

**AUTOMATED TELLER MACHINE, SITE LOCATION, AND CONCESSION
RENEWAL AGREEMENT FOR THE CITY OF LONG BEACH**

THIS AUTOMATED TELLER MACHINE SITE LOCATION AND CONCESSION RENEWAL AGREEMENT FOR THE CITY OF LONG BEACH (the "Agreement"), effective as of June ___, 2021 (the "Effective Date"), is made by and between the City of Long Beach, a municipal corporation, with principal offices located at 1 W. Chester St., Long Beach, NY 11561, (hereinafter "Customer") and Bethpage Federal Credit Union, a credit union with its principal offices located at 899 South Oyster Bay Road, Bethpage New York 11714 (hereinafter "Provider"), Customer and Provider may be referred to as a "Party" and collectively referred to as the "Parties."

RECITALS

WHEREAS, the City of Long Beach issued a Request for Proposal dated April 10, 2014 seeking proposals to provide Automated Teller Machine ("ATM Machine(s)") concession services; and

WHEREAS, Provider offers ATM concession services on its own behalf or through its vendors; and

WHEREAS, Customer wishes to secure ATMs, and Provider is able and willing to provide the ATMs, subject to the terms and conditions of this Agreement;

WHEREAS, the Parties hereto originally entered an agreement dated May 2, 2016 ("Original Agreement"), which was for term of three (3) years. The Original Agreement provided for a one (1) year extension, and thereafter any renewal required a further written agreement between the Parties; and

WHEREAS, this writing satisfies the written renewal requirement pursuant to the Original Agreement.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and premises contained in this Agreement, the Parties agree as follows:

AGREEMENTS

1. **Grant.** Customer grants and extends the exclusive right to Provider to site and maintain within the said Locations (as defined herein) or its appurtenances the ATMs at the Locations, subject to Customer's acknowledgement that Provider will lease and service the ATMs through its third party provider. The Parties shall mutually agree to the specific placement of the ATMs through the respective designated representatives. Customer agrees that no other person or firm shall be permitted to site or maintain ATMs at the Locations. Provider agrees to make no other use of the

Locations other than for the ATM services contemplated in the Agreement. Provider agrees that it (or its third party provider) will operate the ATMs at the Locations consistent with industry standards and in accordance with any applicable Federal, State laws, statutes and regulations for the operation of ATMs. Provider further agrees to maintain the ATMs (through itself or its third party provider) properly stocked and operational for business from the hours of 8:00 am to 5:00 pm, Monday through Friday, excluding the Customer's weekends as well as Customer's office holidays which are set forth at Customer's website (i.e., holiday schedule) ("Business Hours). Customer shall provide security and other such measures to protect the ATMs from loss, damage or theft.

2. **Locations.** The designated locations for the ATM ("Locations") shall be as follows, unless such locations are removed or added as set forth in this Agreement or as agreed to by the parties pursuant to an amendment to the Agreement:

- 2.1 City of Long Beach City Hall, 1 West Chester Street, Long Beach, NY 11561;
- 2.2 Recreation Center, 700 Magnolia Boulevard, Long Beach, NY 11561; and
- 2.3 Long Beach Ice Arena, 150 West Bay Drive, Long Beach, NY 11561;
- 2.4 On the Long Beach boardwalk adjacent to National Boulevard (in front of Marvel Frozen Dairy, Inc.); and
- 2.5 On the Long Beach boardwalk adjacent to Riverside Boulevard.

To the extent that any ATM does not perform in accordance with the Performance Guarantee (as defined below), then Provider shall have the right to terminate the Agreement.

To the extent privacy concerns arise regarding the Provider's ATM located on the Long Beach Boardwalk adjacent to National Boulevard, identified *supra* at ¶ 2.4, the Provider may relocate said ATM, at its own cost and expense, to a mutually agreeable location, subject to the Customer's approval, which shall not be unreasonably withheld.

3. **Term.** The term of this renewal agreement is for two (2) years from the Effective Date (as defined herein), with an option to renew for one (1) additional year, upon mutual consent of the Parties in writing.

4. **ATM Operation; Provider Collection of Cash.** In the event there are any transaction discrepancies (i.e., too much/too little dispensed), or there is a service related issue, Customer's users can contact Provider's error resolution center 24 hours

per day, 7 days per week on the contact telephone number which will be displayed on the ATM Machine. Provider (or through its third party provider) shall provide a service level response for a complaint during Business Hours by the end of the next business day. Customer shall not be liable for any such discrepancies.

5. **Maintenance of ATMs.** Provider (including through its vendor) shall be responsible for maintenance of the ATMs. In the event an ATM cannot be repaired on site, Provider shall ensure that a substitute ATM is provided for the duration of the repair. Customer shall not permit the removal of any ATM from the Location, nor allow the placement of any other ATM at the Location, nor subscribe to any other data processing services for processing ATM transactions during the term of this Agreement, except as may be agreed by Provider in writing or required by a lessor of the ATM Machine.

