

**LOWER PAXTON TOWNSHIP
BOARD OF SUPERVISORS**
WEDNESDAY, NOVEMBER 4, 2020 - 7:00 PM,
425 PRINCE STREET, LOWER PAXTON, PA

CALL TO ORDER - CHAIRMAN HENRY

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

PUBLIC COMMENT

CHAIRMAN & BOARD MEMBERS' COMMENTS

MANAGER'S REPORT

OLD BUSINESS

ACTION ON A SOFTWARE LICENSE AND PROFESSIONAL SERVICES
AGREEMENT WITH TURNKEY TAXES, INC. - **Mr. Gotshall; Mr. Schuster**
(by phone)

NEW BUSINESS

ACTION ON MASTER INSTALLMENT PURCHASE AGREEMENT WITH
MERCEDES-BENZ FINANCIAL SERVICES USA, LLC FOR THE PURCHASE
OF A FREIGHTLINER TRUCK - **Mr. Gotshall**

SUBDIVISION AND LAND DEVELOPMENT

IMPROVEMENT GUARANTEES

PAYMENT OF BILLS - LOWER PAXTON TOWNSHIP & LOWER PAXTON
TOWNSHIP AUTHORITY

ANNOUNCEMENTS

ADJOURN

**NEXT BOARD MEETING (Workshop Meeting), TUESDAY, NOVEMBER 10,
2020; 7:00 P.M.**



Software License and Professional Services Agreement

This Software License and Professional Services Agreement (the “**Agreement**”), is entered into this ____ day of _____, 2020 (the “**Effective Date**”), by and between **turnKey Taxes, Inc.**, a Pennsylvania corporation, with a business address of 1936 Fifth Avenue, Pittsburgh, Pennsylvania 15219 (hereinafter “**turnKey**”) and **Lower Paxton Township**, a Pennsylvania municipality, with a business address of 425 Prince Street, Harrisburg, PA 17109 (“**Client**”). Client and turnKey may be referred to individually as a “party” and collectively as the “parties.”

RECITALS

- A. turnKey has developed and owns a certain software application known as turnKey Taxes which it provides as a remotely accessible service (the “**Software**”).
- B. turnKey has developed a unique expertise and experience in developing methods and approaches to analysis and collection of delinquent municipal taxes and other revenues, together with obtaining, cleaning, analyzing and organizing historical and current records relating to tax and other revenues, and converting such data into electronic forms (collectively, the “**Services**”).
- C. Client is a tax collecting governmental entity having unpaid taxes due and owing from taxpayers (the “**Delinquent Taxes**”). Client also possesses certain tax and other records in various forms and formats relating to the Delinquent Taxes, including, without limitation, tax registers, complete property, business and individual tax filing and payment history and utility payment data (the “**Tax Records**”).
- D. Client desires to license the Software from turnKey and to also engage turnKey to provide the Services and turnKey desires to license the Software and to provide such Services to Client based upon the terms and conditions of this Agreement.

TERMS AND CONSIDERATION

NOW THEREFORE, in consideration of the mutual promises and of the mutual agreements herein contained (including without limitation the Recitals above which are incorporated by reference) and intending to be legally bound hereby, Client and turnKey agree as follows:

1. **Servicing Arrangement.** Client agrees to retain turnKey and turnKey accepts such retention, as an independent contractor to perform the Services for the Term, as set forth herein or as mutually agreeable in writing by the parties.
2. **Relationship of Parties.** turnKey shall perform the Services under this Agreement as an independent contractor and not as an agent, servant or employee of the Client.
3. **Software License.**
 - A. **Grant of License.** Under the terms of this Agreement, and for the payment of the fees set forth herein, turnKey grants to Client a nonexclusive, non-transferrable, non-sublicensable license to access the Software for the Term (“**License**”).

turnKey Taxes, Inc. 1936 Fifth Avenue Pittsburgh, PA 15219

Call Center: 724-252-3114



- B. Customization of Software. turnKey shall customize the Software as it reasonably determines is needed in order to allow Client to access electronic Tax Records as held by turnKey.
- C. Maintenance of Software; Training. turnKey shall maintain the Software and shall exercise commercially reasonable efforts to promptly correct any failure of the Software to perform in a manner to allow Client to access its Tax Records in a manner that is satisfactory to Client.

