CITY COMMISSION MEETING AGENDA

CITY COMMISSION **DAYTON, OHIO** **FEBRUARY 26, 2020**

8:30 A.M.

I. AGENDA SCHEDULE

<u>Please register to speak</u> on items 9, 11 and 13 with the Clerk of the Commission. (Sign-up sheets at entrance of Commission Chambers.)

1. Call Meeting to Order
2. Invocation
3. Pledge of Allegiance
4. Roll Call
5. Approval of Minutes
6. Communications and Petitions Distribution (if any)
7. Special Awards/Recognition
8. Discussion of City Manager's Recommendations (See Section II)
9. Citizen Comments on City Manager's Recommendations
10. City Commission Action on City Manager's Recommendations
11. Public Hearing: **N/A**
12. Discussion Item: **N/A**
13. Comments by Citizens - Please register to speak with the Clerk of Commission - (Non - Calendar items) sign-up sheets at entrance of Commission Chambers
14. Comments by City Manager
15. Comments by City Commission
16. Work Session: **N/A**
17. Miscellaneous (See Section VI)

II. CITY MANAGER RECOMMENDATIONS (Item #8 above)

The following recommendations are offered for City Commission approval.

A. Purchase Orders, Agreements and Contracts:

(All contracts are valid until delivery is complete or through December 31st of the current year).

1. **Purchase Orders:**

<u>AVIATION</u>

A1. Chapel Electric Company LLC dba Kastle Electric Company
(emergency electrical repairs) **$24,062.06**

1. **(Cont'd):**

A2. Frost Brown Todd LLC (professional legal services as needed through 12-31-20) **$35,000.00**

A3. Tyco Fire & Security (US) Management, Inc. dba Johnson Controls (fire alarm annual maintenance services as needed through 12-31-20) **30,000.00**

HUMAN RESOURCES

B1. University of Dayton (emerging leader certificate program as needed through 12-31-22) **324,000.00**

PUBLIC WORKS

C1. Ennis-Flint, Inc. (roadway traffic paint as needed through 12-31-20) **36,750.00**

C2. Ennis-Flint, Inc. (pavement marking compound as needed through 12-31-20) **13,710.00**

C3. B & G Equipment & Truck Repair (body shop repair services for heavy equipment as needed through 12-31-21) **100,000.00**

C4. Boone's Power Equipment, Inc. (trimmers, chainsaws, blowers and related grounds maintenance equipment as needed through 12-31-20) **20,000.00**

C5. Cargill, Inc. (rock salt as needed through 7-31-20) **390,000.00**

C6. Road Solutions, Inc. (non-chloride liquid deicer/anti-icer products as needed through 12-31-20) **22,000.00**

RECREATION AND YOUTH SERVICES

D1. Cubbie, Bradford dba Stripes (sports officials, scorekeepers and timekeepers services as needed through 12-31-20) **22,000.00**

D2. Rain Drop Products LLC (splash pad expansion) **270,658.00**

D3. Service Supply LTD, Inc. (playground expansion) **101,411.68**

WATER

E1. White Allen Chevrolet, Inc. (two 2020 full-size four wheel drive extended cab pickup trucks) **67,900.00**

E2. Xylem Water Solutions USA, Inc. (sewer collection system monitoring equipment) **69,409.25**

E3. Ohio Cat (rental services for various heavy equipment and related items) **10,816.00**

-Depts. of Aviation, Human Resources, Public Works, Recreations and Youth Services and Water. **Total: $1,537,716.99**

2. **CityWide Development Corporation – Service Agreement –** for a development partnership for asset based strategic initiatives– Dept. of Economic Development. **$550,000.00 (Thru 12/31/20)**

3. **O & S Associates, Inc. – Contract Modification –** second amendment for the Oregon District Garage Phase 2 Design Services– Dept. of Public Works/Property Mgmt. **$79,900.00**
(Thru 12/31/21)

4. **SAMBA Holdings, Inc. dba SambaSafety– Service Agreement –** for Automated Driver's License Verification – Dept. of Human Resources.
$20,000.000
(Thru 02/26/21)

5. **Vertex Data Utility Services LLC – Contract Modification –** second amendment for the utility billing professional services agreement – Dept. of Finance/Utility Revenue Admin. **$282,000.00**
(Thru 2/28/21)

B. Construction Contracts:

6. **L. J. DeWeese Co., Inc. – Award of Contract –** for the Salem Avenue Water Main Improvements Phase 3 (20% MBE-Goal/20.07% MBE –Achieved) – Dept. of Water/Water Engineering. **$749,666.94**
(Thru 5/31/21)

7. **R. B. Jergens Contractors, Inc. – Award of Contract –** for the Jefferson Street Reconstruction (8% DBE Participation Goal/16.2% DBE Participation Achieved) (Federal Construction Funds) – Dept. of Public Works/Civil Engineering. **$2,193,817.73**
(Thru 11/25/22)

C. Revenue to City:

8. **CK3 LLC – Contract Modification –** second renewal for food and beverage concessions at Kittyhawk Golf Center – Dept. of Recreation and Youth Services/Golf. **$22,000.00**
(Thru 3/31/21)

9. **Delta Air Lines, Inc. – Lease Agreement –** for a ground service maintenance facility lease – Dept. of Aviation/AP Admin & Finance. **94,800.00**
(Thru 2/28/25)

E. Other – Contributions, Etc.:

10. **Homefull – Other –** for the Emergency Solutions Grant Subrecipient Agreement – Dept. of Planning & Community Development/Community Dev.
$29,250.00
(Thru 1/31/21)

11. **Miami Valley Regional Planning Commission (MVRPC) – Other –** for the 2020 Miami Valley Regional Planning Commission Annual Membership Dues – Dept. of Planning & Community Development/Land Use Admin.
65,102.42
(Thru 12/31/20)

12. **St. Vincent de Paul Social Services, Inc. – Other –** for the 2019 Emergency Solutions Grant- Subrecipient Agreement – Dept. of Planning & Community Development/ Community Dev. **291,061.00**
(Thru 6/30/20)

13. **University of Dayton – Other –** for the University of Dayton Agreement and Marketing Sponsorship –winning water utility – Dept. of Water/Director.
$51,000.00
(Thru 6/30/22)

IV. LEGISLATION:

Emergency Resolution – First and Second Reading

14. **No. 6476-20** Approving the Submission of a Grant Application for the Fiscal Year 2020 Ohio Airport Grant Program to the Ohio Department of Transportation, Office of Aviation; Authorizing the Acceptance of a Grant from the State of Ohio Department of Transportation, Office of Aviation in an Amount Not to Exceed Two Hundred Sixty Three Thousand Four Hundred Ninety Three Dollars and Zero Cents ($263,493.00) on behalf of the City of Dayton; and Declaring an Emergency.

Ordinance – Second Reading:

15. **No. 31791-20** Appropriating Funds for the Year 2020 to Provide for the Operating and Capital Expenses of Various Offices, Departments, and Divisions of the Government of the City of Dayton.

VI. MISCELLANEOUS:

ORDINANCE NO. 31792-20

RESOLUTION NO. 6477-20

IMPROVEMENT RESOLUTION NO. 3598-20

INFORMAL RESOLUTION NO. 976-20

City Manager's Report

From **2730 – PMB/Procurement**

Date February 26, 2020

Expense Type Purchase Order

Total Amount $1,537,716.99

Supplier, Vendor, Company, Individual

Name **See Below**

Address **See Below**

2020 Purchase Orders

Fund Source(s)	Fund Code(s)	Fund Amount(s)
See below	See below	See below

Includes Revenue to the City ☐ Yes ☑ No **Affirmative Action Program** ☑ Yes ☐ No ☐ N/A

Description

AVIATION

(A1) P0200640 – CHAPEL ELECTRIC COMPANY LLC dba KASTLE ELECTRIC COMPANY, MORAINE, OH

- Emergency electrical repairs.
- These services are required to repair electrical issues with the underground conductors at Aviation.
- Pursuant to Section 86 of the City of Dayton Charter, the City has declared an emergency, the necessary funds have been encumbered, and the supplier has been notified to proceed.
- The Department of Aviation recommends approval of this order.

Fiscal Year	Fund Source(s)	Fund Code(s)	Fund Amount(s)
2020	Other Maintenance of Facilities	51000-3221-1172-43	$24,062.06

Signatures/Approval

ACTING 02-20-2020
Division

2.20.2020
Department

for City Manager

Approved by City Commission

Clerk

Date

FORM NO. MS-16

Updated 06/2016

AVIATION (CONTINUED)

(A2) P0200638 – FROST BROWN TODD LLC, CINCINNATI, OH

- Professional legal services as needed through 12/31/2020.
- These services are required to provide legal consultation and representation in matters related to the Dayton International Airport.
- The law firm of Frost Brown Todd LLC is recommended based upon proven past performance, subject matter expertise and experience of its staff in related matters; therefore, this purchase was negotiated.
- The Department of Aviation recommends approval of this order.

Fiscal Year	Fund Source(s)	Fund Code(s)	Fund Amount(s)
2020	Legal Services	51000-3210-1152-43	$35,000.00

(A3) P0200641 – TYCO FIRE & SECURITY (US) MANAGEMENT, INC. dba JOHNSON CONTROLS, WEST CHESTER TOWNSHIP, OH

- Fire alarm annual maintenance services as needed through 12/31/2020.
- These goods and services are required to maintain fire alarm systems at the Dayton International Airport.
- Rates are in accordance with the State of Ohio Term Schedule Contract pricing #MMA7482 and Index #MMA846.
- The Department of Aviation recommends approval of this order.

Fiscal Year	Fund Source(s)	Fund Code(s)	Fund Amount(s)
2020	Other Maintenance of Facilities	51000-3220-1172-43	$30,000.00

HUMAN RESOURCES

(B1) P0200688 – UNIVERSITY OF DAYTON, DAYTON, OH

- Emerging Leader Certificate Program as needed through 12/31/2020.
- These services are required to provide leadership training and business development skills for City employees.
- The University of Dayton is recommended based upon proven past performance and subject matter expertise and experience; therefore, this purchase was negotiated.
- The University of Dayton qualifies as a Dayton local entity.
- The Department of Human Resources requests additional authority of $216,000.00 through 12/31/2022.
- The Department of Human Resources recommends approval of this order.

Fiscal Year	Fund Source(s)	Fund Code(s)	Fund Amount(s)
2020	Other Professional Services	16903-5610-1159-62	$108,000.00
2021	Other Professional Services	16903-5610-1159-62	$108,000.00
2022	Other Professional Services	16903-5610-1159-62	$108,000.00

PUBLIC WORKS – CIVIL ENGINEERING

(C1) P0200663 – ENNIS-FLINT, INC., GREENSBORO, NC

- Roadway traffic paint as needed through 12/31/2020.
- These goods are required to mark roadways thoughout the City.
- Rates are in accordance with the City of Dayton's existing price agreement IFB 18011D with pricing through 12/31/2020.
- The Department of Public Works recommends approval of this order.

Fiscal Year	Fund Source(s)	Fund Code(s)	Fund Amount(s)
2020	Supplies and Materials	21000-6450-1301-54	$36,750.00

(C2) P0200665 – ENNIS-FLINT, INC., GREENSBORO, NC

- Pavement marking compound as needed through 12/31/2020.
- These goods are required to mark roadways throughout the City.
- Three (3) possible vendors were solicited and three (3) responses were received.
- The Department of Public Works recommends acceptance of the low response.

Fiscal Year	Fund Source(s)	Fund Code(s)	Fund Amount(s)
2020	Supplies and Materials	21000-6450-1301-54	$13,710.00

PUBLIC WORKS – FLEET MANAGEMENT

(C3) P0200196 – B & G EQUIPMENT & TRUCK REPAIR, MORAINE, OH

- Body shop repair services for heavy equipment as needed through 12/31/2020.
- These services are required to maintain the City's fleet.
- Eighteen (18) possible vendors were solicited and two (2) bids were received. This order establishes a price agreement per IFB 20013D with pricing through 12/31/2021.
- The Department of Public Works requests additional authority of $50,000.00 through 12/31/2021.
- The Department of Public Works recommends acceptance of the sole responsive bid.

Fiscal Year	Fund Source(s)	Fund Code(s)	Fund Amount(s)
2020	Other Equipment Maintenance	61000-6470-1167-99	$50,000.00
2021	Other Equipment Maintenance	61000-6470-1167-99	$50,000.00

PUBLIC WORKS – STREET MAINTENANCE

(C4) P0200648 – BOONE'S POWER EQUIPMENT, INC., BROOKVILLE, OH

- Trimmers, chainsaws, blowers, and related grounds maintenance equipment as needed through 12/31/2020.
- This equipment is required to replenish inventory used to maintain City streets, parks and vacant lots.
- Rates are in accordance with the City of Dayton's existing price agreement IFB D19004 with pricing through 12/31/2020.
- The Department of Public Works recommends approval of this order.

Fiscal Year	Fund Source(s)	Fund Code(s)	Fund Amount(s)
2020	Supplies and Materials	10000-6430-1301-54	$10,000.00
2020	Supplies and Materials	10000-6490-1301-56	$5,000.00
2020	Supplies and Materials	10001-6430-1301-54	$5,000.00

(C5) P0200661 – CARGILL, INC., NORTH OLMSTED, OH

- Rock salt as needed through 7/31/2020.
- These goods are required to deice City streets and expressways during inclement weather.
- Rates are in accordance with the price agreement established by the Southwest Ohio Purchasers for Government (SWOP4G) Purchasing Cooperative Bid #19007SWOP4G with pricing through 7/31/2020.
- The Department of Public Works recommends approval of this order.

Fiscal Year	Fund Source(s)	Fund Code(s)	Fund Amount(s)
2020	Supplies and Materials	21000-6430-1301-54	$300,000.00
2020	Supplies and Materials	21100-6430-1301-54	$90,000.00

(C6) P0200677 – ROAD SOLUTIONS, INC., INDIANAPOLIS, IN

- Non-chloride liquid deicer/anti-icer products as needed through 12/31/2020.
- These goods are required to deice City streets and expressways during inclement weather.
- Road Solutions, Inc. is recommended as the sole manufacturer and distributor of Geomelt 55 deicing products; therefore, this purchase was negotiated.
- The Department of Public Works recommends approval of this order.

Fiscal Year	Fund Source(s)	Fund Code(s)	Fund Amount(s)
2020	Supplies and Materials	21000-6430-1301-54	$11,000.00
2020	Supplies and Materials	21100-6430-1301-54	$11,000.00

BACK

RECREATION AND YOUTH SERVICES

(D1) P0200684 – CUBBIE, BRADFORD dba STRIPES, DAYTON, OH

- Sports officials, scorekeepers, and timekeepers services as needed through 12/31/2020.
- These services are required by the Department of Recreation and Youth Services for the 2020 youth basketball, adult volleyball, and youth flag football seasons.
- Four (4) possible vendors were solicited and two (2) bids were received. This order establishes a price agreement per IFB N20001 with pricing through 5/30/2023.
- Cubbie, Bradford dba Stripes qualifies as a Dayton local entity.
- The Department of Recreation and Youth Services recommends acceptance of the lowest and best bid meeting specifications.

Fiscal Year	Fund Source(s)	Fund Code(s)	Fund Amount(s)
2020	Other Professional Services	10000-6530-1159-56	$22,000.00

(D2) P0200682 – RAIN DROP PRODUCTS LLC, ASHLAND, OH

- Splash pad expansion.
- These goods and services are required to expand the splash pad at Fairview Park.
- Rates are in accordance with the Sourcewell Contract # 030117-RDP in conjunction with IFB MW19026 with pricing through 12/31/2020.
- The Department of Recreation and Youth Services recommends approval of this order.

Fiscal Year	Fund Source(s)	Fund Code(s)	Fund Amount(s)
2020	Land Improvements	49805-6530-1420-56	$270,658.00

(D3) P0200683 – SERVICE SUPPLY LTD, INC., REYNOLDSBURG, OH

- Playground expansion.
- These goods and services are required to expand the playground at Fairview Park.
- Rates are in accordance with OMNIA Partners formerly known as National Intergovernmental Purchasing Alliance (NIPA) Contract #R170304 in conjunction with IFB MW19026 with pricing through 12/30/2020.
- The Department of Recreation and Youth Services recommends approval of this order.

Fiscal Year	Fund Source(s)	Fund Code(s)	Fund Amount(s)
2020	Land Improvements	49805-6530-1420-56	$101,411.68

BACK

WATER – WATER ENGINEERING

(E1) P0200647 – WHITE ALLEN CHEVROLET, INC., DAYTON, OH

- Two (2) 2020 full-size four-wheel drive extended cab pickup trucks.
- These vehicles are required to support the daily operations of the Division and will replace Units #841 and #2092 which will be disposed of in the best interest of the City.
- Rates are in accordance with the City of Dayton's existing price agreement IFB 19050D with pricing through 3/31/2020.
- White Allen Chevrolet, Inc. qualifies as a Dayton local entity.
- The Department of Water recommends approval of this order.

Fiscal Year	Fund Source(s)	Fund Code(s)	Fund Amount(s)
2020	Motorized Equipment	55000-3420-1412-54	$67,900.00

WATER – WATER RECLAMATION

(E2) P0200679 – XYLEM WATER SOLUTIONS USA, INC., MILFORD, OH

- Sewer collection system monitoring equipment.
- These goods are required to provide daily monitoring for the measurement of pH, temperature and Redox potential (ORP) in the collection system.
- Xylem Water Solutions USA, Inc. is recommended as the Original Equipment Manufacturer (OEM); therefore, this purchase was negotiated.
- The Department of Water recommends approval of this order.

Fiscal Year	Fund Source(s)	Fund Code(s)	Fund Amount(s)
2020	Infrastructure	55003-3460-1424-54-SF1606	$69,409.25

WATER – WATER SUPPLY AND TREATMENT

(E3) P0200653 – OHIO CAT, TROY, OH

- Rental services for various heavy equipment and related items.
- These services are required for the levee project at Union Road Well Field.
- Rates are in accordance with the City of Dayton's existing price agreement IFB 19052D with pricing through 12/31/2022.
- The Department of Water recommends approval of this order.

Fiscal Year	Fund Source(s)	Fund Code(s)	Fund Amount(s)
2020	Other Professional Services	53000-3430-1159-54	$10,816.00

The aforementioned departments recommend approval of this order.

BACK

City Manager's Report

2.

From **2600 - Economic Development**

Date **February 26, 2020**

Expense Type **Service Agreement**

Supplier, Vendor, Company, Individual

Total Amount $550,000.00 thru 12-31-2020

Name **CityWide Development Corporation**

Address **8 N. Main Street**
Dayton, OH 45402

Fund Source(s)	Fund Code(s)	Fund Amount(s)
Development Fund	16300-2600-1223-41	$550,000.00

Includes Revenue to the City ☐ Yes ☑ No **Affirmative Action Program** ☑ Yes ☐ No ☐ N/A

Description

Development Partnership Agreement

The Department of Economic Development requests approval to enter into a Development Partnership Agreement with CityWide Development Corporation in the amount of $550,000.00. CityWide will undertake asset based strategic initiatives in four service areas:

Neighborhood Planning and Investment. CityWide will prepare tactical work plans, organize work teams, lead community organizing, pursue funding opportunities, and track private investment in agreed upon project areas. Current project areas include: Phoenix Next; Salem Avenue Corridor; DaVinci; North Main Street; and Greater Downtown.

Urban Revitalization CityWide will work with stakeholders and development agencies on the revitalization of traditional business districts, high volume transportation corridors, public spaces and sites associated with community anchor institutions.

Innovation Networks and the Entrepreneurial Ecosystem. Strategic sectors for this initiative include: Advanced Materials and Manufacturing; Aerospace Research and Development; Data and Software Services; and Medical and Healthcare Services.

West Dayton Strategic Initiative. CityWide will staff ongoing project development in agreed upon project areas including: Wolf Creek and Wright Dunbar; Greater Westwood including the VA campus; and the HUD Choice Project/West Neighborhoods – Pineview, Madden Hills, Miami Chapel, Lakeview, Edgemont, and Carillon.

The Department of Law has reviewed and approved this Agreement as to form and correctness.

The Agreement is effective upon execution and will expire on December 31, 2020.

A Certificate of Funds for $550,000.00 is attached.

