City of Troy

CITY COUNCIL AGENDA ITEM

Date: March 2, 2015

To: Brian Kischnick, City Manager

From: Gary G Mayer, Chief of Police
Chris Stout, Police Lieutenant
Tom Darling, Director of Financial Services

Subject: Proposed Amended Agreement with Somerset Collection

History

Somerset Collection has expressed a desire to add an additional Troy police officer to complement the current officer who is assigned to The Somerset Collection, and has therefore proposed an amended agreement with the City. Under the amended agreement, Somerset Collection would now reimburse the City for the cost of two full time police officer positions, and in exchange, the City would assign two police officers to work at Somerset Collection 80 hours a week. The scheduling of the officers' hours would be worked out between the City and Somerset Collection. The Somerset Collection would have some input on the selection of the dedicated officers. These officers would primarily be responsible for policing at the Somerset Collection. The amended agreement is initially for a 15 month period of time, starting April 1, 2015, and it is renewable annually thereafter, each July 1st, with the ability to adjust annual fees to reflect the true costs of providing the service.

Financial

-Currently budgeted for 78 full-time police officers. The police department requests an additional position for a total of 79 full-time police officers.

-The additional costs for the police officer is estimated at $22,500 (for 3 months) to the end of the 2014/15 fiscal year. This amount is anticipated to be covered by the current 2014/15 budget. Estimated revenues from the Somerset Contracted Services will increase approximately $22,500 from $160,000 to $182,500.

Recommendation

City Administration recommends approval of the attached Agreement between *The City of Troy and The Somerset Collection For Assignment of Two Positions and Reimbursement To The City Of Troy For Costs.*

City Attorney's Review as to Form and Legality

Lori Grigg Bluhm, City Attorney

3/3/2015
Date

Prepared by Lieutenant Chris Stout

AMENDMENT TO AGREEMENT BETWEEN THE CITY OF TROY AND SOMERSET COLLECTION FOR ASSIGNMENT OF POLICE OFFICER POSITION AND REIMBURSEMENT TO THE CITY OF TROY FOR COSTS

This Agreement amends the May 13, 2013 Agreement Between the City of Troy and Somerset Collection for Assignment of Police Officer Position and Reimbursement to the City of Troy for Costs entered into by the CITY OF TROY, a Michigan Municipal Corporation, whose address is 500 W. Big Beaver Road, Troy, Michigan 48084, hereinafter referred to as the "TROY", and SOMERSET COLLECTION, a Michigan Limited Partnership, whose address is 2800 Big Beaver Road, Suite 300., Troy, Michigan 48084, hereinafter referred to as "SOMERSET." Both TROY and SOMERSET are also referred to as party or parties.

The parties agree to amend the Agreement as follows, in order to allow for additional personnel to be assigned to the Somerset Collection as of April 1, 2015:

1. Section 1 is hereby amended to read as follows:

"1. **ASSIGNED POLICE OFFICER POSITIONS**. TROY agrees to provide a sworn, uniformed police officers to fill two positions for assignment to the Somerset Collection. The reference to "assigned police officer", "assigned police officer(s)", "police position", "police position(s)", or "police positions" throughout ~~this~~ the original Agreement and this Amendment shall refer to the two positions and not to any one individual serving as assigned police officers ~~acting at all times as the assigned police officer for the reason set forth in this Agreement~~. However, it is recognized that ~~a single~~ two (2) primary SOMERSET officers will be selected by TROY, in accordance with established labor agreements, and in consultation with SOMERSET. The assigned Somerset police officers will

perform the duties of a Troy Police Officer as determined solely by the Troy Police Department.

During the performance of his/her duties, the assigned police officers will also conduct indoor patrols of common areas of Somerset Collection North and Somerset Collection South and establish a community presence at the Somerset Collection.

TROY will provide the Somerset assigned police officers with uniforms, weapons, equipment and supplies as TROY determines are necessary and in accordance with contractual obligations. TROY ~~may also~~ will provide the assigned police officers with a fully marked patrol vehicle with radio equipment, a patrol car computer or any related equipment to establish a direct interface with the Troy Police Department. Due to contracts with the State of Michigan, Michigan State Police and/or the federal government or its agencies, any radio(s) and/ or computer equipment shall only be available for use by the assigned police officers or any Troy Police Department personnel."

