

# CITY OF CLAYTON, OHIO

## RESOLUTION NO. R- 02 - 23 - 23

### **A RESOLUTION AUTHORIZING THE NEGOTIATION, EXECUTION, AND DELIVERY OF GOVERNMENTAL LEASE-PURCHASE AGREEMENT NO. 008-0883355-300 IN PRINCIPAL AMOUNT NOT TO EXCEED \$166,650.99 BETWEEN CITY OF CLAYTON, OHIO AND THE HUNTINGTON NATIONAL BANK AND PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH**

**WHEREAS**, the City of Clayton, Ohio (the “Lessee”) is a political subdivision duly organized and existing pursuant to the Constitution and laws of the State of Ohio; and

**WHEREAS**, Lessee is duly authorized by applicable law to acquire such items of personal property as are needed to carry out its governmental functions and to acquire such personal property by entering into lease-purchase agreements; and

**WHEREAS**, Lessee hereby finds and determines that the execution of a Lease for the purpose of leasing with the option to purchase the property designated and set forth in Attachment 2 to the Lease is appropriate and necessary to the function and operations of the Lessee; and

**WHEREAS**, The Huntington National Bank, (the “Lessor”) shall act as Lessor under said Lease; and

**WHEREAS**, the Lease shall not constitute a general obligation indebtedness of the Lessee within the meaning of the Constitution and laws of the State.

### **NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:**

Section 1. The Lessee, in substantially the form as presently before the governing body of the Lessee, is hereby approved, and the City Manager of the Lessee is hereby authorized to negotiate, enter into, execute, and deliver the Lease and related documents in substantially the form as presently before the governing body of the Lessee (*Exhibit A*) with such changes therein as shall be approved by such officer, and which Lease will be available for public inspection at the offices of Lessee.

Section 2. The Lessee shall, and the officers, agents and employees of the Lessee are hereby authorized and directed to take such further action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution, and to carry out, comply with and perform the duties of the Lessee with respect to the Lease.

Section 3. The Lessee’s obligations under the Lease shall be expressly subject to annual appropriation by Lessee; and such obligations under the Lease shall not constitute a

general obligation of Lessee or indebtedness of Lessee within the meaning of the Constitution and laws of the State of Ohio.

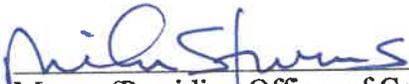
Section 4. All other related contracts and agreements necessary and incidental to the Lease are hereby authorized, ratified, and approved.

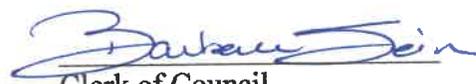
Section 5. As to said Lease, the Municipality reserves the right to consider for approval at a future date the issuance of not more than \$10,000,000 of tax-exempt obligations (other than "private activity bonds" which are not "qualified 501(c)(3) bonds") during the fiscal year in which each such Lease is issued and hereby designates each Lease as a qualified tax-exempt obligation for purposes of Section 265(b) of the Internal Revenue Code of 1986, as amended.

Section 6. This resolution shall take effect immediately upon its adoption and approval.

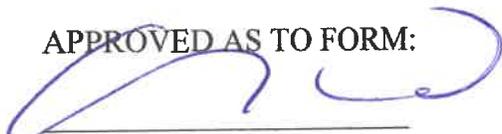
ADOPTED BY COUNCIL ON FEBRUARY 9, 2023.

AUTHENTICATION:

  
Mayor (Presiding Officer of Council)

  
Clerk of Council

APPROVED AS TO FORM:

  
Law Director

CERTIFICATION

The Undersigned Clerk of the above-named Municipality hereby certifies and attests that the undersigned has access to the official records of the Governing Body of the Municipality, that the foregoing resolution was duly adopted by said Governing Body of the Municipality at a meeting of said Governing Body and that such resolution has not been amended or altered and is in full force and effect on the date stated below.

  
Signature of Clerk of Municipality

Print Name: BARBARA SEIM

Official Title: Clerk of Council

Date: February 16, 2023

CERTIFICATION OF PUBLICATION

This shall certify that that the text of the above referenced enactment or a summary thereof was published once in the following newspaper and a summary posted in three places of public access as designated by Council.

Name of newspaper

Brookville Star

Date of publication

February 22, 2023

Barbara Jean

CLERK



GOVERNMENTAL LEASE-PURCHASE AGREEMENT NO. 008-0883355-300 DATED AS OF February 10, 2023 (TAX-EXEMPT)

LESSOR: The Huntington National Bank, 11100 Wayzata Blvd, Suite 700, Minnetonka, MN 55305. LESSEE: City of Clayton Ohio, 6001 Salem Avenue, Clayton, OH 45315. LEASE PAYMENT INFORMATION: Principal Portion: \$166,650.99, Interest Rate: 6.95%, Maximum Lease Term: 48 Months. BANK QUALIFIED: YOU hereby designate this Lease as a "qualified tax-exempt obligation"...

