

RESOLUTION NO. 1640

A RESOLUTION REQUESTING THE CLAY CENTER, KANSAS PUBLIC BUILDING COMMISSION TO PROCEED WITH THE SALE OF REFUNDING REVENUE BONDS FOR THE PURPOSE OF REFUNDING THE PBC'S OUTSTANDING REVENUE BONDS, SERIES 2014; DECLARING AN INTENT TO ENTER INTO A SUPPLEMENTAL LEASE WITH THE PBC RELATING TO SAID REFUNDING REVENUE BONDS; AND MAKING CERTAIN FINDINGS REGARDING OFFERING DOCUMENTS RELATED THERETO.

WHEREAS, the City of Clay Center, Kansas (the "City") has heretofore created the City of Clay Center, Kansas Public Building Commission, a municipal corporation of the State of Kansas (the "PBC") under the authority of K.S.A. 12-1757 *et seq.* (the "Act"); and

WHEREAS, the PBC has heretofore issued its Public Building Commission Revenue Bonds, Series 2014, in the original principal amount of \$4,720,000 (the "Series 2014 Bonds") to finance swimming pool facility improvements on behalf of the City; and

WHEREAS, in conjunction with the issuance of the Series 2014 Bonds, the PBC, as Issuer and the City, as Tenant, entered into a Lease dated as of March 25, 2014 (the "Lease") wherein the City agreed to make rental payments to provide funds sufficient to meet the debt service requirements of the Series 2014 Bonds; and

WHEREAS, the PBC is authorized under K.S.A. 10-116a and the Act to issue refunding revenue bonds of the PBC for the purpose of refunding any previously issued revenue bonds; and

WHEREAS, due to the current interest rate environment, the PBC has the opportunity to issue its refunding revenue bonds in order to achieve an interest cost savings on all or a portion of the debt represented by the Series 2014 Bonds (such portion of the Series 2014 Bonds as may be refunded referred to as the "Refunded Bonds"), which will directly benefit the City and PBC with respect to reduced rental payments made to the PBC pursuant to the Lease; and

WHEREAS, for purposes of providing sufficient revenues to make debt service payments on the refunding revenue bonds of the PBC, the City hereby declares an intent to enter into a supplement to the Lease (the "Supplemental Lease"), subject to the provisions hereinafter set forth; and

WHEREAS, the City and PBC have heretofore selected the firm of Piper Sandler & Co., Leawood, Kansas (the "Purchaser"), as underwriter with respect to the issuance of refunding revenue bonds of the PBC in order to provide funds to refund the Refunded Bonds; and

WHEREAS, the City desires to authorize the Purchaser to coordinate with the PBC the sale of the refunding revenue bonds of the PBC and related activities.

WHEREAS, one of the duties and responsibilities of the City and PBC is to prepare and distribute a preliminary official statement relating to said refunding revenue bonds; and

WHEREAS, the City desires to authorize the Purchaser, City Clerk, and Gilmore & Bell, P.C., bond counsel to the City and the PBC ("Bond Counsel"), to proceed with the preparation and distribution of a preliminary official statement and all other preliminary action necessary to sell said refunding revenue bonds; and

WHEREAS, due to the volatile nature of the municipal bond market and the desire of the City and PBC to achieve maximum benefit of timing of the sale of said refunding revenue bonds, the governing body of the City desires to authorize the Mayor (or member of the governing body authorized to exercise the power and duties of the Mayor in the Mayor's absence) (the "Mayor"), to approve: (a) the sale of such refunding bonds; and (b) the execution of the Supplemental Lease, subject to certain parameters as set forth herein.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF CLAY CENTER, KANSAS, AS FOLLOWS:

Section 1. The City hereby finds and determines, pursuant to the Act, that: (a) issuance of the refunding revenue bonds by the PBC (the "PBC Bonds"); (b) continuing to lease the facilities financed by the Series 2014 Bonds from the PBC under the terms and provisions set forth in the Lease, as supplemented by the Supplemental Lease, are necessary, convenient and in furtherance of the governmental purposes of the City.