2. Section 3 is hereby amended as follows:

"3. **START-UP DATE**. Based upon the approval of this Amendment, a second designated uniformed Troy police officer shall be assigned to the Somerset Collection starting April 1, 2015. The effective date of the Agreement as Amended remains July 1. Except as set forth above, all services under this Agreement shall begin in effect on July 1, 2013. Yearly payments and overall cost adjustments will, however, continue in July as set out in Paragraph 10. If the start-up date is delayed due to circumstances beyond the reasonable control

of SOMERSET or TROY, such as unanticipated events, including but not limited to labor strikes, natural disasters or weather events, events of force majeure, or terrorist activities, the parties will mutually agree upon a new start-up date and Troy will adjust the monthly installment payment on a pro-rated hourly basis for the affected time period.

3. Section 4 is hereby amended as follows:

"4. **FEES FOR SERVICES AND PREVIOUS YEAR ADJUSTMENTS**. In consideration of TROY'S promises and efforts under this Agreement, SOMERSET agrees to pay an annual fee not to exceed ~~One Hundred Eighty Thousand ($180,000)~~ Two Hundred Forty Thousand ($ 240,000.00) Dollars for two assigned police officers. Based on the approval of this Amendment, SOMERSET shall pay a monthly installment payment of ~~Fifteen Thousand ($15,000)~~ Twenty Thousand ($20,000.00) Dollars starting April 1, 2015. This annual fee does not include any overtime costs. TROY shall keep records of the actual costs, including any overtime worked by Troy police officers, and for the months of April, May and June 2015, if the actual costs incurred by TROY on behalf of SOMERSET exceed the amount paid by SOMERSET in monthly installments for that period, TROY will send an invoice for adjustments on or before June 30, 2015, and this amount shall be paid by SOMERSET on or before July 31, 2015. Thereafter, TROY will do this accounting on an annual contractual basis, and if the actual costs, including any overtime work by Troy police officers, exceed the amount received in monthly installments, then TROY shall send SOMERSET an annual invoice for adjustments on June 30, and SOMERSET

shall pay any adjustment on or before July 31 of each year. ~~The first payment shall be due on July 1, 2013. Thereafter,~~ Payments shall be made on the first day of each month.

~~A. All monthly payments shall be due and payable by SOMERSET without any further notice or demand from TROY.~~

A. Each monthly payment shall be made by check drawn on a SOMERSET account made payable to the "City of Troy" and delivered or mailed to the attention of the City of Troy Treasurer, 500 W. Big Beaver Road, Troy, MI 48084. Each such payment shall clearly identify that it is a monthly payment being made pursuant to this Agreement and identify the calendar month for which SOMERSET intends the payment to apply. SOMERSET agrees that TROY, in its discretion, may apply any monthly payments received from SOMERSET to any past due amount or monthly payment.

4. Section 10 is hereby amended as follows:

10. <u>ANNUAL REVIEW OF FEES</u>. Each year, prior to the anniversary date ("anniversary date" shall refer to July 1st), of the Agreement or any renewal Agreement, TROY shall review its personnel costs and any costs directly related to the ability of TROY to provide services under this Agreement as Amended. If those costs have increased or decreased, TROY shall notify SOMERSET in writing of the amount of and the reason for the increased or decreased costs for service under this Agreement no later than April 30th. Those increased or decreased costs will be assessed as the new fee to SOMERSET from the anniversary date of any renewal of the Agreement as Amended for a one (1) year period. The renewal fee amount will be paid in monthly

installments on the first day of each month over the 12 month period of the renewal period with the first payment due on July 1st. If requested by SOMERSET, the TROY Chief of Police or his/her designee, shall meet with a representative from SOMERSET to discuss any increases or decreases in the annual fee as set out in this Section. TROY and SOMERSET shall determine and agree in writing to the new annual fee for the upcoming year prior to June 1st of each year.

4. Except as otherwise stated in this Amendment, the original Agreement Between the City of Troy and Somerset Collection for Assignment of Police Officer Position and Reimbursement to the City of Troy for Costs executed on May 14, 2013 shall remain in full force and effect, and to the extent there is a conflict between the terms of the Agreement and the terms of this Amendment, the terms and provisions of this Amendment shall govern and control.

5. This Amendment may be executed in any number of counterpart originals, each of which, when taken together, shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, TROY and SOMERSET have executed this Amendment to Agreement on this _____ day of _____, 2015.