TERMS AND CONDITIONS

Please read this Governmental Lease-Purchase Agreement No. 008-0883355-300 (including all attachments and schedules hereto, and any related escrow agreement, "Lease") carefully and feel free to ask US any questions YOU may have about it.

- 1. LEASE: WE agree to lease to YOU and YOU agree to lease from US, the equipment listed on Attachment 2: Equipment Description, including all replacement parts, repairs, additions and accessories ("Equipment") on the terms and conditions of this Lease and on any attached schedule. 2. TERM: This Lease is effective on the earlier of the date on which WE disburse funds to the vendor of the Equipment or the date on which WE deposit funds for the purchase of the Equipment with an escrow agent... 3. LATE CHARGES. If a Lease Payment is not made on the date when due, YOU will pay US a late charge at the rate of 10% of the amount due or the maximum amount permitted by law, whichever is less, from the due date. 4. CONTINUATION OF LEASE TERM. YOU currently intend, subject to Section 5, to continue this Lease, and to pay Lease Payments hereunder, through the Maximum Lease Term. 5. NONAPPROPRIATION. YOU are obligated only to pay such Lease Payments under this Lease as may lawfully be made from funds budgeted and appropriated for that purpose during YOUR then current budget year. 6. WARRANTIES. WE are leasing the Equipment to YOU "AS-IS" and WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. 7. DELIVERY AND ACCEPTANCE. YOU ARE RESPONSIBLE, AT YOUR OWN COST, TO ARRANGE FOR THE DELIVERY AND INSTALLATION OF THE EQUIPMENT (UNLESS THOSE COSTS ARE INCLUDED IN THE COSTS OF THE EQUIPMENT TO US).

(Terms and Conditions continued on the next page of this Lease.)

LESSEE SIGNATURE: City of Clayton Ohio, Legal Name of Lessee, Signature: Amanda Zimmerlin, Print Name and Title: Amanda Zimmerlin, City Manager. LESSOR SIGNATURE: Name of Lessor The Huntington National Bank, By Signature, Print Name and Title, Lease Number: 008-0883355-300.

CERTIFICATE OF CLERK OR SECRETARY: I, the undersigned, do hereby certify that the officer of Lessee who executed the foregoing Lease on behalf of Lessee and whose genuine signature appears thereon, (1) is the duly qualified and acting officer of Lessee as stated beneath his or her signature and (2) is duly authorized to execute and deliver the foregoing Agreement on behalf of Lessee. Signature: Barbara Jain, Title: Clerk of Council. THE ABOVE CERTIFICATION MUST BE SIGNED BY THE CLERK OR SECRETARY OF LESSEE, AND THE CLERK OR SECRETARY MUST BE A DIFFERENT INDIVIDUAL THAN THE OFFICER SIGNING IN THE "LESSEE SIGNATURE" BOX.

**8. TITLE, PERSONAL PROPERTY, LOCATION, INSPECTION, NO MODIFICATIONS OR ALTERATIONS.** YOU have title to the Equipment; provided that title to the Equipment will immediately and without any action by YOU vest in US, and YOU will immediately surrender possession of the Equipment to US, (a) upon any termination of this Lease other than termination pursuant to Section 17 (including but not limited to any termination pursuant to Section 5) or (b) if YOU are in default of this Lease. It is the intent of the parties hereto that any transfer of title to US pursuant to this Section will occur automatically without the necessity of any bill of sale, certificate of title or other instrument of conveyance. YOU will, nevertheless, execute and deliver any such instruments as WE may request to evidence such transfer. As security for YOUR obligations hereunder, to the extent permitted by law, YOU grant to US a first and prior security interest in the Equipment, all cash and negotiable instruments comprising the escrow fund held under any related escrow agreement, and all proceeds of the foregoing. YOU have the right to use the Equipment during the term of this Lease, except as otherwise expressly set forth in this Lease. Although the Equipment may become attached to real estate, it remains personal property. YOU agree not to alter or modify the Equipment or permit a lien to be placed upon the Equipment or to remove the Equipment without OUR prior written consent. YOU agree to provide US with waivers of interest or liens from anyone claiming any interest in the real estate on which any items of Equipment is located. WE also have the right, at reasonable times, to inspect the Equipment.