Section 2. The City hereby requests that the PBC, in connection with the Purchaser and Bond Counsel, proceed with the offering for sale of the PBC Bonds. The confirmation of the sale of the PBC Bonds shall be subject to the execution of a bond purchase agreement between the Purchaser and the PBC, which shall also be approved by the Mayor (the "Bond Purchase Agreement"), in a form approved by Bond Counsel and the City Attorney, and the execution of various documents necessary to deliver the PBC Bonds. The Mayor is hereby authorized to approve the Bond Purchase Agreement on behalf of the City, subject to the following parameters: (a) the principal amount of the PBC Bonds shall not exceed \$3,750,000; and (b) the present value savings associated with refunding the Refunded Bonds shall be not less than 3.00% of the outstanding principal of the Refunded Bonds. Subject to the execution of the Bond Purchase Agreement, the Mayor is authorized to execute the Supplemental Lease on behalf of the City.

Section 3. With respect to the City, the Purchaser, in conjunction with the Clerk and Bond Counsel, is hereby authorized to cause to be prepared a Preliminary Official Statement relating to the PBC Bonds. The City hereby consents to the use and public distribution by the Purchaser of the Preliminary Official Statement in connection with the offering for sale of the PBC Bonds.

Section 4. For the purpose of Purchaser to comply with the requirements of Rule 15c2-12 of the Securities and Exchange Commission (the "Rule"), the Clerk or other appropriate officers of the City are hereby authorized: (a) to execute the "Certificate Deeming Preliminary Official Statement Final" in substantially the form attached hereto as **Exhibit A**, as approval of the information relating to the City contained in the Preliminary Official Statement, such official's signature thereon being conclusive evidence of such official's and the City's approval thereof; (b) covenant that the City will provide continuous secondary market disclosure by annually transmitting certain financial information and operating data and other information necessary to comply with the Rule to the Municipal Securities Rulemaking Board; and (c) take such other actions or execute such other documents as such officers in their reasonable judgment deem necessary to enable the Purchaser to comply with the requirement of the Rule.

Section 5. The Mayor, Clerk, and the other officers and representatives of the City, the Purchaser and Bond Counsel are hereby authorized and directed to take such other action as may be necessary to assist

the PBC in carrying out the sale of the PBC Bonds and to provide for notice of redemption of the Refunded Bonds.

Section 6. This Resolution shall be in full force and effect from and after its adoption.

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ADOPTED by the governing body on April 6, 2021.

(SEAL)

ATTEST:

Mayor

Clerk

EXHIBIT A

**CERTIFICATE DEEMING
PRELIMINARY OFFICIAL STATEMENT FINAL**

April 6, 2021

To: Piper Sandler & Co.
Leawood, Kansas

Re: Clay Center, Kansas Public Building Commission Refunding Revenue Bonds, Series 2021

The undersigneds are the duly acting President of the Clay Center, Kansas Public Building Commission (the "PBC") and the Clerk of the City of Clay Center, Kansas (the "City"), are authorized to deliver this Certificate to the addressee(s) (the "Purchaser") on behalf of the PBC and City. The PBC has heretofore caused to be delivered to the Purchaser copies of the Preliminary Official Statement (the "Preliminary Official Statement"), relating to the above-referenced bonds (the "Bonds").

For the purpose of enabling the Purchaser to comply with the requirements of Rule 15c2-12(b)(1) of the Securities and Exchange Commission (the "Rule"), the PBC and City hereby deem the information regarding the PBC and the City, respectively, contained in the Preliminary Official Statement to be final as of its date, except for the omission of such information as is permitted by the Rule, such as offering prices, interest rates, selling compensation, aggregate principal amounts, principal per maturity, delivery dates, ratings and other terms of the Bonds depending on such matters.

**CITY OF CLAY CENTER, KANSAS
PUBLIC BUILDING COMMISSION**

CITY OF CLAY CENTER, KANSAS

By: _____
President

By: _____
Clerk



AVIATION SUPPORT AND MAINTENANCE SERVICES Order Summary

Contracted Party: City of Clay Center 427 Court St. Clay Center, KS 67432	Serviced Customer: (physical address) Clay City Municipal Airport (CYW) 1226 104th Road Seneca, KS 66538
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The Effective Date of this Agreement is _____ TBD _____, 20²¹.

The Term of this Agreement shall be for a period of 1 year(s) from the Effective Date.

