

**CITY OF XENIA, OHIO
RESOLUTION 2018 – FF**

**AUTHORIZING THE CITY MANAGER TO EXECUTE A USE AGREEMENT WITH
CASEY’S MARKETING COMPANY FOR THE USE OF CITY PROPERTY LOCATED
ADJACENT TO 1625 N. DETROIT STREET**

WHEREAS, Section 723.121 of the Ohio Revised Code grants to the legislative authority of a municipal corporation the authority to permit the use of, for such period as it shall determine, any lands owned by a municipality not needed for street or highway purposes;

WHEREAS, Casey’s Marketing Company, has approached this Council regarding a desire to use approximately 0.071 acres of land owned by the City adjacent to 1625 N. Detroit Street for an ingress/egress for its business; and

WHEREAS, this Council has determined that this City-owned property is currently used as a bike path, but that permitting Casey’s to use the requested area for purposes relating to its business at 1625 N. Detroit Street should not unduly interfere with the use of the City’s property as a bike path.

NOW, THEREFORE, THE CITY OF XENIA HEREBY RESOLVES, at least four (4) members of the City Council concurring, that:

Section 1. The City Manager is hereby authorized to execute a Use Agreement with Casey’s Marketing Company to allow Casey’s to use the portion of City-owned property located adjacent to 1625 N. Detroit Street (approximately 0.071 acres) that is shown on Exhibit A of the Use Agreement, upon such terms and conditions as are approved by the Law Director.

Section 2. In no case shall the City of Xenia be liable for any damages that may arise through, or because of, Casey’s Marketing Company’s use of the City’s property, and the Use Agreement authorized pursuant to Section 1. of this Resolution, above, shall contain an indemnification clause in favor of the City of Xenia and the public reflecting the same.

Section 3. It is hereby found that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council that resulted in this formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code, and the Rules of Council.

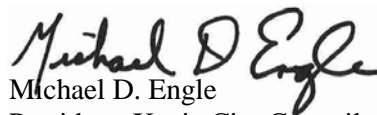
Section 4. This Resolution shall become effective immediately upon its passage.

Introduced: September 27, 2018

Passed: October 11, 2018

Attest:


Michelle D. Johnson
City Clerk


Michael D. Engle
President, Xenia City Council

Prepared by/Return to: City of Xenia, Director of Law, 101 N. Detroit Street, Xenia, OH 45385 / 937-376-7302

**CITY OF XENIA, OHIO
USE AGREEMENT**

THIS USE AGREEMENT is made and entered into this ____ day of October, 2018, by and between the **City of Xenia**, an Ohio municipal corporation, Xenia, Ohio 45385, as approved by the Xenia City Council by Resolution 2018 -FF, passed on October 11, 2018, hereinafter referred to as the "CITY," and Casey's Marketing Company, an Iowa corporation, One S.E. Convenience Boulevard, Ankeny, Iowa 50021, hereinafter referred to as "CASEY'S."

WITNESSETH, that for and in consideration of the mutual promises and covenants contained herein, the parties do hereby agree as follows:

1. DESCRIPTION; AUTHORIZED USE; TERM; ANNUAL RENTAL.

The CITY, in consideration of the use payments to be paid and the covenants and agreements to be performed by CASEY'S, hereby permits CASEY'S to use the premises described in "Exhibit A" attached hereto and made a part hereof, being hereinafter referred to as the " Premises."

CASEY'S use of the Premises shall be limited to providing vehicular access to and from CASEY'S property. CASEY'S use of the Premises for this purpose shall not unduly interfere with the general public's use of the Premises as a bike path, and CASEY'S shall provide and maintain adequate signage and painted pavement markings to protect those using the bike path from vehicles entering or existing the CASEY'S property over the Premises.

The initial term of this Use Agreement shall be for twenty-five (25) years commencing on November 1, 2018, and ending on the 31st day of December, 2043.

The annual use payment under this Agreement, first due in calendar year 2019, shall be Nineteen Dollars and Sixty-Nine Cents (\$19.69) per year through 2027 and shall be payable to the CITY, or shall be paid as otherwise directed by the CITY, in advance, no later than the 10th day of January of each year during the initial term of this Lease and any renewals thereof. The initial year (2018) shall be prorated from the date of commencement and shall be due and payable within thirty (30) days. In 2027, the CITY shall determine if the annual use payment should be increased/decreased based on interest rates and land valuation, and the CITY and CASEY'S shall execute a written addendum to this Agreement setting forth the change in the annual use payment.

2. RENEWAL.

The term of this Use Agreement may, at CASEY'S option, be renewed for one (1) additional twenty-five (25) year term, upon the same terms and provisions of this Use Agreement, subject to a recalculation of the use payment at the time of renewal and the execution of a written Addendum to this Agreement approving the renewal and setting forth the new annual rate for the renewal term. CASEY'S shall notify the CITY at least ninety (90) days prior to the expiration of the initial term of this Use Agreement if CASEY'S does not intend to exercise its option of renewal.