**9. MAINTENANCE.** YOU are required, at YOUR own cost and expense, to keep the Equipment in good repair, condition and working order, except for ordinary wear and tear, and to supply all parts and servicing required. All replacement parts used or installed and repairs made to the Equipment will become OUR property. YOU acknowledge that WE are not responsible for providing any required maintenance and/or service for the Equipment. YOU will make all claims for service and/or maintenance solely to the supplier and/or manufacturer and such claims will not affect YOUR obligation to make Lease Payments.

**10. ASSIGNMENT.** YOU agree not to transfer, sell, sublease, assign, pledge or encumber either the Equipment or any rights under this Lease without OUR prior written consent. YOU agree that WE may sell, assign or transfer this Lease and, if WE do, the new owner will have the same rights and benefits, but not the obligations, that WE now have. The rights of the new owner will not be subject to any claims, counterclaims, defenses or set-offs that YOU may have against US. No assignment will be effective until YOU have received written notice from the assignor of the name and address of the assignee. YOU or YOUR agent will maintain a written record of each assignment in form necessary to comply with Section 149(a) of the Internal Revenue Code of 1986, as amended.

**11. LOSS OR DAMAGE.** YOU are responsible for the risk of loss or destruction of, or damage to, the Equipment. No such loss or damage relieves YOU from any obligation under this Lease. If any one of the Equipment is damaged by fire or other casualty or if title to, or the temporary use of, any of the Equipment is taken under the exercise of the power of eminent domain, the net proceeds ("Net Proceeds") of any insurance claim or condemnation award will be applied to the prompt replacement, repair, restoration, modification or improvement of that Equipment, unless YOU have exercised YOUR option to purchase the Equipment pursuant to Section 17. Any balance of the Net Proceeds remaining after such work has been completed will be paid to YOU.

**12. INDEMNITY.** WE are not responsible for any losses or injuries caused by the manufacture, acquisition, delivery, installation, ownership, use, lease, possession, maintenance, operation or rejection of the Equipment or defects in the Equipment. To the extent permitted by law, YOU agree to reimburse US for and to defend US against any claim for losses or injuries (including attorneys' fees and other expenses for the defense of such claim), regardless of nature, relating to the Equipment, including, without limitation, its manufacture, acquisition, delivery, installation, ownership, use, lease, possession, maintenance or operation. This indemnity will continue even after the termination of this Lease.

**13. TAXES.** YOU agree to pay any applicable license and registration fees, sales and use taxes, personal property taxes and all other taxes and charges, relating to the ownership, leasing, rental, sale, purchase, possession or use of the Equipment (except those based on OUR net income). YOU agree that if WE pay any taxes or charges, YOU will reimburse US for all such payments and will pay US interest and a late charge (as calculated in Section 3) on such payments with the next Lease Payment, plus a fee for OUR collecting and administering any taxes, assessments or fees and remitting them to the appropriate authorities.

**14. INSURANCE.** During the term of this Lease, YOU will keep the Equipment insured against all risks of loss or damage in an amount not less than the replacement cost of the Equipment. YOU will also obtain and maintain for the term of this Lease, liability insurance insuring against liability for bodily injury and property damage with a minimum limit of \$1,000,000.00 combined single limit or such greater amount as may be prescribed by any applicable state law. WE will be the sole named loss payee on the property insurance and named as an additional insured on the liability insurance, and such insurance shall provide US at least thirty days written notice of cancellation. YOU will pay all premiums for such insurance and must deliver proof of insurance coverage satisfactory to US. If YOU do not provide such insurance, YOU agree that WE have the right, but not the obligation, to obtain such insurance and add an insurance fee to the amount due from you.

**15. DEFAULT.** Subject to Section 5, YOU are in default of this Lease if any of the following occurs: (a) YOU fail to pay any Lease Payment or other sum when due; (b) YOU breach any warranty or other obligation under this Lease, or any other agreement with US, (c) YOU become insolvent or unable to pay YOUR debts when due, YOU make an assignment for the benefit of creditors or YOU undergo a substantial deterioration in YOUR financial condition, or (d) YOU file or have filed against YOU a petition for liquidation, reorganization, adjustment of debt or similar relief under the Federal Bankruptcy Code or any other present or future federal or state bankruptcy or insolvency law, or a trustee, receiver or liquidator is appointed for YOU or a substantial part of YOUR assets.

