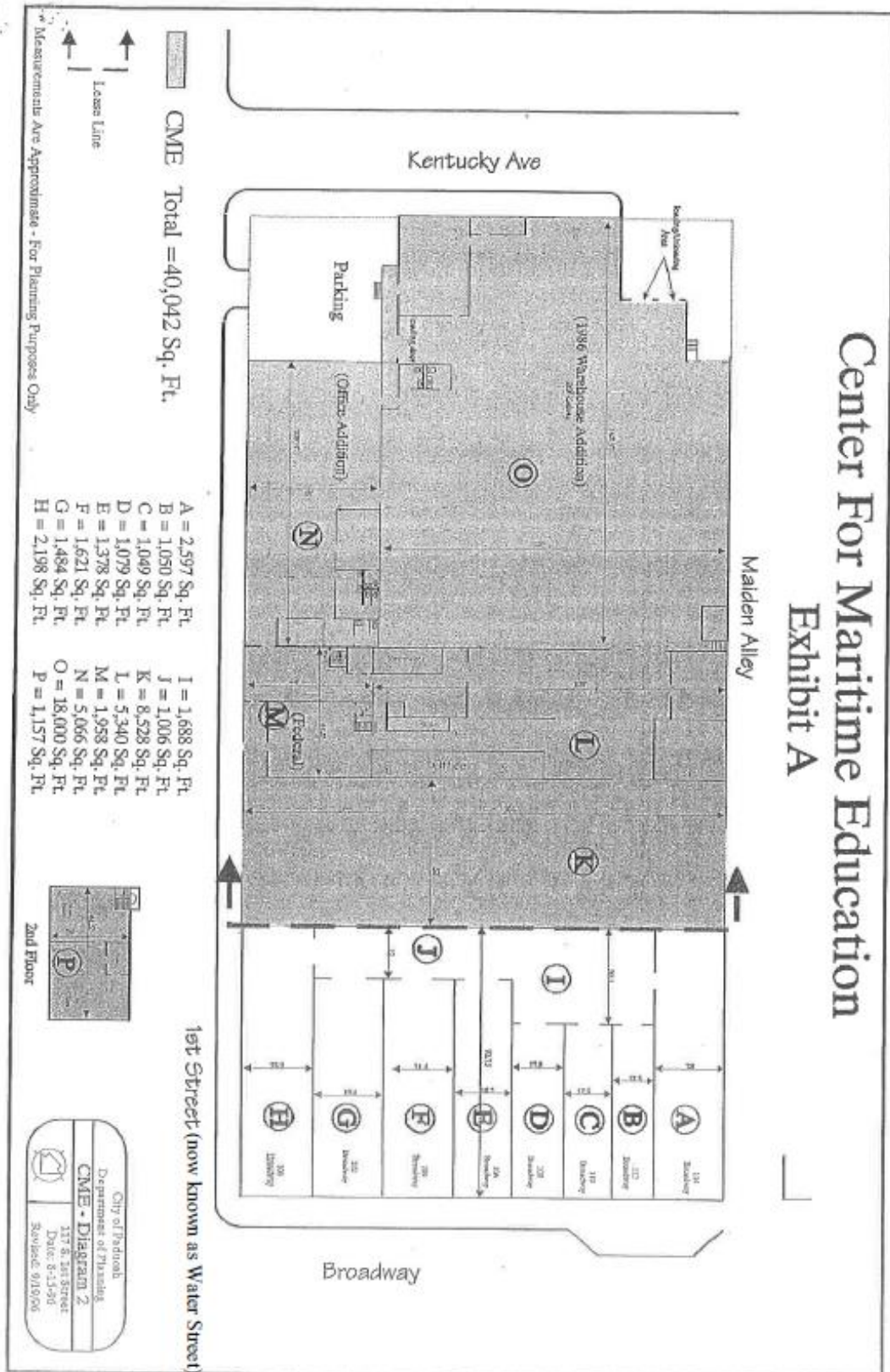
My commission expires _____.

NOTARY PUBLIC

EXHIBIT A
DESCRIPTION OF PREMISES

EXHIBIT A

The Leased Premises shall consist the shaded areas, labeled "K", "L", "M", "N", "O", and "P".



