

**20241-20238 Agreement between the
City of Gahanna and the Gahanna Convention & Visitors Bureau
for the Ohio Herb Center**

This Agreement is between the City of Gahanna, Ohio (hereinafter referred to as the “City”) and the Gahanna Convention & Visitors Bureau (hereinafter referred to as “the CVB”). The City and the CVB may be referred to individually herein as a Party or collectively as the Parties.

WITNESSETH:

WHEREAS, the City of Gahanna has enacted Gahanna City Code Section 165.02(a) to authorize a lodging tax to be expended for the purpose of tourism and attracting visitors to the City of Gahanna.

WHEREAS, the City previously oversaw the management and operations of the Ohio Herb Center (hereinafter referred to as “the OHC”), at the premises located at 110 Mill St., Gahanna, Ohio 43230, and transferred management and operational responsibility of the OHC to the CVB on February 4, 2019, pursuant to ORD 0009-2019.

WHEREAS, the City, on the ____ day of _____, 2020, adopted Ordinance Number _____, wherein the Mayor of the City of Gahanna, Ohio, is hereby authorized to enter into this Agreement with the CVB for the purpose of continuing the transfer of full responsibility to the CVB for all aspects of management and operations of the OHC, in order to increase the patronage and business of tourists into the City for the benefit of the citizens of the City and the business community, and specifically for the City’s downtown area, in accordance with Gahanna City Code Section 165.02(d).

NOW, THEREFORE, the parties hereto wish to enter into an agreement in accordance with the above Ordinances and Gahanna City Code and upon the following terms and conditions:

SECTION I – TERM

1. This Agreement shall be for a period of ~~three (3)~~ four (4) years, beginning on the first day of January, 2024, and extending up to and including December 31, 2028. ~~the second day of January, 2024~~. It shall replace all previous agreements dated prior to the execution of this agreement. This Agreement will continue on a month to month basis upon expiration unless terminated as stipulated in Section IV herein or unless replaced by a subsequent agreement.

SECTION II – CVB OBLIGATIONS

1. The CVB agrees to continue all administrative, financial and managerial responsibility for operations of the OHC, with the vision of attracting visitors and residents to Gahanna and promoting retail activity within the City’s downtown area.
- ~~2.~~ 2. The CVB agrees that 16.67 percent of the collected lodging tax will be distributed by the City to the CVB for the purpose of marketing and operating the OHC and shall be spent solely for the purpose of the OHC. All revenues generated from operations of the OHC while under the CVB’s management will remain the property of the CVB,

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— and the CVB further agrees to be solely responsible for any deficit relative to operations of the OHC.

2.3. The CVB shall deliver to the City an annual report covering the previous calendar year, detailing the activities and accomplishments of the OHC, including expenditure of funds remitted to the CVB by the City. The CVB is further obligated to complete and accomplish, to the best of its ability, the duties as outlined in the Scope of Services attached as Addendum 1 to this Agreement.

4. The CVB shall keep and maintain accurate records and accounts of all financial transactions for the OHC. The City and/or State of Ohio has the right to examine and audit all such records at any time upon reasonable notice.
5. The CVB will indemnify, defend and hold harmless the City and its successors and assignees, agents, officials, officers and employees from and against any and all claims, suits, proceedings, costs, judgments, awards, penalties, demands, liabilities, expenses (including court costs and reasonable legal fees), or damages (Claims) to real or tangible personal property and/or bodily injury to persons resulting from the negligence or willful misconduct and/or omission of its employees or agents.

SECTION III – CITY OBLIGATIONS

1. For the services identified herein and in the attached addendum, the City agrees to pay 16.67 percent of the collected lodging tax to the CVB. Said payment shall be remitted monthly to the CVB by the first day of the second month following collection or the next business day.
2. The City will not be responsible for making up any shortage if receipts from the lodging tax are less than anticipated or budgeted.
3. The City will allow the CVB continued use of the city-owned furniture and equipment that currently is in use by the OHC as of execution of this Agreement. ~~The CVB agrees to assume a pro-rata cost for the duration of the current copier lease for the OHC. The City and CVB further agree that, should this Agreement terminate prior to the end of the copier lease, or should the CVB notify the City that it no longer has a need for use of the copier, the City will resume financial responsibility for the remainder of the copier lease upon transfer of the copier back to the City, and the CVB's financial responsibility for the copier will automatically terminate. In that event, the CVB agrees that the copier will be returned to the City in the same condition in which it was provided.~~
4. The City will provide logistical staffing and support as needed for Herb Day, which will be continued by Visit Gahanna as required herein, at no additional cost to the CVB or to OHC.
5. The City will indemnify, defend and hold harmless the CVB and its successors and assignees, agents, officials, officers and employees from and against any and all claims, suits, proceedings, costs, judgments, awards, penalties, demands, liabilities,

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expenses (including court costs and reasonable legal fees), or damages (Claims) to real or tangible personal property and/or bodily injury to persons resulting from the negligence or willful misconduct and/or omission of its employees or agents.