Services (check as applicable)
☒ Periodic/Pre-Season Maintenance 3 Trips
☐ Equipment Restoration
☐ NADIN DataLink Service
☐ Other Data Services Now Cast Lightning Data

Equipment	Manufacturer/Model	Equipment	Manufacturer/Model
☐ VOR		☐ RWIS Runway	
☐ DME		☐ ATIS	
☐ LOC		☐ NDB	
☐ GS		☐ Control Tower	
☒ AWOS	AWI-3000 IIPT	☐ Markers	
☐ RVR		☐ Other	Now Cast License Bundle

Fees		Contract Total: \$4,500.00
Annual Fee	\$ 4,500.00	Invoiced Annually
Unplanned Outage Fee	\$ 1,500.00	per day (ex. lightning strike, bird strike)
Facility Visit Fee	\$ 1,500.00	per day (ex. flight check)
Holiday Fee	\$ 500.00	Additional to Unplanned Outage Fee
Cancellation/Delay Fee	\$ 500.00	per day

*Definitions of Terms and Conditions

Airport Manager: Scott Heinen

Email Address: Scott@HeinenBrosAG.com

Phone Number: 785-336-3788

Statement of Work and Additional Terms
Attachment 1: Aviation Support and Maintenance Services General Terms and Conditions, Rev.1 Attachment 2: Statement of Work

Pricing Year 1: 4,500.00

Pricing Year 2:

Pricing Year 3:

This Order Summary is part of the DBT Support and Maintenance Services Agreement ("Service Agreement") between DBT and Customer. The Service Agreement consists of this Summary and each listed attachment. By signing this Order Summary, the parties signify that they have read, understand, and agree to be bound by all the terms and conditions of the Service Agreement.

DBT Transportation Services

Clay City Municipal Airport (CYW)

By: Michael Trosclair By: _____

Title: Sales Manager Title: _____

Date: March 10th, 2021 Date: _____



AVIATION SUPPORT AND MAINTENANCE SERVICES Order Summary

Contracted Party: City of Clay Center 427 Court St. Clay Center, KS 67432	Serviced Customer: (physical address) Clay City Municipal Airport (CYW) 1226 104th Road Seneca, KS 66538
---	--

The Effective Date of this Agreement is TBD, 2021.

The Term of this Agreement shall be for a period of 1 year(s) from the Effective Date.

Services (check as applicable)
☒ Periodic/Pre-Season Maintenance 3 Trips
☒ Equipment Restoration Unlimited
☐ NADIN DataLink Service
☐ Other Data Services Now Cast Lightning Data

Equipment	Manufacturer/Model	Equipment	Manufacturer/Model
☐ VOR		☐ RWIS Runway	
☐ DME		☐ ATIS	
☐ LOC		☐ NDB	
☐ GS		☐ Control Tower	
☒ AWOS	AWI-3000 IIPT	☐ Markers	
☐ RVR		☐ Other	Now Cast License Bundle

Fees		Contract Total: \$5,750.00
Annual Fee	\$ 5,750.00	Invoiced Annually
Unplanned Outage Fee	\$ 1,500.00	per day (ex. lightning strike, bird strike)
Facility Visit Fee	\$ 1,500.00	per day (ex. flight check)
Holiday Fee	\$ 500.00	Additional to Unplanned Outage Fee
Cancellation/Delay Fee	\$ 500.00	per day

*Definitions of Terms and Conditions

Airport Manager: Scott Heinen

Email Address: Scott@HeinenBrosAG.com

Phone Number: 785-336-3788

Statement of Work and Additional Terms
Attachment 1: Aviation Support and Maintenance Services General Terms and Conditions, Rev.1 Attachment 2: Statement of Work

Pricing Year 1: 5,750.00

Pricing Year 2:

Pricing Year 3:

This Order Summary is part of the DBT Support and Maintenance Services Agreement ("Service Agreement") between DBT and Customer. The Service Agreement consists of this Summary and each listed attachment. By signing this Order Summary, the parties signify that they have read, understand, and agree to be bound by all the terms and conditions of the Service Agreement.

DBT Transportation Services

Clay City Municipal Airport (CYW)

By: Michael Trosclair By: _____

Title: Sales Manager Title: _____

Date: March 10th, 2021 Date: _____



Statement of Work

1. Description of Equipment Services

1.1 **Periodic Maintenance** consists of such periodic routine tests and adjustments as may be required by the equipment manufacturer and by the FAA for non-Federal facilities in accordance with 14 C.F.R Part 171 and AC 150/5220-16D as they may be modified or superseded from time to time.