Signatures/Approval

Division Ford P. Weber

Department

for City Manager

Approved by City Commission

Clerk

Date

FORM NO. MS-16

Updated 8/2016

CERTIFICATE OF FUNDS

CT20-2530

SECTION I - to be completed by User Department

NO DRAFT DOCUMENTS PERMITTED

X New Contract ____ Renewal Contract ____ Change Order

Contract Start Date	upon execution
Expiration Date	12/31/2020
Original Commission Approval	$ 550,000.00
Initial Encumbrance	$ 550,000.00
Remaining Commission Approval	$ -

Original CT/CF	
Increase Encumbrance	
Decrease Encumbrance	$ -
Remaining Commission Approval	$ -

Required Documentation

X	Initial City Manager's Report
X	Initial Certificate of Funds
X	Initial Agreement/Contract
	Copy of City Manager's Report
	Copy of Original Certificate of Funds

Amount: $ 550,000.00

Fund Code 16300 - 2600 - 1223 - 41 - ____ - ____
Fund Org Acct Prog Act Loc

Amount: ____

Fund Code XXXX - XXXX - XXXX - XX - XXXX - XXXX
Fund Org Acct Prog Act Loc

Amount: ____

Fund Code XXXX - XXXX - XXXX - XX - XXXX - XXXX
Fund Org Acct Prog Act Loc

Amount: ____

Fund Code XXXX - XXXX - XXXX - XX - XXXX - XXXX
Fund Org Acct Prog Act Loc

Attach additional pages for more FOAPALs

Vendor Name: CityWide Development Corporation

Vendor Address: 8 N. Main Street (Street) Dayton (City) Ohio (State) 45402 (Zipcode + 4)

Federal ID: 31-0821189

Commodity Code: 91849

Purpose: 2020 Development Partnership Agreement

Contact Person: Jill Bramini Economic Development (Department/Division) 2/13/2020 (Date)

Originating Department Director's Signature: Ford P. Weber

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropirated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

Finance Director Signature — Date 2/17/2020

CF Prepared by Jeffrey L Marshall — Date 2/17/2020 — CF/CT Number CT20-2530

2/17/2020

DEVELOPMENT PARTNERSHIP AGREEMENT

THIS DEVELOPMENT PARTNERSHIP AGREEMENT ("Agreement") is made and entered into between **CityWide Development Corporation**, a corporation in the State of Ohio, located at 7 North Main Street, Dayton, Ohio 45402 (hereinafter referred to as "CityWide") and the **City of Dayton**, Ohio, a municipal corporation in and of the State of Ohio (hereinafter referred to as "City").

WITNESSETH THAT:

WHEREAS, City desires to improve its employment base by attracting businesses to Dayton and encouraging expansion of existing businesses; and,

WHEREAS, City desires to improve its asset base by attracting investment to Dayton; and,

WHEREAS, City desires to improve its housing base by attracting top-quality developers to Dayton; and,

WHEREAS, CityWide is strategically positioned to provide support in the above mentioned areas; and,

WHEREAS, City believes that a partnership with and providing support to CityWide under the terms and conditions set forth herein is in the best interest of City.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, City and CityWide agree as follows:

ARTICLE 1. SCOPE OF SERVICES

CityWide will perform the services outlined in Attachment A – *Scope of Services,* which is attached hereto and incorporated herein.

ARTICLE 2. TERM

The initial term of this Agreement shall begin upon execution and it will expire on December 31, 2020. At the end of the initial term, City will review CityWide's performance of the Scope of Services. Based upon acceptable performance, City, at its discretion, may extend the Agreement for an additional one (1) year term. The parties shall mutually agree to additional funding and Scope of Service for any renewal.

ARTICLE 3. FUNDING

The total remuneration of this Agreement shall not exceed FIVE HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS ($550,000.00) for all services, including reimbursable expenses and travel costs incurred in accordance with the provisions of this Agreement, to be provided by CityWide pursuant to this Agreement as outlined in Attachment B, attached hereto and incorporated herein. CityWide is solely responsible for all costs in excess of the funding provided by City hereunder. CityWide shall submit quarterly invoices for payment of the Services actually provided. Such invoices shall state the invoice period, total amount requested and Services provided during the invoice period. The City will, unless disputed, remit payment of all undisputed amounts of invoices within thirty (30) days from receipt thereof.

ARTICLE 4. REIMBURSABLE EXPENSES AND TRAVEL COSTS

As described above, The City agrees to reimburse CityWide for reimbursable expenses and travel costs incurred in the performance of the professional services during the term of this Agreement.

CityWide shall submit invoices, not more frequently than monthly, for reimbursement of travel expenses. Such invoices shall detail the work for which the expenditure was related, state the total amount of reimbursement requested, and contain a detailed listing, by category and type, of each travel expense actually incurred. However, payment for such reimbursable expenses is subject to the following limitations:

1. Travel costs shall be billed only for approved travel specifically pre-approved by authorized City personnel. Air travel reimbursement is limited to coach/economy rates. Local automobile travel expenses are included in the hourly rates paid as compensation for services. Automobile travel expenses for any destination outside of Montgomery County, Ohio will be reimbursable at the rate set by the U. S. Internal Revenue Service for business mileage reimbursement. Reimbursement for meals will not exceed City of Dayton per-diem guidelines.

2. Reimbursable expenses are limited to those out-of-pocket expenses paid by CityWide to its employees or an unrelated third party, subject to the City's final determination that the expense is appropriate and reasonable.

3. Amounts billed as reimbursable expenses are limited to direct costs incurred by CityWide and shall not include any multiple or additional percentage of those costs.

4. In order to be reimbursable, expenses must have been reasonably appropriate or must have been necessary, when evaluated in the light of the services to be performed. The cost of alcoholic beverages or entertainment shall not be reimbursed.

5. Signed, legible and explanatory receipts must be submitted for all reimbursable expenses.

Upon verification and review, the City will tender payment of travel reimbursement invoices within forty-five (45) days from receipt thereof, unless the invoice is disputed.

ARTICLE 5. SPECIFIC CONDITIONS

A. CityWide shall comply with all applicable federal, state, and local laws, including applicable prevailing wage laws, rules, regulations, and orders governing receipt and use of municipal and other public funds for the project. CityWide shall assume full and complete responsibility for any alleged or actual violation of the foregoing, including payment of any penalty imposed and/or repayment of improperly expended funds, if any, and shall defend, indemnify, and hold harmless City and its elected officials, officers, agents, and employees therefrom.

B. It is the City of Dayton's commitment to encourage the greatest participation possible of Minority- and Women-owned, Small, and Local Businesses on all projects, joint agreements, and bid opportunities through City's Procurement Enhancement Plan ("PEP") and other initiatives.

C. CityWide shall make good faith efforts to hire qualified and City of Dayton Human Relations Council ("HRC") PEP certified contractors, and particularly those suppliers located in the city of Dayton, to complete work and services associated with the project.

D. At the completion of the project, CityWide shall provide to City a PEP Report regarding the use of certified Minority- and Women-owned and Small businesses, as designated by City.

E. If it becomes necessary for review, audit, or verification purposes, CityWide shall allow City to inspect applicable, confidential records.

F. CityWide agrees to supply additional information upon request by City and to cooperate in any audit or review of the funding provided hereunder.

ARTICLE 6. TERMINATION

A. This Agreement may be immediately terminated under any of the following circumstances:

1. A receiver for CityWide's assets is appointed by a court of competent jurisdiction.
2. CityWide is divested of its rights, powers, and privileges under this Agreement by operation of law.
3. CityWide's failure to comply with any term, covenant or condition of this Agreement to be kept, performed and observed by it, and the failure of CityWide to remedy such failure within thirty (30) days from the date of written notice from City.
4. CityWide's violation of any applicable federal, state, or local law applicable to the Project and construction thereof.
5. One or both parties desires to terminate this Agreement and upon giving thirty (30) days prior written notice to the other party.

In the event of termination, CityWide shall repay to City within three (3) business days from the effective date of termination all funds provided but not used for the purposes set forth in this Agreement hereunder and, upon such repayment, CityWide shall be released from its obligations hereunder. This obligation to remit repayment of funding shall survive termination of this Agreement until such funds are actually received by City. If no funds were provided, the parties shall be immediately relieved of their obligations hereunder.

ARTICLE 7. INDEMNIFICATION

CityWide shall defend, indemnify, and hold harmless City and its elected officials, officers, employees, and agents from and against all claims, losses, damages, and expenses (including reasonable attorneys' fees) of whatsoever kind and nature, to the extent that such claims, losses, damages, or expenses are caused by or arise out of the performance or non-performance of this Agreement and/or the acts, omissions or conduct of CityWide, and its agents, employees, contractors, sub-contractors, and representatives in undertaking and completing the Project, and/or CityWide's failure to comply with federal, state, and local laws, including (as applicable) those relating to the payment of prevailing wages.

ARTICLE 8. EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION

CityWide shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap with respect to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, lay-off, termination, rates of pay or other forms of compensation, or selection for training, including apprenticeship.

It is expressly agreed and understood that Section 35.14 of the Revised Code of General Ordinances of the City of Dayton constitutes a material condition of this Agreement as fully and as if specifically

rewritten herein and that failure to comply therewith shall constitute a breach thereof entitling City to terminate this Agreement at its option.

ARTICLE 9. POLITICAL CONTRIBUTIONS

CityWide affirms and certifies that it complies with Ohio Revised Code § 3517.13 limiting political contributions.

ARTICLE 10. RECORDS AND RETENTION

CityWide shall use Generally Accepted Accounting Principles ("GAAP") in recording and documenting all costs and expenditures related in whole or part to the Project. All costs and expenditures for the Project for which CityWide will be reimbursed hereunder shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers or other accounting documents and other evidence (collectively, "Records"). All Records shall be clearly identified and readily accessible. At any time during normal business hours and as often as City may request, CityWide shall make available to City, the Auditor of the State of Ohio, the federal government and any of its departments and agencies, and any of their designees, all of its Records related to this Agreement and the Project. CityWide shall permit City, the Auditor of the State of Ohio, the federal government and any of its departments and agencies and any of their designees to audit, examine, and make excerpts or transcripts from such Records and to have audits made of all contracts, invoices, materials, payrolls, personnel records, conditions of employment and other data pertaining in whole or in part to matters covered by this Agreement.

All Records, including any and all supporting documentation for invoices submitted to City, shall be retained by CityWide and made available for review by City, the Auditor of the State of Ohio, the federal government and any of its departments and agencies, and any of their designees for a minimum of three (3) years after the termination or expiration of this Agreement. Notwithstanding the foregoing, if there is litigation, claims, audits, negotiations or other actions that involve any of the Records pertaining to this Agreement, which commences prior to the expiration of the three-year period, CityWide shall retain such Records until completion of the actions and resolution of all issues or the expiration of the three year period, whichever occurs later.

ARTICLE 11. TAX REPRESENTATION

CityWide certifies that, as of the date of execution, it does not owe any delinquent taxes to the City of Dayton and/or does not owe delinquent taxes for which CityWide is liable under Chapter 5733, 5735, 5739, 5741, 5743, 5747, or 5753 of the Ohio Revised Code or, if such delinquent taxes are owed, CityWide currently is paying such delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, or CityWide filed a petition in bankruptcy under 11 U.S.C. Section 101. et seq., or such a petition has been filed against CityWide. For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.

ARTICLE 12. INDEPENDENT CONTRACTOR

The parties hereby agree that CityWide is an independent contractor and not subject to the control of the City, except as provided herein. At no time shall the relationship between the parties under this Agreement be construed, held out or considered as a joint venture principal-agent or employer-employee. As an independent contractor, CityWide understands and agrees that any and all persons retained or hired to perform the CityWide's duties and responsibilities under this Agreement are not City employees and not entitled to any of the emoluments of City employment.

CityWide understands and agrees that it is not a City employee, and therefore, shall not be entitled to, nor will it make a claim for, any of the emoluments of employment with the City of Dayton. CityWide acknowledges its employees are not public employees for the purpose of Ohio Public Employees Retirement System ("OPERS") membership. Further, CityWide shall be solely responsible to withhold and pay all applicable local, state and federal taxes.

ARTICLE 13. GENERAL PROVISIONS

A. Conflict of Interest. CityWide covenants that it has no interest and shall not acquire any interest, direct or indirect, that would cause conflict in any manner or degree with the performance of this Agreement or completion of the project.

B. Entire Understanding. This Agreement represents the entire and integrated agreement between the parties. This Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreements or contracts, whether oral or written, relating to the subject matter of this Agreement.

C. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws. Any arbitration, litigation or other legal matter regarding this Agreement or performance by either party must be brought in a court of competent jurisdiction in Montgomery County, Ohio.

D. Amendment. The parties may amend this Agreement, provided that no such amendment shall be effective unless it is reduced to a writing, which makes specific reference to this Agreement, is executed by a duly authorized representative of each party to this Agreement and, if required or applicable, is approved by the Commission of the City of Dayton, Ohio.

E. Waiver. A waiver by City of any breach of this Agreement shall be in writing. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it is given and shall not affect City's rights with respect to any other or further breach.

F. Relationship. This Agreement is not intended to be, nor shall it be construed, as creating a partnership, joint venture, corporation, or other relationship between the parties with respect to the project or any activities to be completed by CityWide.

G. Communications. Any notice, demand, or other communication required under the Agreement by one party to the other party shall be sufficiently given, if it is sent by certified U.S. mail, postage prepaid, return receipt requested or delivered personally, and addressed as follows:

For City:

Ford Weber, Director
Department of Economic Development
City of Dayton
P.O. Box 22, 101 W. Third Street
Dayton, OH 45401

For CityWide: Brian Heitkamp
CityWide Development Corporation
8 North Main St.
Dayton, OH 45402

H. Severability. The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any provision of this Agreement void shall in no way affect the validity or enforceability of any other provision of this Agreement. Any void, unenforceable, invalid, or illegal provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular provision.

IN WITNESS WHEREOF, City and CityWide, each by a duly authorized representative, have executed this Agreement as of the date set forth below.

CITY OF DAYTON, OHIO

_____
City Manager

_____
Date

CITYWIDE DEVELOPMENT CORPORATION

By: _____

Its: PRESIDENT
Rosalie Gehrich
CFO

APPROVED AS TO FORM AND CORRECTNESS:

_____
City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

_____, 2020

Min. / Bk. _____ Pg. _____

_____
Clerk of the Commission

Attachment A

Scope of Services

Asset-Based Development 2020 Partnership Agreement

CityWide will pursue asset based strategic initiatives in coordination with various City Departments. Through strategic partnerships with the private sector and community-based organizations, CityWide will promote development and investment in four service areas:

Neighborhood Planning and Investment.

CityWide will prepare tactical work plans, organize work teams, lead community organizing, pursue funding opportunities, and track private investment in agreed upon project areas. Current project areas include: Phoenix Next; Salem Avenue Corridor; DaVinci; North Main Street; and Greater Downtown.

Urban Revitalization.

CityWide will engage with building owners, developers and investors to promote the adaptive reuse of existing buildings and clusters of buildings throughout Dayton. CityWide will work with stakeholders and development agencies to coordinate redevelopment projects with public investment. These efforts will prioritize the revitalization of traditional business districts, high volume transportation corridors, public spaces and sites associated with community anchor institutions.

Innovation Networks and the Entrepreneurial Ecosystem.

CityWide will work to attract, recruit and retain a strong technology-based business sector that leverages the investment to date in the innovation networks established in Webster Station, The Entrepreneur Center, Sinclair Community College, and the University of Dayton. Strategic sectors for this initiative include: Advanced Materials and Manufacturing; Aerospace Research and Development; Data and Software Services; and Medical and Healthcare Services.

West Dayton Strategic Initiative.

CityWide will provide staff support to the West Dayton Strategic Framework Initiative as directed by the City Manager. CityWide will staff ongoing project development in agreed upon project areas including: Wolf Creek and Wright Dunbar; Greater Westwood including the VA campus; and the HUD Choice Project/West Neighborhoods – Pineview, Madden Hills, Miami Chapel, Lakeview, Edgemont, and Carillon.

Attachment B
2020 Funding Allocation

Total City Funding	$ 550,000.00
CityWide Projected Investment (Private Sector & CityWide Support)	$ 550,000.00
Total	**$1,100,000.00**

BACK

City Manager's Report

3.

From **6480 - PW/Property Management**

Date **February 26, 2020**

Expense Type **Contract Modification**

Supplier, Vendor, Company, Individual

Total Amount **$79,900.00 thru 12/31/2021**

Name **O & S Associates, Inc.**

Address **471 East Broad Street**
Suite 910
Columbus, Ohio 43215

Fund Source(s)	Fund Code(s)	Fund Amount(s)
Fac. Phase II Oregon Dist. Gar	49010-6480-1425-54	$79,900.00

Includes Revenue to the City ☐ Yes ☑ No **Affirmative Action Program** ☑ Yes ☐ No ☐ N/A

Description

OREGON DISTRICT GARAGE PHASE 2 DESIGN SERVICES – SECOND AMENDMENT

The Department of Public Works requests approval for a second amendment to the City's agreement with O & S Associates, Inc. for Oregon District Garage Phase 2 Design Services. This amendment will cover additional services/work needed for a phase 2 construction project. Services will include continued design services for the repair of deteriorated or damaged structural concrete, replace expansion joints, seal exposed floor slabs with a traffic rated waterproofing membrane, install a new security camera system, and continued construction administration services.

This project is fully funded from the 2020 Facilities Phase II Oregon District Garage Capital Fund.

The current service agreement amount is $134,513.00. The Second Amendment, which totals $79,900.00 through December 31, 2021, will increase the contract with O & S Associates, Inc. for the Oregon District Garage Phase 2 Design Services to $214,413.00.

The agreement has been approved by the Department of Law as to form and correctness. A copy of the Second Amendment and the Certificate of Funds are attached.

Signatures/Approval

Division

Department

for City Manager

Approved by City Commission

Clerk

Date

FORM NO. MS-16

Updated 1/2019

CT17-1814
CORD #2

CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department **NO DRAFT DOCUMENTS PERMITTED**

_____ New Contract _____ Renewal Contract X Change Order

Contract Start Date	Upon Execution
Expiration Date	12/31/21
Original Commission Approval	$ 214,413.00
Initial Encumbrance	$ 134,513.00
Remaining Commission Approval	$ 79,900.00
Original CT/CF	CT17-1814
Increase Encumbrance	$ 79,900.00
Decrease Encumbrance	$ -
Remaining Commission Approval	$ -

Required Documentation

_____ Initial City Manager's Report
_____ Initial Certificate of Funds
_____ Initial Agreement/Contract

_____ Copy of orignal City Manager's Report
_____ Copy of Original Certificate of Funds

Amount: $ 79,900.00	Amount:
Fund Code 49010 (Fund) 6480 (Org) 1425 (Acct) - 54 (Prog) - XXXX (Act) - XXXX (Loc)	Fund Code XXXXX (Fund) - XXXX (Org) - XXXX (Acct) - XX (Prog) - XXXX (Act) - XXXX (Loc)
Amount:	Amount:
Fund Code XXXXX (Fund) - XXXX (Org) - XXXX (Acct) - XX (Prog) - XXXX (Act) - XXXX (Loc)	Fund Code XXXXX (Fund) - XXXX (Org) - XXXX (Acct) - XX (Prog) - XXXX (Act) - XXXX (Loc)

Attach additional pages for more FOAPALs

Vendor Name: O&S Associates

Vendor Address: 471 East Broad St., Suite 910 (Street) Columbus (City) Ohio (State) 43215 (Zipcode + 4)

Federal ID: 223429552

Commodity Code: 90600

Purpose: The second amendment will cover additional services/work needed for a phase 2 construction project.

Contact Person: Chatan Robinson Public Works/Property Management (Department/Division) 1/31/2020 (Date)

Originating Department Director's Signature: Thomas J. Fitchel Jr. 1-31-2020

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropirated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

[signature] 2/18/2020
Finance Director Signature Date

[signature] 2/17/2020 CT17-1814 CORD #2
CF Prepared by Date CF/CT Number

SA 02-17-2020

SECOND AMENDMENT TO
DESIGN SERVICES AGREEMENT

This Second Amendment to the Design Services Agreement, is entered into this ____ day of _____, 2020 between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio, ("City") and O&S Associates, Inc. ("Consultant").