SECTION IV- AGREEMENT TERMINATION

1. Either party to this Agreement may terminate the same upon the giving of ~~ninety (90) days~~ one hundred and eighty (180) days written notice thereof to the other party, directed to the address stated herein.
2. In the event of termination, the CVB shall be responsible for any and all obligations or encumbrances incurred by the CVB on behalf of the OHC as of the date of notice of termination and for any additional expenses that are incurred as a direct result of the winding down of operations (collectively referred to as "outstanding expenses"). To the extent that the CVB has exhausted any and all monies and is unable to cover the payments of its outstanding expenses, the City shall be responsible for any remaining expenses in an amount not to exceed the prorated share of the City's total receipts for lodging tax designated for this contract for the remainder of the current calendar year. If the CVB has any remaining monies from the OHC after the payment of all outstanding expenses as defined above, any and all monies remaining shall be returned to the General Fund of the City. and all expenses, obligations or encumbrances of the OHC incurred after the effective date of termination of this Agreement, and all monies generated by the OHC or earmarked by the City for the OHC after the termination date shall be directed to the General Fund of the City of Gahanna. Visit Gahanna shall be responsible for existing OHC expenses, obligations or encumbrances incurred through the effective date of this Agreement and shall retain any and all revenue and monies earned or generated as of the effective date of termination. All fixed assets initially provided by the City shall be returned and remitted to the City in the same condition in which they were received. Visit Gahanna will retain all fixed and non-fixed assets which it purchased or supplied for the OHC.

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SECTION V – MISCELLANEOUS PROVISIONS

1. This Agreement constitutes all promises, conditions, inducements and understandings between the City and Visit Gahanna.
2. Neither Party hereto shall have the right to assign this Agreement without the written consent of the other Party, except as provided herein. This Agreement shall be binding upon the successors and assigns of the Parties hereto.
3. This Agreement shall constitute the entire agreement between the Parties hereto, and no modification thereof shall be effective unless made by supplemental agreement in writing executed by the Parties. Any modification requires at least sixty (60) days' written notice, unless waived in writing by both Parties.
4. No waiver of any breach shall affect or alter this Agreement but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect.

5. The failure of City or Visit Gahanna to seek redress for any breach or default of this Agreement shall not constitute a waiver, and the City or CVB shall have all remedies provided herein and at law or in equity with respect to any such act or subsequent act constituting such breach or default. _____

6. In the event any term or provision of this Agreement shall for any reason be held invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other term or provision herein.
7. This Agreement is made pursuant to and shall be governed by and construed in accordance with the laws of the State of Ohio.

IN WITNESS WHEREOF, the parties have caused duplicate originals of this agreement to be executed on the _____ day of _____, 2020.

City of Gahanna
200 S. Hamilton Road
Gahanna, OH 43230

Gahanna Convention & Visitors Bureau
11670 Mill Street
Gahanna, OH 43230

BY:

BY:

Laurie A. Jadwin, Mayor

Lori Kappes, Executive Director

Jody Brown-Spivey
President, Board of Directors

Approved as to form:

Raymond J. Mularski, City Attorney

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SCOPE OF SERVICES – ADDENDUM 1

Visit Gahanna agrees to complete and accomplish, to the best of its ability, the following services related to the Ohio Herb Center:

Operations & Finance

1. Employ and manage a professional team for operations of the OHC.
2. Establish and implement revenue and performance goals and measurements for OHC programming, events, rentals and gift shop.
3. Operate gift shop to be open to the public during normal business hours during the week, and on weekends as appropriate.
4. The parties hereto agree to implement a lease agreement for the premises located at 110 Mill St., Gahanna, Ohio for operating the OHC.

Programming & Event Production

1. Plan, manage and grow the Herb Center in a fiscally responsible manner, demonstrating vision with revenue generation opportunities and expense controls.
2. Implement programming designed to attract visitors and residents to the OHC and to the City's downtown area.
3. Create a vision and plan for event opportunities in the downtown area that promote and/or expand upon the mission and vision of the OHC and that are designed to encourage positive economic impact for the OHC and business community.

Marketing & Public Relations

1. Create awareness about OHC, its programming, rental opportunities and events, by implementing a strategic and dynamic marketing and public relations plan that encourages positive economic impact for the community.
2. Collaborate with local businesses and community stakeholders to build upon existing partnerships and identify new relationships for marketing and tourism development opportunities within the City.