3. MAINTENANCE OF THE PREMISES.

CASEY'S covenants with the CITY that CASEY'S, at its sole cost and expense, will properly maintain the Premises and any signage or marking required under Paragraph 1. hereof, and will assume all liability for all costs that the CITY may sustain due to CASEY'S failure to properly maintain the Premises.

4. INSURANCE COVERAGE.

CASEY'S shall keep the Premises insured against claims for personal injury and property damage under a policy of comprehensive public liability insurance for both the protection of the CITY and CASEY'S, and the CITY shall be named as an additional insured. CASEY'S shall provide the CITY, at the time the annual lease payment is made, proof of insurance and add the CITY'S name to the insurance policy to be notified in case of cancellation. The CITY and CASEY'S hereby waive all claims for recovery from each other for any loss or damage sustained by them individually attributable to the Premises which is insured under valid and collectible insurance policies to the extent of any recovery collectible under such insurance, subject to the limitation that this waiver shall apply only when permitted by the applicable policy of insurance.

5. INDEMNIFICATION.

CASEY'S shall indemnify and hold harmless the CITY against any and all actions, claims, demands or liabilities for death, personal injuries and/or property damage arising from, connected with or related to CASEY'S use of the Premises, by any person for any cause whatsoever. In addition, CASEY'S shall pay all expenses which the CITY may incur in the investigation and/or defense of any such claim, including counsel fees and court costs. CASEY'S shall give the City prompt notice of any claim or suit against the CASEY'S arising from, connected with or related to CASEY'S use of the Premises.

6. ASSIGNMENT OF AGREEMENT.

The CITY may, upon prior written notice to CASEY'S, assign its interest in this Use Agreement. CASEY'S may, only upon the prior written approval of the CITY, assign its interest in this Agreement; provided, however, that CASEY'S may assign its interest in this Agreement to its parent company, an affiliate, or a subsidiary without the City's prior written consent, but only upon at least seven (7) days prior written notice to the City of such assignment.

7. RIGHTS OF SUCCESSORS AND ASSIGNS; CHOICE OF LAW; AMENDMENT.

The terms and provisions of this Use Agreement shall inure to the benefit of and shall be binding upon the parties hereto, and their respective successors and permitted assigns, and shall be governed by the laws of the State of Ohio. This Agreement may be amended or modified only upon the written agreement of the CITY and CASEY'S, as evinced by an addendum hereto.

8. TERMINATION.

- A. If the property adjacent to the Premises, located at 1625 N. Detroit Street, Xenia, Ohio, has not been transferred to CASEY’S by December 31, 2018, this Agreement shall automatically terminate as of December 31, 2018.

- B. This Agreement may be terminated by the CITY upon thirty (30) days written notice to CASEY’S, if CASEY’S: (a) voluntarily abandons its operations for a continuous period of six (6) months; (b) assigns or attempts to assign its rights or interests, or any part thereof, under this Agreement to any other party without the prior written consent of the CITY, if required under Paragraph 6. hereof; or (c) defaults under any condition of this Agreement and the default is not cured within thirty (30) days from the date of written notice by the CITY of such default (if the default is such that it cannot reasonably be corrected within thirty (30) days, it will be considered timely cured if CASEY’S begins corrective measures promptly after notice and diligently prosecutes them to completion, provided the default is cured within a reasonable time).

9. SURRENDER OF PREMISES.

At the termination, expiration of this Agreement, CASEY’S shall surrender the Premises to the CITY as of the date of termination or expiration. All improvements/encroachments on the Premises shall be removed at the cost of CASEY’S when this Agreement is terminated or expires.

10. NOTICES.

Written notices shall be sent by certified mail, postage prepaid, to:

CITY:

City of Xenia
Attn: City Manager
107 E. Main Street
Xenia, OH 45385

CASEY’S

Casey’s Marketing Company
Attn: Amy M. Costello, Legal Counsel
One S.E. Convenience Boulevard
Ankeny, IA 50021

11. ENTIRE AGREEMENT.

This Agreement represents the entire and integrated agreement of the parties, and supersedes all prior negotiations, representations, and agreements, both written and oral.

[Signature Page Follows]

IN WITNESS WHEREOF, the CITY and CASEY'S have signed duplicates hereof on the day and year first above written.

CITY:

The City of Xenia, Ohio

By: _____
Brent W Merriman, Xenia City Manager

STATE OF OHIO
GREENE COUNTY, SS:

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by Brent W Merriman, City Manager of the City of Xenia, an Ohio municipal corporation, on behalf of the corporation.

Notary Public

CASEY'S:

Casey's Marketing Company

By: _____
Michael R. Richardson, President

STATE OF IOWA
POLK COUNTY, SS:

The foregoing instrument was acknowledged before me this ____ day of October, 2018, by Michael R. Richardson, as President of Casey's Marketing Company, an Iowa corporation, on behalf of the corporation.

Notary Public

Approved as to Form:

Donnette A. Fisher, Esq.
City of Xenia Law Director

**EXHIBIT A: LEASED PREMISES
SURVEY AND LEGAL DESCRIPTION**