1.2 **Equipment Restoration.** In the event of an unplanned equipment failure or outage, DBT Transportation Services shall respond to or notify the customer as to the restoration plan of action within one (1) business day after the outage is reported and complete restoration services in a reasonable prompt manner. Diagnosis may be performed remotely and render the system inoperable until which time replacement equipment/parts can arrive to Customer's site. Repairs required due to Acts of God, lightning, vandalism, etc. are excluded and will be billed at the Unplanned Outage price.

1.3 All services provided by DBT shall be performed by qualified field technicians having all required certifications and licenses required by the FAA and OSHA. DBT will also maintain a full Aviation Products and Liability Insurance policy for the term of the contract.

1.4 DBT shall record test results in a station log and maintain the required 6000 series records, copies of which will be provided to the FAA as required.

1.5 DBT shall make a best effort to maintain and repair all equipment. Customer acknowledges that components and equipment under contract may be obsolete rendering repair or restoration of equipment impossible.

2. Testing Equipment and Replacement Parts – Nav aids Only (ILS, LOC, GS, VOR, DME, NDB etc)

2.1 Customer shall maintain at its own expense an inventory of replacement parts for the Equipment to be utilized by DBT when providing Service under this Agreement. In the event parts necessary for maintenance or restoration of the Equipment are not available in Customer's Inventory, DBT will provide such part(s) and invoice the Customer for required part(s). If customer does not have the necessary spare parts available for use in restoring the Equipment, DBT reserves the right to charge \$1500 for a return trip charge, if necessary to and solely for the purpose of restoring downed equipment.

3. Data Service – NADIN

3.1 AviMet Data Link is an automated weather dissemination service for the distribution of Automated Weather Observation System ("AWOS") data to the Federal Aviation Administration's (FAA) Weather Message Switching Center Replacement ("WMSCR") System. DBT Transportation shall provide the AWOS observations to WMSCR in accordance with FAA specifications every twenty (20) minutes twenty-four (24) hours per day, seven (7) days per week.

DBT Transportation Services LLC
Aviation Support and Maintenance Services General Terms and Conditions

These terms and conditions are part of the DBT Support and Maintenance Services Agreement (“Agreement”) for the Services and Equipment listed in the Order Summary (“Summary”) The Agreement consists of the Summary, these terms and conditions, each Attachment identified in the Summary, and any supplemental Statement of Work executed by the parties.

1. Description of Fees and Services.

- 1.1. The Annual Fee is for Periodic Maintenance and the specified number of Equipment Restoration site visits shown in the Summary.
- 1.2. “Periodic Maintenance” is labor performed at the Equipment site at intervals shown in the Summary. It includes periodic inspections, functional testing, adjustments, replacement of equipment and parts which have failed or at Customer’s request, and maintenance required by the Equipment manufacturer or government regulation. If the Equipment includes Road Weather Information System (RWIS) equipment, Periodic Maintenance includes an annual preseason maintenance check.
- 1.3. “Equipment Restoration” is labor to replace failed or damaged equipment and parts at times other than during Periodic Maintenance visits. The number of Restoration visits included in the Annual Fee is shown in the Summary. DBT shall begin restoration work within one business day after an outage is reported and complete restoration as reasonably prompt as conditions permit.
- 1.4. An “Unplanned Outage” is a DBT site visit to repair or replace failed or damaged equipment and parts other than during Periodic Maintenance and in excess of the number of Equipment Restoration visits included in the Annual Fee. Unplanned Outage Fees are charged on a per diem basis, including days required for travel, plus reasonable travel costs and expenses.



