

**Marsh & McLennan Agency, LLC**  
**Client Service Agreement**

City of Lebanon (“Client”)

and

Marsh & McLennan Agency LLC (“MMA”).

It is agreed as follows:

**1. Services**

MMA is engaged as the Client’s insurance, risk management and insurance broker and shall perform the following services for the Client with respect to the following lines of insurance coverage: [Property, Electronic Data Processing, Inland Marine Property, General Liability, Law Enforcement Liability, Employee Benefits Liability, Public Officials Wrongful Acts Liability, Ohio Stop Gap, Sexual Abuse, Employment Practices Liability, Automobile, Excess Liability, Crime, Cyber Liability, Public Officials Bonds, Multi-Media Liability] (“Fee Coverages”)

- a. Work with the Client to assess the Client’s risks;
- b. Identify and negotiate on the Client’s behalf with insurers and keep the Client informed of significant developments. MMA shall be authorized for purposes of this Agreement to represent and assist the Client in all discussions and transactions with all insurers, provided that MMA shall not place any insurance on behalf of the Client unless so authorized by the Client;
- c. Assist with documentation and other steps to obtain commitments for and implement the Client’s insurance program upon the Client’s instructions, it being understood that MMA will not independently verify or authenticate Client-provided information necessary to prepare underwriting submissions and other documents relied upon by insurers, and the Client shall be solely responsible for the accuracy and completeness of such information and other documents furnished to MMA and/or insurers and shall sign any application for insurance;
- d. Use its best efforts to place insurance on behalf of the Client, if so instructed by the Client including the use of available MMA Insurance Agency services to include the following; Risk Management Services, Loss Control Services, Human Resource Consulting (additional fees may apply depending on scope of project) and Technology-based programs.
- e. Monitor published financial information of the Client’s current insurers and alert the Client when the status of one or more of such insurers falls below MMA’s minimum financial guidelines. MMA will not, however, be responsible for the solvency or ability to pay claims of any insurance carrier. Insurers with whom the Client’s risks are placed will be deemed acceptable to the Client, in the absence of contrary instructions from the Client;
- f. Follow up with insurance carriers for timely issuance of policies and endorsements;

- g. Review policies and endorsements for accuracy and conformity to specifications and negotiated coverage;
- h. In certain cases, placements which MMA makes on the Client's behalf may require the payment of surplus lines taxes and/or fees to state regulators, boards or associations, which the Client agrees to pay. Such taxes will be identified on invoices covering these placements;
- i. Utilize the services of other intermediaries to assist in the marketing of the Client's insurance (including brokers in the London and other markets when in MMA's professional judgment those services are necessary or appropriate. Such intermediaries may be affiliates of MMA or not related to MMA. The compensation of such intermediaries is not included in MMA's compensation under this Agreement and will be paid by insurers out of paid premiums;
- j. Process or facilitate the processing of certificates of insurance, bonds, auto identification cards, as requested by the Client;
- k. Review schedules, audits, rating adjustments, dividend calculations and loss data;
- l. Provide the Client with detailed invoices, except in the case of direct billing by insurers;
- m. Assist the Client in establishing claims reporting procedures;
- n. Consult with the Client regarding specific claims;
- o. Follow-up with insurers with respect to timely collection of claims;
- p. Act as a liaison between the Client and insurers;
- q. Assist the Client in connection with issues relating to interpretation of insurance policies placed by MMA;
- r. Meet regularly with the Client's key people as designated by Client to discuss strategy and open items.

If MMA has taken over any existing program or policies implemented by another broker, MMA will not assume any responsibility for the adequacy or effectiveness of those programs or policies or any actions or omissions occurring prior to MMA's retention. Within 60 days, MMA will have completed a review of those programs and policies and will make recommendations it believes are necessary.

MMA does not speak for any insurer, is not bound to utilize any particular insurer, and does not have the authority to make binding commitments on behalf of any insurer.

MMA does not guarantee or make any representation or warranty that insurance can be placed on terms acceptable to the Client.

## **2. Compensation**

MMA will deliver the services as outlined in this Agreement for an annual fee of \$15,000. The fee shall be paid ANNUALLY as invoiced by MMA. The foregoing fee is not required by the insurer(s) with which MMA will place insurance hereunder, and MMA is not required by such insurer(s) to charge this fee.

MMA may place insurance coverage through a wholesaler or Managing General Agent of the insurer, in which case the wholesaler or MGA may receive commission compensation directly from the insurer pursuant to their contractual agreement, at no charge to Client. Any such commissions shall be disclosed to Client in writing prior to Client's binding of any such policies.

### **3. Term and Termination**

A. Client hereby appoints MMA to provide the Agreed Services effective September 30, 2021, for a term of 24 MONTHS. At Client's option and upon at least 90 days' advance written notice prior to expiration of the term, the term may be extended for an additional 12 MONTHS.

B. In the event of a material breach of the terms of this Agreement, the non-breaching party may terminate this Agreement by providing written notice of intent to terminate to the breaching party. The breaching party thereafter shall be provided 15 calendar days to cure the alleged breach. If such alleged breach is cured within 15 days, the Agreement remains in effect.

C. The parties may terminate by mutual written agreement at any time.

D. Client shall be responsible for fees incurred through the date termination is effective. Upon termination, MMA shall cooperate in good faith in assisting Client with any transfer of program or coverages to a subsequent service provider.