Agenda Action Form

Paducah City Commission

Meeting Date: October 12, 2021

Short Title: Approve Contract Modification to Professional Services Contract with HDR, Inc. for the Paducah Floodwall Pump Station #2 Project in the amount of \$55,315.00 - **R MURPHY**

Category: Ordinance

Staff Work By: Melanie Townsend, Rick Murphy

Presentation By: Rick Murphy

Background Information: Summary: A contract amendment for out of scope work performed by HDR, Inc. during the Paducah Floodwall Pump Station #2 project. HDR has submitted the following additional fee schedule:

Structural Analysis	\$ 8,275.00
Geotechnical & Inspection	\$ 37,040.00
On-site Inspections	\$ 10,000.00
Total Estimated Not to Exceed Fee Increase	\$ 55,315.00

Background:

Original Contract Information (Ordinance 2016-08-8410, dated August 23, 2016)

As a part of the design agreement with the U.S. Department of the Army (USACE) for the design of the Floodwall Rehabilitation Project (a/k/a Ohio River Shoreline Reconstruction Project), an original contract with HDR Engineering, Inc. (HDR) was executed in August of 2016. The original contract scope is as follows:

- To finalize project plans for Pump Stations #2 and #9 for a fee of \$57,500.00.
- To provide construction administration and inspection services at an hourly rate not to exceed \$75,000.
- The total contract amount with HDR Engineering, Inc. is \$132,500.00.

Amendment #1 (Ordinance 2018-05-8532, dated May 29, 2018)

HDR projected new construction and inspection fees for Pump Station #2 that are not to exceed time and materials amounts. These amounts are based on expanded scope and added third party inspection requirements.

- Construction Administration-\$91,542
- Resident Inspection Services-\$136,263
- Total: \$227,805

Ordinance 2018-05-8532 increased the original contract amount from \$132,000.00 to \$358,162.00.

Amendment #2 (Ordinance 2020-11-8662, dated October 24, 2020)

During the construction portion of the Pump Station #2 project, HDR performed out of scope work items for design services during construction due to extended effort and unforeseen changes.

The recommendation was to amend HDR's current contract from \$358,162.00 to \$439,662.00.

- Construction administration/inspection shall now include the expanded scope of services as outlined above for Pump Station #2, a/k/a \$81,500.
- Construction administration/inspection shall retain the remaining contract balance of \$36,673.54 for Pump Station #9 expenses.
- The construction administration/inspection portion of the contract is time and materials, Not to Exceed contract. HDR will bill based on actual hours accrued on the contract.
- HDR will bill based on the updated fee for hourly services as outlined in the scope of services (see attached).

Ordinance 2020-11-8662 increased the approved professional engineering services contract from \$358,162.00 to \$439,662.00.

Amendment #3

During the construction portion of the Pump Station #2 project, HDR performed out of scope work items for design services during construction due to extended effort and unforeseen changes.

The recommendation is to amend HDR's current contract from \$439,662.00 to a Not to Exceed amount of \$494,977.00.

- Construction administration/inspection shall now include the expanded scope of services as outlined above for Pump Station #2, a/k/a \$55,315.00.
- Construction administration/inspection shall retain the remaining contract balance of \$36,673.54 for Pump Station #9 expenses.
- The construction administration/inspection portion of the contract is time and materials, Not to Exceed contract. HDR will bill based on actual hours accrued on the contract.
- HDR will bill based on the updated fee for hourly services as outlined in the scope of services (see attached).

Upon approval, the new agreement would increase the approved professional engineering services contract from \$439,662.00 to \$494,977.00

All dollars spent on this original and amended contract regarding Pump Station #2 will be reimbursed or funded through KIA/SRF Loan and/or CDBG and DRA grants.

Does this Agenda Action Item align with a Commission Priority? Yes

If yes, please list the Commission Priority: Stormwater-Floodwall Rehabilitation

Communications Plan: Coordinate with Communications Manager on public communication

Funds Available: Account Name: Pump Station #2

Account Number: FW0014

Staff Recommendation: To adopt an Ordinance authorizing the Mayor to execute an amended agreement with HDR Engineering, Inc to reflect out of scope work items in the amount of \$55,315.00. The approval of the

contract amendment will increase the total contract amount from \$439,662.00 to a Not to Exceed fee of \$494,977.00.