4. **Obligations of turnKey.**

- A. turnKey will examine, scrub, validate, convert and maintain the Client's electronic tax records held by turnKey.
- B. turnKey will identify taxes and fees that have not been previously identified or collected by the current tax collector, delinquent tax collector or department of or for Client.

5. **Obligations of Client.** Client will provide to turnKey all relevant or potentially relevant information necessary to assess and complete turnKey's obligations including, without limitation, Tax Records and to permit turnKey to:

- A. convert Tax Record and other data into a useable / normalized format for validation;
- B. import taxpayer demographic data;
- C. import relevant transactional data; and
- D. perform an analysis and generate comparison records that can be used to identify Delinquent Taxes.

All data and information provided by Client to turnKey will be considered Tax Records.

6. **Term and Termination.**

- A. Term. This Agreement shall have a term extending from the Effective Date for a period of (3) years (the "**Initial Term**"). The Agreement shall automatically renew at the end of the Initial Term for successive one (1) year periods (each and collectively with the Initial Term, the "**Term**") absent written notice of cancellation by either party no less than ninety (90) days prior to the end of any Term.
- B. Termination for Cause. Termination may be made for cause if either party materially breaches any term of this Agreement and said breaching party fails to cure such material breach within thirty (30) days of receiving written notice thereof from the non-breaching party. Notwithstanding the foregoing, if the cure requires more than thirty (30) days and the breaching party commences such cure reasonably promptly within the thirty (30) days and completes the cure within a reasonable time thereafter, the breaching party shall not be in default of this Agreement.

turnKey Taxes, Inc. 1936 Fifth Avenue Pittsburgh, PA 15219

Call Center: 724-252-3114



- C. Effect of Termination. Within thirty (30) days following the expiration or termination of the Agreement, all electronic Tax Records held by turnKey will be delivered by turnKey to Client in an electronic format. For the purpose of clarity, termination or expiration of this Agreement does not and will not affect any fees, costs or reimbursements due and owing to turnKey which have accrued prior to termination or expiration.

- 7. Meetings. The Client and turnKey shall meet at least once every three (3) months to evaluate the progress, substance, and quality of the Services. Such meetings may be requested more frequently by turnKey on a commercially reasonable basis.

- 8. Compensation. During the Term:
 - A. License Fee. Client shall pay one thousand (\$1,000) dollars per month for the License to the Software.

 - B. Services Fee. For the provision of the Services by turnKey, Client shall pay:
 - i. a fixed fee of one (\$1,000) dollars per month; and
 - ii. a sum in the amount of twenty (20%) percent of Delinquent Taxes that are identified by turnKey as taxes or fees that have not been previously collected by the current or any former tax collector or other official or agent of Client and actually collected by turnKey.

 - C. Deferment.
 - i. Payment of the License and Service Fees of two thousand (\$2,000) per month will be deferred for up to six months or until deposited revenues exceed the outstanding balance.
 - ii. Commissions earned by turnKey will not be paid by Client until the amounts identified have been collected by the delinquent collector and deposited in the Client's bank account.

 - D. Conversion Fees. If the Tax Records require conversion from paper or other manual records of Client, turnKey will charge a conversion fee based upon its then-current hourly rate.

 - E. Expenses. Mailing and other out of pocket costs of turnKey will be deducted from all Delinquent Taxes collected by turnKey.

For the avoidance of doubt, all fees paid to turnKey are in addition to any fees/costs that the Client may be obligated to pay any third-party tax collector (current or delinquent).

9. Intellectual Property.

- A. Tax Records. The Client shall be the owner of all right, title and interest in and to the Tax Records produced by Client or as developed by turnKey under this Agreement.



- B. Software. turnKey shall be the owner of all right, title and interest in and to the Software, including without limitations any modifications, customizations or configurations made pursuant to this Agreement.