WITNESSES:

SOMERSET COLLECTION,

_____

_____

By: John F. Myszak III
Its: General Manager

CITY OF TROY

By: Dane Slater
Mayor

By: M. Aileen Dickson
City Clerk

AMENDMENT TO AGREEMENT BETWEEN THE CITY OF TROY AND SOMERSET COLLECTION FOR ASSIGNMENT OF POLICE OFFICER POSITION AND REIMBURSEMENT TO THE CITY OF TROY FOR COSTS

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The parties agree to amend the Agreement as follows, in order to allow for additional personnel to be assigned to the Somerset Collection as of April 1, 2015:

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During the performance of his/her duties, the assigned police officers will also conduct indoor patrols of common areas of Somerset Collection North and Somerset Collection South and establish a community presence at the Somerset Collection.

TROY will provide the Somerset assigned police officers with uniforms, weapons, equipment and supplies as TROY determines are necessary and in accordance with contractual obligations. TROY will provide the assigned police officers with a fully marked patrol vehicle with radio equipment, a patrol car computer or any related equipment to establish a direct interface with the Troy Police Department. Due to contracts with the State of Michigan, Michigan State Police and/or the federal government or its agencies, any radio(s) and/ or computer equipment shall only be available for use by the assigned police officers or any Troy Police Department personnel."

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terrorist activities, the parties will mutually agree upon a new start-up date and Troy will adjust the monthly installment payment on a pro-rated hourly basis for the affected time period.

3. Section 4 is hereby amended as follows:

"4. **FEES FOR SERVICES AND PREVIOUS YEAR ADJUSTMENTS**. In consideration of TROY'S promises and efforts under this Agreement, SOMERSET agrees to pay an annual fee not to exceed Two Hundred Forty Thousand ($ 240,000.00) Dollars for two assigned police officers. Based on the approval of this Amendment, SOMERSET shall pay a monthly installment payment of Twenty Thousand ($20,000.00) Dollars starting April 1, 2015. This annual fee does not include any overtime costs. TROY shall keep records of the actual costs, including any overtime worked by Troy police officers, and for the months of April, May and June 2015, if the actual costs incurred by TROY on behalf of SOMERSET exceed the amount paid by SOMERSET in monthly installments for that period, TROY will send an invoice for adjustments on or before June 30, 2015, and this amount shall be paid by SOMERSET on or before July 31, 2015. Thereafter, TROY will do this accounting on an annual contractual basis, and if the actual costs, including any overtime work by Troy police officers, exceed the amount received in monthly installments, then TROY shall send SOMERSET an annual invoice for adjustments on June 30, and SOMERSET shall pay any adjustment on or before July 31 of each year. Payments shall be made on the first day of each month.

Each monthly payment shall be made by check drawn on a SOMERSET account made payable to the "City of Troy" and delivered or mailed to the attention of the City of Troy Treasurer, 500 W. Big Beaver Road, Troy, MI 48084. Each such payment shall clearly identify that it is a monthly payment being made pursuant to this Agreement and identify the calendar month for which SOMERSET intends the payment to apply. SOMERSET agrees that TROY, in its discretion, may apply any monthly payments received from SOMERSET to any past due amount or monthly payment.

4. Section 10 is hereby amended as follows:

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TROY and SOMERSET shall determine and agree in writing to the new annual fee for the upcoming year prior to June 1st of each year.

4. Except as otherwise stated in this Amendment, the original Agreement Between the City of Troy and Somerset Collection for Assignment of Police Officer Position and Reimbursement to the City of Troy for Costs executed on May 14, 2013 shall remain in full force and effect, and to the extent there is a conflict between the terms of the Agreement and the terms of this Amendment, the terms and provisions of this Amendment shall govern and control.

5. This Amendment may be executed in any number of counterpart originals, each of which, when taken together, shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, TROY and SOMERSET have executed this Amendment to Agreement on this _____ day of _____, 2015.

WITNESSES:

_____

_____

SOMERSET COLLECTION,

3/5/15

By: John F. Myszak III
Its: General Manager

CITY OF TROY

_____
By: Dane Slater
Mayor

By: M. Aileen Dickson
City Clerk

AGREEMENT BETWEEN THE CITY OF TROY AND SOMERSET COLLECTION FOR ASSIGNMENT OF POLICE OFFICER POSITION AND REIMBURSEMENT TO THE CITY OF TROY FOR COSTS

This Agreement is entered into between the CITY OF TROY, a Michigan Municipal Corporation, whose address is 500 W. Big Beaver Road, Troy, Michigan 48084, hereinafter referred to as "TROY") and SOMERSET COLLECTION, a Michigan Limited Partnership, whose address is 2800 Big Beaver Road, Suite 300, Troy, Michigan 48084, hereinafter referred to as "SOMERSET", both TROY and SOMERSET are also referred to as party or parties.