**16. REMEDIES.** WE have the following remedies if YOU are in default of this Lease: WE may declare the entire balance of the unpaid Lease Payments for the then current Initial Term or Renewal Term immediately due and payable; sue for and receive all Lease Payments and any other payments then accrued or accelerated under this Lease; take whatever action at law or in equity may appear necessary or desirable to enforce OUR rights as owner of the Equipment; charge YOU interest on all monies due US at the rate of eighteen percent (18%) per year from the date of default until paid, but in no event more than the maximum rate permitted by law; charge YOU a return-check or non-sufficient funds charge ("NSF Charge") of \$25.00 for a check that is returned for any reason; and require that YOU return the Equipment to US and, if YOU fail to return the Equipment, enter upon the premises peaceably with or without legal process where the Equipment is located and repossess the Equipment. Such return or repossession of the Equipment will not constitute a termination of this Lease unless WE expressly notify YOU in writing. If the Equipment is returned or repossessed by US and unless WE have terminated this Lease, WE will sell or re-rent the Equipment to any persons with any terms WE determine, at one or more public or private sales, with or without notice to YOU, and apply the net proceeds after deducting the costs and expenses of such sale or re-rent, to YOUR obligations with YOU remaining liable for any deficiency and with any excess over the amounts described in this Section plus the then applicable Purchase Price to be paid to YOU. YOU are also required to pay (i) all expenses incurred by US in connection with the enforcement of any remedies, including all expenses of repossessing, storing, shipping, repairing and selling the Equipment, and (ii) reasonable attorneys' fees.

**17. PURCHASE OPTION.** Provided YOU are not in default, YOU will have the option to purchase all, but not less than all, of the Equipment (a) on the date the last Lease Payment is due (assuming this Lease is renewed at the end of the Initial Term and each Renewal Term), if this Lease is still in effect on that day, upon payment in full of Lease Payments and all other amounts then due and the payment of One Dollar to US; (b) on the last day of the Initial Term or any Renewal Term then in effect, upon at least 30 days' prior written notice to US and payment in full to US of the Lease Payments and all other amounts then due plus the then applicable Purchase Price set forth on the Lease Payment Schedule; or (c) if substantial damage to or destruction or condemnation of substantially all of the Equipment has occurred, on the day specified in YOUR written notice to US of YOUR exercise of the purchase option upon at least 30 days' prior notice to US and payment in full to US of the Lease Payments and all other amounts then due plus the then applicable Purchase Price set forth on the Lease Payment Schedule.

**18. REPRESENTATIONS AND WARRANTIES.** YOU warrant and represent as follows: (a) YOU are a public body corporate and politic duly organized and existing under the constitution and laws of YOUR State with full power and authority to enter into this Lease and to perform all of YOUR obligations hereunder; (b) YOU have duly authorized the execution and delivery of this Lease by proper action by YOUR governing body, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Lease; (c) YOU have complied with such public bidding requirements as are applicable to this Lease and the acquisition by YOU of the Equipment; (d) all authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery by YOU of this Lease or in connection with the carrying out of YOUR obligations hereunder have been obtained; (e) this Lease constitutes the legal, valid and binding obligation of YOU enforceable in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally; (f) YOU have, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current budget year to make the Lease Payments scheduled to come due during the current budget year and to meet YOUR other obligations under this Lease during the current budget year, and those funds have not been expended for other purposes; (g) there is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by this Lease or our interest in the Equipment; (h) the Equipment is essential to YOUR functions or to the services YOU provide to YOUR citizens, YOU have an immediate need for the Equipment and expect to make immediate use of the Equipment, YOUR need for the Equipment is not temporary and YOU do not expect the need for any item of the Equipment to diminish in the foreseeable future, including the Maximum Lease Term, and the Equipment will be used by YOU only for the purpose of performing one or more of YOUR governmental or proprietary functions consistent with the permissible scope of YOUR authority and will not be used in the trade or business of any other entity or person; and (i) YOU have never failed to appropriate or otherwise make available funds sufficient to pay rental or other payments coming due under any lease purchase, installment sale or other similar agreement.

**19. UCC FILINGS AND FINANCIAL STATEMENTS.** YOU authorize US to file a financing statement with respect to the Equipment. If WE feel it is necessary, YOU agree to submit financial statements (audited if available) on an annual basis.

**20. UCC - ARTICLE 2A PROVISIONS.** YOU agree that this Lease is a Finance Lease as that term is defined in Article 2A of the Uniform Commercial Code ("UCC"). YOU acknowledge that WE have given YOU the name of the Supplier of the Equipment. WE hereby notify YOU that YOU may have rights under the contract with the Supplier and YOU may contact the Supplier for a description of any rights or warranties that YOU may have under this supply contract. YOU also waive any and all rights and remedies granted YOU under Sections 2A-508 through 2A-522 of the UCC.