Attachments:

1. agree-amend 3 HDR floodwall pump station #2
2. Paducah FPS#2_Amend_3_091621

ORDINANCE NO. 2021-__ -__

**AN ORDINANCE OF THE CITY OF PADUCAH KENTUCKY,
APPROVING A THIRD AMENDMENT TO THE PROFESSIONAL SERVICE
AGREEMENT FOR ENGINEERING SERVICES FOR FLOOD CONTROL PUMP
STATION #2 WITH HDR ENGINEERING, INC. TO REFLECT AN EXPANDED
CONSTRUCTION ADMINISTRATION AND INSPECTION SCOPE AND TO
INCREASE THE AGREEMENT IN AN AMOUNT OF \$55,315 AND AUTHORIZING
THE EXECUTION OF ALL DOCUMENTS RELATED TO SAME**

WHEREAS, on August 30, 2016, the City and HDR Engineering, Inc., (the “Engineer”) entered into a Short Form Agreement for Professional Services (the “Agreement”) whereby the City engaged the Engineer to provide professional engineering, design, consulting and related services in connection with the improvement and rehabilitation of Flood Control Pump Stations #2 and #9 (the “Project”) in an amount of \$132,000 as approved by Ordinance No. 2016-08-8410; and

WHEREAS, the City of Paducah entered into Amendment No. 1 to the Agreement to increase the original Agreement to \$358,162 due to an expanded scope and added third party inspection requirements as approved by Ordinance No. 2018-05-8532; and

WHEREAS, the City of Paducah entered into Amendment No. 2 to the Agreement to increase the Amended Agreement from \$358,162 to \$439,662, as approved by Ordinance No. 2020-11-8662; and

WHEREAS, during the construction portion of the Pump Station #2 project, HDR performed out of scope work items for design services during construction due to extended effort and unforeseen changes; and

WHEREAS, the City of Paducah now wishes to amend the Agreement to included the expanded scope of services and to increase the contract from \$439,662 to an amount not to exceed \$494,977.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD
OF COMMISSIONERS OF THE CITY OF PADUCAH, KENTUCKY:**

SECTION 1. Recitals and Authorization. The City hereby approves the Third Amendment to the Professional Service Agreement with HDR Engineering, Inc., for an increase in a not to exceed amount of \$55,315 for expanded construction administration and inspection services for Pump Station #2. Said Third Amendment results in a total Agreement cost of \$494,977. It is further determined that it is necessary and desirable and in the best interests of the City to enter into this Third Amendment. Further, the Mayor of the City is hereby authorized to execute all documents related to said Amendment.

SECTION 2. Compensation. All dollars spent on the original and amended Agreement regarding Pump Station #2 will be reimbursed or funded through KIA/SRF Loan and/or CDBG

and DRA Grants. The expenditure authorized in Section 1 above shall be paid through the Pump Station # 2 Rehab Project Account No. FW0014.

SECTION 3. Severability. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 4. Compliance With Open Meetings laws. The City Commission hereby finds and determines that all formal actions relative to the adoption of this Ordinance were taken in an open meeting of this City Commission, and that all deliberations of this City Commission and of its committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with applicable legal requirements.

SECTION 5. Conflicts. All ordinances, resolutions, orders or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed and the provisions of this Ordinance shall prevail and be given effect.

SECTION 6. Effective Date. This ordinance shall be read on two separate days and will become effective upon summary publication pursuant to KRS Chapter 424.

George Bray, Mayor

ATTEST:

Lindsay Parish, City Clerk

Introduced by the Board of Commissioners, September 28, 2021

Adopted by the Board of Commissioners, _____

Recorded by Lindsay Parish, City Clerk, _____

Published by The Paducah Sun, _____

ord\eng\agree-amend 3 HDR floodwall pump station #2

AMENDMENT #4 TO AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES
FLOOD PUMP STATIONS #2 AND #9-10032833

HDR ENGINEERING, INC. ("HDR") entered into an Agreement on August 30, 2016 to perform engineering services for the **CITY OF PADUCAH, KENTUCKY** ("OWNER");

CITY OF PADUCAH, KENTUCKY desires to amend this Agreement in order for HDR to perform services beyond those previously contemplated;

HDR is willing to amend the agreement and perform the additional engineering services.