WITNESSETH THAT:

WHEREAS, the City and Consultant entered into an Agreement on October 25, 2017 for engineering, design, and construction administration services for the Transportation Center Parking Garage, Dayton, Ohio; and,

WHEREAS, the Department of Public Works requested a 2020 Capital Improvement Project to complete a Phase 2 construction project in the Garage; and,

WHEREAS, this Phase 2 Capital Improvement Project will continue to make similar repairs and improvements as the completed Phase 1 project; and,

WHEREAS, in and effort to maintain contuinity of services, it is necessary to retain the Consultant for necessary engineering, design, and construction administration services; and,

WHEREAS, the City and Consultant agree that the additional work will require additonal compensation to be paid to the Consultant.

NOW, THEREFORE, The City and Consulatant hereby agree that:

Section 1. Article One, Services To Be Performed, is hereby deleted in its entirety and replaced with the following:

ARTICLE I – SERVICES TO BE PERFORMED

Consultant shall assess, inspect, evaluate and determine damage to the Oregon District Garage, located at 101 East Fifth Street, Dayton, Ohio, and develop recommendation for repair, restoration, and improvement to the Oregon District Garage, hereinafter referred to as the Project, described in the Request for Proposal, hereinafter referred to as the RFP, a copy of which is attached as Exhibit A and incorporated herein by reference. To the extent not inconsistent with Exhibit A, Consultant shall perform the work and services for the project and comply with the representations detailed in Consultant's response to the RFP, hereinafter referred to as the Proposal, a copy of which is attached as Exhibit B and incorporated herein by reference. Services to be performed by Consultant shall include, but are not limited to, the following:

PHASE 1: Parking Structure Assessment, Inspection & Evaluation

1. Review any documents pertinent to the evaluation, such as existing plans, previous engineering and testing reports, and construction, repair, or maintenance information.
    a. Visually observe the structural and waterproofing elements of the garage, and other incidental appurtenances related to determining the condition of the structure, floor slab & soffits, including cracking and spalling.
    b. PT beams, including cracks, spalls and delamination.

c. Concrete Columns.
d. Exposed, corroded steel reinforcement or PT tendons/anchors.
e. Drains & Piping.
f. Sealants.
g. Vehicle Barriers/ Restraints.
h. Waterproofing systems.
i. Expansion joints and glands.
j. Facade walls, spandrel beams, exterior columns, etc.
k. Lighting systems.
l. Windows & doors.
m. Stairs.
n. Traffic flow, wayfinding, and signage.
o. Electrical wiring and conduit.
p. Coating options for acrylic windows.

Determine and quantify the visible deterioration at reasonably accessible areas available at the time of work, given the stated means and methods. Find and document adverse conditions such as concrete spalling, corroded reinforcement, cracking, leaking, leaching, scaling, and other related deterioration and deficiencies of the structural and waterproofing elements.

2. Obtain a representative photographic inventory of the observed deterioration.
3. Provide an acoustic survey of the floor slabs and representative areas of the ceilings using "chain drag" and "hammer sounding" techniques. Review the ingress and egress characteristics (vehicular and pedestrian) of each facility and provide recommendations to increase ease of ingress and egress including the reduction of vehicle-to-vehicle conflicts and vehicle-to-pedestrian conflicts.
4. Adequacy of interior vehicular and pedestrian wayfinding signage including elevator and level identification systems. Review of facility identification signage.
5. Review lighting system conditions and record lighting measurements to provide recommendations for upgrade to an LED system to meet current standards and reduction in energy consumption.
6. Review options for a security camera surveillance system.
7. Evaluate the general housekeeping condition of each facility and provide recommendations to maintenance programs for improvement.
8. Identify any other issues related to improvements or replacement not specifically identified in the RFP document that may be relevant to facilities analysis.
9. Preform cursory review of parking garage for ADA assessable routing and report our findings.

<u>Phase 1 Deliverables</u>

1. Perform an analysis of observed conditions and testing results.
2. Develop a recommended repair program with a budget level construction cost estimate.
3. Develop a conceptual repair program & improvement plan including repair options that vary in scope and costs to optimize investment horizon, implementation costs, and long-term maintenance costs.
4. Provide a summary report of observations, finding, and conclude a recommendation of each repair item.
5. Photographic documentation of the conditions will also be provided.
6. Attend an onsite meeting with City representatives to present findings, conclusions and recommendations (at request).

Phase 1: Project Design

Stage One: Schematic Design Phase

1. Discuss with the city to finalize the program for restoration design, based on the findings, recommendations, prioritization of work items and the City's available budget.
2. Discuss with the City options for signage and graphics improvements, tinting the acrylic elevator enclosure, upgrading the lighting LED, and installing a camera based surveillance system.
3. Based on the project goals and program established, prepare a Schematic Design. The Schematic Design will include suggested design details and materials.
4. Review options for value-engineering and cost containment and present options for cost saving materials and design details.
5. Attend one (1) kick-of meeting to discuss the program and design aspect of the project

Stage Two: Detailed Design Development Phase

Based on the City's comments on the Schematic Design drawings, prepare Design Development Drawings. The Design Development Drawings will represent a future refinement of the design, materials selection and placement as well as the following:

1. Coordinate with team members on all related aspects of the design to assure a well- integrated product.
2. Provide a revised or updated opinion of order of magnitude costs for review within budget constraints and develop a schedule for phasing of the work.
3. Attend two (2) meetings with the team during this phase to discuss on-going design issues.
4. Provide Construction/ Contract Documents: Produce construction drawings and specifications in a format suitable for competitive bidding. This phase of services includes the following work:
    a. Review available original design documents.
    b. Structural Repair Plan - A detailed set of repair drawings is to be issued incorporating survey information showing location and/or approximate extent of unit priced and lump sum repair work.
        i. The repair design shall address both typical and non-typical conditions including column, slab, and concrete framing members, walls, and ramp repair details.
        ii. Prepare details to include supplemental reinforcement, if required, welding processes, and the level of preparation necessary for each type of repair. Prepare details to indicate the methods for integrating the new repair areas with the existing.
        iii. For unit priced work, the locations shown will be representative to be determined in the field when actual conditions are understood upon demolition and exploratory opening.
    c. Waterproofing Plan and Details
        i. Prepare waterproofing drawing, details, and specifications for the parking levels to address cracks, failed sealants & seals, terminations, surface preparation, materials, application and quality assurance for repairs and waterproofing work are to be provided in drawings.
    d. Garage Improvements
        i. Prepare specifications for camera based surveillance system.
        ii. Prepare specifications for modem LED lighting system based on lighting analysis.
        iii. Prepare new designs for signature and graphics.
        iv. Specify procedure and material for tinting acrylic elevator enclosure.
    e. Temporary Protection and Phasing Plans as required to maintain occupancy during construction.
    f. Repair procedures and methods are to be provided for each work item on the drawings.
    g. Prepare construction details to illustrate repair technologies and describe the details of

the unit price work items.

h. Provide special demolition, temporary protection, and temporary shoring details in order to safely repair the structure while maintaining structural stability and occupancy.

1. Provide drainage improvements.

j. Prepare technical specifications for repair work and general conditions of the Contract, based in part of the AIA 101 & 201 series for the contract and general conditions accordingly.

k. Specifications will be prepared in general conformance with CSI format

l. Standard Bidding Documents including Instructions to Bidders and detailed Proposal Form Preparation of technical specifications for each individual work item outlining performance criteria, testing requirements during construction, warranties for each work item.

m. Repair procedures and specific materials are to be identified in the specifications to assure proper prosecution of the work.

n. Specific material testing during construction is to be outlined to determine acceptability and conformance of work with the contract requirements.

o. Attend progress meeting as required for discussion prior to final revisions and submission.

p. Submit the Contract Documents to the City in accordance to the RFP.

5. Bidding Services:

a. Assist the City in advertising the project.

b. Reproduce and distribute construction documents to Bidders in accordance to the City's requirements.

c. Attend one pre-bid conference and site meeting with Bidders to review the site and construction scope of work.

d. Provide follow-up pre-bid meeting minutes and any required addendums as required to all parties.

e. Respond to Bidders' requests for information.

f. Tabulate bid results, and evaluate bids for potentially adverse bid strategies.

g. Attend one on-site meeting/conference to help interview and qualify Bidders and to help identify or understand differences between Bidders and their Bids.

6. Construction Administration

a. Conduct one on-site pre-construction meeting prior to the mobilization to review critical items such as schedule, phasing, temporary protections, and project administration. Write and distribute Meeting Minutes.

b. Review all Contractor submittals including Shop Drawings, RFI's, product specifications, etc.

c. Observe work to monitor conformance with contract plans, specifications, and workmanship standards. Document observations and submitted to the City via Field Reports.

d. Upon substantial completion, attend one project-closeout meeting with City Project manager and Contractor to determine outstanding work, discuss how deficient work will be resolved, and review the project-closeout requirements.

e. Issue punch-list if required and make final inspection to verify that all punch- list items were completed.

PHASE 2 Engineering Services to be Provided

1. Produce Repair Drawings

a. The plans produced in phase 1 will be updated to show phase 2 work. The updated drawings are to be prepared showing schematic locations of required repairs and required repair sections/details.

b. Additional details will be provided for phase 2 work items not included in phase 1.

c. Phase 1 details will be updated as needed based on the findings from the construction of the

first phase.

d. A set of security drawings will be developed for the installation of a new security camera system. A high coverage system and on-site monitoring is included.
e. Based on the City's constraints and the operations of the garage, a set of phasing plans will be developed which will allow sequencing of the construction work for continued operations of the facility.

2. Specifications/Project Manual
   a. Preparation of technical specifications for each individual work item outlining performance criteria, testing requirements during construction, and warranties for each work item.
   b. Repair procedures and specific materials are to be identified in the specifications to assure proper prosecution of the work.
   c. Contractor bid item descriptions, estimated repair quantities, and a design/bidding level budget will be provided to the City for transposal onto the City's standard documents for bidding.
3. Bidding
   a. Attend the pre-bid meeting.
   b. Preparation and issuance of addenda as appropriate to interpret, clarify, or modify the bidding documents.
   c. Review acceptability of alternate materials and equipment proposed by the prospective Contractor's when substitution prior to award of contracts is allowed by the bidding documents.
   d. Assist the City in the bidding process and selection of the Contractor including evaluation of the bids received and the technical competence and cost competitiveness of the bidding parties.
   e. Recommend a Contractor to the City for contract award.
4. Construction Administration
   a. Attend the pre-construction meeting.
   b. Layout of all work in the field.
   c. Attend progress meetings including in-field review of Contractor's compliance with plans and specifications based on observations and measurements during each meeting. Bi-weekly meetings are assumed.
   d. Complete a punch-list site visit.
   e. Complete a final completion site visit.
   f. Complete site visits as needed to review field conditions during construction.
   g. Review Contractor submittals.
   h. RFI review and resolution.
   i. Review of shop drawings.
   j. Change Order review and assist in preparation, as appropriate.
   k. Construction change directive review and assist in preparation, as appropriate.
   l. Contractor claim evaluation and feedback to the City, as appropriate.
   m. Evaluation of substitutions.
   n. Assist with Contractor's pay request processing.
   o. Office follow-up after site visit as required.

Section 2. Article Two, Compensation, is hereby deleted in its entirety and replaced with the following:

ARTICLE II - COMPENSATION

The City shall pay Consultant a sum not to exceed Two Hundred Fourteen Thousand Four Hundred Thirteen Dollars and Zero Cents ($214,413.00) for the Services actually provided in accordance with this Agreement, as amended. Consultant may submit invoices to City monthly for services actually provided. The City will, unless disputed, remit payment of all undisputed amounts of invoices within thirty (30) days from receipt thereof.

Section 3. Article Three, Term, is hereby deleted in its entirety and replaced with the following:

ARTICLE III – TERM

This Second Amendment shall commence upon execution by the City and shall terminate automatically on December 31, 2021, unless extended to a later date by a mutual written amendment to this Second Amendment or teminated according to Article 6 of the Agreement.

Section 4. Except as amended by this Second Amendment, the Agreement shall remain in full force and effect and shall remain unchanged.

IN WITNESS WHEREOF, the City and Consultant, each by a duly authorized representative, have executed this Second Amendment as of the date first above written

CITY OF DAYTON, OHIO

_____
City Manager

O&S ASSOCIATES, INC.

_____
Title PROJECT MANAGER

APPROVED AS TO FORM AND CORRECTNESS:

_____
City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

_____, 20____

Min./Bk. _____ Pg. _____

_____
Clerk of the Commission

MEMORANDUM | DAYTON

July 1, 2019

TO: Valerie Henderson, Financial Services Supervisor
Division of Financial Analysis
Department of Finance

FROM: Joey Shope, Division Manager
Division of Property Management

SUBJECT: Change Order – CT17-1814 O&S Associates, Inc.

Property Management is requesting an increase of $9,513 to CT17-1814 O&S Associates Inc. for additional engineering services. During the design phase, it was determined to be necessary to perform the additional services of invasive coring and investigational surveys on the helical ramps. It was discovered that these ramps had maintenance applied that differed from the original construction plans and it was therefore imperative to identify the material make-up of these ramps for accurate construction plans and specifications for the repair and restoration of the Transportation Center Garage.

A copy of the original CF, City Manager's Report and Professional Engineering Services Agreement are attached.

If you have any questions, please feel free to contact Chatan Robinson at x4207.

APPROVED:

Thomas J. Ritchie, Jr., Deputy Director
Department of Public Works

JS/clr

Attachments

Cc: Melody Walls, File

CERTIFICATE OF FUNDS CT17-1814

SECTION I - to be completed by User Department **NO DRAFT DOCUMENTS PERMITTED** COCD #1

_____ New Contract _____ Renewal Contract X Change Order

Contract Start Date	Upon Execution
Expiration Date	12/31/20
Original Commission Approval	$ 134,513.00
Initial Encumbrance	$ 125,000.00
Remaining Commission Approval	$ 9,513.00

Original CT/CF	CT17-1814
Increase Encumbrance	$ 9,513.00
Decrease Encumbrance	$ -
Remaining Commission Approval	$ -

Required Documentation

_____ Initial City Manager's Report
_____ Initial Certificate of Funds
_____ Initial Agreement/Contract

_____ Copy of orignal City Manager's Report
_____ Copy of Original Certificate of Funds

Amount: $ 9,513.00	Amount: _____
Fund Code 49801 - 5540 - 1159 - 54 - XXXX - XXXX (Fund, Org, Acct, Prog, Act, Loc)	Fund Code XXXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund, Org, Acct, Prog, Act, Loc)
Amount: _____	Amount: _____
Fund Code XXXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund, Org, Acct, Prog, Act, Loc)	Fund Code XXXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund, Org, Acct, Prog, Act, Loc)

Attach additional pages for more FOAPALs

Vendor Name: O&S Associates

Vendor Address: 471 East Broad St., Suite 910 (Street) Columbus (City) OH (State) 43215 (Zipcode + 4)

Federal ID: 223429552

Commodity Code: 90600

Purpose: Additional engineering services - Slab Survey & Investigative Coring at the Transportation Center Garage

Contact Person: Chatan Robinson | Public Works/Property Management (Department/Division) | 7/1/2019 (Date)

Originating Department Director's Signature: Thomas J. Stokes Jr. 7-2-19

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropirated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

Finance Director Signature — Date: 7-11-19

Jennifer Williams — CF Prepared by — Date: 7/8/19 — CF/CT Number: CT17-1814 COCD #1

SA 7/8/19

FIRST AMENDMENT TO
DESIGN SERVICES AGREEMENT

This First Amendment to design services agreement, is entered into this ____ day of _____, 2019 between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio, (hereinafter referred to as "City") and O&S Associates, Inc. (hereinafter referred to as "Consultant").

WITNESSETH THAT:

WHEREAS, the City and Consultant entered into an Agreement on October 25, 2017 for engineering, design, and construction administration services for the Transportation Center Parking Garage, Dayton, Ohio; and,

WHEREAS, it was discovered during the design that the original helical ramps were not adhering to the original construction design; and,

WHEREAS, in and effort to properly determine the current condition and make-up of the helical ramps for accurate construction drawings and specifications; and,

WHEREAS, it was imperative to perform invasive coring and investigational surveys on the helical ramps to provide accurate construction drawings and specifications; and,

WHEREAS, the City and Consultant agree that the additional work will require additonal compensation to be paid to the Consultant.

NOW, THEREFORE, The City and Consulatant hereby agree that:

Section 1. Under this First Amendment, the Consultant shall perform the following additional engineering services,

a. Slab Survey & Investigavtive Coring $ 9,513.00

Section 2. In consideration of Consultant performing the additonal engineering services described in Section 1, the City Shall pay the Contractor an additional Nine Thousand Five Hundred Thirteen Dollars and Zero Cents ($9,513.00).

Section 3. Article Three, of the Agreement is hereby deleted in its entirety and replaced with the following:

ARTICLE III – TERM

This Second Amendment shall commence upon execution by the City and shall terminate automatically on December 31, 2020, unless extended to a later date by a mutual written amendment to this Second Amendment or teminated according to Article 6 of the Agreement.

IN WITNESS WHEREOF, the City and Consultant, each by a duly authorized representative, have executed this First Amendment as of the date first above written.

CITY OF DAYTON, OHIO

_____

City Manager

O&S ASSOCIATES, INC.

_____

Title PROJECT MANAGER

APPROVED AS TO FORM AND CORRECTNESS:

_____

City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

_____, 20____

Min./Bk. _____ Pg. _____

_____

Clerk of the Commission

No Commission Action Required

CERTIFICATE OF FUNDS CT17-1814.

SECTION I - to be completed by User Department

X New Contract ____ Renewal Contract ____ Change Order

Contract Start Date	10/04/17
Expiration Date	12/31/18
Original Commission Approval	$ 125,000.00
Initial Encumbrance	$ 125,000.00
Remaining Commission Approval	$ -
Original CT/CF	
Increase Encumbrance	$ -
Decrease Encumbrance	$ -
Remaining Commission Approval	$ -

Required Documentation

	Initial City Manager's Report
	Initial Certificate of Funds
	Initial Agreement/Contract
X	Copy of City Manager's Report
X	Copy of Original Certificate of Funds

Amount: $ 125,000.00	Amount:
1. Fund Code 49801 - 5540 - 1159 - 54 - XXXX - XXXX (Fund Org Acct Prog Act Loc)	2. Fund Code XXXX - XXXX - XXXX - XXX - XXXX - XXXX (Fund Org Acct Prog Act Loc)
Amount:	Amount:
3. Fund Code XXXX - XXXX - XXXX - XXX - XXXX - XXXX (Fund Org Acct Prog Act Loc)	4. Fund Code XXXX - XXXX - XXXX - XXX - XXXX - XXXX (Fund Org Acct Prog Act Loc)

Attach additional pages for more FOAPALs

Vendor Name: O & S Associates

Vendor Address: 471 East Broad Street, Columbus, Ohio 43215
Street City State Zipcode + 4

Federal ID: 223429552

Commodity Code: 90600

Purpose: Evaluation and Design Services of the repair and restoration of the Transportation Center Garage

Contact Person: Joey Shope Central Services/Director's Office 10/16/2017
Department/Division Date

Originating Department Director's Signature: [signature] OCT 16, 2017

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropirated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

for [signature] Lashea Lefton 10/17/2017
Finance Director Signature Date

[signature] Melissa Leyseth 10/17/17 CT17-1814
CF Prepared by Date CF/CT Number

KB 10/17/17

City Manager's Report

2.

From 5540 - CS/Property Management

Date October 25, 2017

Expense Type Award of Contract

Total Amount $125,000.00 Thru 12-2018

Supplier, Vendor, Company, Individual

Name O & S Associates, Inc.

Address 471 E. Broad Street, St. 910
Columbus, Oh 43215

Fund Source(s)	Fund Code(s)	Fund Amount(s)
Capital	49801-5540-1159-54	125,000.00

Includes Revenue to the City ☐ Yes ☑ No

Affirmative Action Program ☑ Yes ☐ No ☐ N/A

Description

Transportation Center Garage Repair Design Services

The Department of Central Services requests permission to enter into an agreement with O & S Associates, Inc. to perform professional Engineering services for the City of Dayton Transportation Center Garage.

The scope of work to be performed includes three phases: (1) Assessment of garage structure and infrastructure, (2) development of designs and work scopes to achieve needed repairs and upgrades, and (3) bid analyses and construction management.

Four proposals were received and evaluated by the City. The proposal from O & S Associates, Inc. is the highest ranked and, therefore, recommended for engagement by the City to perform these services.