Purposes of Agreement

TROY is authorized by law to provide a police department for the protection for residents, businesses and the general public; and

TROY through its Police Department is authorized by law to detain individuals to investigate criminal activities, make arrests for criminal activities and to perform numerous other activities pursuant to law; and

SOMERSET is a business within TROY that provides rental space shopping, dining and entertainment facilities for the general public; and

WHEREAS, TROY has the capacity to provide the presence of police personnel for the protection of the community and to deter crime, but absent this Agreement, is not obligated to provide any assigned police personnel to SOMERSET; and

WHEREAS, TROY is willing to provide SOMERSET with an assigned police officer position for the above stated purposes and under the terms and

conditions as stated herein in exchange for reimbursement by SOMERSET for the cost of that TROY Police Department assigned police officer position:

NOW, THEREFORE, based upon the foregoing statements of the purpose of this Agreement, TROY and SOMERSET agree to the following terms, conditions, representations and acknowledgements and mutually agree as follows:

1. **ASSIGNED POLICE OFFICER POSITION**. TROY agrees to provide sworn, uniformed police officer(s) to fill a position that is assigned to the Somerset Collection. The reference to "assigned police officer" throughout this Agreement shall refer to the position and not to one individual serving as the assigned police officer. However, it is recognized that a primary Somerset officer will be selected by TROY, in accordance with established labor agreements, and in consultation with SOMERSET. The assigned Somerset police officer(s) will perform the duties of a Troy Police Officer as determined solely by the Troy Police Department.

During the performance of his/her duties for Somerset, the assigned police officer will also conduct indoor patrols of common areas of Somerset Collection North and Somerset Collection South and establish a community presence at the Somerset Collection.

TROY will provide the Somerset assigned police officer(s) with uniforms, weapons, equipment and supplies as TROY determines are necessary and in accordance with contractual obligations. TROY may also provide the assigned police officer (s) with a fully marked patrol vehicle, radio equipment, a patrol car computer or any related equipment to establish a direct interface with the Troy

Police Department. Due to contracts with the State of Michigan, Michigan State Police and/or the federal government or its agencies, these radio(s) and or computer equipment shall only be available for use by the assigned police officers or any Troy Police Department personnel.

2. HOURS AND DAYS OF ASSIGNED OFFICER AND INTERRUPTION OF SERVICES. The assigned Somerset police officer (s) will report to the Somerset Collection site as a duty station for forty (40) hours over a four (4) day period during the fifty-two (52) weeks of each year unless the Troy Police Department determines that there are ~~for~~ emergency situations, labor strikes, natural disasters or weather events, events of force majeure, terrorist activities, extreme shortages in staff, or other events necessitating the use of the assigned Somerset police officer for other official duties. It is understood that the Somerset officer will start and end the workday at the Troy Police Department so that he/she can pick up equipment, attend roll call and perform other administrative functions.

Due to the fluctuating needs of SOMERSET, TROY understand that SOMERSET will need some flexibility in the scheduling of the forty (40) hours as set forth above. SOMERSET agrees to give the Community Services Section Supervisor notice of its forty (40) hour scheduling preference for each week at least two (2) weeks ahead of time so that TROY can implement the schedule.

Although the request for additional TROY police officers at specific events and/or during the holiday season is beyond the scope of this Agreement and shall continued to be negotiated by the parties separately and apart from this

Agreement, TROY agrees that all overtime originating from the specific events and/or holiday season coverage will be filled first by the officer(s) selected to serve in the SOMERSET police officer position, as set forth in this Agreement, and then from the Community Services Section ("CSS") unit and lastly, from the Troy police department master seniority list.

SOMERSET will provide the name and telephone number of a SOMERSET representative to the Troy Police Department's Community Services Supervisor at: 248-619-7615. The SOMERSET representative and the TROY Community Services Supervisor will decide how to set up the weekly schedule for the SOMERSET assigned police officer and discuss any other details regarding standard routines, including, but not limited to: use of an office at the Somerset Collection, set up of SOMERSET owned computers, use of TROY owned software (including, but not limited to, propriety privileges and rights to the computer, software and/or data, notification which may involve special instructions), and other non-policy issues.