NOW, THEREFORE, HDR and **CITY OF PADUCAH, KENTUCKY** do hereby agree:

The Agreement and the terms and conditions therein shall remain unchanged other than those sections and exhibits listed below;

Section I shall include the following services: Additional design services during construction per attached Exhibit A.

Section IV shall be:

LUMP SUM:

ORIGINAL CONTRACT:	\$57,500.00
AMENDMENT #1:	<u>\$36,183.46</u>
TOTAL:	\$93,683.46

HOURLY, NOT-TO-EXCEED:

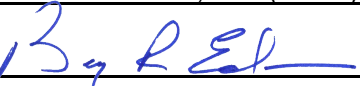
ORIGINAL CONTRACT:	\$ 75,000.00
AMENDMENT #2:	\$189,478.54
AMENDMENT #3:	\$ 81,500.00
AMENDMENT #4:	<u>\$ 55,315.00</u>
TOTAL:	\$401,293.54

TOTAL CONTRACT FEE: \$494,977.00

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year written below:

HDR ENGINEERING, INC. ("HDR")

CITY OF PADUCAH, KENTUCKY ("OWNER")

By: 

By: _____

Name: Ben R. Edelen

Name: George P. Bray

Its: Sr. Vice President/Area Manager

Its: Mayor

Date: September 16, 2021

Date: _____



August 26, 2021

Mr. Rick Murphy, PE
City Engineer
City of Paducah, KY
300 South 5th Street
PO Box 2267
Paducah, KY 42002

RE: HDR Contract Financial Status
Paducah Flood Pump Station #2 & #9 Improvement Projects

Dear Mr. Murphy,

HDR has performed out of scope work items for design services during construction due to extended effort and unforeseen changes as follows:

- Per the request of the City and the USACE, HDR provided additional structural analysis of the station to review seismic code conformance. This analysis required additional structural calculations and research of the original pump and motor weights. It was found that the new pumps and motors were within the allowable tolerance per code.
- During excavation and installation of the new discharge piping, unsuitable soil conditions were encountered causing the floodwall to be unstable. HDR's geotechnical professionals investigated several options of potential repair, including developing a sheeting plan. Additional testing, engineering, inspection, and coordination with the USACE was necessary to determine an appropriate solution and to monitor the contractors progress in rebuilding the floodwall. The changes in construction have also required additional funding assistance through SRF/KIA.
- Additional expenses due to on-site inspection of pump performance testing and casting inspections are required by the contract specifications. HDR and City of Paducah staff will travel to the pump manufacturer (Cascade) headquarters located in Sante Fe Springs, California to witness the performance testing. The additional expenses are estimated at \$10,000.

Below is an estimate of hours per rate category for the out-of-scope work items:

Structural Analysis

Category	Hours	Rate	Fee
Project Manager	12.5	\$200	\$2,500
Project Engineer	38.5	\$150	\$5,775
		Total	\$8,275

Geotechnical & Inspection

Category	Hours	Rate	Fee
Project Manager	10	\$200	\$2,000
Construction Administrator	58	\$155	\$8,990
Project Engineer	24.5	\$150	\$3,675
Resident Engineer	125	\$115	\$14,375
Additional Testing			\$8,000
		Total	\$37,040

In addition to the request for additional fee for the hourly services, HDR respectfully requests inclusion of the following geotechnical and materials testing prices into the contract:

- Standard Proctor - \$151/each
- Atterburg Limits - \$70/each
- Sieve Analysis with #200 Wash - \$102/each
- Permeability Test - \$477/each

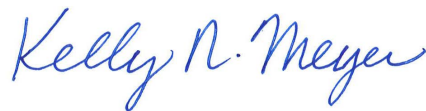
Due to these scope changes, HDR is requesting an increase to the hourly not to exceed portion of the contract in the amount of \$55,315 to a new ceiling amount of \$401,293.54. The total new contract amount, including the lump sum portion, would be \$494,977.00.