**21. TAX EXEMPTION.** YOU will comply with all applicable provisions of the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder to maintain the exclusion of the interest portion of the Lease Payments from gross income for purposes of federal income taxation. YOU will file all necessary informational returns with the IRS, on a timely basis, and provide US with copies of such filed returns relating to this Lease. If YOU fail to file the necessary informational returns on a timely basis, YOU authorize US, in OUR sole discretion, to engage a tax professional to complete the required returns on YOUR behalf and expense, which YOU will promptly execute and file. If it is determined that any of the interest may not be excluded from gross income, YOU agree to pay to US an additional amount determined by US for the loss of such excludability.

**22. BANK QUALIFICATION.** If this Lease has been designated a "qualified tax-exempt obligation" on the front page of this Lease, YOU and all YOUR subordinate entities will not issue in excess of \$10,000,000 of qualified tax-exempt obligations (including this Lease, but excluding private activity bonds other than qualified 501(c)(3) bonds) during the calendar year in which WE fund this Lease without first obtaining an opinion of nationally recognized counsel in the area of tax-exempt municipal obligations acceptable to US that the designation of this Lease as a "qualified tax-exempt obligation" will not be adversely affected.

**23. CHOICE OF LAW; JURY TRIAL WAIVER.** This Lease will be governed and construed in accordance with federal law and, to the extent not preempted by federal law, the laws of the state where YOU are located. To the extent permitted by law, YOU agree to waive YOUR rights to a trial by jury.

**24. ENTIRE AGREEMENT; SEVERABILITY; WAIVERS.** This Lease contains the entire agreement and understanding. No agreements or understandings are binding on the parties unless set forth in writing and signed by the parties. Any provision of this Lease which for any reason may be held unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective without invalidating the remaining provisions of this Lease.

**25. COUNTERPARTS; NOTICES; ELECTRONIC TRANSACTION.** This Lease may be simultaneously executed in counterparts, each of which will be an original and all of which will constitute but one and the same instrument. Notices hereunder shall be deemed given when delivered personally, sent via overnight courier, facsimile or e-mail (with confirmation of transmission), or certified U.S. Mail, addressed as set forth above. Copies, electronic files and other reproductions of original documents shall be deemed to be authentic counterparts for all purposes. There shall be only one original counterpart of this Lease and it shall bear OUR original ink or electronic signature and be marked "Original." To the extent that this Lease constitutes chattel paper (as that term is defined by the UCC), a security or ownership interest intended to be created through the transfer and possession of this Lease can be done only by the transfer of such original bearing OUR ink or electronic original signature. YOU consent to the use of electronic signatures on this Lease and any related documents.

**26. ROLE OF LESSOR.** WE have not acted and will not act as a fiduciary for YOU or as YOUR agent or municipal advisor. WE have not and will not provide financial, legal, tax, accounting or other advice to YOU or to any financial advisor or placement agent engaged by YOU with respect to this Lease. YOU, YOUR financial advisor, placement agent or municipal advisor, if any, shall each seek and obtain YOUR own financial, legal, tax, accounting and other advice with respect to this Lease from YOUR own advisors (including as it relates to structure, timing, terms and similar matters).

**LEASE PAYMENT SCHEDULE**

LESSOR: The Huntington National Bank

LESSEE: City of Clayton Ohio

COMMENCEMENT DATE\*: \_\_\_\_\_

INTEREST RATE: 6.95%

PAYMENT FREQUENCY: Semiannual

The first Lease Payment shall be due in advance on the Commencement Date, and subsequent Lease Payments shall be due semi-annually on the same day of each six month period thereafter until paid in full.

<u>Payment Number</u>	<u>Rental Payment</u>	<u>Interest Portion</u>	<u>Principal Portion</u>	<u>Purchase Price</u>
				166,650.99
1	23,579.08	965.19	22,613.89	144,037.10
2	23,579.08	858.65	22,720.43	125,536.34
3	23,579.08	748.36	22,830.72	106,383.30
4	23,579.08	634.19	22,944.89	86,554.98
5	23,579.08	515.98	23,063.10	66,027.57
6	23,579.08	393.61	23,185.47	44,776.42
7	23,579.08	266.93	23,312.15	22,776.02
8	23,579.08	135.78	23,443.30	-0.04
<b>Totals</b>	<b>188,632.64</b>	<b>21,981.65</b>	<b>166,650.99</b>	

Lessee: City of Clayton Ohio

X By:  Amanda Zimmerlin, City Manager

\*YOU hereby authorize US to fill in the Commencement Date based on the earlier of the date that WE disburse funds to the Vendor of the Equipment following receipt of YOUR executed Acceptance Certificate, or the date on which WE deposit funds for the purchase of the Equipment with an escrow agent.