10. Nondisclosure of Proprietary Information. The parties acknowledge that during the engagement each will have access to and become acquainted with various trade secrets, processes, information, records, and specifications owned or licensed thereby in connection with the operation of the Services and the License including, without limitation, business and product processes, methods, accounts, and procedures (“**Confidential Information**”). Each party agrees not to disclose any Confidential Information, directly or indirectly, or use any Confidential Information in any manner, either during the term of this Agreement or at any time thereafter, except as required by this Agreement. Each party will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as it protects its own confidential or proprietary information of a similar nature, and with no less than the greater of reasonable care and industry-standard care. Neither party shall not retain any copies of Confidential Information without the disclosing party’s prior written permission. Upon the expiration or earlier termination of this Agreement, or whenever requested by the disclosing party, the receiving party shall immediately deliver or destroy all requested files, records, documents, information and other items in its possession or under its control. The parties’ obligations of confidentiality and non-use shall not apply to any information that: (a) is publicly known at the time of disclosure; (b) becomes public knowledge without breach of this Agreement; (c) is known to the recipient at the time of the disclosure and not subject to any restriction; (d) is lawfully obtained without restriction from a third party not affiliated with any party; or (e) is independently developed by the recipient without access to the Confidential Information.

11. Use of Client Name. turnKey shall not at any time during the Term or otherwise represent itself as having any relationship with the Client as officer, employee, or agent; neither shall turnKey represent itself as being the Client.

12. Representations and Warranties.

- A. Mutual Representations and Warranties. Each Party represents and warrants to the other Party that:
 - i. it has the full right, power and authority to enter into, and to perform its obligations and grant the rights and licenses it grants or is required to grant under, this Agreement;
 - ii. the execution of this Agreement by its representative whose signature is set forth on this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and
 - iii. when executed and delivered by both parties, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.



- B. Additional turnKey Representations and Warranties. turnKey further represents, warrants and covenants to Client that:
- i. it is the legal and beneficial owner or licensee of the entire right, title and interest in and to the Software;
 - ii. it has the right, power and authority to grant and perform the License hereunder; and
 - iii. when used by Client in accordance with this Agreement, the Software as delivered by turnKey does or will not: infringe, misappropriate or otherwise violate any intellectual property right of any third party.
- C. Performance Warranty and Limited Remedy. During the Term, turnKey warrants to client that the Software will perform substantially in accordance with its specifications. turnKey's sole obligation and Client's exclusive remedy in connection with the breach of a warranty provided under this section shall be for turnKey to repair non-conforming Software. turnKey will exert commercially reasonable efforts to maintain any Tax Records held by turnKey.

EXCEPT AS MAY BE CAUSED BY TURNKEY'S NEGLIGENCE OR WILFUL MISCONDUCT, TURNKEY HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION OR RECOVERY OF HOSTED TAX RECORDS.

13. Indemnifications.

- A. General Indemnity by turnKey. turnKey will defend Client from any third party claim, including but not limited to claims by Client agents, employees and contractors, for (i) wrongful death of or bodily injury, to the extent caused by turnKey's negligence or intentional torts, or (ii) physical damage to tangible personal property, to the extent caused by turnKey's negligence or intentional torts, (iii) willful or reckless misrepresentations made by turnKey to third parties, (iv) breach of any of turnKey's representations, warranties, covenants or obligations under this Agreement; or (v) unauthorized use of Tax Records in breach of turnKey's confidentiality obligations herein, to the extent caused by turnKey's negligence or intentional torts, and will pay costs and damages awarded against Client in any such claim that are specifically attributable to turnKey's negligence or intentional torts or those costs and damages agreed to by turnKey in a monetary settlement of such claim.
- B. General Indemnity by Client. To the extent authorized by applicable law, Client will defend turnKey from any third party claim for or based upon: (i) wrongful death of or bodily injury, to the extent caused by Client's negligence or intentional torts, (ii) inaccurate or otherwise improper Tax Records or any other materials or information provided by or on behalf of Client; (iii) breach of any of Client's representations, warranties, covenants or obligations under this Agreement; or (iv) physical damage to tangible personal property, to the extent caused by Client's negligence or intentional



torts, and will pay costs and damages awarded against turnKey in any such claim that are specifically attributable to Client's negligence or intentional torts or those costs and damages agreed to by Client in a monetary settlement of such claim.