Please let me know if there are any questions or if you need additional information.

Sincerely,



Kyle R. Guthrie, P.E.
Associate Vice President



Kelly Meyer, PE, PLS
Vice President

cc: Mike Hansen, PE
Sheryl Chino
Melanie Townsend

Agenda Action Form

Paducah City Commission

Meeting Date: October 12, 2021

Short Title: Ordinance Authorizing Institution of Condemnation Proceedings for Acquisition of Easement
from ProRealEstate, LLC

Category: Ordinance

Staff Work By: Mayor George Bray

Presentation By: Jason Petersen, Paducah Water Works

Background Information: Paducah Water Works is requesting authority from the City of Paducah to institute condemnation proceedings to acquire necessary easements from ProRealEstate, LLC in order to construct a sixteen (16) inch water main which will run from the Cairo Road Pump Station to the Cairo Road Elevated Storage Tank. All other necessary easements were voluntarily granted by the owners of the land which the project will cross. This is the sole remaining landowner whose easement is necessary to begin the project. Paducah Water Works is investing Six Million Dollars into the project. Negotiations with the landowner have been ongoing since fall of 2020 but have been unsuccessful. As such, condemnation proceedings are necessary to begin construction of the project and to provide higher quality services to the citizens.

Does this Agenda Action Item align with a Commission Priority? Yes

If yes, please list the Commission Priority: Enhancement of Services provided to citizens of City of Paducah

Communications Plan:

Funds Available: Account Name: N/A
 Account Number:

Recommendation: That the first reading for the ordinance be held on October 12, 2021 and that a second reading be scheduled for October 26, 2021.

Attachments: Ordinance and its Exhibits

ORDINANCE NO. 2021 - _____

**AN ORDINANCE DEEMING IT NECESSARY TO
CONDEMN AND ACQUIRE FOR PUBLIC PURPOSES A
CERTAIN PERMANENT UTILITY EASEMENT AND A
TEMPORARY CONSTRUCTION EASEMENT OVER AND
ACROSS THE REAL PROPERTY OF PROREALESTATE,
LLC, FOR THE EXTENSION, CONSTRUCTION,
MAINTENANCE, AND OPERATION OF THE MUNICIPAL
WATER SYSTEM BY PADUCAH WATER AND
AUTHORIZING THE INSTITUTION OF
CONDEMNATION PROCEEDINGS FOR THE
ACQUISITION OF SUCH EASEMENTS.**

WHEREAS, the Board of Commissioners of the Paducah Water Works (the “Paducah Water”) is a political subdivision of the Commonwealth of Kentucky and an agency of the City of Paducah, Kentucky (the “City”) duly established and empowered pursuant to KRS 96.320 to manage on behalf of the City the municipal water system of the City of Paducah; and

WHEREAS, Paducah Water is authorized to establish, erect, construct, acquire, own, maintain, and operate the municipal water system, together with extensions and necessary appurtenances thereto, within or without the corporate limits of the City; and

WHEREAS, Paducah Water has determined that for purposes of providing an adequate and reliable water supply to its customers in the City of Paducah and McCracken County, Kentucky, it is necessary to extend, establish, erect, construct, acquire, own and maintain a sixteen (16) inch water main which will run from the Cairo Road Pump Station to the Cairo Road Elevated Storage Tank and the northwestern portion of Paducah Water’s Service Area (the “Project”); and

WHEREAS, a certain permanent utility easement and a temporary construction easement across two adjacent parcel(s) of real property owned by ProRealEstate, LLC, a Kentucky limited liability company (the “Owner”) is necessary for the extension, construction, erection, maintenance, and operation of the Project, which easements are more particularly depicted on **Exhibit A** and described on **Exhibit B** attached hereto (the “Easements”); and

WHEREAS, the Easements are needed by Paducah Water for the successful completion of the Project which is in furtherance of the public purpose to provide an adequate and reliable municipal water system to its customers; and

WHEREAS, Paducah Water has been unable to contract or agree with the Owner thereof for the acquisition or purchase of the Easements sought to be condemned; and

WHEREAS, the real property of the Owner affected by the acquisition of the Easements is more particularly described on **Exhibit C** (the “Real Property”); and

WHEREAS, Paducah Water by resolution adopted on January 27, 2021 has authorized the institution of condemnation proceedings on its behalf in the name of the City for the use and benefit of Paducah Water to acquire the Easements.