- 1.5. A "Facility Visit" is an appearance by DBT, at Customer request, to attend or participate in an FAA inspection. Facility Visit fees are charged on a per diem basis, including days required for travel, plus reasonable travel costs and expenses.
- 1.6. "NADIN DataLink" connects the Customer's AWOS observations to the FAA's Weather Message Switching Center (WMSCR) through the National Airspace Data Interchange Network (NADIN) for dissemination as Meteorological Terminal Aviation Routine Weather Reports (METARs).
- 1.7. The Holiday Fee is assessed on a per diem basis whenever any Services or facility visits are performed on a Holiday. The Holiday Fee is in addition to any other fees. By way of example, if repair for an Unplanned Outage is required on a Holiday, Customer will pay both the Unplanned Outage fee and a Holiday Fee. "Holidays" are New Year's Eve, New Year's Day, Memorial Day, July 4th (Independence Day), Labor Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Eve and Christmas Day.
- 1.8. A "Cancellation/Delay Fee" is charged in addition to any other applicable fees, when DBT appears at the Customer's location for a scheduled visit but is unable to enter the airport property or access the Equipment for any reason.
- 1.9. All fees are for labor only. Customer is responsible for the cost of all equipment, replacement parts and other materials. DBT agrees to use Customer's inventory of replacement parts and will invoice Customer for any parts or materials not available in Customer's inventory. Customer is advised to maintain a current list of its replacement parts inventory, which shall be provided to DBT at DBT's reasonable request but, in any event, prior to any visit for service or maintenance.
2. Customer Responsibilities. In addition to the payment of fees and the other obligations under this Agreement, Customer shall be responsible for:
 - 2.1. Monitoring the status of the systems following maintenance;
 - 2.2. Security in and around the Equipment;
 - 2.3. Maintaining the grounds and buildings associated with the Equipment in good repair and in compliance with all federal, state and local rules and regulations.



- 2.4. Providing DBT transportation from the airport and access to the Equipment site during normal business hours upon reasonable notice, and outside of normal business hours as may be necessary for repairs;
 - 2.5. Loss or damage to the Equipment for causes other than actions by DBT. Customer is encouraged to obtain its own insurance to cover any such loss or damage; and
 - 2.6. Issuing NOTAMs (Notices to Airmen) and other public notices relating to the status of the Equipment.
3. Payment, Payment Default, and Right to Dispute.
- 3.1. Payment of Invoices. DBT will invoice Customer annually, quarterly or monthly, as applicable, for the fees and other charges described in this Agreement and the Summary. Payment of each invoice is due, in US Dollars, within 30 days of the invoice date (the invoice's "Due Date").
 - 3.2. Payment Default. If Customer does not pay an invoice by the Due Date or if Customer files or has filed against it any voluntary or involuntary Bankruptcy petition, or becomes subject to an assignment for the benefit of creditors, receivership or other insolvency proceeding (individually and collectively, a "Payment Default"), DBT may take any and of the following actions, individually or in combination:
 - 3.2.1. Cease performing or refuse to perform Services which have not been paid for;
 - 3.2.2. Require a cash deposit, standby letter of credit, or such other assurance of payment DBT may deem appropriate, as a condition to providing any labor or materials requiring payment of fees and expenses in addition to the Annual Fee;
 - 3.2.3. Terminate this Agreement.
 - 3.3. Customer Right to Dispute Charges. Customer may in good faith dispute and withhold payment of all or any part of an invoice by paying the undisputed balance of the invoice and giving DBT written notice of the disputed amount and a reasonable description of the basis for the dispute on or before the invoice Due



Date. The parties shall confer in a good faith attempt to resolve the dispute within ten business days after DBT receives notice of the dispute. If the resolution of the dispute requires an invoice adjustment, Customer shall pay the adjusted amount within 10 business days. If the parties are unable to agree on a resolution to the dispute, DBT may, without further notice, exercise any of its rights for a Payment Default.

4. Termination.

- 4.1. Termination for Material Breach. Except with respect to a Payment Default to which paragraphs 3.2 and 3.3 apply, in the event of a material breach of this Agreement, the party claiming the breach shall notify the other in writing, describing the breach in reasonable detail. The party accused of the breach shall have 30 days from receipt of notice of breach to cure the breach. If the breach is not cured within the 30-day period, the party claiming the breach may, by written notice to the other party, immediately terminate this Agreement.
- 4.2. Termination without cause for Force Majeure. A delay or failure to perform for a reason described in paragraph 10 (Force Majeure) shall not be considered a material breach of this Agreement. However, if a delay or failure to perform for a Force Majeure reason continues for a period of 120 consecutive days and there is no reasonably foreseeable remedy or cure available, this Agreement may thereafter be terminated by either party upon ten days written notice.
- 4.3. Obligations upon Termination. Upon termination of this Agreement for any reason:
 - 4.3.1. Customer shall pay each outstanding invoice by its Due Date;
 - 4.3.2. DBT will submit a final invoice for unpaid services provided and non-refundable costs incurred prior to the effective date of termination, all of which will be due and payable by the Due Date.
 - 4.3.3. All payments made by Customer to DBT prior to the effective date of termination shall be non-refundable.
 - 4.3.4. Each party shall promptly return all Confidential Information belonging to the other party.