If it becomes necessary to temporarily interrupt the services of the SOMERSET police officer position as set out herein, the Troy Police Chief or his designee will notify SOMERSET as soon as possible. As soon as possible after the interruption of service, TROY will issue a credit to SOMERSET for the pro-rata hourly rate of the assigned Troy police officer for each hour, or portion of an hour, that a police officer is unable to perform the agreed upon hours per week, and this credit shall result in an adjustment to the next monthly payment. TROY

intends to exercise its authority to interrupt the service to SOMERSET only in an extreme situation.

3. **START-UP DATE**. All services under this Agreement shall begin on July 1, 2013, and the terms shall be effective for the entire year, unless and until there is a termination or are annual adjustments, as allowed in Paragraph 10. If the start-up date is delayed due to circumstances beyond the reasonable control of SOMERSET or TROY, for unanticipated events including, but not limited to: labor strikes, natural disasters or weather events, events of force majeure, or terrorist activities; the parties will mutually agree upon a new start-up date and TROY will adjust the monthly installment payment on a pro-rated hourly basis for the affected time period.

4. **FEES FOR SERVICES AND PREVIOUS YEAR ADJUSTMENTS**. In consideration of TROY'S promises and efforts under this Agreement, SOMERSET agrees to pay an annual fee not to exceed One Hundred Eighty Thousand ($ 180,000.00) Dollars for the 2013-2014 contract year, which shall be paid in twelve monthly installments of Fifteen Thousand Dollars ($15,000), starting July 1, 2013, unless adjustments are required under the terms of this Agreement. Thereafter, the payments shall be made on or before the first day of each month. All monthly payments shall be due and payable by SOMERSET without any further notice or demand from TROY.

A. Each monthly payment shall be made by check drawn on a SOMERSET account made payable to the "City of Troy" and

delivered or mailed to the attention of the City of Troy Treasurer, 500 W. Big Beaver Road, Troy, Michigan 48084.

B. Each such payment shall clearly identify that it is a monthly payment being made pursuant to this Agreement and identify the calendar month for which SOMERSET intends the payment to apply. SOMERSET agrees that TROY, in its discretion, may apply any monthly payments received from SOMERSET towards any past due amount or monthly payment.

5. SOMERSET'S RESPONSIBILITIES. SOMERSET will not cancel or reduce for any reason the required number of hours, the days of the week on site or the number of weeks on site for the assigned Somerset police officer position without the written agreement of the Troy Police Chief or his designee. A request by SOMERSET to cancel or reduce hours, days or weeks as set out herein, if approved by the Troy Police Chief or his designee, will not result in a reduction in the monthly or yearly fee due to TROY, and SOMERSET will reimburse TROY for the aforementioned costs for the days an assigned officer is present at SOMERSET and also for any requested overtime work that is performed at Somerset by any Troy police officers.

SOMERSET and/or its employees will not have any authority to require specific services and/or command the assigned police officer (s) in their duties.

One of the main purposes of the assigned Somerset officer position is to provide maximum public exposure of the Troy Police Department inside the

Somerset Collection. TROY and SOMERSET agree that it would be helpful to maximize the assigned police officer's time by allowing the writing of reports, the obtaining of witnesses statements, and the communication with other Troy Police personnel for transfer of prisoners to the Troy Police Department while physically being present at the Somerset Collection. For these reasons, SOMERSET agrees to provide a computer and software to the assigned police officers for the purpose of completing reports on the SOMERSET site instead of at the Troy Police Department station house. The computer and software provided by SOMERSET shall be solely for the use of the assigned Somerset police officer (s) and shall not be used or monitored by SOMERSET and/or its employees. SOMERSET agrees that all information inputted into the computer is confidential to any party but the Troy Police Department employees and that the Troy Police Department employees will have the sole discretion to disseminate the information in the ordinary course of business and under its policies and procedures. The assigned Somerset officer's use of the computer shall still be governed by the General Orders and policies of the Troy Police Department regarding the proper use of computers and the computer generated data and information.

At the termination of this Agreement, or if SOMERSET terminates the assigned Somerset police officer (s) use of a designated computer, then all software and/or programs which were in use by the Troy Police Department will be deleted or removed by the Troy Police Department and the computer will be returned to SOMERSET within a reasonable time thereafter.