This project is being funded by General Capital funds.

A Certificate of Funds in the amount of $125,000 is attached.

The Agreement has been reviewed and approved by the City's Law Department as to form and correctness.

Signatures/Approval

Division

Department

City Manager

Approved by City Commission

Rashella Lavender
Clerk

October 25, 2017
Date

FORM NO. MS-16

Updated 8/2016

CITY OF DAYTON, CENTRAL SERVICES
PROFESSIONAL ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT, dated this 15 day of November, 2017 is between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio ("City") and O & S Associates ("Consultant"), a for-profit corporation operating in the State of Ohio.

WITNESSETH THAT:

WHEREAS, the City issued a Request for Proposal for Engineering Services to perform evaluation and design services of the repair and restoration of the Transportation Center Garage, located at 101 East Fifth Street, Dayton, Ohio; and,

WHEREAS, Consultant responded to the City's Request for Proposal, setting forth that it is experienced and qualified to provide the engineering services, and is willing to provide such engineering services to the City; and,

WHEREAS, Consultant's response to the Request for Proposal has been accepted by the City.

NOW, THEREFORE, in consideration of the promises contained in this Agreement, the City and Consultant agree as follows:

ARTICLE I- SCOPE OF WORK

Consultant shall assess, inspect, evaluate and determine damage to the Transportation Garage, located at 101 East Fifth Street, Dayton, Ohio, and develop recommendations for repair, restoration, and improvement to the Transportation Center Garage, hereinafter referred to as the Project, described in the Request for Proposal, hereinafter referred to as the RFP, a copy of which is attached as Exhibit A and incorporated herein by reference. To the extent not inconsistent with Exhibit A, Consultant shall perform the work and services for the project and comply with the representations detailed in Consultant's response to the RFP, hereinafter referred to as the Proposal, a copy of which is attached as Exhibit B and incorporated herein by reference. Services to be performed by Consultant shall include, but are not limited to, the following:

PHASE 1: Parking Structure Assessment, Inspection & Evaluation

1. Review any documents pertinent to the evaluation, such as existing plans, previous engineering and testing reports, and construction, repair, or maintenance information.
    a. Visually observe the structural and waterproofing elements of the garage, and other incidental appurtenances related to determining the condition of the structure. Floor Slab & Soffits, including cracking and appalling
    b. PT beams, including cracks, spalls and delamination

c. Concrete Columns
d. Exposed, corroded steel reinforcement or PT tendons/anchors
e. Drains & Piping
f. Sealants
g. Vehicle Barriers / Restrains
h. Waterproofing Systems
i. Expansion joints and glands
j. Façade Walls, Spandrel Beams, Exterior Columns, Etc.
k. Lighting Systems
l. Windows & Doors
m. Stairs
n. Traffic Flow, Wayfinding and Signage
o. Electrical Wiring and Conduit
p. Coating options for Acrylic Windows

Determine and quantify the visible deterioration at reasonably accessible areas available at the time of work, given the stated means and methods. Find and document adverse conditions such as concrete spalling, corroded reinforcement, cracking, leaking, leaching, scaling, and other related deterioration and deficiencies of the structural and waterproofing elements.

2. Obtain a representative photographic inventory of the observed deterioration.
3. Provide an acoustic survey of the floor slabs and representative areas of the ceilings using "chain drag" and "hammer sounding" techniques. Review the ingress and egress characteristics (vehicular and pedestrian) of each facility and provide recommendations to increase ease of ingress and egress including the reduction of vehicle-to-vehicle conflicts and vehicle –to-pedestrian conflicts.
4. Adequacy of interior vehicular and pedestrian wayfinding signage including elevator and level identification systems. Review of facility identification signage.
5. Review lighting system conditions and record lighting measurements to provide recommendations for upgrade to an LED system to meet current standards and reduction in energy consumption.
6. Review options for a security camera surveillance system.
7. Evaluate the general housekeeping condition of each facility and provide recommendations to maintenance programs for improvement.
8. Identify any other issues related to improvements or replacement not specifically identified in the RFP document that may be relevant to facilities analysis.
9. Preform cursory review of parking garage for ADA assessable routing and report our findings

Phase 1 Deliverables

1. Perform an analysis of observed conditions, and testing results.
2. Develop a recommended repair program with a budget level construction cost estimate.

3. Develop a conceptual repair program & improvement plan including repair options that vary in scope and costs to optimize investment horizon, implementation costs, and long-term maintenance costs.
4. Provide a summary report of observations, finding, and conclude a recommendation of each repair item.
5. Photographic documentation of the conditions will also be provided.
6. Attend an onsite meeting with City representatives to present findings, conclusions and recommendations (at request).

Phase 2: Project Design

Stage One: Schematic Design Phase

- Discuss with the city to finalize the program for restoration design, based on our findings, recommendations, prioritization of work items and the city's available budget.
- Discuss with the city options for signage and graphics improvements, tinting the acrylic elevator enclosure, upgrading the lighting LED, and installing a camera-based surveillance system.
- Based on the project goals and program established, prepare a Schematic Design. The Schematic Design will include suggested design details and materials.
- Review options for value-engineering and cost containment and present options for cost saving materials and design details.
- Attend one (1) kick-of meeting to discuss the program and design aspect of the project

Stage Two: Detailed Design Development Phase

Based on the City's comments on the Schematic Design drawings, prepare Design Development Drawings. The Design Development Drawings will represent a future refinement of the design, materials selection and placement as well as the following:

1. Coordinate with team members on all related aspects of the design to assure a well-integrated product
2. Provide a revised or updated opinion of order of magnitude costs for review within budget constraints and develop a schedule for phasing of the work
3. Attend two (2) meetings with the team during this phase to discuss on-going design issues.
4. Provide Constriction/ Contract Documents: Produce construction drawings and specifications in a format suitable for competitive bidding. This phase of services includes the following work:
    a. Review available original design documents.

b. Structural Repair Plan – A detailed set of repair drawings is to be issued incorporating survey information showing location and/or approximate extent of unit priced and lump sum repair work.
    i. The repair design shall address both typical and non-typical conditions including column, slab, and concrete framing members, walls, and ramp repair details.
    ii. Prepare details to include supplemental reinforcement, if required, welding processes, and the level of preparation necessary for each type of repair. Prepare details to indicate the methods for integrating the new repair areas with the existing.
    iii. For unit priced work, the locations shown will be representative to be determined in the field when actual conditions are understood upon demolition and exploratory opening.
c. Waterproofing Plan and Details
    i. Prepare waterproofing drawing, details, and specifications for the parking levels to address cracks, failed sealants & seals, terminations, surface preparation, materials, application and quality assurance for repairs and waterproofing work are to be provided in drawings.
d. Garage Improvements
    i. Prepare specification for camera based surveillance system.
    ii. Prepare specification for modern LED lighting system based on lighting analysis.
    iii. Prepare new designs for signature and graphics.
    iv. Specify procedure and material for tinting acrylic elevator enclosure.
e. Temporary Protection and Phasing Plans as required to maintain occupancy during construction.
f. Repair procedures and methods are to be provided for each work item on the drawings.
g. Prepare construction details to illustrate repair technologies and describe the details of the unit price work items.
h. Provide special demolition, temporary protection, and temporary shoring details in order to safely repair the structure while maintaining structural stability and occupancy.
i. Provide drainage improvements.
j. Prepare technical specifications for repair work and general conditions of the Contract, based in part of the AIA 101 & 201 series for the contract and general conditions accordingly.
k. Specifications will be prepared in general conformance with CSI format
l. Standard Bidding Documents including Instructions to Bidders and detailed Proposal Form Preparation of technical specifications for each individual

work item outlining performance criteria, testing requirements during construction, warranties for each work item.

m. Repair procedures and specific materials are to be identified in the specifications to assure proper prosecution of the work.

n. Specific material testing during construction is to be outlined to determine acceptability and conformance of work with the contract requirements.

o. Attend progress meeting as required for discussion prior to final revisions and submission.

p. Submit the Contract Documents to the City in accord to the RFP.

5. Bidding Services:

a. Assist the City in advertising the projects.

b. Reproduce and distribute construction documents to Bidders in accord to the City's requirements.

c. Attend on pre-bid conference and site meeting with Bidders to review the site and construction scope of work.

d. Provide follow-up pre-bid meeting minutes and any required addendums as required to all parties.

e. Respond to Bidders' requests for information.

f. Tabulate bid results, and evaluate bids for potentially adverse bid strategies.

g. Attend one on-site meeting/conference to help interview and qualify Bidders and to help identify or understand differences between Bidders and their Bids.

6. Construction Administration

a. Conduct one on-site pre-construction meeting prior to the mobilization to review critical items such as schedule, phasing, temporary protections, and project administration. Write and distribute Meeting Minutes.

b. Review all Contractor submittals including Shop Drawings, RFI's, product specifications, etc.

c. Observe work to monitor conformance with contract plans, specifications, and workmanship standards. Document observations and submitted to the City of Dayton via Field Reports.

d. Upon substantial completion, attend one project-closeout meeting with City Project manager and Contractor to determine outstanding work, discuss how deficient work will be resolved, and review the project-closeout requirements.

e. Issue punch-list if required and make final inspection to verify that all punch-list items were completed.

ARTICLE II- COMPENSATION

The City shall pay Consultant a sum not to exceed One Hundred Twenty-five Thousand Dollars ($125,000) for the Services actually provided in accordance with this Agreement. Payment for the Services shall be based upon the total project price submitted in the Proposal. Consultant may submit invoices to City for partial payment on a monthly basis.

ARTICLE III- TERM

This Agreement shall commence upon execution by the City and shall terminate automatically on December 31, 2018, unless extended to a later date by a mutual written amendment to this Agreement or terminated according to Article 6 of this Agreement.

ARTICLE IV- INDEMNIFICATION

Consultant agrees to indemnify and hold harmless the City, its elected officials, officers, employees and agents from and against claims, losses, damages, and expenses (including reasonable attorneys' fees) to the extent such claims, losses, damages, or expenses are caused by or arise out of the performance or non-performance of this Agreement and/or the acts, omissions or conduct of Consultant or its employees, agents, and representatives.

ARTICLE V- INSURANCE

During the performance of the Services under this Agreement, Consultant shall maintain, at its sole cost and expense, and issued by an insurance company authorized to conduct business in the State of Ohio and having an "A" rating or better by A.M. Best, insurance compliant with the following minimums:

1. General/Comprehensive liability insurance, with a combined single limit of One Million Dollars ($1,000,000) for each occurrence and One Million Dollars ($1,000,000) in the aggregate; and

2. Automobile liability insurance, with a combined single limit of One Million Dollars ($1,000,000) for each person and One Million Dollars ($1,000,000) for each accident; and

3. Workers' compensation insurance, in such amounts as required by Ohio law, and Employer's liability insurance with a limit of Five Hundred Thousand Dollars ($500,000) for each occurrence; and

4. Professional liability, with a minimum annual aggregate of Five Hundred Thousand Dollars ($500,000); and

5. Errors and omissions insurance in the amount of Five Hundred Thousand Dollars ($500,000), to protect the City from any errors that Consultant or its employees may perpetrate in the preparation of the plans, specifications, and cost estimates and any resulting damage from said errors.

All policies of general/comprehensive liability insurance required herein shall name the City, its elected officials, officers, employees, agents, and volunteers as additional insured. All insurance policies, excluding Workers' compensation insurance, shall contain the requirement that the City be notified thirty (30) days in advance of any termination or diminution of coverage.

Within thirty (30) days of the execution of this Agreement, Consultant shall furnish the City with copies of certificates of insurance demonstrating compliance with the insurance requirements contained herein.

Consultant shall provide the City with prompt written notice of: (1) the cancellation or threatened cancellation of any insurance policy required hereunder, and (2) the filing of any claim with respect to the performance of Services under this Agreement.

ARTICLE VI- TERMINATION

This Agreement may be terminated by the City upon written notice in the event of substantial failure by Consultant to perform according to the terms of this Agreement. Consultant shall have fifteen (15) calendar days from the date of the termination notice to cure or submit a plan to cure acceptable to the City. If a plan to cure is not accepted, then this Agreement will be terminated immediately and the City shall pay Consultant only for those services accepted by the City.

The City may terminate or suspend performance of this Agreement for the City's convenience upon written notice to Consultant thirty (30) days before termination or suspension. If termination or suspension is for the City's convenience, upon restart, an equitable adjustment may be made to Consultant's compensation, if necessary. In the event of termination by the City hereunder, the City shall pay Consultant for Services actually provided up to the date of termination.

In either event, Consultant shall terminate the Services according to a schedule acceptable to the City.

ARTICLE VII- COMMUNICATIONS

Any written communication or notice required or permitted by this Agreement shall be delivered personally, sent by express delivery, certified mail or first class U.S. mail, postage pre-paid to the address specified below:

Consultant:	O & S Associates 471 East Broad Street Columbus, Ohio 43215 Attention: Venkitasamy Perumalsamy, President
City:	City of Dayton Department of Facilities Management 101 West Third Street Dayton, Ohio 45402 Attention: Dennis Thomas

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Consultant and the City.

ARTICLE VIII- NON DISCRIMINATION

Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap with respect to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, lay-off determination, rates of pay or other forms of compensation, or selection for training, including apprenticeship.

It is expressly agreed and understood that Section 35.14 of the Revised Code of General Ordinances of the City of Dayton constitutes a material condition of this contract as fully as if specifically rewritten herein and that failure to comply therewith shall constitute a breach thereof entitling the City to terminate this Agreement at its option.

ARTICLE IX- CONFIDENTIALITY

Either party may provide the other with information that it considers confidential or proprietary. Proprietary information is information that, if made public, would put the disclosing party at a disadvantage in the market place or trade of which the party is a part. Confidential information is information that, under the laws of the State of Ohio, is classified as being "private". Such information shall be marked "confidential" and/or "proprietary" by the party providing it.

To the extent permitted by law, each party agrees that for two (2) years following the date of disclosure of the confidential or proprietary information, it shall not disclose such information of the other to any third party without the other party's written consent. During this two-year period, each party shall protect the confidential or proprietary information in the same manner that it protects its own confidential information of a similar nature. Each party agrees that it shall only copy the confidential or proprietary information to the extent necessary to perform the work and services contracted for pursuant to this Agreement.

Nothing in this Article shall prohibit or limit either party's use or disclosure of confidential or proprietary information: (i) previously known to it without an agreement of confidentiality, (ii) independently developed by it, (iii) that is or becomes publicly available through no breach of this Agreement by the other party, (iv) when such disclosure is required by an order of a Court or under state or federal law, or (v) when such disclosure is authorized in writing by a party to this Agreement.

ARTICLE X- OWNERSHIP OF DOCUMENTS & INTELLECTUAL PROPERTY

Except as otherwise provided in this Agreement, documents and reports prepared by Consultant as part of the Services shall become the sole and exclusive property of the City upon payment.

Consultant shall retain its rights in standard scripts, databases, computer software, and other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of Consultant.

ARTICLE XI- GENERAL PROVISIONS

A. Waiver

A waiver by either the City or Consultant of any breach of this Agreement shall be in writing. Such a waiver shall be effective only in the specific instance and for the specific purpose for which it is given and will not affect the waiving party's rights with respect to any other or further breach.

B. Delay

Neither the City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include, but are not limited to: abnormal weather conditions; floods; earthquakes; fire; epidemics; wars, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and inability to procure permits, licenses, or authorization from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either the City of Consultant under this Agreement.

Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

C. Governing Law & Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws. Any

suit regarding this Agreement must be brought in a court of competent jurisdiction in Montgomery County, Ohio.

D. Meetings and Evaluation

Consultant shall meet with the City's designees at such times designated by the City to review and discuss performance of this Agreement. Consultant shall cooperate with the City in all respects concerning the review and monitoring of Consultant's performance pursuant to this Agreement.

E. Independent Contractor

By executing this Agreement, Consultant acknowledges and agrees that it will be providing Services to the City as an "independent contractor." As an independent contractor for the City, Consultant is prohibited from representing or allowing others to construe the parties' relationship in a manner inconsistent with this Paragraph. Consultant shall have no authority to assume or create any obligation on behalf of, or in the name of the City, without the express prior written approval of a duly authorized representative of the City.

Consultant, its employees and any person retained or hired by Consultant to perform duties and responsibilities under this Agreement are not the City employees, and therefore, such persons will not be entitled to, nor will they make a claim for, any of the emoluments of employment with the City of Dayton. Further, Consultant will be responsible to withhold and pay, or cause such agents, contractors and subcontractors to withhold and pay, all applicable local, state and federal taxes. Consultant further acknowledges and agrees that none of his employees are public employees for the purpose of membership and/or participation in the Ohio Public Employees Retirement System (OPERS).

F. Assignment

Consultant may not assign any rights or duties under this Agreement without the prior written consent of the City. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Paragraph shall prevent Consultant from employing independent consultants, associates, and subcontractors to assist in the performance of the Services.

G. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and Consultant.

H. Amendment

This Agreement may be amended by mutual agreement between the parties. No amendment shall be effective unless it is reduced to writing, executed by a duly authorized representative of

the City and Consultant, approved by the City's Director of Central Services, and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.

I. Effect of Conflicting Documents

In the event any conflict between this Agreement and any term or condition found within any other document including, but not limited to, Exhibits A and B, the terms and conditions of this Agreement shall control.

J. Entire Agreement/Integration

This Agreement, together with Exhibits A and B, represents the entire and integrated agreement between the City and Consultant. This Agreement supersedes all prior and contemporaneous communications, representations, agreements or contracts, whether oral or written, relating to the subject matter of this Agreement.

K. Political Contributions

Consultant affirms and certifies that it complies with Ohio Revised Code § 3517.13 limiting political contributions.

[Remainder of Page Intentionally Left Blank.]

###

IN WITNESS WHEREOF, the City and Contractor, each by a duly authorized representative, have executed this Agreement as of the date first set forth above.

CITY OF DAYTON, OHIO

City Manager

O & S ASSOCIATES, INC.

By:

Print: NABEEL RAZI

Its: ASSOCIATE & REGIONAL MANAGER

APPROVED AS TO FORM AND CORRECTNESS:

City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

October 25, 2017

Min. / Bk. I-15 Pg. 00606

Clerk of the Commission

BACK

City Manager's Report

4.

From **5610 - Human Resources**

Date **February 26, 2020**

Expense Type **Service Agreement**

Supplier, Vendor, Company, Individual

Total Amount **$20,000.00 (thru 2/26/2021)**

Name **SAMBA Holdings, Inc. dba SambaSafety**

Address **8814 Horizon Blvd., NE, Suite 100**
Albuquerque, NM 87113
FID 850468538

Fund Source(s)	Fund Code(s)	Fund Amount(s)
Claims Administration/Workers' Compensation	65000-5610-1159-62	20,000.00

Includes Revenue to the City ☐ Yes ☑ No **Affirmative Action Program** ☑ Yes ☐ No ☐ N/A

Description

Automated Driver's License Verification

The Department of Human Resources requests permission to enter into a one (1) year extension of its Agreement with SAMBA Holdings, Inc. dba SambaSafety in the amount of $20,000.00 for automated driver's license verification and reporting for employees in all departments except the Dayton Police Department.

The agreement will cover the period of February 26, 2020 through February 26, 2021. Annual costs associated with these services are not to exceed $20,000.00.

The Law Department has previously reviewed and approved the document as to form and correctness.

A Certificate of Funds is attached for $20,000.00 for the period of February 26, 2020 through February 26, 2021.

Signatures/Approval

Division

Department

City Manager

Approved by City Commission

Clerk

Date

FORM NO. MS-16

Updated 8/2016

CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department NO DRAFT DOCUMENTS PERMITTED

_____ New Contract x Renewal Contract _____ Change Orders

Contract Start Date	02/26/20
Expiration Date	02/26/21
Original Commission Approval	$ 20,000.00
Initial Encumbrance	$ 20,000.00
Remaining Commission Approval	$ -

Original CT/CF	CT19-1941
Increase Encumbrance	$ -
Decrease Encumbrance	$ -
Remaining Commission Approval	-

Required Documentation

	Initial City Manager's Report
	Initial Certificate of Funds
	Initial Agreement/Contract
x	Copy of City Manager's Report
x	Copy of Original Certificate of Funds

Amount: $ 20,000.00	Amount:
Fund Code 65000 - 5610 - 1159 - 62 - XXXX - XXXX (Fund Org Acct Prog Act Loc)	Fund Code XXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund Org Acct Prog Act Loc)
Amount:	Amount:
Fund Code XXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund Org Acct Prog Act Loc)	Fund Code XXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund Org Acct Prog Act Loc)

Attach additional pages for more FOAPALs

Vendor Name: SAMBA Holdings, Inc.