6. **Utilities: Phone and Electrical Requirements.** Customer will provide electricity (an operating 110 volt electrical power outlet isolated with hard ground within 2 feet of the ATM location), lighting, heating and air conditioning (to interior ATM locations only), and a standard telephone line (POTS) ("Utilities") to the ATMs at the designated Locations; except that Customer shall not be liable to Provider for temporary interruption of such Utilities thereof due to a force majeure event causing an outage to such Utilities solely to the extent that such outage is unforeseen and beyond Customer's reasonable control.

7. **Revenue Computation and Donation.** Customer agrees to provide a commission to Provider based on the volume of revenue generated from each ATM Transaction in excess of net expenses at a rate of \$1.25 per transaction (except for surcharge free transactions"), and Provider shall provide a donation to Customer as set forth in Exhibit A (attached hereto), except that donations and payment shall be subject to Performance Metrics and Performance Guarantee set forth in the Agreement. In addition, Provider shall provide a performance bond as set forth in Exhibit A. In no event shall Customer be financially liable to Provider.

8. **Performance Metrics: Performance Guarantee.** Provider shall provide a monthly report on the revenue generated by each ATM. If any ATM fails to meet the Performance Metric for three (3) consecutive months ("Performance Guarantee"), then Provider has the right to terminate service for that ATM Location and remove it from the Agreement and/or terminate the Agreement in its entirety.

9. **Termination Rights.** In addition to Provider's right to terminate for failure to meet the Performance Guarantee as set forth in Section 8, each party shall have the right to terminate this Agreement for its convenience upon thirty (30) days' prior written notice.

10. **Audit Rights.** Customer or its designee reserves the right to audit, examine, and copy books, records and information regarding the operation of the ATMs. All such records shall be maintained until the audit is complete and all questions arising therefrom are resolved, but no later than three (3) years after this Agreement

expires or is terminated, except that records will be retained beyond the 3rd year if an audit is in process and/or the findings of an completed audit have not be resolved.

11. **Indemnification.** Customer agrees to indemnify and hold harmless Provider for any loss relating to the loss, security or theft of interior ATMs that are caused by Customer's employees or licensees, invitees or any other person accessing or having access to the ATMs.

12. **Limitation of Liability.** EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, CUSTOMER UNDERSTANDS AND AGREES THAT PROVIDER MAKES NO WARRANTY, EXPRESS, IMPLIED OR STATUTORY, AS TO ANY MATTER WHATSOEVER, INCLUDING THE CONDITION OF THE ATM, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSES. NEITHER PARTY SHALL IN BE RESPONSIBLE FOR ANY LOST PROFITS OR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR INDIRECT DAMAGES THAT CUSTOMER MAY INCUR, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, STRICT LIABILITY OR OTHERWISE. PROVIDER'S SOLE LIABILITY TO CUSTOMER HEREUNDER, EXCEPT AS OTHERWISE PROVIDED, SHALL BE TO REMEDY ANY BREACH OF THIS AGREEMENT IN A TIMELY MANNER. NEITHER PARTY WILL BE LIABLE FOR FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT IF SUCH FAILURE IS DUE TO ACTS OR EVENTS BEYOND SUCH PARTY'S REASONABLE CONTROL.

13. **Confidentiality.** The terms and provisions of any Confidentiality and Non-Disclosure Agreements agreed to in the Original Agreement remain in effect for this Renewal Agreement.

14. **Advertising.** The Parties agree that each Party may advertise the locations of the ATMs. Provider agrees that Customer reserves the right to approve product advertising only to the extent that such approval shall not be unreasonably withheld, delayed or conditioned.

15. MISCELLANEOUS

16.1 **Assignment.** Customer shall not subcontract or otherwise assign its rights or obligations under this Agreement or any part thereof to any other person or entity without the prior written consent of Provider which consent may be withheld in its absolute discretion.

16.2 **Notices.** All notices or other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given if delivered by electronic transmission, overnight

delivery service or personally, otherwise any such notice or other communication shall be deemed to have been duly given five days after mailing if sent by certified or registered mail, return receipt requested, any and all notices shall be addressed as follows:

If to Provider:

Bethpage Federal Credit Union
899 South Oyster Bay Road
Bethpage, NY 11714
Telephone: (516) 349-6788
Fax: (516) 349-6765
Attn: Linda Armyn
SVP Corporate Affair

If to Customer:

City of Long Beach
1 West Chester Street
Long Beach, NY 11561
Telephone: (516) 431-1001
Fax: (516) 431-1389
Attn: Corporation Counsel

Any Party may change the address to which notices or other communications are to be sent to it by giving written notice of such change in the manner provided herein.