SOMERSET may provide at its own cost and in its discretion a designated office for the assigned Somerset police officer(s) and ancillary equipment or supplies such as a telephone, fax machine, filing cabinet, office supplies and the like. SOMERSET and/or its employees will not deny the assigned police officer(s) access to areas open to the general public and/or areas of the Somerset Collection where access is needed to investigate criminal activities.

6. **POLICIES AND PROCEDURES**: The parties acknowledge that due to the number and variety of factual situations that could arise in the administration of this Agreement, that it is impossible to set out all policies, procedures, orders and standards applicable to Troy police personnel and/or services to be provided. Therefore, minimally, SOMERSET agrees to be bound by relevant policies and/or procedures of the Troy Police Department.

7. **DISPUTES OVER DUTIES AND/OR ACTIVITIES OF ASSIGNED OFFICER**. If there is a dispute between SOMERSET and TROY regarding the duties and/or action of the assigned police officer, SOMERSET agrees that the Troy Police Department shift commander on duty at the time of the dispute shall make a decision as to the duties and actions of the assigned police officer and how a specific situation shall be handled

8. **DISPUTE RESOLUTION**: If there is a dispute between SOMERSET and TROY regarding the proper handling of a matter by the Troy Police Department and/or the SOMERSET assigned police officer(s), then SOMERSET'S General Manager, or his/her designee, shall contact the Troy Police Chief or his designee to discuss the issues. SOMERSET and TROY shall make every effort to reach a

mutually satisfactory solution and agree upon the policy for future similar situations. However, if the request by SOMERSET would violate any policies of the Troy Police Department, the policies of the Troy Police Department shall control.

SOMERSET and TROY acknowledge that they wish to continue the amicable relationship that they have had in the past and continuing. Therefore, they will make every effort to contact each other during the terms of the Agreement on a regular basis to discuss any concerns of the parties. TROY will make available the Community Service Supervisor at 248-619-7615 for communication with SOMERSET. SOMERSET will make available a named representative and telephone number for communication with TROY regarding day-to-day activities. It is the hope of both parties that day-to-day issues can be resolved between the TROY Community Service Supervisor and the SOMERSET representative. However, if an issue cannot be resolved, either party may request a meeting between SOMERSET and the Community Services Supervisor to attempt to resolve those issues. As a last resort, if either side is not satisfied with the proposed resolution of the other party, then SOMERSET may request a meeting with the Troy Chief of Police.

9. <u>TERMINATION OF AGREEMENT AT RENEWAL ONLY:</u> This Agreement shall become effective on July 1, 2013 and shall remain in effect for a period of one (1) year. This Agreement will be self-renewing annually unless written notice is given to terminate by either party by May 31st of each year. Since TROY has incurred considerable expenses to accomplish the purposes of this Agreement

by hiring new police personnel and reorganizing police staff to provide an assigned police officer for SOMERSET, neither SOMERSET nor TROY may terminate this Agreement for any reason except at the renewal period as set out herein.

10. **ANNUAL REVIEW OF FEES.** Each year, prior to the anniversary date of the Agreement ("anniversary date" shall refer to July 1st), TROY shall review its personnel costs and any costs directly related to the ability of TROY to provide services under this Agreement. If those costs have increased or decreased, TROY shall notify SOMERSET in writing of the amount of and the reason for the increased or decreased costs for the service under this Agreement, and this shall be provided to Somerset no later than April 30th. Those increased or decreased costs will be automatically assessed as the new fee to SOMERSET, starting at the anniversary date of any renewal of the Agreement and continuing for a one (1) year period, unless this Agreement is terminated in accordance with its terms. The renewal fee amount will be paid in monthly installments on the first day of each month over the 12 month period of the renewal period with the first payment due on July 1st.

11. **NO SETOFF FOR FEES**. SOMERSET agrees that any and all of its payment obligations as set forth in this Agreement shall be absolute and unconditional and shall not be subject to any set-off, defense counterclaim, or recoupment for any reason whatsoever except as set out in Paragraph 2.

12. **INSURANCE REQUIREMENTS.** SOMERSET agrees, at no cost and expense to TROY, to purchase and maintain the following insurance

coverage(s), in the minimum coverage amounts indicated, for the entire duration of this Agreement and to provide TROY with the following Certificates of Insurance. SOMERSET acknowledges that all insurance certificates or proof of same required shall be subject to the approval of TROY. SOMERSET shall name TROY as an additional insured on their policy.