Vendor Address: 8814 Horizon Blvd., NE, Suite 100, Albuquerque, NM 87113
Street City State Zipcode + 4

Federal ID: 850468538

Commodity Code: 99032

Purpose: Automated driver's license verification and reporting for employees in departments of Aviation, Public Works, Water and Human Resources. The cost is $1.00 per employee per month with an additional charge per license report if requested. Cost not to exceed $20,000.00 for 2020.

Contact Person: Katy Branson x4063 Human Resources (Department/Division) 2/12/2020 (Date)

Originating Department Director's Signature: [signature]

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropirated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

[signature] 02/17/2020
Finance Director Signature Date

Tamara Williams 02/14/2020 CT20-1941
CF Prepared by Date CF/CT Number

SA 02-14-2020

FIRST RENEWAL AND AMENDMENT TO THE SAMBASAFETY INFORMATION SERVICES AGREEMENT BETWEEN THE CITY OF DAYTON, OHIO AND SAMBASAFETY

THIS FIRST RENEWAL AND AMENDMENT TO THE INFORMATION SERVICES AGREEMENT ("Renewal and Amendment"), is entered into this ____ day of _____, 2020 between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio, (hereinafter referred to as "City") and SambaSafety.

WITNESSETH THAT:

WHEREAS, the City and SambaSafety entered into an Agreement ("Agreement") on January 10, 2018 for City access to the SambaSafety Information Services System; and,

WHEREAS, the City and SambaSafety agree to amend the Agreement to extend the City's access to the SambaSafety Information Services System and the term of the Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties agree as follows:

1. **"Subscription and Services Fees"** is hereby amended to include the following additional language:

   Customer will pay SambaSafety all the fees in accordance with this Agreement, for the Extension Term, commencing on February 1, 2020, defined in Paragraph Two of this Renewal and Amendment. Total remuneration for all subscription and service fees during this Extension Term shall not exceed TWENTY THOUSAND DOLLARS AND ZERO CENTS ($20,000.00). All payments of fees shall be made in U.S. dollars.

2. **"Contract Term"** is hereby amended to include the following additional language:

   City and SambaSafety agree to a one-year Extension Term, which shall commence on February 1, 2020 and terminate upon the expiration of one (1) calendar year from such commencement date.

3. Except as modified by this First Renewal and Amendment, the Agreement between the City and SambaSafety shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the City and SambaSafety, each by a duly authorized representative, have executed this First Renewal and Amendment as of the day and date first set forth above.

THE CITY OF DAYTON, OHIO

_____
City Manager

APPROVED AS TO FORM AND CORRECTNESS:

_____
City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

_____, 2020

Min. Bk. _____ Pg. _____

_____
Clerk of the Commission

SAMBASAFETY

By:_____

Print:_____

Its:_____

6.

City Manager's Report

From **5610 - Human Resources**

Date **January 10, 2018**

Expense Type **Service Agreement**

Total Amount **$40,000.00 (thru 2/1/2020)**

Supplier, Vendor, Company, Individual

Name **SAMBA Holdings, Inc.**

Address **8814 Horizon Blvd., NE, Suite 100**
Albuquerque, NM 87113
FID 850468538

Fund Source(s)	Fund Code(s)	Fund Amount(s)
Claims Administration	63000-5610-1159-62	$40,000.00

Includes Revenue to the City ☐ Yes ☑ No **Affirmative Action Program** ☑ Yes ☐ No ☐ N/A

Description

The Department of Human Resources requests permission to enter into an Agreement with SAMBA Holdings, Inc. in the amount of $40,000.00 for two years, for automated driver's license verification and reporting for employees in all departments except Dayton Police Department.

The agreement will cover the period of two (2) years from February 1, 2018 through February 1, 2020. Annual costs associate with these services are not to exceed $20,000.00.

We are requesting authority for: 2/1/18 – 1/31/19 $20,000.00
2/1/19 – 2/1/20 $20,000.00

The Law Department has reviewed and approved the renewal addendum document as to form and correctness.

A Certificate of Funds is attached for $20,000.00 for the period of February 1, 2018 through January 31, 2019.

Signatures/Approval

Division

Department

City Manager

Approved by City Commission

Rashella Lavender
Clerk

January 10, 2018
Date

FORM NO. MS-16

Updated 8/2016

CERTIFICATE OF FUNDS 2019

SECTION I - to be completed by User Department

NO DRAFT DOCUMENTS PERMITTED

_____ New Contract x Renewal Contract _____ Change Order

Contract Start Date	02/01/18
Expiration Date	02/01/20
Original Commission Approval	$ 40,000.00
Initial Encumbrance	$ 20,000.00
Remaining Commission Approval	$ 20,000.00

Original CT/CF	CT18-1941
Increase Encumbrance	$ 20,000.00
Decrease Encumbrance	$ -
Remaining Commission Approval	-

Required Documentation

_____	Initial City Manager's Report
_____	Initial Certificate of Funds
_____	Initial Agreement/Contract
x	Copy of City Manager's Report
x	Copy of Original Certificate of Funds

Amount: $ 20,000.00

Fund Code 65000 - 5610 - 1159 - 62 - XXXX - XXXX
Fund Org Acct Prog Act Loc

Amount: _____

Fund Code XXXXX - XXXX - XXXX - XX - XXXX - XXXX
Fund Org Acct Prog Act Loc

Amount: _____

Fund Code XXXXX - XXXX - XXXX - XX - XXXX - XXXX
Fund Org Acct Prog Act Loc

Amount: _____

Fund Code XXXXX - XXXX - XXXX - XX - XXXX - XXXX
Fund Org Acct Prog Act Loc

Attach additional pages for more FOAPALs

Vendor Name: SAMBA Holdings Inc.

Vendor Address: 8814 Horizon Blvd., NE, Suite 100, Albuquerque, NM 87113
Street City State Zipcode + 4

Federal ID: 850468538

Commodity Code: 99032

Purpose: Automated driver's license verification and reportng for employees in departments of Aviation, Public Works, Water and Human Resources. The cost is $1.00 per employee per month with an additional charge per license report if requested. Cost not to exceed $20,000.00 for 2019.

Contact Person: Katy Branson x4063 Human Resources (Department/Division) 12/26/2018 (Date)

Originating Department Director's Signature: [signature]

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropirated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

[signature]
Finance Director Signature 12-31-18 Date

Aaron I. Sonnenburg
CF Prepared by 12-28-2018 Date CT19-1941 CF/CT Number

ıance Department

KB 12/28/18

October 18, 2011

sambasafety

SAMBASAFETY INFORMATION SERVICES AGREEMENT

(THE "AGREEMENT")

CUSTOMER ACCOUNT INFORMATION

ACCOUNT INFORMATION

City of Dayton
Company Name (must be legal name registered with the state filing office)

101 W 3rd St.
Mailing Address

Dayton | OH | 45402
City | State | Zip

Billing Address

City | State | Zip

Brent McKenzie | 937-333-4062 | Brent.mckenzie@cityofdayton.org
Primary Contact Name | Phone | Email

Billing Contact Name | Phone | Email

Business Phone | Business Fax | Business Email

Federal Employer ID Number | Years Business Established

Date Incorporated | State Incorporated

Business License Number | State | Expiration

Website (URL)

sambasafety

Pricing Sheet
(the "Commercial Terms")

Customer Name: City of Dayton

In addition to the Information Services and associated fees in the table below, state, data and additional resource fees ("State/Data Fees") may apply.

Subscription Services	Monthly Minimum	Price Per Driver*	Description
DriverMonitor Standard	991 Number of Drivers*	$1.00	Designed for fleets looking to immediately increase visibility and reduce risk with continuous driver monitoring. Includes Driver monitoring, Samba DriverScore, Driver list management, Real time reporting, On-demand MVRs, Access to Driver Training. Customer invoiced monthly.
Implementation Services	**Fee**		**Description**
DriverMonitor On-Boarding	$ 0.00		One-time prof. services fee for initial on-boarding. Includes system provisioning, user account configuration, enrollment of all drivers in the system, and online training. Customer invoiced after initial drivers are loaded into the SambaSafety System. Customization for API and PolicyManager implementations may require a separate Scope-of-Work.
Product Training	NA		Customized training for Customer's Admin and End Users using Customer's product instance and driver data. Each custom class lasts one (1) hour and is delivered live on-line. Customer invoiced the month following the completion of such training.
On-Demand Services	**Fee**		**Description**
MVR Service Fees	$2.00		Samba MVR service fee charged in addition to data fee for on-demand MVRs, Scheduled MVRs or Annual MVRs defined by Customer's policy; details on fees are included below under the Description of Information Services. Invoiced monthly based on actual usage.
Online DriverTraining	$17.95		Price per on-demand Samba DriverTraining class; price is charged when a driver is enrolled in an online DriverTraining class. Customer invoiced monthly based on actual usage.

N/A in the table above means that these Services are not currently agreed to be provided, but will be added only upon an amendment to the Agreement.

**The price per driver fee is based upon the commitment by Customer of monitoring the Monthly Minimum number of Drivers set forth above, commencing on the Subscription Start Date throughout the remainder of the Contract Term.*

Subscription Start Date	Initial Term**
02/01/2018	2 years

*** Initial Term begins on the Subscription Start Date.*

All of the aforementioned fees shall apply to this Agreement from the Subscription Start Date through the duration specified in the Initial Term. After the Initial Term and until the Agreement terminates or expires, the fees shall be at SambaSafety's then-current pricing applicable to its customers without discount.

Description of Information Services:

Samba DriverMonitor provides continuous visibility into employees' driving records. This is accomplished via a complex set of DMV connections and 3rd party data sources, triggering an MVR only when there is new activity to report, thereby providing actionable information to improve drivers' performance and mitigate risks. The following MVR fees may also apply, depending upon Customer's account activity:

- **Baseline MVR**: A baseline MVR is procured within 24 hours of a driver being added to Samba DriverMonitor. The baseline MVR provides the employer a minimum 3-year driving history, before beginning monthly monitoring. This history is critical in determining if the driver has a valid driver's license and if there are risk factors in the driver's recent driving history. *State/Data Fees for Baseline MVRs are billed to the Customer. No additional MVR Service Fee is added to Baseline MVR orders.*
- **Activity MVR**: Samba DriverMonitor monitors drivers at least monthly for new activity on the driver's driving record. This is done via multiple methodologies without always procuring a full MVR. If activity is found, an official MVR will be automatically procured on behalf of the Customer. *State/Data Fees for Activity MVRs are billed to the Customer. No additional MVR Service Fee is added to Activity MVR orders.*
- **On-Demand MVR**: At any time, the Customer can manually procure an MVR for any driver. This can be done via the DRM dashboard. *State/Data Fees for On-Demand MVRs and an MVR Service Fee specified above is billed to the Customer.*
- **Scheduled Annual MVR**: Annual motor vehicle records can optionally be procured once every 12 months. The Customer can configure the schedule for annual MVR procurement by configuring its annual policy in the DriverMonitor console. Scheduled Annual MVRs are disabled by default. *State/Data Fees for Scheduled Annual MVRs and a MVR Service Fee specified above is billed to the Customer.*
- **Dynamic Baseline MVRs:** In some states where public records are leveraged as activity triggers dynamic baseline MVRs are procured automatically to ensure completeness and accuracy. A dynamic baseline MVR computes the time since the last full MVR was purchased for any reason (baseline, activity, on-demand, scheduled, etc.) and procures a new MVR when the gap exceeds 12 months. *State/Data Fees for Dynamic Baseline MVRs are billed to the Customer. No additional MVR Service Fee is added to Dynamic Baseline MVR orders.*
- **No-Hit MVR**: Some states charge a data fee even if the driver information submitted by SambaSafety on behalf of the Customer returns no results. This can happen when the Customer submits inaccurate driver information, including but not limited to license number, first and last name, or date of birth. Samba DriverMonitor enforces certain checks to validate that a license number follows the appropriate format for a given state before the request is made to the state in an effort to minimize no-hit charges.
- **Enrollment Fees**: Some states, such as California, charge enrollment fees when adding drivers to the state monitoring programs. These fees vary in price and are passed to the Customer as-is with no additional service fees.
- **State/Data Fees Pricing**: The latest pricing info for SambaSafety State/Data Fees are maintained online and can be found using the following URL: https://www.sambasafety.com/resources/state-data-fee-schedules/.

Term, Price and Payment:

- **Contract Term**: "Contract Term" shall mean the period for which this Agreement is operative, which commences on the Effective Date and continues through the Initial Term and, if applicable, any Extension Term(s), subject to early termination of any of the foregoing in accordance with the terms and conditions of this Agreement. Upon early termination of this Agreement, a Discontinuance Fee may apply. At the end of the Initial Term (and any Extension Term(s)), this Agreement shall automatically be extended for automatic and successive additional one-year terms (each, an "Extension Term") unless either party gives written notice to the other not fewer than ninety days prior to the expiration of the then-current term.
- **Subscription and Service Fees**: Customer will pay SambaSafety all of the fees in accordance with this Agreement. Total remuneration for all subscription and service fees during the contract term shall not exceed Forty Thousand Dollars ($40,000.00). All payments of fees shall be made in U.S. dollars.
- **Minimum Monthly Fee**: Commencing on the Subscription Start Date and through the remainder of the Contract Term, Customer agrees to minimally pay SambaSafety an amount equal to the Minimum Number of Drivers (as set forth in the Pricing Sheet above) multiplied by the Monthly Price per Driver set forth above ("Monthly Minimum").
- **Subscription Start Date and Customer Onboarding**: Customer agrees to provide a completed Driver Upload Template and other required State Forms (Exhibit C) to SambaSafety within 15 business days prior to the Subscription Start Date specified above. If drivers are located in California or Pennsylvania, Customer must provide SambaSafety with the Driver Upload Template and additional required State Forms within six (6) weeks prior to the Subscription Start Date.
- **Payment Terms**: Commencing on the Subscription Start Date or the actual date on which any of Customer's drivers are uploaded into the SambaSafety System, whichever occurs first, SambaSafety will invoice Customer on a monthly basis for the greater of (a) the Monthly Minimum Fee plus all other Information Service fees applicable for the preceding month, or (b) for all Subscription Fees incurred by Customer during the preceding month plus all other Information Service fees applicable for the preceding month. All invoices are due and payable by Customer within 15 days of the invoice date (Net 15 payment terms). Customer agrees to facilitate automatic payments to SambaSafety by setting up either (a) Automated Clearing House (ACH) payments, or (b) automatic monthly credit card payments. Customer shall allow SambaSafety to initiate a monthly draft for either payment method, and complete all necessary forms to facilitate such automatic payments, which shall be drawn 15 days after Invoice Date. All fees are non-refundable. Any invoices which are not paid in full on the first of the month following the invoice due date shall accrue interest at the lesser of one and one-half percent (1 ½%) per month or the maximum amount permitted by law. If an account is suspended for

non-payment, a $100 reinstatement fee may be added to the following invoice as a condition for account reactivation. In addition to any other rights or remedies available to SambaSafety, any failure by Customer to timely pay in full all invoices submitted by SambaSafety, entitles SambaSafety to immediately discontinue Customer's access to the SambaSafety System and any Information Services. A twenty-five dollar ($25.00) Non-Sufficient Funds Fee will be assessed for all dishonored payments.

- **Taxes**: In addition to any fees owing, Customer must pay or reimburse SambaSafety for all sales, use, transfer, privilege, excise or other taxes and duties, whether national, state, or local, however designated, which are levied or imposed by reason of this Agreement or any services provided hereunder; excluding, however, income taxes on profits which may be levied against SambaSafety.
- **Inactive Accounts**. If following the Contract Term, Customer's account includes amounts owing to Customer, Customer shall request a refund of the balance within 5 months of the termination or expiration of this Agreement. If such refund is not requested, SambaSafety may charge a communication maintenance fee of the lesser of $15 per month, or the maximum amount permitted by applicable law. Such communication maintenance fee, if applied, will be charged to Customer's account on the first day of each month until the Customer's account balance is $0.00.
- **Discontinuance Fee**: The parties have mutually agreed upon the fees for the Subscription Services to be provided hereunder based upon certain assumed volumes of processing activity, and the Contract Term. Customer acknowledges and agrees that, without the certainty of revenue promised by the commitments set forth in this Agreement, SambaSafety would have been unwilling to provide the Subscription Services at the fees set forth in this Agreement. Because of the difficulty in ascertaining SambaSafety's actual damages for a termination or other breach of this Agreement by Customer with respect to an earlier termination or Customer's failure to achieve the Minimum Number of Drivers throughout the entirety of the Contract Term, Customer agrees that prior to any termination taking effect and in addition to all other amounts then due and owing to SambaSafety, Customer will pay to SambaSafety (as a contract discontinuance fee and not as a penalty) an amount equal to the balance of the fees that would have been due under this Agreement had there been no termination, but in no event less than the fifty percent (50%) of the Monthly Minimum multiplied by the number of months remaining in the remaining Contract Term ("Discontinuance Fee"). Customer acknowledges and agrees that the Discontinuance Fee is a reasonable estimation of the actual damages that SambaSafety would suffer if SambaSafety were to fail to receive the amount of processing business contemplated by this Agreement. Customer shall not be required to pay the Discontinuance Fee if SambaSafety terminates this Agreement other than as a result of Customer's breach of its obligations hereunder or if Customer terminates this Agreement for a material, uncured breach by SambaSafety of one of its material obligations under this Agreement.

Additional Terms

- **Additional Legal Terms**: The parties expressly incorporate by reference and intend this Agreement to include the additional legal terms and conditions attached hereto in Exhibit A (the "Applicable Terms and Conditions").

Accepted by: By executing below, Customer acknowledges and agrees to the terms and conditions set forth herein (the "Commercial Terms") and the Applicable Terms and Conditions. Any reference to the "Agreement" shall refer to these Commercial Terms, together with the Applicable Terms and Conditions.

This Agreement shall only become effective when signed by both Customer and SambaSafety, and any fees or other terms and conditions may be withdrawn or altered at any time unless and until this Agreement is executed by both parties. If this Agreement is signed by SambaSafety, but not countersigned by the Customer within ninety days after the date of SambaSafety's signature, this Agreement shall be deemed not to have been signed by SambaSafety and shall have no effect. The later date on which either party signs shall be deemed the "**Effective Date**" of this Agreement.

CUSTOMER	SAFETY HOLDINGS, INC. ("SambaSafety")
Signature	Signature
Joe Parlette Name	MARK BURGE Name
Deputy City Manager Title	VP Sales Title
1/22/18 Date	12/12/17 Date

Exhibit A: SAMBASAFETY
Applicable Terms and Conditions

These Applicable Terms and Conditions supplement the foregoing Commercial Terms executed between Customer and SambaSafety, and form an integral part of the Agreement between SambaSafety and the Customer.

1. **Definitions**. The following terms, when capitalized, will have the meaning set forth in this section. All other capitalized terms when used shall have the meaning ascribed to them as set forth elsewhere in the Agreement.

"**SambaSafety System**" means the proprietary system(s) developed and operated by SambaSafety or Vigillo for facilitating requests for, and retrieval and distribution of Information Services from Data Providers with which SambaSafety maintains license arrangements, and which comprises a gateway server or servers, and other equipment, SambaSafety proprietary software, and telecommunication lines.

"**Data Provider**" means any Federal or State agencies, private service providers, and other service bureaus that provide SambaSafety with Information Services.

"**Information Services**" means any data, reports, indicators, products and/or services, including Motor Vehicle Reports ("MVRs"), vehicle, title and registration histories, driver monitoring, database records, and analytic services provided by SambaSafety to Customer.

"**Information Services Fees**" means any fees for the Information Services, excluding State/Data Fees and any taxes that may be paid or owing by Customer pursuant to the Agreement.

"**Personal Information**" means (i) any information about an identifiable individual and (ii) information that is not specifically about an identifiable individual but, when combined with other information, may identify an individual. Personal Information includes names, email addresses, postal addresses, telephone numbers, government identification numbers, financial account numbers, payment card information, credit report information, biometric information, IP addresses, network and hardware identifiers, and geolocation information.