- C. Infringement Indemnity. Except to the extent that Client is obligated to indemnify turnKey under this section, turnKey shall indemnify and hold harmless Client, its officers, directors, employees, shareholders, legal representatives, agents, successors and assigns, from and against any damages, liabilities, costs and expenses (including reasonable attorneys' and professionals' fees and court costs) arising out of any third party claims arising from a claim that the Software infringes any U.S. patent, copyright, trade secret or trademark of a third party; provided however, that (i) Client shall have promptly provided turnKey with written notice thereof and reasonable cooperation, and assistance in connection therewith; and (ii) turnKey shall have sole control and authority with respect to the defense, settlement, or compromise thereof, so long as the turnKey does not admit fault on the part of Client without the Client's prior written approval. If any materials provided by turnKey become, or in turnKey opinion are likely to become, the subject of a claimed intellectual property infringement or other claim, turnKey may, at its option: (i) procure for Client the right to continue using the materials; or (ii) replace or modify the materials to be non-infringing, without incurring a material diminution in performance or function; or (iii) if neither of the foregoing is reasonably available, Client shall return all copies of the materials upon notice from turnKey, and turnKey shall provide Client with a pro-rata refund of the unearned fees paid by Client to turnKey in connection with any such returned materials.
- D. Limitations of Infringement Indemnity. In no event will turnKey have any obligations under this Agreement or any liability for any claim or action to the extent the claim or action is caused by, or results from: (i) the combination or use of Software or any other deliverables with non-turnKey software, services, Services or data, if such claim or action would have been avoided by the non-combined or exclusive use of the Software or other deliverables, (ii) modification of the Software or any other deliverables by anyone other than turnKey if such claim or action would have been avoided by use of the unmodified Software, (iii) the continued allegedly infringing activity after being notified thereof or after being provided modifications that would have avoided the alleged infringement, (iv) Client's use of the Software or any other deliverables in a manner not materially in accordance with this Agreement or related documentation, (v) any modification of the Software or other deliverables in compliance with Client's specifications (except to the extent such specifications were implemented at the direction of or acting on the advice of turnKey or were approved in writing by turnKey), or (vi) use of the Software other than in substantial compliance with this Agreement. For the avoidance of doubt, turnKey shall have no liability for any Tax Records or other information provided by Client.
- E. Right to Defend. As a condition to each party's indemnity obligations under this Agreement, the party claiming indemnification will provide the indemnifying party with prompt written notice of the claim, permit the indemnifying party to control the defense or settlement of the claim, so long as the indemnifying party does not admit fault on the part of the indemnified party without the indemnified party's prior written



approval, and provide the indemnifying party with reasonable assistance in connection with such defense or settlement. The indemnified party may employ counsel at its own expense to assist it with respect to any such claim.

THIS SECTION CONSTITUTES EACH PARTY'S SOLE AND EXCLUSIVE OBLIGATION WITH RESPECT TO THIRD PARTY CLAIMS BROUGHT AGAINST THE OTHER PARTY.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR COVER OR FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL (INCLUDING LOSS OR CORRUPTION OF DATA OR LOSS OF REVENUE, SAVINGS OR PROFITS) OR EXEMPLARY DAMAGES, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDED, HOWEVER, THAT FOR THE AVOIDANCE OF DOUBT, DAMAGES ARISING IN CONNECTION WITH OBLIGATIONS OF INDEMNIFICATION OR CONFIDENTIALITY HEREUNDER SHALL BE DEEMED TO BE DIRECT DAMAGES FOR WHICH RECOVERY SHALL NOT BE BARRED BY THIS PARAGRAPH. TURNKEY'S PRICING REFLECTS THIS ALLOCATION OF RISKS AND LIMITATION OF LIABILITY.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NOTHING HEREIN SHALL LIMIT DAMAGES CAUSED BY (I) EITHER PARTY'S FRAUD, MISREPRESENTATION, WILLFUL MISCONDUCT, OR GROSS NEGLIGENCE; (II) A BREACH BY CUSTOMER OF ANY INTELLECTUAL PROPERTY RIGHT OF TURNKEY OR ANY LICENSE GRANTED BY TURNKEY HEREUNDER; OR (III) RELATED TO THE AMOUNTS PAYABLE BY EITHER PARTY PURSUANT TO THE INDEMNIFICATION OBLIGATIONS HEREIN. SUBJECT TO THE FOREGOING, THE AGGREGATE LIABILITY OF EACH PARTY AND ITS AFFILIATES AND ITS AND THEIR OFFICERS, DIRECTORS, EMPLOYEES OR OTHER REPRESENTATIVES, ARISING IN ANY WAY IN CONNECTION WITH THIS AGREEMENT—WHETHER UNDER CONTRACT LAW, TORT LAW, WARRANTY OR OTHERWISE—SHALL NOT EXCEED THE TOTAL AMOUNT PAID AND PAYABLE HEREUNDER.