A. All Certificates of Insurance, self-insurance, or duplicate policies of any outside vendor or contractor shall contain all of the following clauses:

i. "Any coverage afforded to TROY shall apply as primary and not excess to any insurance issued in the name of SOMERSET".

ii. "The insurance company(s) issuing the policy or policies shall have no recourse against TROY for payment of any premiums or for assessments under any form of policy.";

iii. "Any and all deductibles in the above described insurance policies shall be assumed by, and be for the account of, and at the sole risk of SOMERSET; and

iv. "There will be no additional exclusions running to the Additional Insured based upon any actions or activities of the Named Insured."

B. All Certificates of Insurance are to require that TROY be provided with thirty (30) days advance notice of any material change or cancellation. All

Certificates of Insurance must be provided to TROY not less than thirty (30) working days before the commencement date of services to be provided under this Agreement. Throughout the term of the Agreement, upon TROY's request, SOMERSET shall provide a copy of SOMERSET'S certificate(s) of insurance to TROY within a reasonable time after requested.

13. **SUBROGATION:** The parties agree that they will legally conform with the requirements of this Agreement and in doing so shall be subrogated to any rights to recover or any benefits either may have under any insurance policy and to the full extent of any payment made under any insurance policy as may be required to make the recovering party whole for any claims. In this instance, the other party agrees to cooperate and perform any act necessary or required to secure such rights for the prevailing or claiming party.

14. **INDEMNIFICATION AND HOLD HARMLESS**.

Unless a specific percentage of liability is assigned to each party by a jury verdict or a court ruling, SOMERSET and/or TROY shall be mutually obligated to pay all or any portion of any court-ordered judgment or award for damages where a court has determined that SOMERSET and/or TROY and/or any SOMERSET employee and/or TROY employee were either negligent or at fault. Where a court or a jury has determined that the liability was the exclusive liability of SOMERSET or TROY and/or any SOMERSET employee or TROY police personnel, then that party shall be responsible for the Court ordered damages or judgment.

TROY and SOMERSET agree that neither is required to indemnify nor hold the other harmless under those circumstances under which claims occur or arise or are made on the basis of the negligence, recklessness or gross misconduct of the party's own personnel in the performance of the terms of the Agreement, or violations of state or federal law alleged to have arisen as a result of the conduct of the party's own personnel.

15. **PAYMENT AND SATISFACTION OF CLAIMS**: The indemnification right afforded in this Agreement shall be in excess and over and above any other valid and collectible insurance right available to SOMERSET or TROY and applicable to any part of any ultimate net SOMERSET or TROY loss, whether or not any such insurance coverage is stated to be primary, contributing, excess, or contingent. To the extent that any promise to indemnify, pay on behalf of, and hold harmless as set forth in this Agreement may become unenforceable or uncollectible, the indemnitor shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law toward the payment and satisfaction of any claims.

16. **NO WAIVER OF GOVERNMENTAL IMMUNITY**. All of the privileges and immunities from liability, and exemptions from laws, ordinances and rules which apply to the activities of any governmental agency when performing its functions, shall apply to the same degree and extent to the performance of such functions and duties under the provisions of this Agreement. No provision of this Agreement is intended, nor shall any provision of this Agreement be construed, as a waiver by TROY of governmental immunity as provided under law.

17. SURVIVAL OF CLAIMS IF CANCELLATION: The parties agree that all indemnification and hold harmless promises, waivers of liability, representations, insurance coverage obligations, liabilities, payment obligations, and/or any other related obligations provided for in this Agreement with regard to any acts, occurrences, events, transactions, or claims, either occurring or having their basis in any events or transactions that occurred before the cancellation of this Agreement or part of this Agreement, shall survive the cancellation. The parties agree that the cancellation or termination of this Agreement shall be without prejudice to any rights or claims of either party against the other and shall not relieve either party of any obligations which, by their nature, survive cancellation or termination of this Agreement.

18. INDEPENDENT CONTRACTOR: SOMERSET and TROY agree that no employees, volunteers, agents and personnel servicing this Agreement or otherwise, shall be considered or asserted to be employees of the other, and further agree, that at all times and for all purposes under the terms of this Agreement, the legal status and relationship of each party shall be that of an Independent Contractor. The parties also agree that no Troy police personnel, employee, volunteer, agent or personnel shall, by virtue of this Agreement or otherwise, be considered or asserted to be an employee, agent, or working under the supervision and control of the other.