"**User**" means any person or entity who or that access the SambaSafety System (i) on behalf of Customer or clients or customers of Customer or (ii) using any password or access code of Customer or clients or customer of Customer and the employees and agents thereof.

2. **License Grant; Restrictions**.

2.1 License Grant. Subject to the terms and conditions of the Agreement, during the Contract Term, SambaSafety hereby grants to Customer a limited, worldwide, enterprise-wide, royalty-free, non-exclusive, non-transferable license and right to access and use the SambaSafety System and any Information Services provided by SambaSafety solely for its internal business purposes. Exclusive proprietary ownership of MVRs remains with state Data Providers.

2.2 Restrictions on Use. Customer shall not, nor allow or authorize any third party to: (a) alter, enhance or otherwise modify or create derivative works of or from the SambaSafety System; (b) disassemble, decompile, reverse engineer or otherwise attempt to derive the source code of the SambaSafety System; (c) merge the SambaSafety System with other software; *provided that* utilizing SambaSafety's APIs in accordance with the purposes such APIs are provided shall not be deemed a merger of the SambaSafety System with other software; (d) remove or destroy any proprietary markings, confidential legends or any trademarks or trade names of SambaSafety or its licensors placed upon or contained within the SambaSafety System, its documentation or the Information Services; (e) upload, post or transmit into the SambaSafety System any unlawful, threatening, abusive, libelous, defamatory, obscene, pornographic, profane, or otherwise objectionable information of any kind, including any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any Applicable Law, including violations of the intellectual property rights or any other rights of a third party; or (f) post or transmit into the SambaSafety System any information, content or software which is subject to any open source or freeware license or contains a virus, cancelbot, Trojan horse, worm or other harmful component. Use, duplication or disclosure by the U.S. Government or any of its agencies is subject to restrictions set forth in the Commercial Computer Software and Commercial Computer Software Documentation clause at DFARS 227.7202 and/or the Commercial Computer Software Restricted Rights clause at FAR 52.227.19(c). Customer further acknowledges and agrees that each individual accessing the SambaSafety System may be required to agree and consent to SambaSafety's then-current online end user license terms and conditions prior to accessing or utilizing the SambaSafety System's functionality.

2.3 Public Record Indicators. Customer elects to receive traffic and court records available to the public which might indicate the need to procure a current, up-to-date MVR ("Public Record Indicators"). Due to the limited nature of Public Record Indicators, Customer acknowledges that these Public Record Indicators shall only be used as pointers of possible records or changes in an individual's status. Customer represents and warrants that (a) it will not knowingly use Public Record Indicators to deny insurance coverage or to take an adverse action against any individual; and (b) prior to

making any decisions to deny insurance coverage or take an adverse action against any individual, Customer will verify the activity on a Public Record Indicator directly with a current, up-to-date MVR.

3. **Confidentiality and Treatment of Information**.

3.1 Personal Information. Customer acknowledges that in connection with the Agreement, it may receive Personal Information from SambaSafety and/or Data Providers. Customer agrees to treat as confidential all Personal Information received from or through SambaSafety and to use such information only as permitted under the Agreement and all Applicable Laws and to disclose Personal Information only to those authorized and who have a need to know such information to accomplish their duties in accordance with the Agreement and all Applicable Laws. Customer shall not use Personal Information for any purpose except the purpose permitted by the Agreement.

3.2 Confidential Information. "Confidential Information" means information that one party, or a party's affiliate, discloses to the other party or its affiliate(s) under this Agreement, and that is marked as confidential or a reasonable person would believe to be considered confidential information given the nature of the information and the circumstances under which such information is disclosed; *provided, however*, so long as such Confidential Information is not Personal Information (which must always be treated as Confidential Information), neither party shall have any obligation to maintain the confidentiality of any Confidential Information which: (a) is or becomes publicly available by other than unauthorized disclosure by the recipient; (b) is independently developed by the recipient; or (c) is received from a third party who has lawfully obtained such Confidential Information without a confidentiality restriction.

3.3 Reciprocal Obligations. Without limiting Customer's obligations with regards to Personal Information, the recipient will not disclose Confidential Information of the discloser, except to recipient's affiliates, employees, agents or professional advisors who need to know it and who have agreed in writing (or in the case of professional advisors are otherwise bound) to keep it confidential. The recipient will ensure that those people and entities to whom and which it transfers any Confidential Information of the discloser shall only use such information as permitted under the Agreement and that such individuals and entities shall keep it confidential in accordance with the Agreement. Notwithstanding the foregoing, if required by any court of competent jurisdiction or other governmental authority, the recipient may disclose to such authority, data, information or materials involving or pertaining to Confidential Information to the extent required by such order or authority; *provided that* the recipient shall have given reasonable notice to the discloser prior to such disclosure.

3.4 No Rights. Except for the limited use rights under the Agreement, neither party acquires any right, title, or interest in the other party's Confidential Information.

3.5 Change in Customer's Business. Customer shall immediately notify SambaSafety of any of the following events: change in ownership of Customer (over 50%); a merger, change in name or change in the nature of Customer's business that in any way affects Customer's rights to request and receive consumer reports.

4. **SambaSafety System and Information Services Availability**.

4.1 No Availability Guarantee. SambaSafety will use commercially reasonable efforts to deliver the Information Services. Customer acknowledges that SambaSafety relies totally on the information contained in the records and/or information provided by various Data Providers for its Information Services and response times for fulfillment of Information Services. Requests through the SambaSafety System may be subject to delays occasioned by numerous technical factors which cannot be fully anticipated. SambaSafety does not guarantee availability of the SambaSafety System, any Information Services from any particular Data Provider. SambaSafety makes no representation or warranty whatsoever regarding anticipated response times for retrieval or delivery of Information Services.

4.2 Records Not Available. Data Providers may offer multiple types of records, including records that are not available to SambaSafety and/or not provided by SambaSafety as part of the Information Services. Customer is responsible for accessing and using the appropriate record type for Customer's particular use. If Customer requires Information Services not provided by SambaSafety (such as a certified copy of a driving record), Customer is responsible for contacting the appropriate Data Provider directly.

5. **Termination**.

5.1 Termination. SambaSafety may immediately terminate this Agreement upon the occurrence of the following events: (a) Customer files a petition in bankruptcy, files a petition seeking any reorganization, arrangement, composition or similar relief under any law regarding insolvency or relief for debtors or makes an assignment for the benefit of creditors; (b) Any involuntary petition or proceeding under bankruptcy or insolvency laws is instituted against Customer and is not staid, enjoined or discharged within sixty days; (c) Customer adopts a resolution for discontinuance of its business; (d) Default in payment of any fees or other related amounts for the Information Services; (e) Misuse of Information Services; (f) Uncured (after 30 days written notice by SambaSafety to Customer) material breach of this Agreement; or (g) Unauthorized release or use of any information contained or related to the Information Services.

5.2 Survival. Termination or expiration of this Agreement shall not impair either party's then accrued rights, obligations, liabilities or remedies. The terms and conditions of Sections 1, 2, 3, this Section 5.2, Sections 6, 7, 8, 9, and 10, and any other provision which by its nature is intended to survive, shall survive the termination or expiration of this Agreement.

6. **Limited Warranty; Disclaimer.**

6.1 Performance and Non-Infringement. SambaSafety warrants that it will use reasonable commercial efforts to provide the Information Services substantially in accordance with the Commercial Terms and the then-current documentation of the SambaSafety System, and to use commercially reasonable efforts to make the SambaSafety System continuously available to Customer during regular business hours and to attempt to restore availability if it is within SambaSafety's reasonable control. SambaSafety warrants that, to the best of its knowledge, SambaSafety (a) owns or has licensed the intellectual property rights to offer the SambaSafety System to Customer for use within the United States, and (b) the SambaSafety System does not violate or infringe intellectual property rights of any third party within the United States; *provided, however,* Customer's exclusive remedy and SambaSafety's sole liability for any breach of the warranties set forth in the foregoing sentence shall be the rights set forth to Customer within the indemnification section set forth in Section 7.

6.2 DISCLAIMER OF WARRANTY. EXCEPT AS SET FORTH HEREIN, SAMBASAFETY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND ABOUT THE AVAILABILITY, ACCURACY, RELIABILITY, COMPLETENESS OR TIMELINESS OF THE SAMBASAFETY SYSTEM, ANY INFORMATION SERVICES, ANY DATA PROVIDER'S DATABASE, OR ANY INFORMATION CONTAINED THEREIN, OR ABOUT ANY RESULTS TO BE OBTAINED FROM USING THE SAMBASAFETY SYSTEM, ANY INFORMATION SERVICES, OR ANY DATA PROVIDER'S DATABASE, USE OF ANY OF WHICH IS AT CUSTOMER'S OWN RISK. THE SAMBASAFETY SYSTEM, ANY INFORMATION SERVICES, ANY DATA PROVIDER'S DATABASE, AND ANY INFORMATION CONTAINED THEREIN IS PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND. WHERE PERMITTED, PUBLIC RECORD INDICATORS USED FOR DRIVING MONITORING SERVICES MAY BE SUPPLIED FROM DATABASE FILES OF VARIOUS PRIVATE DATA PROVIDERS. THESE PUBLIC RECORD INDICATORS MAY PRODUCE DATA NOT CONTAINED IN A MOTOR VEHICLE REPORT PROVIDED BY A STATE AGENCY DATABASE. EXCEPT AS SET FORTH HEREIN, SAMBASAFETY AND ITS DATA PROVIDERS, TO THE FULLEST EXTENT PERMITTED BY LAW, DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THE SAMBASAFETY SYSTEM, ANY INFORMATION SERVICES, ANY DATA PROVIDER'S DATABASE, OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OF CONDITIONS OF TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY OR FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT SAMBASAFETY KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE) WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING OR OTHERWISE. SAMBASAFETY FURTHERMORE EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY THIRD PARTY WITH RESPECT TO THE SAMBASAFETY SYSTEM, INFORMATION SERVICES, ANY DATA PROVIDER'S DATABASE, OR ANY PART THEREOF.

7. **IP Infringement Indemnity and Procedures.**

7.1 IP Claim. SambaSafety agrees, at its own expense, to defend (or at SambaSafety's option, settle) and hold harmless Customer from and against any claims of a third party the SambaSafety System infringes any valid United States copyright, patent or trademark ("IP Claim") and shall indemnify Customer against any liabilities, obligations, damages and penalties awarded in any final judgment, or final settlement of any IP Claim; *provided that* Customer: (a) promptly notifies SambaSafety in writing of any such IP Claim, and (b) permits SambaSafety to control and direct the investigation, preparation, defense and settlement of the IP Claim; and (c) assists and cooperates in the defense of the IP Claim.

7.2 Mitigation. Following notice of an IP Claim or any facts that may give rise to such IP Claim, SambaSafety may, in its sole discretion and at its option: (a) procure for Customer the right to continue to use the Information Services or SambaSafety System; (b) replace the SambaSafety System with content that does not materially degrade the functionality of the Information Services; or (c) modify the SambaSafety System to make the challenged product non-infringing; *provided that* the modification does not impose any material costs on Customer and the modification does not materially diminish the features or functionality of the Information Services. If it is not commercially reasonable to perform any of these alternatives, SambaSafety shall have the option to terminate the Agreement without any further obligation to perform Information Services; *provided, however,* SambaSafety shall refund to Customer a ratable share of any fees actually paid by Customer for Subscription Services not rendered prior to the date the termination of this Agreement takes effect.

7.3 Exclusions. In no event will SambaSafety have any obligations under this Section 7 or any liability for any claim or action if the IP Claim is caused by, or resulting from: (a) modification, customization, translation or alteration of the SambaSafety System of the Information Services by or on behalf of Customer if such IP Claim would have been avoided without such modification, customization or alteration; (b) Customer's continued allegedly infringing activity after SambaSafety provides a non-infringing replacement in accordance with Section 7.2; or (c) Customer's use of the SambaSafety System of the Information Services in a manner prohibited by or not provided for in this Agreement.

8. **Limitation of Liability and Available Remedies.**

8.1 Disclaimer of Remedies. REGARDLESS OF THE FORM OF ACTION OR THEORY OF RECOVERY, WHETHER IN CONTRACT, TORT, STATUTORY, WARRANTY OR OTHERWISE, IN NO EVENT SHALL EITHER

PARTY BE LIABLE OR RESPONSIBLE FOR: (a) INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, MULTIPLE OR EXEMPLARY DAMAGES, REGARDLESS OF ITS AWARENESS OF THESE RISKS; AND/OR (b) LOST PROFITS, LOST REVENUES, LOST DATA, LOSS OF BUSINESS EXPECTANCY, BUSINESS INTERRUPTION LOSSES, OR BENEFIT OF THE BARGAIN DAMAGES.

8.2 Limitation of Liability. SUBJECT TO SECTION 8.1 AND SECTION 8.3, BUT NOTWITHSTANDING ANY LANGUAGE ELSEWHERE TO THE CONTRARY, TO THE MAXIMUM EXTENT PERMISSIBLE BY LAW, EACH PARTY'S AGGREGATE LIABILITY FOR DIRECT DAMAGES SHALL NOT BE IN EXCESS OF THE AMOUNTS OF INFORMATION SERVICES FEES ACTUALLY PAID BY CUSTOMER IN THE PREVIOUS 3-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE INITIAL CLAIM FOR DAMAGES.

8.3 Exclusions to Caps and Exculpations. NOTWITHSTANDING THE FOREGOING, THE PARTIES EXPRESSLY AGREE THAT THE LIMITS AND EXCULPATIONS SET FORTH IN THIS SECTION 8 SHALL NOT APPLY TO CUSTOMER'S OBLIGATION TO PAY ANY TRANSACTION FEES OR ANY DISCONTINUANCE FEE, WHETHER COMMITTED OR RENDERED, OR ANY BREACH RELATING TO, OR INFRINGEMENT OF, SAMBASAFETY'S OR ITS LICENSEES' INTELLECTUAL PROPERTY OR CONFIDENTIAL INFORMATION, OR ANY OBLIGATION BY A PARTY TO INDEMNIFY AND DEFEND CLAIMS AS SET FORTH IN THIS AGREEMENT.

8.4 Reliance on Information. In providing the Information Services, SambaSafety shall be entitled to rely upon and act in accordance with any instructions, guidelines, data or information provided by Customer, and shall incur no liability in doing so.

9. **State- and Data-Mandated and Government Restrictions.**

9.1 Required Documents. Customer agrees to promptly execute and return to SambaSafety all documentation required, now or in the future, by any Data Provider or SambaSafety to permit release of information or to ensure compliance with any Applicable Laws or as part of SambaSafety's routine and specific audit requests in order to verify that requests are being sought for permissible purposes. Customer agrees to only use the information obtained as set forth in any applicable state-mandated forms, or that they will obtain approval from applicable state agencies prior to the release of any individual's name and address. The failure to return such documentation will result in Customer being blocked from receiving the information related to the documentation, and may result in all Information Services being suspended or terminated.

9.2 Compliance with Laws. Customer represents, warrants, covenants and certifies that it shall order, receive, disseminate and otherwise use the Information Services in compliance with all applicable federal, state and local statutes, rules, codes and regulations, including the Fair Credit Reporting Act ("FCRA"), the Driver's Privacy Protection Act, 18 U.S.C. §2721 et seq. ("DPPA"), and their state equivalents, including any changes, supplements or amendments to such statutes, rules, codes and regulations (collectively, "Applicable Laws"). Customer further represents, warrants, covenants and certifies that before ordering Information Services, it will comply with any applicable consumer disclosure-authorization and adverse action requirements under the FCRA and will not use any information contained in the Information Services in violation of any applicable federal or state equal opportunity law or regulation. Customer understands that violators of the FCRA, the DPPA, and other federal and state laws governing protection of Personal Information are potentially subject to civil actions and penalties, including fines. Customer shall be responsible for understanding and for staying current with all Applicable Laws.

9.3 Credentialing. Credentialing is the process for verifying that entities are legitimate and their purpose for the use of Information Services is authorized. Customer agrees to cooperate fully with continued monitoring of Customer credentials. Monitoring includes the recertification of credentials (*i.e.,* business license). SambaSafety reserves the right to make credentialing requests as it deems necessary.

9.4 Information Security. Customer shall make commercially reasonable efforts to: (a) implement reasonable data security procedures that meet or exceed current industry standards to protect Information Services provided by SambaSafety under this Agreement from unauthorized disclosure. Such reasonable procedures shall include, but are not limited to, user name and password access policies, firewalls, background investigations of employees or any other individuals authorized to access Information Services; (b) physically secure and tightly control all Customer information technology assets that store, house or process Information Services in order to prevent unauthorized access; (c) employ adequate measures to insure that unauthorized users cannot successfully attack Customer information technology assets in a manner that allows the SambaSafety System or the Information Services to be compromised; (d) periodically scan Customer information technology hosts and networks that hold or process Information Services for known vulnerabilities to search for exploits; (e) have a formal process in place to install vendor-recommended security patches in a timely manner for all information technology assets, hosts and networks that process Information Services or connect with the SambaSafety System; (f) provide periodic, but minimally annual, security training to employees on best security practices and the practices of the Customer; (g) ensure that each User or Customer employee or other individuals who will have access from Customer to Information Services execute an SambaSafety User Statement of Confidentiality in a form directed by SambaSafety from time-to-time; (h) have a reasonable computer incident policy and procedure program in place.

9.5 Use of the Internet. Customer and any of its Users will not disseminate any unsecured or unencrypted Information Services over the Internet. Internet dissemination includes e-mail, World Wide Web access, FTP and all other mechanisms where data is transmitted across the Internet. This shall not prohibit Customer from transmitting such information over a secure network using current security technologies to Users with a legitimate need to receive the

information, *provided that* such actions comply with Applicable Laws as well as any other state and federal statutes and regulations governing the confidentiality, security and transmission of the Information Services.

9.6 Account Information. Customer: (a) shall remain fully responsible for any use of its and its Users' SambaSafety account number, User IDs, and passwords granted in connection with the Agreement and to prevent the disclosure or distribution thereof; (b) shall not provide any such information to any third party; (c) agrees to limit access to Information Services only to its current employees whose responsibilities require such access and only to the extent necessary for its proper use in accordance with Applicable Law and as authorized by the Agreement; (d) agrees to immediately terminate the User ID and password granted in connection with the Agreement for any employee that leaves Customer's organization or violates any terms or conditions of the Agreement or in the event there is reason to believe such User ID or password might be compromised; (e) shall remain fully responsible and liable for any unauthorized use of account number, User IDs or passwords granted in connection with the Agreement; (f) agrees that Customer's employees shall be forbidden to attempt to obtain Information Services on themselves, associates, or any other persons, except in the exercise of their official duties for Customer; and (g) shall ensure each User of the SambaSafety System by or on behalf of Customer is assigned a unique user ID and password.

9.7 Audits. Beginning on the Effective Date of the Agreement, Customer must maintain all records related to its ordering and using Information Services, for a period of five (5) years from the date each Information Services report is ordered. The information retained pursuant to this section must include without limitation the: request date, requested individual, requestor, and permissible purpose for each Information Services report, a signed release from the prospective or current employee each time a request is made for employment purposes, and any other information sufficient to verify that the ordering and use of the Information Services complies with the terms of the Agreement and Applicable Laws. Upon receipt of written SambaSafety audit requests, Customer agrees to respond with all documentation as requested within the time period specified in the audit notice or request for information. Access privileges to the Information Services may be suspended upon failure to comply with such requests.

9.8 Notification in Event of Breach or Misuse of Information. Customer will promptly (but in any event within 72 hours of any inadvertent or unauthorized release) notify SambaSafety of any inadvertent or unauthorized release of any Information Service or other security breach of Personal Information contained in any Information Service. To the extent required by Applicable Law, Customer agrees to notify all affected consumers in writing that their Personal Information has been potentially compromised in the event of the Customer's or its Users', inadvertent or unauthorized release, misuse, or other security breach of Personal Information contained in the Information Services supplied to Customer. Customer shall retain documentation of such notification and provide it to SambaSafety and any governmental representatives immediately upon request.

9.9 Archiving. Customer and any of its Users shall not use Information Services supplied by or through SambaSafety, or data derived from them, including any MVR data, to directly or indirectly compile, store, or maintain the Information Services or derivative data to develop its own source or database of such services or data. Customer agrees that use of Information Services is restricted to use, one time, for the permissible purpose referenced in the Permissible Purpose Disclosure completed by the Customer. Customer shall accurately complete the Account Information Sheet upon request of SambaSafety and prior to accessing the Information Services.