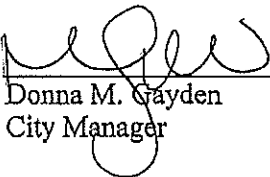
- 16.3 Waiver.** Provider's failure to insist in any one or more instances upon strict performance of any provision of the Agreement, or failure or delay to take advantage of any of its rights or remedies hereunder, or failure to notify Customer of any breach, violation or default) shall not be construed as a waiver by Provider of any such performance, provision, right, breach violation or default, either then or for the future. Any waiver shall be effective only if in writing and signed by Provider's authorized representative, and only with respect to the particular case expressly covered in that writing.
- 16.4 No Third Party Beneficiaries.** The Parties to this Agreement are the only Parties to this Agreement, and there are no third party beneficiaries to this Agreement.
- 16.5 Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to principles governing conflict of laws, and any claims or suits arising out of this Agreement shall be litigated in New York. The Parties agree that prior to commencing any legal action relating to or arising from this Agreement and/or the underlying transaction, the Parties will attempt in good faith to resolve any issues by discussions and negotiations to be agreed upon by the Parties.
- 16.6 Headings.** The headings assigned to the Articles of this Agreement are for convenience only and shall not limit the scope and applicability of the Articles.

16.7 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which together shall constitute one instrument.

16.8 **Entire Agreement.** This Agreement constitutes the full agreement between the Parties hereto with respect to the ATMs. This Agreement supersedes any course of performance, course of dealings, usage of trade previous agreements, representations and understandings, either oral or written. No terms, conditions, agreements, representations, understandings, course of performance, course of dealing or usage of trade purporting to modify, vary, supplement, expand or amend any provisions of this Agreement shall be effective unless in writing, signed by a Company representative authorized to amend this Agreement.

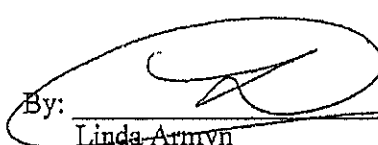
WHEREFORE, the Parties hereto have caused this Agreement to be executed by their duly authorized agents on the Effective Date (as defined in the Preamble).

CITY OF LONG BEACH

By: 
Donna M. Gayden
City Manager

Date: 6/11/2021

BETHPAGE FEDERAL CREDIT UNION

By: 
Linda Armyn
SVP Corporate Affair

Date: 6/9/21

EXHIBIT A
REVENUE SHARING

	Year 2021	Year 2022	Year 2023
ATM Cost per Month (3% Increase per Year)	\$689.59	\$710.28	\$731.58
Number of breakeven transactions.	276 ¹	284	292
Donation to Long Beach Fund (Monthly)			
@300 Transactions	\$30.21	\$19.86	\$8.88
@350 Transactions	\$92.71	\$82.36	\$71.38
@400 Transactions	\$155.21	\$144.86	\$133.88
@450 Transactions	\$217.71	\$207.36	\$198.38
@500 Transactions	\$280.21	\$269.86	\$258.88
@550 Transactions	\$342.71	\$332.36	\$321.38
@600 Transactions	\$405.21	\$394.86	\$383.88

¹ For the purposes of calculating the revenue sharing amount, transactions that are provided for users "Surcharge Free" are excluded from the computation.

Notes

¹ For the purposes of calculating the revenue sharing amount, transactions that are provided for users "Surcharge Free" are excluded from the computation.

August 5, 2014

Item No. 3
Resolution No. 105/14

The following Resolution was moved by Mr. Eramo
and seconded by Mr. Torres :

Resolution Authorizing the City Manager to Enter into an
Agreement for the Furnishing and Installation of Automated
Teller Machines at Various Locations within the City.

WHEREAS, after due advertisement therefore, two proposals were received in the
Office of the City Purchasing Agent on April 10, 2014 at 11:00 a.m. for the furnishing and
installation of Automated Teller Machines (ATM's) at various locations within the City, which
may include but not be limited to City Hall, the Recreation Center Lobby and the Ice Arena
Lobby; and

WHEREAS, Bethpage Federal Credit Union submitted a proposal that will
provide the City with a revenue stream, with no monthly cost outlay to the City except for the
electricity and internet connection required to keep the machines running and which offers the
lower ATM charge to the customer;

NOW, THEREFORE, be it

RESOLVED, by the City Council of the City of Long Beach, New York that the
City Manager be and he hereby is authorized to enter into an agreement with Bethpage Federal
Credit Union, 889 South Oyster Bay Road, Bethpage, New York 11714 for the furnishing and
installation of Automated Teller Machines at various locations within the City; and be it further

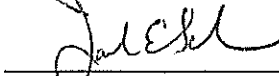
RESOLVED, that said agreements shall contain such other terms, conditions and
provisions as the City Manager and Corporation Counsel shall deem necessary and proper.

APPROVED/ADHERES TO PURCHASING
POLICY:



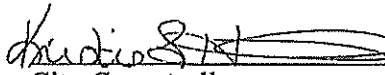
City Purchasing Agent

APPROVED AS TO ADMINISTRATION:



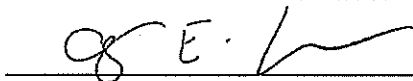
City Manager

APPROVED AS TO FUNDS:



City Comptroller

APPROVED AS TO FORM & LEGALITY:



Corporation Counsel

VOTING:

- Council Member Adelson - AYE
- Council Member Eramo - AYE
- Council Member Goggin - AYE
- Council Member Torres - AYE
- President Mandel - AYE