19. RESPONSIBILITIES TO RESPECTIVE EMPLOYEES: SOMERSET and TROY agree that, at all times and for all purposes relevant to this Agreement, SOMERSET and TROY shall each remain the sole and exclusive employer of

each of their respective employees. Except as set out in Paragraph 2, SOMERSET and TROY each agree to remain solely and exclusively responsible for the issuance of payment of each of their respective employees' wages, compensation, overtime wages, expenses, fringe benefits, pension or retirement benefits, training expenses, or other allowances or reimbursement of any kind, including, but not limited to, workers' disability compensation, unemployment compensation, Social Security Act protections and benefits, employment taxes, or any other statutory or contractual right or benefit based, in any way, upon employment of personnel.

20. NO CHANGE TO CONDITIONS OF EMPLOYMENT: This Agreement does not, and is not intended to create, change, modify, supplement, supercede, or otherwise affect or control, in any manner, any terms or conditions of employment of any employees of either SOMERSET or TROY, including, but not limited to, any employment and/or union contracts, any levels or amounts of supervision, any standards of performance, any sequence or manner of performance, and/or any rules regulations, training and education standards, orders, policies, procedures, directives, and ethical guidelines which shall solely and exclusively govern and control the employment relationship between each of the parties hereto and their employees. This provision shall also apply to hours of work and/or shift assignments of each party's personnel except as otherwise set out in this Agreement.

21. NO EXERCISE OF CONTROL OVER OTHER PARTIES EMPLOYEES: The parties agree that neither shall provide, furnish or assign any of the other's

employees, volunteers, agents or personnel with any job instructions, job descriptions, job specifications, or job duties, or, in any manner attempt to control, supervise, train, or direct any of the other's employees, volunteers, agents or personnel in the performance of any duty or obligation under the term of this Agreement.

22. NOTICE OF CLAIMS: Each party agrees that it shall promptly deliver to the other written notice and copies of any claims, complaints, charges, or any other accusations or allegations of negligence or other wrongdoing civil in nature, that either becomes aware of which involves, in any way personnel and/or services under this Agreement or any other activities that might give rise to a claim, damages and/or litigation involving the other party. Unless prohibited by Michigan Court Rule, SOMERSET and TROY agrees to cooperate to assist each other with any investigation conducted by either party concerning any acts or performance of any duties or services by SOMERSET or TROY personnel which involve services under this Agreement. However, TROY shall be exempt from releasing information in an on-going investigation or if release of information would be against police policies or state or federal laws and/or city ordinances, including, but not limited to administrative codes.

23. NOTICE REQUIREMENTS: Any written notice required or permitted under this Agreement shall be considered delivered to a party as of the date that such notice is deposited, with sufficient postage, with the U.S. Postal Service. Unless specifically otherwise set out in this Agreement, all writing sent to TROY shall be sent to: the Troy Chief of Police and the Troy City Attorney and all writing sent to

SOMERSET shall be sent to: John F. Myszak III, General Manager, Somerset Collection, 2800 W. Big Beaver Road, Suite 300, Troy, Michigan 48084 or his successor.

24. JURISDICTION AND INTERPRETATION: This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced and governed under the laws of the State of Michigan. The language of all parts of this Agreement is intended to and, in all cases, shall be construed as a whole, according to its fair meaning, and not construed strictly for or against any party. As used in this Agreement, the singular or plural number, possessive or nonpossessive shall be deemed to include the other whenever the context so suggests or requires. Each party's legal counsel has negotiated the language of this Agreement.

25. NO WAIVER OF RIGHTS OR PRIVILEGES: Absent an express written waiver, the failure of any party to pursue any right granted under this Agreement shall not be deemed a waiver of that right regarding any existing or subsequent breach or default under this Agreement. No failure or delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise of any right, power or privilege preclude any other or further exercise of any other right, power or privilege.

26. BINDING ON SUCCESSORS: TROY and SOMERSET acknowledge that this Agreement shall be binding upon each of them and, to the extent permitted

by law, upon their administrators, representatives, successors and all persons acting by, through, under, or in concert with them.

27. PARAGRAPH HEADINGS: The paragraph headings to this Agreement are for convenience reference only and are not to be construed as part of this Agreement for interpretation purposes.

SOMERSET COLLECTION

WITNESSES:

BY: John F. Myszak III
General Manager

DATED: May 9, 2013

CITY OF TROY

WITNESSES:

Cheryl A Stewart

BY: Dane Slater
Mayor

Irene Newman
IRENE NEWMAN

BY: Aileen Bittner
City Clerk

DATED: May 14, 2013