NOW, THEREFORE, be it ordained by the City of Paducah, Kentucky:

Section 1. That public use and necessity require the acquisition by Paducah Water of the Easements for the extension, construction, erection, maintenance, and operation of the Project which is in furtherance of the public purpose to provide an adequate and reliable municipal water system to its customers. The Easements sought to be condemned are described in the attached Exhibits A and B and the Real Property affected by the Easements are described in the attached Exhibit C.

Section 2. The City does hereby authorize the acquisition of the Easements pursuant to the Eminent Domain Act of Kentucky and further authorizes the institution of condemnation proceedings in the McCracken Circuit Court in the name of the City for the use and benefit of Paducah Water against the Owner and all other parties of interest, to acquire the Easements across the Real Property of Owner.

Section 3. That with respect to the Easements sought to be condemned; Paducah Water shall also acquire the following rights and interests:

(a) Owner shall not erect or install any permanent improvement within the area or upon the land of the aforesaid permanent utility easement; and

(b) The right of ingress and egress over the Real Property of Owner to and from the Easements and the right of entry upon, passage over, deposit of excavated earth and storage of material and equipment on the Real Property of Owner in the exercise of its rights under the Easements and the extension, construction, erection, maintenance, and operation of the Project.

Section 4. Pursuant to the provisions of KRS 416.560 (2) the City of Paducah on behalf of Paducah Water is directed to seek and request from the governing body of McCracken County, Kentucky (“County”) authorization to institute these condemnation proceedings in the McCracken Circuit Court in the name of the City for the use and benefit of Paducah Water against the Owner and other parties of interest for the condemnation of the Easements. Further, the County shall be named as a co-petitioner in the condemnation proceedings authorized by this Ordinance.

Section 5. That the corporate counsel for the City, the law firm of Denton Law Firm, PLLC, shall institute these condemnation proceedings on behalf of the City and Paducah Water and shall be appointed as special counsel for the County to represent the interests of the City,

Paducah Water, and the County in the proceedings authorized herein, and all costs, including attorney fees, involved in or arising out of such proceedings shall be borne by Paducah Water.

Section 6. Severability. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

Section 7. Compliance With Open Meetings Laws. The City Commission hereby finds and determines that all formal actions relative to the adoption of this Ordinance were taken in an open meeting of this City Commission, and that all deliberations of this City Commission and of its committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with applicable legal requirements.

Section 8. Conflicts. All ordinances, resolutions, orders or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed and the provisions of this Ordinance shall prevail and be given effect.

Section 9. Emergency. Pursuant to KRS 83A.060, the City Commission suspends the requirement of a second reading of this Ordinance. As grounds therefore, the City Commission does hereby declare an emergency to exist as to the authorizations provided here. Specifically, any further delay in the acquisition of the Easements could adversely impact commencement of the construction and the Project.

Section 10. Effective Date. This Ordinance shall take effect from and after its passage, as provided by law.

GEORGE BRAY, MAYOR

ATTEST:

City Clerk

Introduced by the Board of Commissioners, _____, 2021.

Adopted by the Board of Commissioners, _____, 2021.

Recorded by City Clerk, _____, 2021.

Published by The Paducah Sun, _____, 2021.



PROJECT NO. 20001-03 DATE January 2021



EXHIBIT A

OWNER:	PADUCAH WATER
PROJECT:	CAIRO ROAD WATERMAIN IMPROVEMENTS
DRWING:	PROREAL ESTATE, LLC PROPERTY

EXHIBIT B

EASEMENTS

The Easements are located along the Cairo Road, in McCracken County, Kentucky and are better defined as follows:

Easement 1

A strip of land 20 feet in width, centered about a water line beginning at the Grantor's east property line and ending at the Grantor's west property line as further described below.