Communications

1. Engage in consistent two-way communication with stakeholders.
2. Collaborate with the City's efforts to enhance the overall strategic communications of Gahanna and its many partners.

**CITY OF GAHANNA AND
GAHANNA CONVENTION & VISITORS BUREAU
LEASE AGREEMENT**

This Lease Agreement is made and entered into, by and between the City of Gahanna, its successors and assigns, having an address at 200 South Hamilton Road, Gahanna, Ohio, 43230, hereinafter designated as the “Lessor”, and the Gahanna Convention & Visitors Bureau, its successors and assigns, having an address at 11067 Mill Street, Gahanna, Ohio 43230, hereinafter designated as the “Lessee”.

WITNESSETH:

WHEREAS, the Lessee desires to lease the property located at 110 Mill Street, Gahanna, Ohio 43230, as depicted on “Exhibit A” attached hereto and incorporated herein, and hereinafter collectively referred to as the “Premises”.

WHEREAS, the demised premises is listed on the National Registry of Historic Places, which encompasses specific requirements and limitations on repairs, maintenance and renovations.

NOW, THEREFORE, in consideration of the premises and the mutual promises and benefits contained herein, the parties hereto hereby agree as follows:

PREMISES AND TITLE

1. The Lessor hereby agrees to the lease of the demised premises leased by the Lessee. The Lessor covenants and warrants that, as of the date hereof, the Lessor holds good and marketable title to the premises; the Lessor has full authority and power to enter into this Lease; and so long as this Lease is in effect and the Lessee is not in default, the Lessee shall, at all times during the continuance hereof, have quiet, continuous, peaceable and undisturbed possession and enjoyment of the demised premises, free from the claims of the Lessor and all persons claiming under, by or through the Lessor, and free from the claims of all persons through or under whom the Lessor claims, subject to the terms and conditions of this Lease.

By taking possession of the demised premises, Lessee accepts Lessor’s warranty that the demised premises are in good and sanitary order, condition and repair. Lessee shall keep, maintain and preserve the demised premises and appurtenances in good condition and repair from daily use and wear and tear, unless such damage is caused by the negligent acts or omissions of Lessor, its agents or employees.

In spite of anything to the contrary contained in this Lease, Lessor shall keep the demised premises, exterior and interior, free of defects, deficiencies, deviations or failures during the term hereof, and shall, at Lessor’s cost, repair and maintain exterior areas, all mechanical systems and the structural portions of the building in which the demised premises are located, unless such maintenance and repairs are necessitated in part or in whole by the negligent act or omission of Lessee, Lessee’s agents, employees or invitees, in which case Lessee shall pay to Lessor, as additional rent, the reasonable cost of such maintenance and repairs.

The Lessee shall be responsible for all ~~i~~interior cleaning and janitorial to include windows, doors and bathrooms within its leased space. The Lessor shall be responsible for lawn, exterior cleaning and upkeep, and snow removal.

This Lease Agreement does not constitute any express or implied waiver of Lessee's obligation to comply with any and all provisions of the Codified Ordinances of Gahanna.

RENT AND TERM

2. The rental for the term of this Lease shall be payable as follows:

~~Beginning January 2, 2021, Lessee agrees to pay \$ 1.00 per year, payable to the City of Gahanna, for use of the Premises for operation of the Ohio Herb Center. Payment will be made by the last day of January.~~

~~It is further agreed to by the parties that the Lessee intends to relocate its administrative offices and visitors center into the location of the Premises. Lessee shall provide sixty (60) days written notice to the Lessor of its intent to relocate its offices to the Premises. Upon relocation of the Lessee's administrative offices and visitors center to the Premises, Lessee shall be responsible for payment of a monthly rental to the Lessor in the amount of \$500.00 per month, to be paid on the first day of each month, commencing the first month of occupancy by the Lessee's offices.~~

This Agreement will be effective and will continue for a period of one (1) year ("the Initial Term"). Thereafter, this Agreement will automatically renew for successive one year periods (each a "Renewal Term") unless either party provides written notification to the other party of its decision not to renew, with such notice to be provided no later than ninety (90) days prior to the end of the Initial Term or the then-current Renewal Term.

CONDITIONS

3. During the term hereof, and those terms identified herein, the Lessee shall be responsible for listing the Lessor as an additional insured for the minimum coverage acceptable to the Lessor and providing the Lessor with a Certificate of Insurance. Each Party will indemnify, defend and hold harmless the other Party and its successors and assignees, agents, officials, officers and employees from and against any and all claims, suits, proceedings, costs, judgments, awards, penalties, demands, liabilities, expenses (including court costs and reasonable legal fees), or damages (Claims) to real or tangible personal property and/or bodily injury to persons resulting from the negligence or willful misconduct and/or omission of their respective employees or agents.