5. Performance Warranty and Disclaimer of Other Warranties.

5.1. DBT represents and warrants it will perform the Services in a professional manner consistent with generally accepted industry standards, using qualified field technicians and other personnel, all of whom shall have and maintain any certifications and licenses required by the FAA

5.2. Except as expressly provided in this paragraph 5, DBT PROVIDES ALL SERVICES "AS IS." TO THE MAXIMUM EXTENT PERMITTED BY LAW, DBT MAKES NO OTHER WARRANTIES AND EXPLICITLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, THE RELIABILITY OR ACCURACY OF DATA OR INFORMATION GENERATED OR TRANSMITTED BY ANY EQUIPMENT OR SOFTWARE, AS WELL AS ANY WHICH MAY ARISE FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

5.3. DBT IS NOT RESPONSIBLE FOR ANY DAMAGES OR LIABILITY ARISING OUT OF THIRD PARTY PRODUCTS OR SERVICES, EVEN IF SUCH PRODUCTS OR SERVICES ARE USED BY DBT IN THE COURSE OF PROVIDING SERVICES UNDER THIS AGREEMENT.

6. Insurance. During the term (including the term of any renewal) of this Agreement and for one year thereafter, DBT shall maintain (a) workers compensation coverage as required by federal law and the law of the state in which work is performed; (b) Commercial General Liability insurance, including completed operations and contractual liability coverage, with minimum limits of \$1,000,000 per occurrence for bodily injury, death and property damage; and (c) Aviation product liability insurance with minimum limits of \$1,000,000. Required insurance shall be written by companies reasonably satisfactory to Customer and authorized to do business in Customer's state, include Customer as additional insured with respect to liabilities arising out of activities performed by DBT under this Agreement, and provide for at least thirty days written notice to Customer prior to cancellation. DBT shall furnish Customer evidence of required insurance upon Customer's reasonable request.

7. Indemnification.

- 7.1. DBT shall defend, indemnify and hold Customer, its elected or appointed officials, officers, members, agents, and employees, harmless from any and all demands, suits, actions, proceedings and other claims of any kind or nature, brought against Customer to the extent they arise out of DBT's performance of this Agreement, except those resulting from Customer's negligent, willful or intentional acts.
- 7.2. Customer shall defend, indemnify and hold DBT, its officers, members, consultants, contractors, agents, and employees, harmless from any and all demands, suits, actions, proceedings and other claims of any kind or nature, brought against DBT to the extent they arise out of Customer's obligations under this Agreement, except those resulting from DBT's negligent, willful or intentional acts.
- 7.3. A party seeking indemnification ("Indemnitee") from the other ("Indemnitor") must (a) not be in default under this Agreement; (b) notify the Indemnitor in writing within ten business days of receipt of the assertion of a claim and, in addition, within ten business days of the receipt of service or process or notice of the commencement of any lawsuit or other proceeding. The parties shall cooperate fully with each other in the defense of all claims, and neither shall admit, settle, or consent to the entry of any judgment in any claim without the other's prior written consent, which may not reasonably be withheld.

8. Limitations of Damages

- 8.1. DBT's maximum liability to Customer shall be limited to sums actually afforded and paid in settlement of a claim or satisfaction of a judgment by DBT's insurance policies required in paragraph 6, excepting claims for damages or equitable relief for breaching confidential and proprietary information obligations in paragraph 9.
- 8.2. Excepting claims for damages or equitable relief for breaching confidential and proprietary information obligations in paragraph 9, IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER ANY CONTRACT, TORT, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OF