14. **Waiver.** The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which violates the terms hereunder shall not be construed as a waiver thereof, or of any future breach or subsequent wrongful conduct.
15. **Amendment.** This Agreement may be validly amended only by the mutual agreement of the parties in a writing executed by them.
16. **Construction.** Whenever used in the Agreement, the singular shall include the plural, the plural the singular and the use of any gender shall be applicable to all genders.



- 17. **Entire Agreement.** This Agreement contains the entire understanding of the parties and may only be validly amended, modified or revoked in whole or in part at any time or times by the parties hereto by a written instrument signed by all the parties.
- 18. **Severability.** If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will be unimpaired, and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.
- 19. **Force Majeure.** Either party shall be excused from delays in performing or from its failure to perform hereunder to the extent that such delays or failures result from causes beyond the reasonable control of such party; provided that, in order to be excused from delay or failure to perform, such party must act diligently to remedy the cause of such delay or failure.
- 20. **Governing Law.** The validity of the Agreement as well as the rights and duties of the parties hereunder, shall be governed by the law of the Commonwealth of Pennsylvania.
- 21. **Counterparts.** This Agreement may be executed separately by the parties on counterpart copies, which shall have the same force and effect as if executed in a single document. Furthermore, each party may execute the document utilizing electronic signatures and/or other electronic or facsimile documentation.

IN WITNESS WHEREOF, and with the intention of being legally bound under the laws of the Commonwealth of Pennsylvania, the parties have executed this Agreement by their duly authorized representative.

turnKey Taxes, Inc.

Client



Authorized Signature

Authorized Signature

Mark J. Schuster

Print Name

Print Name

CEO

Title

Title

Date

Date

ACKNOWLEDGEMENT OF BOARD APPROVAL

Board:	Board of Supervisors of Lower Paxton Township
Date of Board Meeting:	November 4, 2020
Borrower:	Lower Paxton Township
Lender:	Mercedes-Benz Financial Services USA LLC
Master Installment Purchase Agreement Contract	Master Installment Purchase Agreement dated January 10, 2020 Schedule No. 2 dated October 16, 2020 to the Master Installment Purchase Agreement
Equipment to be purchased:	See attachment for details
Cost not to exceed:	\$234,86400
Rate of interest:	Rate 3.9860%

A motion was offered by _____, seconded by _____, and carried by a vote of ____ to ____ to approve entering into a Master Installment Purchase Agreement with Mercedes-Benz Financial Services USA LLC for the purpose of purchasing, via a financing contract, the equipment listed on the attachment. The cost shall not exceed the figure specified above.

Borrower has or will comply with applicable property acquisition laws, public bidding requirements, and open meeting laws in connection with the Master Installment Purchase Agreement and the transactions contemplated thereby. Borrower is a political subdivision or agency of the State of Pennsylvania within the meaning of Section 103 of the Internal Revenue Code of 1986, as amended, with full power and authority to enter into, and perform its obligations under, the Contract.

The Master Installment Purchase Agreement and the Contract have been or will be duly authorized, executed, and delivered by Borrower. It is the intention of the Board that the above Contract shall constitute a legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except to the extent limited by state and federal laws affecting creditors' remedies and by bankruptcy, reorganization, moratorium or other laws of general application relating to or affecting the enforcement of creditors' rights.

Capitalized terms herein shall have the same meanings as in the Contract unless otherwise provided herein.

I certify the above Contract is approved by the Board.

Board Member Signature

November 4, 2020
Date

Lowman S. Henry
Print Name

Chairman
Title