9.10 Retention of Information Services. Customer shall make commercially reasonable efforts to promptly and adequately destroy any Information Services in its possession when the Information Services are no longer required for the purpose authorized in the Agreement, or sooner, if required by any Applicable Law.

9.11 No Solicitations. Customer shall not, and shall not permit others to, use any Information Services for any solicitations, direct mail advertising, or any other mailings or communications.

9.12 Use of Information Services. Customer will not disclose, distribute, resell and/or transfer any Information Services to any third party, nor provide any Information Services directly to individuals who are the subjects of Information Services, or to the general public except as required by the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., nor permit any third party direct access to the SambaSafety System except as expressly permitted by the Agreement.

9.13 Failure to Comply. Failure of Customer to fully comply with the requirements of all of this Section 9 shall be a material breach of the Agreement and shall permit SambaSafety to immediately terminate the Agreement and the delivery of any Information Services to Customer without notice or delay.

9.14 Other Restrictions. SambaSafety shall have the right to amend upon written notice any term or condition of the Agreement, including as necessary or recommended to comply with any statute, rule, regulation, interpretation or contract, or in the event any modification or termination of any license for Information Services with any Data Provider, as determined by SambaSafety in its reasonable discretion. In the event of such notification from SambaSafety, (a) Customer may elect to terminate the Agreement by providing written notice of such termination to SambaSafety; *provided, however,* if Customer requests, uses or accepts any Information Services after such notification or fails to promptly provide notice of termination pursuant to this section, then such terms and conditions shall take effect and become a part of the Agreement as specified in SambaSafety's notice to Customer.

10. **General Provisions**.

10.1 Notice. All notices and demands pursuant to the Agreement must be in writing. Notices to Customer shall be effective upon receipt thereof and may be delivered via the SambaSafety System, an email address of one of the Customer's designated SambaSafety administrator(s) or any email or mailing address specified on the Commercial

Terms. Notice to SambaSafety shall be provided by a reputable overnight courier with required signed receipt, or via certified mail of the U.S. postal system, and shall be deemed effective solely upon receipt if delivered to, SambaSafety, 8814 Horizon Blvd., Suite 100, Albuquerque, NM 87113, ATTN: Compliance Officer.

10.2 Intellectual Property Rights. Notwithstanding anything in the Agreement to the contrary, the SambaSafety System and its documentation and all intellectual property rights therein are proprietary to SambaSafety and its third party suppliers or licensors, and SambaSafety and its third party suppliers and licensors as applicable retain ownership of all rights whatsoever in the SambaSafety System and all intellectual property rights therein.

10.3 Electronic Signature. If Customer elects to obtain a signed release, authorization or consent in the form of an electronic signature, the electronic signature shall meet the standards defined under ESIGN and UETA. SambaSafety shall have the right to audit and request any documentation regarding the Customer's compliance with the requirements regulating electronic signatures. Furthermore, upon written notice SambaSafety may require Customer to cease using electronic signatures for a particular Data Provider. Customer shall assume full responsibility for obtaining signatures in electronic format and shall hold harmless SambaSafety from any damages, losses or claims related to the validity of an electronic signature.

10.4 Entire Agreement; Modification; Counterparts. The Agreement, including the Commercial Terms, constitutes the entire agreement and understanding between the parties concerning its subject matter, and supersedes in full all prior and contemporaneous written and oral agreements, understandings, proposals, promises and representations of the parties concerning its subject matter and its terms; *provided, however*, nothing herein shall effect or terminate ongoing rights from non-disclosure agreements entered into by the parties prior to the Effective Date; *provided, further,* any new Confidential Information exchanged between the parties shall be governed by the confidentiality obligations set forth herein. Except as otherwise provided herein regarding SambaSafety's rights to modify or amend this Agreement, the Agreement may not be modified or amended except in writing signed by duly authorized representatives of SambaSafety and Customer.

10.5 Independent Contractor. SambaSafety and Customer are independent contractors with respect to all activities under the Agreement, and nothing in the Agreement may be construed to create any employment, joint venture, agency, partnership or other relationship other than independent contractors. Neither SambaSafety nor Customer, or any of their respective employees, consultants, contractors or agents has any authority to bind the other party. Each party is responsible for its own costs and expenses in executing, implementing and performing under the Agreement, unless otherwise explicitly stated, in the Agreement. Contractor understands and agrees that he, and any persons retained or hired to perform the duties and responsibilities under this Agreement, are not "public employees" for the purpose of participation in the Ohio Public Employees Retirement System.

10.6 Non-Exclusivity. Nothing in the Agreement is intended to, or may be construed to prevent SambaSafety from entering into similar agreements with other persons or entities to provide Information Services or other services through the SambaSafety System or otherwise, even if such persons or entities are or may become competitors of Customer.

10.7 Assignment. The Agreement may not be assigned, in whole or in part, by either party without the prior written consent of the other party, except that SambaSafety may (a) subcontract any of its obligations under the Agreement, and (b) assign the Agreement, and Customer hereby consents to any successor entity in any merger or corporate reorganization, or to the purchaser of all or substantially all of the assets related to the SambaSafety System. Any attempted assignment in violation of the foregoing will be void. Subject to the foregoing, the Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective representatives, successors and assigns.

10.8 Invalid Provision. If any part of the Agreement, for any reason, is declared by a court of competent Jurisdiction to be invalid or unenforceable, then: (a) the validity and enforceability of all provisions of the Agreement not ruled to be invalid or unenforceable, will be unaffected; (b) the effect of the ruling will be limited to the jurisdiction of the court making the ruling; (c) the provision(s) held wholly or partly invalid or unenforceable will be deemed amended, and the court is authorized to reform the provision(s) to the minimum extent necessary to render them valid and enforceable in conformity with the parties' intent as manifested herein; and (d) if the ruling, or the controlling principal of law or equity leading to the ruling is subsequently overruled, modified, or amended by legislative, judicial, or administrative action, then the provision(s) in question as originally set forth in the Agreement will be deemed valid and enforceable to the maximum extent permitted by the new controlling principal of law or equity.

10.9 No Waiver. The failure of SambaSafety at any time to require performance of any provision of the Agreement, in no way affects the right of SambaSafety to require performance of that provision at any time. Any waiver by either party of any breach of any provision of the Agreement is not a waiver of any continuing or succeeding breach of that provision, a waiver of the provision itself, or a waiver of any right under the Agreement.

10.10 Force Majeure. Except for Customer's payment obligations, neither party shall be liable for any failure or delay in performance directly or indirectly caused by any act or omissions beyond its reasonable control.

10.11 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws.

10.12 Injunctive Relief. The parties agree that any violation or breach of the Agreement by Customer may cause SambaSafety irreparable harm. Accordingly, in addition to any other remedies available at law or equity, SambaSafety shall be entitled to seek an injunction or other decree of specific performance with respect to any violation or explicit threat thereof in any court of competent jurisdiction, without any bond or other security being required and without the necessity of demonstrating actual damages.

10.13 Construction; Counterparts. The captions and headings contained herein are for purposes of convenience only and are not a part of the Agreement; all references to the Agreement and the words "herein," "hereof," "hereto" and "hereunder" and other words of similar import refer to the Agreement as a whole and not to any particular section, or other subdivision unless expressly specified otherwise; and the words "including," "included" and "includes" mean inclusion without limitation. In the event of any ambiguities in the language hereof, there shall be no inference drawn in favor of or against either party. The parties agree that they have been represented by legal counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in the Agreement shall be construed against the party drafting any language herein.

10.14 Signatures; Counterparts. The Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same Agreement. A document signed and transmitted by .pdf or electronic copy shall have the same binding effect as an original signature.

10.15 Political Contributions. Contractor affirms and certifies that it complies with Ohio Revised Code § 3517.13 limiting political contributions.

EXHIBIT B: REQUIRED COMPLIANCE FORMS

USER STATEMENT OF CONFIDENTIALITY

All Users on the account must complete this form.

As an employee, principal, officer, temporary employee or subcontractor of Customer you may have access to official government motor vehicle and/or driver record information contained in SambaSafety information reports ("Records"). The Confidentiality of the information contained within these Records shall be maintained at all times. Information contained in records shall not be distributed, sold or shared with any third party nor used by you in any way except as expressly authorized by law. Disclosure of such information may be cause for criminal and/or civil legal action against you, Customer, and any involved third party. The State providing Records shall not be in any way responsible for defense of any such action.

Pursuant to State and Federal law, any person who willfully and knowingly obtains, resells, transfers, or uses information in violation of law may be subject to criminal charges and/or liable to any injured party for treble damages, reasonable attorneys; fees, and costs. Other civil and criminal laws may also apply.

USER	
Signature	Date: 1-16-18
Name: Brent C. McKenzie	Title: Deputy Director HR

sambasafety

EXHIBIT B: REQUIRED COMPLIANCE FORMS
SAMBASAFETY PERMISSIBLE PURPOSE DISCLOSURE

Permissible Purpose. Upon the terms, and subject to the conditions set forth in the Applicable Terms and Conditions, Safety Holdings, Inc. ("SambaSafety") grants to Customer for the license period, a limited, nonexclusive, nontransferable, and revocable license to access the SambaSafety system only for the following purposes (**check all that apply**):

YES ☑	NO ☐	**CDL Employer:** For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under state or federal law.
YES ☑	NO ☐	**Employment Signed Release:** For use by a business, its agents, employees, or contractors for employment purposes, if the requester obtains the written consent of the individual to whom the information pertains.
YES ☐	NO ☐	**Insurance Claims:** For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, or antifraud activities.
YES ☐	NO ☐	**Insurance Underwriting:** For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with rating or underwriting activities.
YES ☑	NO ☐	**Government:** For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions.

Customer certifies that:

1. Customer shall use Information Services for the sole and exclusive purpose(s) Customer has selected above and for no other purpose; and
2. Customer will only use Information Services for its own use and Customer is the end user of the Information Services.

Customer certifies that when requesting Information Services for **Employment purposes** Customer certifies that it will:

1. Prior to requesting a report, provide a written disclosure to the employee or prospective employee in a document consisting solely of the disclosure that Information Services may be obtained for employment purposes;
2. Prior to requesting a report, obtain express written consent from the employee or prospective employee prior to obtaining any Information Services which explicitly authorizes the retrieval and use by Customer, its agents or contractors of any Information Services regarding the particular employee or prospective employee in question; each submission of an order is a certification that the disclosure was provided and authorization has been obtained.
3. Provide the employee or prospective employee a notice, along with a copy of his or her report and a summary of rights under the FCRA before taking adverse action; and
4. After taking adverse action, provide the employee or prospective employee a notice that adverse action has been taken along with a copy of the report and summary of rights under the FCRA.
5. Not use Information Services in violation of any employment equal opportunity laws. This includes any laws generally known as "Ban-the-Box". Customer certifies that it will not order a report until allowed under these laws.

Customer acknowledges it is aware and will comply with all of the requirements of the Fair Credit Reporting Act ("FCRA"), and has received from SambaSafety the following documents:

1. The Notice to Users of Consumer Reports; Obligations of Users under the FCRA;
2. Summary of Your Rights under the Fair Credit Reporting Act; and
3. Remedying the Effects of Identity Theft

Customer understands that there are legal requirements and responsibilities when taking adverse action based in whole or part on consumer reports. Customer understands and agrees to comply with adverse action procedures required by the FCRA including requirements to provide a preliminary adverse action notice to consumers, along with a copy of the consumer report and A Summary of Your Rights Under the Fair Credit Reporting Act, allowing the consumer a designated period of time to contact the CRA if consumer wishes to dispute any information in the consumer report or to provide mitigating information to you, providing CRA contact information and providing a final adverse action notice to the consumer if a final adverse employment decision is made.

Customer understands that SambaSafety is not legal counsel and cannot provide legal advice. Customer should work with counsel to develop an employment screening program specific to your needs. It is necessary for Customer to work with counsel to ensure that Customer's policies and procedures related to the use of CRA-provided information are in compliance with applicable state and federal laws and your legal responsibilities.

I hereby certify that I am a legally authorized representative of Customer, and I hereby obligate Customer to the terms and conditions listed above:

APPROVAL

Signature	Date 1-16-18
Name Brent L. McKenzie	Title Deputy Director HR
Company Name City of Dayton	

Samba Safety - Renewal FY2018

APPROVED AS TO FORM
AND CORRECTNESS:

City Attorney

APPROVED BY THE COMMISSION OF
THE CITY OF DAYTON, OHIO:

January 10, 2018

Min. Bk. 115 Pg. ____

Clerk of the Commission

N/A

sambasafety

EXHIBIT C: STATE-MANDATED FORMS

(If Drivers are located in California or Pennsylvania, please contact SambaSafety to complete additional forms)

The following Addenda are hereby merged and integrated into the Agreement between Safety Holdings, Inc. (SambaSafety) and the Customer ("Customer" or the "Undersigned"). Except as specifically provided in these Addenda, all other terms and conditions of the Agreement shall remain in full force and effect, without modification, addition or deletion. In the event of any conflict between these Addenda and the Agreement, these Addenda shall control with respect to the applicable state records.

GEORGIA ADDENDUM

GEORGIA DEPARTMENT OF DRIVER SERVICES BULK MVR CUSTOMER CERTIFICATE

Customer certifies that for each driving record requested, the information contained therein shall be used solely for one of the following approved purposes: insurance claims investigation, insurance antifraud activities, insurance rating, insurance underwriting, car rental agreements, address verification by a creditor, or as part of a background investigation on an employee or applicant for employment.

In the event that an adverse decision is based upon any information supplied to the Customer by the Department of Driver Services (DDS), then upon request of the driver named in the driving record, the Customer or the producing insurance agent, if applicable, shall inform the driver named in the record of all information pertinent to the decision. This provision is to be construed as requiring the Customer to include specific information included in the driver's record.

All information is requested only for the Customer's exclusive use. The Customer shall not share, sell or otherwise disseminate any information included in the motor vehicle report to any other person or company, except as provided in O.C.G.A. §40-5-2, 18 U.S.C.§2721, *et seq.*, Ga. Admin. Comp. Ch. 375-3-8-.03, any other applicable provision of law, or as provided herein.

Any violation of the rules, laws or agreements applicable to the access provided herein to the Customer shall be considered sufficient grounds for the DDS to refuse to release any additional information on any other driver that the Customer may request. This administrative action by the DDS shall not be deemed to supersede any other sanctions prescribed by law, including, but not limited to, any applicable civil or criminal penalties.

The DDS has the right to inspect and copy all records, files, reports, or any other materials deemed necessary to verify that the Customer has abided by all terms of the certificate unless such access is prohibited by law.

The burden of showing compliance with the provisions of this certificate is at all times on the Customer. Upon reasonable notice by the DDS, the Customer must be able to demonstrate such compliance.

Customers obtaining driving records for any of the aforementioned insurance purposes must have an application for insurance or renewal thereof in order to obtain driving records. Customers obtaining driving records for employment or pre-employment background investigations must obtain the written consent of each licensee whose driving record is requested.

Access granted to this Customer via the Requestor named above, if any, shall cease immediately if the DDS terminates the Requestor's access to driving records for any reason.

Termination, non-renewal, or expiration of the agreement between the Requestor named above and the Georgia Technology Authority terminates the Customer's access to driving records for any reason.

The person signing below has authority to do so on behalf of the applicant named above

I agree to GEORGIA Terms (Initial) _____

N/A

sambasafety

EXHIBIT C: STATE-MANDATED FORMS

ADDENDA FOR COLORADO & NEW MEXICO

AFFIDAVIT OF INTENDED USE
(Colorado & New Mexico)

To obtain record(s), you must declare your intended use of the record(s).

INFORMATION MAY BE USED ONLY FOR THE FOLLOWING APPROVED PURPOSES:

YES ☐	NO ☐	By a business that will use the information to verify the accuracy of information submitted by individuals for the purposes of preventing fraud, pursuing legal remedies against or recovering a debt or security interest.
YES ☐	NO ☐	In connection with a civil, criminal, administrative, or arbitral proceeding in any court or before a self-regulatory body, including process service, investigation, execution of judgment, or pursuant to a court order.
YES ☐	NO ☐	By an insurer or insurance support agency in connection with claims, investigations, antifraud activities, rating, or underwriting.
YES ☐	NO ☐	By an employer/agent or insurer of a Commercial Driver License Holder.
YES ☐	NO ☐	By a legitimate business that has obtained written consent of the person whose record is being requested.

Under penalty of perjury, I attest that I shall not obtain, resell, transfer, or use the information in any manner prohibited by law. I understand that motor vehicle or driver records that are obtained, resold, or transferred for purposes prohibited by law may subject me to civil penalties under federal and state law.

I agree to COLORADO Terms (Initial) _____

I agree to NEW MEXICO Terms (Initial) _____

I am authorized to bind Company to the terms and conditions in each of the Addenda I have initialed above

APPROVAL

Signature _____ Date _____

Name _____ Title _____

Company Name _____

N/A

sambasafety

EXHIBIT C: STATE-MANDATED FORMS

ADDENDUM FOR WASHINGTON STATE

Attachment E
Subscriber Certification of Use

Choose one:

☐ **Insurance Company**

I hereby certify:

1. The insurance carrier shall use abstracts of driver records exclusively for the named individual that has applied for motor vehicle insurance or life insurance and/or has motor vehicle insurance or life insurance in effect covering the named individual.
2. That the insurance carrier or the agent of the insurance carrier designated below as Subscriber:
   a. Has motor vehicle insurance in effect covering employer or prospective employer; or
   b. Has motor vehicle insurance in effect covering the named individual; or
   c. Is the Insurance carrier to which the employer or prospective employer has applied for motor vehicle insurance?
3. That SambaSafety is acting as agent for Subscriber.
4. That abstracts of driver records shall be used exclusively for our insurance underwriting purposes only, and that no information contained therein shall be divulged, sold, assigned, or otherwise transferred to any third person or party.
5. That the information contained in the abstracts of driver records obtained from the Department shall be used in accordance with the requirements and in no way violate the provisions of RCW 46.52.130.

☐ **Employer/Transit authority/Volunteer organization**

I hereby certify:

1. That the Subscriber as designated below is an employer, prospective employer, agent of employer or prospective employer, a volunteer organization, or a transit authority for its vanpool program.
2. That SambaSafety is acting as an Agent for Subscriber.
3. That abstracts of driver records shall be used exclusively for determining:
   a. Whether the volunteer licensee meets those insurance and risk management requirements necessary to drive a vanpool vehicle; or
   b. Whether an employee, prospective employee, or volunteer should be employed to operate a vehicle for employment purposes related to driving by an individual as a condition of that individual's employment upon the public highways.
4. That no information contained therein shall be divulged, sold, assigned, or otherwise transferred to any third person or party.
5. That the information contained in the abstracts of driver records obtained from the Department shall be used in accordance with the requirements and in no way violate the provisions of RCW 46.52.130.

The Subscriber listed below agrees to, and shall indemnify and hold harmless the state of Washington, Department of Licensing (DOL), the Director of DOL and all DOL employees from any and all suits at law or equity, and from any and all claims, demands or loss of any nature, including but not limited to all costs and attorney's fees, arising from any incorrect or improper disclosure of individual names or addresses under this "Certification of Use"; any defects in any of Subscriber's procedures followed or omitted or arising from failure of Subscriber or its officers, employees, customers, contractors or agents to fulfill any of its obligations under this Contract; or arising in any manner from any negligent act or omission by Subscriber or its officers, employees, customers, contractors, or agents.

I affirm that I am a representative authorized to bind Subscriber named below.

APPROVAL

Signature _____ Date _____

Name _____ Title _____

Company Name _____

N/A

sambasafety

EXHIBIT C: STATE-MANDATED FORMS

NEW HAMPSHIRE MOTOR VEHICLE RECORDS USER CERTIFICATION

I hereby certify:

That COMPANY designated below is an employer or the agent of an employer and is requesting New Hampshire Driver/Vehicle Record Information on an employee or prospective employee because operating a motor vehicle is a condition of employment.