Commencing at the Grantor's northeast property corner, said corner being in the south right-of-way line of Cairo Road and also being the northwest corner of the ProRealEstate, LLC property as described in Deed Book 1420 Page 389, in the McCracken County Court Clerk's office; thence, in a southerly direction with the Grantor's east property line an approximate distance of 25 feet to the point of beginning; thence, in a westerly direction, centered about a water line, an approximate distance of 250 feet to a point on the Grantor's west property line, said point being approximately 25 feet from the Grantor's northwest property corner. The total area of the proposed permanent easement is 5,130 sq ft (0.12 acres).

In addition, a temporary construction easement 10 feet in width shall be granted, adjacent, and parallel to the south side, with a variable width easement granted along the north side of the described perpetual easement for the entire length of said easement. The total area of the proposed temporary easement is 5,630 sq ft (0.13 acres).

Said tract being a portion of the same property conveyed to ProRealEstate, LLC, a Kentucky limited liability company, by Deed dated October 30, 2020, in Deed Book 1420 Page 392 in the McCracken County Court Clerk's office.

Easement 2

A strip of land 20 feet in width, centered about a water line beginning at the Grantor's east property line and ending at the Grantor's west property line as further described below.

Commencing at the Grantor's northeast property corner, said corner being in the south right-of-way line of Cairo Road and also being the northwest corner of the BJE Family, LLC property as described in deed book 921, page 691, in the McCracken County Court Clerk's office; thence, in a southerly direction with the Grantor's east property line an approximate distance of 22 feet to the point of beginning; thence, in a westerly direction, centered about a water line, an approximate distance of 470 feet to a point on the Grantor's west property line, said point being approximately 25 feet from the Grantor's northwest property corner. The total area of the proposed permanent easement is 9,370 sq ft (0.22 acres).

In addition, a temporary construction easement 10 feet in width shall be granted, adjacent, and

parallel to the south side, with a variable width easement granted along the north side of the described perpetual easement for the entire length of said easement. The total area of the proposed temporary easement is 11,800 sq ft (0.27 acres).

Said tract being a portion of the same property conveyed to ProRealEstate, LLC, a Kentucky limited liability company, by Deed dated October 30, 2020, in Deed Book 1420 Page 389 in the McCracken County Court Clerk's office.

EXHIBIT C

THE REAL PROPERTY OF THE OWNER

The Real Property of the Owner is more particularly described as follows:

Parcel 1

Being a 3.00 acre tract shown on the Waiver of Subdivision Plat of the Michael F. Gallagher Revocable Trust Property of record in Plat Section "L", page 1404, McCracken County Clerk's Office.

Being the same property conveyed to ProRealEstate, LLC, a Kentucky limited liability company, by deed dated October 30, 2020, of record in Deed Book 1420, Page 392 of the McCracken County Court Clerk's Office.

Parcel 2

Beginning at a concrete monument in the south right-of-way line of the Cairo Road, and also being 161.26 feet west of the Swanson Lane centerline, extended; running thence with the south right-of-way line of the Cairo Road South 69 degrees 23 minutes West 468.21 feet to a concrete monument; thence south 19 degrees 52 minutes east 166.43 feet to a concrete monument; thence south 7 degrees 08 minutes east 346.47 feet to a concrete monument; thence north 88 degrees 40 minutes east 579.67 feet to a concrete monument; thence north 20 degrees 17 minutes west 694.83 feet to the point of beginning. Said tract containing 6.93 acres (previously described as the John Griffin 6.65 acre tract in Plat Book "F", page 42 in the McCracken County Clerk's Office).

It is understood that 25 x 35 foot cemetery is located on the above described property, and that said cemetery will remain in its present location forever.

This property is also subject to an easement in favor of Mamie Stewart and the heirs of W. C. Griffin granted by the McCracken Circuit Court in Civil Action No. 88-CI-141. Reference is made to said lawsuit regarding said easement.

Being in all respects the same property conveyed to ProRealEstate, LLC, a Kentucky limited liability company, by deed dated October 30, 2020, of record in Deed Book 1420, Page 389 of the McCracken County Court Clerk's Office.