ANY KIND, WHETHER FORESEEABLE OR UNFORESEEABLE, EVEN IF A PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

9. Confidential and Proprietary Information.

- 9.1. The parties acknowledge each may, in the course of performing this Agreement, receive or have access to information belonging to the other, including but not limited to, business operations, current and future product plans, equipment, software and other product specifications and manuals, patents, copyrights and other intellectual property, personnel information, personal information of individuals protected by federal or state law and other information which, under the circumstances, would appear to a reasonable person to be confidential or proprietary ("Confidential Information"). Confidential Information does not include information which: (a) was or becomes known to the receiving party (other than disclosure by the disclosing party) from a source other than one having a duty of confidentiality, (b) becomes a matter of public knowledge other than by a breach of this Agreement, or (c) is required to be released by law, regulation or legal process, provided that the receiving party gives prompt written notice to the disclosing party in sufficient time to object to the release and cooperates with the disclosing party in any efforts to prevent the release.
- 9.2. The receiving party shall use the other's Confidential Information only as needed for the performance of this Agreement. Disclosure to employees, contractors, subcontractors and consultants shall be on a "need to know" basis. The receiving party shall not disclose Confidential Information to any other person or entity without the written approval of the disclosing party. Each party shall protect the other's Confidential Information with the same degree of care as the party would use for the protection of its own information, but no less than reasonable care and, with respect to personal information, with the degree of care required by applicable law.



- 9.3. Nothing in the Agreement shall be construed to grant either party any license or other right or interest in any trademark, patent, copyright or other intellectual property of the other.
- 9.4. Notwithstanding any other provision of this Agreement, each party shall be entitled to pursue any legal or equitable remedy, including injunctive relief, against the other or against any third party with regard to any misuse, misappropriation or breach of this paragraph 9. This paragraph 9 shall survive termination of this Agreement.
10. Force Majeure. Neither party shall be liable for delay or failure in performance due acts of God, acts of war or public enemy, riot, epidemic, fire, flood, quarantine, embargo, epidemic, unusually severe weather or other disaster, or compliance with laws, governmental acts or regulations which were not applicable on the date this Agreement was executed, or other causes beyond the party's reasonable control, the sole remedy for such failure or delay being termination of the Agreement pursuant to paragraph 4.2.
11. Resolution of Disputes.
- 11.1. Waiver of trial by jury. The parties waive all rights to trial by jury in any litigation arising from this Agreement or its performance.
- 11.2. Allocation of legal fees and costs. The prevailing party in any litigation or other dispute resolution procedure brought to enforce the terms of this Agreement shall be entitled to an award of its legal fees and costs.
12. Notice. Notices and other communications shall be in tangible, readable form sent to a party at the address, fax number or email address listed on the Summary or to any other contact information a party may designate later. Notice shall be deemed to have been delivered (i) on the date delivered in person; (ii) on the earlier of the date actually received by the recipient or three business days after being deposited with the United States Postal Service or any other nationally recognized delivery service (such as UPS or FedEx) which provides proof of delivery, even if not actually received; (iii) on the date shown on the fax delivery confirmation; or (iv) on the date the recipient manually



acknowledges receipt by return email (automated email delivery or read receipts are insufficient).

13. General Provisions.

- 13.1. The parties are independent contractors with respect to each other. This Agreement and its performance do not create any agency, partnership, joint venture, employment or similar relationship between them. Neither party has the right or authority to create an obligation or responsibility for the other.
- 13.2. The parties shall comply with all federal and state laws applicable to their respective operations, including but not limited to all export laws and regulations of the United States.
- 13.3. Each party represent that it is authorized to enter into this Agreement and performing it does not and will not violate or conflict with any law, regulation or existing obligation which may apply to it. DBT represents it is authorized to do business in Customer's state.
- 13.4. This Agreement contains the entire agreement and understanding between the parties relating to the subject described in this Agreement, superseding and replacing all prior agreements, representations and understandings, oral or written, between the parties.
- 13.5. This Agreement can only be modified, amended or waived through a writing signed by both parties. Waiving or failing to insist on strict performance of any term, condition or obligation shall not constitute or be construed as a waiver of a party's right to enforce the same or any other provision.
- 13.6. If any provision of this Agreement is held to be invalid or unenforceable, it shall be severable, and the remaining provisions shall be enforced to the full extent permitted by law.
- 13.7. This Agreement is not intended to, and does not create, any third-party beneficiary or other rights or remedies in favor of any person other than the parties.



TRANSPORTATION SERVICES

13.8. This Agreement may be executed in multiple counterparts, all of which, taken together, shall be deemed to be a single document. A facsimile of this Agreement or any signature shall be considered for all purposes as an original.