### **4. Accuracy of Information**

Client shall be solely responsible for the accuracy and completeness of all information that furnished to MMA and/or insurers, and shall sign any required application for insurance. MMA shall not be responsible to verify the accuracy or completeness of any information that provided by Client, and MMA shall be entitled to rely on that information. MMA shall have no liability for any errors, deficiencies or omissions in any Services provided to Client, including the placement of insurance on your behalf, that are based on inaccurate or incomplete information provided to MMA. Client is hereby advised that the failure to provide all necessary information to an insurer, whether intentional or by error, could result in the impairment or voiding of coverage. Client further agrees to review all policy documents provided to Client by MMA.

### **5. Books and Records**

The Client is entitled to copies of reports and/or documents relating to its account. However, files (other than copies of insurance policies) will not be retained for more than seven years after the expiration of a particular policy's term.

### **6. Compensation Disclosure**

MMA's Compensation Disclosure is attached as Exhibit "A."

### **7. Confidentiality**

A. MMA recognizes that certain confidential information will be furnished by Client to MMA in connection with its services pursuant to this Agreement. MMA agrees that it will disclose Confidential Information only to those who, in MMA's reasonable determination, have a need to know such information and are permitted by applicable Federal and State laws to be privy to such Information. Client recognizes that as a function of its role as Consultant, MMA will provide Confidential Information to insurers, underwriters, wholesalers, or other insurance marketing representatives with whom MMA has privacy agreements in place as required by law. Confidential information shall not include information that (i) is in the possession of MMA prior to its receipt of such information from Client; (ii) becomes publicly available other than as a result of breach of this Agreement by MMA; or (iii) is or can be independently acquired or developed by MMA without violating any of its obligations under this Agreement. Notwithstanding the foregoing, disclosure by MMA of any confidential information pursuant to the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, judicial or administrative agency or by a legislative body or committee shall not constitute a violation of this Agreement.

B. Client agrees that MMA is the sole owner of the following material and that Client shall not use or disclose such material following termination of this Agreement except to the extent (i) specific written consent to such use or disclosure is obtained from Client; (ii) required pursuant to the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, judicial or administrative agency or by a legislative body or committee; or (iii) subject to disclosure under ORC 149.43:

- 1) Proprietary computer programs;
- 2) Proprietary procedures and methods of administration; and
- 3) Underwriting and client files and/or reports developed by MMA.

## **8. No Fiduciary Responsibility**

The parties acknowledge and agree that, in performing the Services, MMA and its affiliates are not acting as a fiduciary for Client, except to the extent required by applicable law, and does not have a fiduciary or other enhanced duty to Client. Any reports or advice provided by MMA should not be relied upon as accounting, legal, regulatory or tax advice. In all instances, MMA recommends that Client seek its own advice on such matters from professional accounting, legal, regulatory and tax advisors.

## **9. Liability Limitation/Waiver of Jury Trial**

MMA's aggregate liability arising out of or relating to any services on Client's account shall not exceed ten million dollars (\$10,000,000), and in no event shall MMA be liable for any indirect, special, incidental, consequential or punitive damages or for any lost profits or other economic loss arising out of or relating to such services. In addition, Client agrees to waive its right to a jury trial in any action or legal proceeding arising out of or relating to such services. The foregoing limitation of liability and jury waiver shall apply to the fullest extent permitted by law.

## **10. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to any conflicts of law provisions.

**11. Severability**

It is the intent of the parties that the provisions of this Agreement shall be enforced to the fullest extent permitted by applicable law. To the extent that the terms set forth in this Agreement or any word, phrase, clause or sentence is found to be illegal or unenforceable for any reason, such word, phrase, clause or sentence shall be modified or deleted in such manner so as to afford the party for whose benefit it was intended the fullest benefit commensurate with making this Agreement, as modified, enforceable, and the balance of this Agreement shall not be affected thereby, the balance being construed as severable and independent.

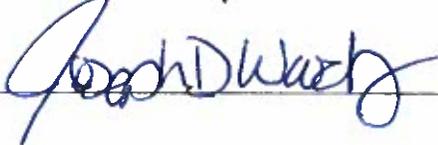
**12. Miscellaneous.**

This Agreement contains the entire understanding of the parties with respect to the subject matter contained herein, superseding all prior agreements, understandings and negotiations with respect to such matters. This Agreement may be modified or otherwise amended and the observance of any term of this Agreement may be waived, only if such modification, amendment or waiver is in writing and signed by the party to be charged with same. This Agreement shall be binding upon and inure to the benefit of the parties' respective successors. Neither party shall have any liability for any failure or delay in performance of its obligations under this Agreement because of circumstances beyond its reasonable control, including without limitation, acts of God, fires, floods, earthquakes, acts of war or terrorism, civil disturbances, sabotage, accidents, unusually severe weather, governmental actions, power failures, computer/network viruses that are not preventable through generally available retail products, catastrophic hardware failures or attacks on its server.

ACCEPTED AND AGREED this 24<sup>th</sup> day of May, 20 21.

Marsh & McLennan Agency, LLC

Print name/title: Joseph D. Woods, VP

Sign:  Date: 5/24/21

City of Lebanon

Print name/title: Scott Brunka - City Manager

Sign:  Date: 5/24/21