EQUIPMENT DESCRIPTION

The Equipment consists of the equipment described below, together with any and all replacement parts, additions, repairs, modifications, attachments and accessories thereto, any and all substitutions, replacements or exchanges therefor, and any and all insurance and/or proceeds thereof.

Description/Serial No./Model No.	Location	Total Cost
(1) Toro Reelmaster 3550, (2) Toro Workman HDX, (1) Toro Greensmaster 3150 together with all attachments and accessories thereto	6001 Salem Avenue, Clayton, OH 45315	\$166,650.99

Lessee: City of Clayton Ohio

X By:  Amanda Zimmerlin, City Manager

ACCEPTANCE CERTIFICATE

The Huntington National Bank  
11100 Wayzata Blvd, Suite 700  
Minnetonka, MN 55305

Re: Governmental Lease-Purchase Agreement No. 008-0883355-300 between The Huntington National Bank, as Lessor (the "Lessor"), and City of Clayton Ohio, as Lessee (the "Lessee").

Ladies and Gentlemen:

In accordance with the above-referenced Governmental Lease-Purchase Agreement No. 008-0883355-300 (the "Lease"), the undersigned Lessee hereby certifies and represents to, and agrees with Lessor as follows:

1. All of the Equipment (as such term is defined in the Lease) listed in the Lease has been delivered, installed and accepted on the date hereof.
2. Lessee has conducted such inspection and/or testing of the Equipment listed in the Lease as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.
3. Lessee is currently maintaining the insurance coverage required by Section 14 of the Lease.
4. No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, a default as set forth in Section 15 of the Lease exists at the date hereof.
5. We acknowledge that Lessor is neither the vendor nor manufacturer or distributor of the Equipment and has no control, knowledge or familiarity with the condition, capacity, functioning or other characteristics of the Equipment.
6. The serial number for each item of Equipment that is set forth in the Lease is correct.
7. Lessee hereby acknowledges and agrees to the Lease Payment Schedule attached to the Lease as Attachment 1.

X Date: \_\_\_\_\_, 20\_\_

Lessee: City of Clayton Ohio

X By:  Amanda Zimmerlin, City Manager

**INSURANCE COVERAGE REQUIREMENTS**

RE: INSURANCE COVERAGE REQUIREMENTS

1. In accordance with the Governmental Lease-Purchase Agreement, Lessee certifies that it has instructed the insurance agent named below (please fill in name, address, and telephone number):

<b>Insurance Company Liability:</b> Public Entities Pool Burnham & Flowers Insurance Group 6500 Taylor Rd. BLACKICK, OH 43004	<b>Agent Name:</b> Thomas Welsh	<b>Business Phone #</b> 614-353-1077 <b>Fax Phone #</b> 216-276-4077
<b>Insurance Company Property:</b> Same	<b>Agent Name:</b> Same	<b>Business Phone #</b> <b>Fax Phone #</b> Same

to issue: (check to indicate coverage)

a. All Risk Physical Damage Insurance on the following leased Property evidenced by a Certificate of Insurance and Long Form Loss Payable Clause naming The Huntington National Bank and/or its assigns as Loss Payee.

Leased Property: (1) Toro Reelmaster 3550, (2) Toro Workman HDX, (1) Toro Greensmaster 3150 together with all attachments and accessories thereto

Coverage Required: \$166,650.99

b. Public Liability Insurance evidenced by a Certificate of Insurance naming The Huntington National Bank and/or its assigns as an Additional Insured.

Minimum Coverage Required:

\$1,000,000.00 per person  
 \$1,000,000.00 aggregate bodily injury liability  
 \$1,000,000.00 property damage liability

Proof of insurance coverage will be provided to The Huntington National Bank, 11100 Wayzata Blvd, Suite 700, Minnetonka, MN 55305, prior to the time that the property is delivered to Lessee.

Please fax a copy of the Certificate of Insurance or binder to Amy Kuester at (800) 844-3577.

Lessee: City of Clayton Ohio

By  Amanda Zimmerlin, City Manager



**OHIO ADDENDUM  
TO GOVERNMENTAL LEASE-PURCHASE AGREEMENT NO. 008-0883355-300 DATED AS OF February 10, 2023**

This Addendum is hereby incorporated in and is hereby made a part of the above-referenced Governmental Lease-Purchase Agreement No. 008-4012787-312 (together with all Exhibits and Attachments and this Addendum, the "Lease"). Words "YOU" and "YOUR" refer to the "Lessee" and the words "WE," "US" and "OUR" refer to the "Lessor," its successors and assigns. Lessor and Lessee hereby agree that capitalized terms used herein and not otherwise defined herein shall have the terms assigned to such terms in the Lease and that the following changes and additions shall be made to the Lease:

1. **Section 5** of the Lease is hereby deleted and the following **Section 5** is hereby inserted in lieu thereof:

**5. NONAPPROPRIATION.** YOU are obligated only to pay such Lease Payments under this Lease as may lawfully be made from funds budgeted and appropriated for that purpose during YOUR then current budget year. If YOU fail to appropriate or otherwise make available funds to pay the Lease Payments required to be paid in the next occurring Renewal Term, *and YOU cannot certify that those funds are available or in the process of collection*, this Lease will be deemed terminated at the end of the then current Initial Term or Renewal Term. YOU agree to deliver written notice to US of such termination at least 90 days prior to the end of the then current Initial Term or Renewal Term, but failure to give such notice will not extend the term of this Lease beyond the then current Initial Term or Renewal Term. If this Lease is terminated in accordance with this Section, YOU agree, at YOUR cost and expense, to peaceably deliver the Equipment to US at the location or locations specified by US.

2. **Section 12** of the Lease is hereby deleted.

3. **Section 16** of the Lease is hereby amended by adding a new sentence at the end thereof that reads in its entirety as follows:

"Notwithstanding anything to the contrary contained herein, any amounts potentially owed under this Section 16 shall be limited to the amounts appropriated for in connection with this Lease."

4. **Fiscal Officer's Certificate.** Notwithstanding any provision in this Lease, this Lease will not be effective until a certificate of Lessee's fiscal officer in substantially the form attached hereto has been signed and attached hereto.

Except as specifically set forth in this Addendum, all terms and conditions contained in the Lease will remain in full force and effect and are hereby ratified and confirmed.

Lessor: The Huntington National Bank

Lessee: City of Clayton Ohio

By: \_\_\_\_\_ Title: \_\_\_\_\_  
X By:  Amanda Zimmerlin, City Manager



**OHIO ADDENDUM**  
**TO GOVERNMENTAL LEASE-PURCHASE AGREEMENT NO. 008-0883355-300 DATED AS OF February 10, 2023**

**FISCAL OFFICER'S CERTIFICATE**

The undersigned, as fiscal officer of the Lessee, hereby certifies that the money required for the payment of the obligations of the Lessee under the attached contract during the current fiscal year has been lawfully appropriated for such purposes and is in the treasury or in the process of collection to the credit of the appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Section 5705.41 of the Ohio Revised Code.

**LESSEE: City of Clayton Ohio**

X Dated: 2-20, 2023

X   
Signature of Fiscal Officer

X Kevin Schwetzer  
Printed Name of Fiscal Officer

**RESOLUTION**  
**GOVERNMENTAL LEASE-PURCHASE AGREEMENT NO. 008-0883355-300**  
**DATED AS OF February 10, 2023**

A resolution authorizing the negotiation, execution, and delivery of Governmental Lease-Purchase Agreement No. **008-0883355-300** dated **February 10, 2023** (the "Lease"), in principal amount not to exceed **\$166,650.99**, between **City of Clayton Ohio, 6001 Salem Avenue, Clayton, OH 45315** and **The Huntington National Bank, 11100 Wayzata Blvd, Suite 700, Minnetonka, MN 55305**; and prescribing other details in connection therewith.

**WHEREAS**, City of Clayton Ohio, (the "Lessee") is a political subdivision duly organized and existing pursuant to the Constitution and laws of the State of Ohio; and

**WHEREAS**, Lessee is duly authorized by applicable law to acquire such items of personal property as are needed to carry out its governmental functions and to acquire such personal property by entering into lease-purchase agreements; and

**WHEREAS**, Lessee hereby finds and determines that the execution of a Lease for the purpose of leasing with the option to purchase the property designated and set forth in Attachment 2 to the Lease is appropriate and necessary to the function and operations of the Lessee; and

**WHEREAS**, The Huntington National Bank, (the "Lessor") shall act as Lessor under said Lease; and

**WHEREAS**, the Lease shall not constitute a general obligation indebtedness of the Lessee within the meaning of the Constitution and laws of the State;

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF City of Clayton Ohio:**

X Section 1. The Lease, in substantially the form as presently before the governing body of the Lessee, is hereby approved, and the City Manager of the Lessee, is hereby authorized to negotiate, enter into, execute, and deliver the Lease and related documents in substantially the form as presently before the governing body of the Lessee, with such changes therein as shall be approved by such officer, and which Lease will be available for public inspection at the offices of Lessee.

Section 2. The Lessee shall, and the officers, agents and employees of the Lessee are hereby authorized and directed to take such further action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution, and to carry out, comply with and perform the duties of the Lessee with respect to the Lease.