4. During the term hereof, and those terms identified herein, the Lessor shall be responsible for listing the Lessee as an additional insured for the minimum coverage acceptable to the Lessee and providing the Lessee with a Certificate of Insurance.

5. During the term of this Agreement, the Lessee shall be responsible for all utilities related to use of the Premises, including but not limited to gas, electric, phone, internet, water, sewer, refuse.

6. Parties acknowledge that the demised premises is centrally located in the City's downtown area and near events that are programmed for the community. The Parties agree that the Lessee shall have priority in use and access to the demised property in the event any conflicts arise in scheduling of other activities, except the City reserves the right for priority use of the carriage house for the following events: the Creekside Blues & Jazz Festival, ~~Creepside Festival~~, Independence Day Celebration, Herb Day, Holiday Lights, Creekside Hops & Vines, Gahanna Flea Market, and any other events that may be agreed upon by the Lessor and Lessee.

7. Lessee shall be responsible for landscaping of beds and plants around and on the Premises. Lessor shall be responsible for mowing of grass on the Premises.

8. Except as set in the Scope of Services, Lessee shall not otherwise authorize use of the Premises by any third party without the express written consent of the Lessor.

ASSIGNMENTS

9. The Lessee shall not assign this Lease without the prior written consent of the Lessor. Such consent shall not be unreasonably withheld.

DEFAULTS

10. If the Lessee shall fail to pay the Lease thirty (30) days after receipt of written notice to the Lessee of such default, or if the Lessee shall fail to perform any other agreements or conditions contained herein, and such failure shall not be corrected within thirty (30) days after the Lessee shall have received written notice from the Lessor of such failure (or such longer period as may be required to correct such failure, if within said thirty (30) days, the Lessee shall commence to correct the same and thereafter diligently pursue the correction thereof), the Lessee shall be in default hereunder. Upon the occurrence of any such event of default, the Lessor shall have the rights permitted by law, including but not limited to, the right of its election to terminate this Lease and thereafter the Lessor may re-enter the demised premises and take possession thereof in any manner then permitted by law.

SURRENDER AT END OF TERM

11. At the expiration or termination of this Lease, whereby by lapse of time or otherwise, the Lessee will peaceably and quietly surrender to the Lessor all of the demised premises, in good condition, reasonable wear and tear, acts of God, and other causes beyond the control of Lessee excepted.

TERMINATION

12. The Lessor or Lessee shall have the right to terminate this Lease at any time without penalty or further liability whatsoever in the event either party determines that the other party herein has failed to conform with the terms and conditions of the Lease Agreement herein, or in the event that the use accorded to the property becomes unacceptable in accordance with the standards, requirements and conditions demanded to operate the Ohio Herb Center. The

Parties further agree that any termination of the companion agreement between the Lessor and the Lessee governing the operations of the Ohio Herb Center (entered into on the ____ day of _____, 2020, Ordinance No. _____) will automatically terminate this Lease, and that the effective date of termination of the companion agreement shall also serve as the effective terminate date for this Lease.

NOTICES

13. All notices required under this Lease to be served upon either party shall be sent registered or certified mail, return receipt requested, and shall be deemed served when deposited in the United States Mail, properly stamped and addressed to the Mayor of the City of Gahanna (for notice to the Lessor) or addressed to the Lessee (for notice to the Lessee), at the respective addresses herein above set forth, or to such other address as the Lessor or Lessee shall hereinafter give notice to the other in writing.

MISCELLANEOUS

14. It is mutually stipulated and agreed by and between the parties thereto that this instrument contains the entire Lease Agreement between them as of this date, and that the execution thereof has not been induced by either party by any representations, promises or undertakings not expressed herein, the execution of which causes this Lease Agreement to have full force and effect. It is further mutually stipulated and agreed by and between the parties that there are no other promises or undertakings whatsoever by the respective parties in any way affecting the subject matter of this lease which are not expressly contained in this instrument and no change, alteration or modification hereof may be made except in writing signed by both parties hereto.

The terms, covenants and conditions hereof shall be binding upon and inured to the benefit of the parties hereto, and their respective successors and assigns.

If any part of this Lease Agreement is held to be unlawful, or null and void, such part shall be severed from the whole hereof, and the remaining portion thereof shall retain its full force and effect as fully written herein.

This Lease shall be construed under the law of the State of Ohio.

IN WITNESS WHEREOF, the parties hereunder set their hands the day and year first written above.

CITY OF GAHANNA

GAHANNA CONVENTION & VISITORS
BUREAU

By:_____

By: _____

Printed Name

Printed Name

Title

Title

Title: _____

Approved as to form:

Raymond J. Mularski, City Attorney

Exhibit A

Property definition to include house, grounds, carriage house and drying shed