Section 3. The Lessee's obligations under the Lease shall be expressly subject to annual appropriation by Lessee; and such obligations under the Lease shall not constitute a general obligation of Lessee or indebtedness of Lessee within the meaning of the Constitution and laws of the State of Ohio.

Section 4. All other related contracts and agreements necessary and incidental to the Lease are hereby authorized, ratified and approved.

Section 5. Lessee reasonably anticipates to issue not more than \$10,000,000 of tax-exempt obligations (other than "private activity bonds" which are not "qualified 501(c)(3) bonds") during the current calendar year and hereby designates the Lease as a "qualified tax-exempt obligation" for purposes of Section 265(b) of the Internal Revenue Code of 1986, as amended.

Section 6. This resolution shall take effect immediately upon its adoption and approval.

X CERTIFIED AS TRUE AND CORRECT this 16<sup>th</sup> day of February, 2023.

X Barbara Seim  
Signature of Clerk, Secretary or Assistant Secretary

X BARBARA SEIM  
Printed Name of Clerk, Secretary or Assistant Secretary

# **LAW OFFICE OF MARTINA M. DILLON, ESQ.**

**7501 Paragon Road, Suite A**

**Dayton, Ohio 45459**

**Phone: 937-434-1908**

**[martina@mdillonlaw.com](mailto:martina@mdillonlaw.com)**

## **OPINION OF COUNSEL**

**Date:** February 10, 2023

**Lessee:** City of Clayton Ohio  
6001 Salem Avenue  
Clayton, OH 45315

**Lessor:** The Huntington National Bank  
11100 Wayzata Blvd, Suite 700  
Minnetonka, MN 55305

**Re:** Governmental Lease-Purchase Agreement No. 008-0883355-300, dated as of February 10, 2023, by and between City of Clayton Ohio and The Huntington National Bank.

**Ladies and Gentlemen:**

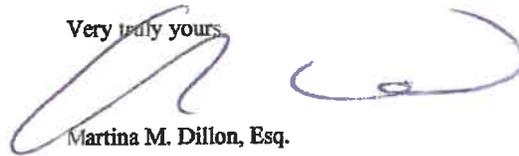
I have acted as counsel to Lessee with respect to the Governmental Lease-Purchase Agreement described above and the related escrow agreement, if any (together, the "Lease") and various related matters, and in this capacity have reviewed a duplicate original or certified copy of the Lease and all exhibits and attachments thereto. Based upon the examination of these and such other documents as I deem relevant, it is my opinion that:

1. Lessee is a public corporation and political subdivision of the State of Ohio (the "State") within the meaning of Section 103 of the Internal Revenue Code of 1986, as amended, is duly organized, existing and operating under the Constitution and laws of the State, and has a substantial amount of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) police power. The full, true and correct legal name of Lessee is City of Clayton.
2. Lessee is authorized and has power under State law to enter into the Lease and lease the equipment with an option to purchase, and to carry out its obligations thereunder and the transactions contemplated thereby.
3. The Lease and the other documents described above have been duly authorized, approved, executed and delivered by and on behalf of Lessee, and the Lease is a valid and binding contract of Lessee enforceable in accordance with its terms, except to the extent limited by State and Federal laws affecting remedies and by bankruptcy, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights. No further approval, consent or withholding of objection is required from any federal, state or local governmental authority with respect to the entering into or performance by the Lessee of the Lease and the transaction contemplated thereby.
4. Lessee has no authority (statutory or otherwise) to terminate the Lease prior to the end of its term for any reason other than pursuant to the terms of Section 5 of the Lease.
5. The authorization, approval and execution of the Lease and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable State and Federal laws.
6. The execution of the Lease and the appropriation of moneys to pay the payments coming due under the Lease do not result in the violation of any constitutional, statutory or other limitation relating to the manner, form or amount of indebtedness which may be incurred by Lessee.

7. There is no litigation, action, suit, or proceeding pending or before any court, administrative agency, arbitrator or governmental body that challenges the organization or existence of Lessee; the authority of the Lessee or its officers; the proper authorization, approval and execution of the Lease and the other documents described above; the appropriation of monies to make Lease Payments under the Lease for the current fiscal year, or the ability of Lessee otherwise to perform its obligations under the Lease and the transactions contemplated thereby.
8. The equipment leased pursuant to the Lease constitutes personal property and when subject to use by Lessee will not be or become fixtures under applicable law.

This opinion of counsel may be relied upon by The Huntington National Bank and its successors and assigns.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Martina M. Dillon', is written over the typed name. The signature is stylized and cursive.

Martina M. Dillon, Esq.