That SambaSafety is acting as Third Party Transaction facilitator for COMPANY. (Please check applicable box)

[ ] Agent of an Employer
That Driver/Vehicle Record Information obtained by SambaSafety for COMPANY shall be used exclusively for legitimate business, only as long as COMPANY sells or packages the information with additional information for employment purposes to the ultimate and final end user. The end user will be prohibited from reselling, redisplaying, or otherwise redistributing the information to any other party.

[ ] Employer
That Driver/Vehicle Record Information obtained by SambaSafety for COMPANY shall be used exclusively for legitimate business. COMPANY will be prohibited from reselling, redisplaying, or otherwise redistributing the information to any other party.

That the information contained in the Driver/Vehicle Record Information obtained from New Hampshire Motor Vehicle Division shall be used in accordance with the requirements and in no way violate the New Hampshire state regulations, Saf-C 5600, and state law, RSA 260:14.

That all Fair Credit Reporting Act (FCRA) and Driver's Privacy Protection Act (DPPA) regulations have been met with regard to the requests submitted by said COMPANY to SambaSafety, including, but not limited to, obtaining a signed release for each Driver Record Information request submitted to SambaSafety.

I affirm that I am a representative authorized to bind the COMPANY named below and I will comply with RSA 260:14 and New Hampshire Code of Administrative Rules Saf-C 5600 and I understand the limitations placed on the use of information received from the New Hampshire Department of Safety. This form is subject to the penalties by RSA 260:14, IX.

"**RSA 260:14, IX** IX. (a) A person is guilty of a misdemeanor if such person knowingly discloses information from a department record to a person known by such person to be an unauthorized person; knowingly makes a false representation to obtain information from a department record; or knowingly uses such information for any use other than the use authorized by the department. In addition, any professional or business license issued by this state and held by such person may, upon conviction and at the discretion of the court, be revoked permanently or suspended. Each such unauthorized disclosure, unauthorized use or false representation shall be considered a separate offense. (b) A person is guilty of a class B felony if, in the course of business, such person knowingly sells, rents, offers, or exposes for sale motor vehicle records to another person in violation of this section.

Approval	
Signature	Date
Name	Title
Company Name	

BACK

City Manager's Report

5.

From **5350-Finance/Utility Revenue Admin.**

Date **February 26, 2020**

Expense Type **Contract Modification**

Total Amount **$282,000.00 (thru 2/28/2021)**

Supplier, Vendor, Company, Individual

Name **Vertex Data Utility Services LLC**

Address **501 George Bush Hwy, Suite 350**
Richardson, TX 75080

Fund Source(s)	Fund Code(s)	Fund Amount(s)
Water Operating Fund	53000-5350-1159-64	$282,000.00

Includes Revenue to the City ☐ Yes ☑ No **Affirmative Action Program** ☑ Yes ☐ No ☐ N/A

Description

Utility Billing Professional Services Agreement-Second Renewal
Vertex Data Utility Services, LLC

The Department of Finance is requesting City Commission approval to enter into the second renewal option for a 1-year extension of the professional services agreement with Vertex Data Utility Services, LLC ("Vertex") in the amount of $282,000.00. The renewal Agreement will commence on March 1, 2020, and expire on February 28, 2021.

Vertex will continue to provide utility bill printing and mailing services, on-line management and payment services via paydaytonwater.com; and other expanded e-solutions for the City of Dayton, Jefferson Township, and the City of Clayton.

Vertex provides service for over 60,000 utility accounts which are billed monthly, quarterly, semi-annually, and annually. The City generates over 450,000 invoices and bills over $100 million in annual revenue through this vendor.

The Department of Law has reviewed and approved the renewal Agreement as to form and correctness.

A Certificate of Funds in the amount of $163,000.00 to cover March 1, 2020 – December 31, 2020, is attached.

Signatures/Approval

Division

Department

for City Manager

Approved by City Commission

Clerk

Date

FORM NO. MS-16

Updated 10/2019

CERTIFICATE OF FUNDS

CT20-1088
COR0 #1

SECTION I - to be completed by User Department

_____ New Contract X Renewal Contract _____ Change Order:

Contract Start Date	03/01/20
Expiration Date	02/28/21
Original Commission Approval	$ 282,000.00
Initial Encumbrance	$ 163,000.00
Remaining Commission Approval	$ 119,000.00

Original CT/CF	CT15-1088
Increase Encumbrance	
Decrease Encumbrance	
Remaining Commission Approval	$ 119,000.00

Required Documentation

X	Initial City Manager's Report
	Initial Certificate of Funds
X	Initial Agreement/Contract
	Copy of orignal City Manager's Report
	Copy of Original Certificate of Funds

Amount: $ 163,000.00	Amount:
Fund Code 53000 - 5350 - 1159 - 64 - XXXX - XXXX (Fund, Org, Acct, Prog, Act, Loc)	Fund Code XXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund, Org, Acct, Prog, Act, Loc)
Amount:	Amount:
Fund Code XXXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund, Org, Acct, Prog, Act, Loc)	Fund Code XXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund, Org, Acct, Prog, Act, Loc)

Attach additional pages for more FOAPALs

Vendor Name: Vertex Data Utility Services LLC HRC Expires: 1/2/2022

Vendor Address: 501 George Bush Hwy Suite #350 (Street) Richardson (City) TX (State) 75080 (Zipcode + 4)

Federal ID: 26-1398981

Commodity Code: 96600

Purpose: Professional services for on-line billing/payments and the printing, processing and mailing of utility bills, certified notices, inserts, past-due notices and shut-off notices for the City of Dayton, Jefferson Township, and the City of Clayton during the period of March 1, 2020 through February 28, 2021.

Contact Person: Valerie Hudson Finance/Revenue Administration (Department/Division) 2/10/2020 (Date)

Originating Department Director's Signature: [signature]

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

[signature] 03/18/2020
Finance Director Signature Date

[signature] 03/18/2020 CT20-1088 COR0 #1
CF Prepared by Date CF/CT Number

MEMORANDUM | DAYTON

February 14, 2020

TO: Shelley Dickstein, City Manager
Office of the City Manager

FROM: C. LaShea Lofton, Director
Department of Finance

SUBJECT: Professional Services Renewal Agreement

The Department of Finance is requesting City Commission approval for a one-year renewal to a Professional Services Agreement with Vertex Data Utility Services LLC (Vertex) in the amount of $282,000.00. The Agreement will commence on March 1, 2020, and expire on February 28, 2021. The Department of Finance is opting for a one-year renewal period, instead of the previously requested two-year renewal period to explore the option of placing these services out for bid.

Vertex currently provides utility bill printing and mailing services; on-line management and payment services via paydaytonwater.com; and other expanded e-solutions for the City of Dayton, Jefferson Township, and the City of Clayton.

The current renewal Agreement expires February 29, 2020. We are requesting this renewal Agreement be placed on the February 26, 2020, City Commission calendar.

If you have any questions or require additional information, please contact me on extension 3578 or Jim Wedding, Division Manager of Utility Revenue Administration on ext. 3589.

CLL/vah

Attachments

C: Mr. Wedding
Ms. Hudson
file

SECOND AMENDMENT AND EXTENSION OF THE VERTEXONE SERVICES AGREEMENT

THIS SECOND AMENDMENT AND EXTENSION OF THE VERTEXONE SERVICES AGREEMENT ("Second Amendment") is dated this _____ day of _____, 2020 between the City of Dayton, Ohio ("City") and Vertex Data Utility Services, LLC ("Vertex").

WHEREAS, On February 25, 2015, the Commission of the City of Dayton approved a VertexOne Services Agreement ("Agreement") between the City and Vertex, under which Vertex provides services to the City for utility bill printing and other e-solutions, including managing the paydayton.com site; and,

WHEREAS, On March 5, 2018, the Commission of the City of Dayton approved a First Amendment and Extension of VertexOne Service Agreement ("First Amendment"), which extended the term of the Agreement; and,

WHEREAS, Pursuant to Section 12.18 of the Agreement, the City and Vertex may mutually agree to amend the Agreement in writing; and,

WHEREAS, The City and Vertex desire to amend the Agreement by extending the term of the Agreement until February 28, 2021.

NOW THEREFORE, For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Vertex mutually agree to amend and extend the Agreement as follows:

1. Section 2 of the Agreement, "Contract Term", will be deleted in its entirety and replaced with the following:

CONTRACT TERM

This Agreement shall be effective on March 1, 2015 and shall expire on February 28, 2021.

2. The following language is hereby added to the end of Section 6.1 of the Agreement, Fees,:

Notwithstanding anything in the forgoing, Vertex and Company hereby agree that the total expenditure of funds by Company for the Services during the period beginning March 1, 2020 and ending February 28, 2021 shall not exceed the total sum of Two Hundred Eighty-Two Thousand Dollars and Zero Cents ($282,000.00) in accordance with Schedule B: Pricing. Vertex is not required to provide services in accordance with Schedule B that exceed the total sum unless the City agrees to a change order for the additional compensation.

3. Except as modified by the amendment, the remaining terms of the Agreement shall continue to apply and remain in full force and effect.

IN WITNESS WHEREOF, the City and Vertex, each by a duly authorized representative, have executed this Second Amendment as of the date first above written.

CITY OF DAYTON, OHIO

_____
City Manager

APPROVED AS TO FORM AND CORRECTNESS:

City Attorney

VERTEX DATA UTILITY SERVICES, LLC

By: _____
Chief Financial Officer

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

_____, 2020
Min. / Bk. _____ Pg. _____

_____
Clerk of the Commission

FIRST AMENDMENT AND EXTENSION OF VERTEXONE SERVICES AGREEMENT

This **FIRST AMENDMENT AND EXTENSION OF VERTEXONE SERVICES AGREEMENT** is dated this 5th day of March, 2018 between the City of Dayton, Ohio ("City") and Vertex Data Utility Services, LLC ("Vertex").

WHEREAS, on February 25, 2015, the Commission of the City of Dayton approved a VertexOne Services Agreement ("Agreement") between the City and Vertex, under which Vertex provides services to the City for utility bill printing and other e-solutions, including managing the paydayton.com site; and,

WHEREAS, Pursuant to Section 12.18 of the Agreement, the City and Vertex may mutually agree to amend the Agreement in writing; and,

WHEREAS, the City and Vertex desire to amend the Agreement by extending the term of the agreement until February 29, 2020.

NOW THEREFORE, For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Contractor mutually agree to amend and extend the Agreement as follows:

1. Section 2 of the Agreement, "Contract Term", will be deleted in its entirety and replaced with the following:

CONTRACT TERM

This Agreement shall be effective on March 1, 2015 and shall expire on February 29, 2020.

2. Except as modified by the amendment, the remaining terms of the Agreement shall continue to apply and remain in full force and effect.

IN WITNESS WHEREOF, the City and Vertex, each by a duly authorized representative, have executed this First Amendment as of the date first above written.

CITY OF DAYTON, OHIO

City Manager

VERTEX DATA UTILITY SERVICES, LLC

By: Brad Alnard

Its: CFO

APPROVED AS TO FORM AND CORRECTNESS:

City Attorney LJB

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO

February 21 2018 Min. Book I-15 Page 0193

Rachella Lavender

CLERK OF THE COMMISSION

FIRST AMENDMENT
TO THE AGREEMENT

This First Amendment to the VertexOne Services Agreement (this ***"Amendment"***) is effective as of December 1, 2017, by and between Vertex Data Utility Services LLC (***"Vertex"***), and City of Dayton (***"Client"***). Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Agreement (as defined below).

Recitals

A. Vertex and Client are parties to the VertexOne Services Agreement dated March 1, 2015 (the ***"Agreement"***).

B. Vertex and Client have agreed to amend and modify certain terms and conditions of the Agreement as specified in this Amendment.

NOW, THEREFORE, in consideration of the premises and other good, valuable and binding consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

Agreement

1. Contract Term. Pursuant to Section 2 of the Agreement, the parties hereby modify the Agreement to extend the term for two years, beginning March 2, 2018 and ending March 1, 2020.

2. Entire Agreement. The Agreement, as amended, and including any Exhibits, Schedules or other attachments thereto, constitutes the entire agreement and understanding of the parties in respect of the subject matter of the Agreement as amended by this Amendment and supersedes all prior understandings, agreements or representations by or among the parties, written or oral, to the extent they relate in any way to the subject matter of the Agreement, as amended.

3. Ratification and Confirmation. Except as expressly set forth in this Amendment, the terms, provisions and conditions of the Agreement are hereby ratified and confirmed and shall remain unchanged and in full force and effect without interruption or impairment of any kind.

4. Authority. Each party represents that such party has full power and authority to enter into this Amendment, and that this Amendment constitutes a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

5. Counterparts. This Amendment may be executed in any number of counterparts, and each of such counterparts shall for all purposes be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

6. Descriptive Headings. Descriptive headings of the several Sections of this Amendment are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

IN WITNESS WHEREOF, the parties have executed this First Amendment, or caused this First Amendment to be executed by their authorized representatives, as of the date stated in the introductory paragraph of this First Amendment.

VertexOne Services Agreement

between

Vertex Data Utility Services, LLC d/b/a Vertex Business Services

&

City of Dayton

January, 2015

Table of Contents

1. SERVICES **1**

2. CONTRACT TERM **1**

3. CHANGE CONTROL PROCEDURES **1**

4. SERVICE PERFORMANCE **1**

4.1 Implementation 1
4.2 Standard Service Levels 1
4.3 Service Limitations 1
4.4 Limitation of Liability 2

5. DUE DILIGENCE **2**

6. FEES, INVOICING & TERMS OF PAYMENT **2**

6.1 Fees 2
6.2 Invoices 3
6.3 Additional Charges 3
6.4 Indexation 3

7. PROPRIETARY RIGHTS & CONFIDENTIAL INFORMATION **3**

7.1 Vertex Intellectual Property 3
7.2 Company Intellectual Property 3
7.3 Ownership of Company Data 3
7.4 Definition of Confidential Information 3
7.5 Confidentiality. 4

8. TERMINATION **4**

8.1 Termination for Cause 5
8.2 Termination for Bankruptcy/Insolvency 5
8.3 Termination for Failure to Pay by Company 5
8.4 Termination Assistance 5
8.5 Payment upon Termination 5
8.6 Return of Confidential Information 5

9. CONTRACT & RELATIONSHIP MANAGEMENT **6**

9.1 Relationship Management 6
9.2 Dispute Resolution 6
9.3 Arbitration 6

10. GENERAL PROVISIONS **6**

10.1 Assignment 6
10.2 Severability 7
10.3 Indemnity 7
10.4 Force Majeure 7
10.5 Actions of Other Parties 8
10.6 Waiver 8

10.7 Mutual Representations 8
10.8 Warranty 8
10.9 Notices 8
10.10 Governing Law and Jurisdiction 9
10.11 Personnel and Subcontractors 9
10.12 Independent Contractor 9
10.13 Access 9
10.14 Restriction on Solicitation 9
10.15 Publicity and Promotion 9
10.16 Insurance 10
10.17 Remedies Cumulative 10
10.18 Contract Amendments 10

11. CONTRACT ACCEPTANCE 10

SCHEDULES 11

Schedule A: Services, Service Levels & Pricing 12
Schedule B: Pricing 29
Schedule C: Relationship Management 36

VertexOne Services Agreement

This VertexOne Services Agreement (this "Agreement") dated as of _____ day of _____, 2015, (the "Effective Date") is entered into by City of Dayton, ("Company") and Vertex Data Utility Services, LLC d/b/a Vertex Business Services, ("Vertex"). Vertex and Company are hereinafter referred to individually as a "Party" and collectively as the "Parties."

1. SERVICES

Company appoints Vertex as the exclusive provider of the services set forth in Section A.1 of the attached Schedule A (the "Services") to the Company and Vertex shall provide the Services in accordance with the terms of this Agreement. Company agrees that the appointment of Vertex is exclusive and Company shall not during the term of this Agreement appoint or engage any other party to provide the Services or any services that are the same as or substantially similar to the Services.

2. CONTRACT TERM

This Agreement shall be effective upon execution by the Company and shall terminate three (3) years from the date of execution. This Agreement may be renewed for a maximum of three (3) additional two-year periods. However, no such renewal of this Agreement shall be recognized or effective unless it is reduced to a writing, which makes specific reference to this Agreement, and is executed by a duly authorized representative of the Company, the City of Dayton Commission, and Vertex.

3. CHANGE CONTROL PROCEDURES

Either Party may, by a proposed written project change request ("PCR"), request changes to the quantity and/or the specifications of the Services or request new services, and the Parties will undertake to negotiate an appropriate adjustment in price and terms in relation to such proposed changes. For any change that Vertex can perform on a commercially reasonable basis, within ten (10) business days of receiving notification of such proposed change, Vertex shall submit to Company a written proposal for accomplishing the changes requested (the "Change Proposal") and setting forth any proposed adjustments to the purchase price or other terms. Such Change Proposal shall be valid for thirty (30) days. If the Parties reach agreement as to the appropriate adjustments, Vertex and Company shall execute a mutually agreed Change Order amending the Agreement accordingly. No change shall be binding upon either Party until a written Change Order is executed by authorized representatives of both Parties. Upon execution of a Change Order, all services authorized by such Change Order shall become Services under this Agreement.

4. SERVICE PERFORMANCE

4.1 Implementation of Solution

Vertex shall provide to Company the implementation services described in, and in accordance with the implementation plan set forth in Section [A.1.3 of Schedule A] ("Implementation Plan"} of Schedule A. Vertex shall use commercially reasonable efforts to provide the transition-in services without (i) disrupting or adversely impacting

the business or operations of Company, (ii) degrading the Services being provided, or (iii) interfering with the ability of Company to obtain the full benefit of the Services, except as may be otherwise provided in the Implementation Plan.

4.2 Standard Service Levels

The standard service levels for each Service shall be as described in Section A.2 of Schedule A.

4.3 Service Limitations

a) In addition to any specific functions, responsibilities or tasks which Company is given responsibility hereunder, Company shall at all times retain responsibility and control of all policies, procedures, business rules or other processes related to Company's business, *including without limitation, those policies and procedures* necessary to comply with the legal and regulatory obligations applicable to Company's business. Such obligations may include, but are not limited to: utility, privacy, credit evaluation, credit reporting, consumer protection, debt collection and payment processing (including regulations of credit card and debit associations and networks such as VISA, MasterCard, Discover) laws, rules and regulations (collectively, ***"Company Regulatory Requirements"***). Vertex shall bear no responsibility for reviewing the legality of such policies, procedures, business rules or other processes and has no responsibility to monitor or interpret any applicable laws related thereto. Company acknowledges and agrees that Vertex shall be entitled to rely upon, without verification, any and all information, processes, procedures, guidelines, policies and other instructions at any time submitted to Vertex by Company having to do with Company or the Services provided by Vertex hereunder.

b) Vertex shall not be responsible for any failures in the Services or to meet applicable service levels to the extent caused by: (i) components for which Company is responsible; (ii) the action or inaction of Company's personnel; (iii) changes made to the environment or Company's sites which are not made in accordance with the change control procedures set forth herein; (iv) Company's failure to perform it obligations under this Agreement to the extent such failure affects Vertex's ability to meet the applicable Service requirements; (v) Company's failure to comply with the Company Regulatory Requirements as set forth above, to the extent such failure affects Vertex's ability to meet the applicable Service requirements; (vi) the occurrence of a force majeure event as set forth in Section 9.4 herein; (vii) any act or omission of a third party, excluding any subcontractor of Vertex, or any other event beyond the reasonable control of Vertex; or (viii) Vertex adhering to a Company policy, procedure, process or other business rule that conflicts with, interferes with or contradicts a Service requirement.

4.4 Limitation of Liability

a) NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE AGREEMENT, VERTEX SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING LOST PROFITS, LOSS OF DATA OR BUSINESS INTERRUPTION) ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION OR THE THEORY OF RECOVERY AND EVEN IF VERTEX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE AGREEMENT, VERTEX'S TOTAL AGGREGATE LIABILITY HEREUNDER, (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), NON-FRAUDULENT MISREPRESENTATION, FOR BREACH OF ANY WARRANTY EXPRESS OR IMPLIED, UNDER ANY INDEMNITY, FOR LIQUIDATED DAMAGES, WILFUL DEFAULT OR OTHERWISE HOWSOEVER) WILL BE LIMITED TO THE FEES PAID OR PAYABLE BY COMPANY TO VERTEX DURING THE INITIAL THREE YEARS OF THE AGREEMENT.

b) THE LIMITATIONS SET FORTH IN THIS SECTION 4.1 SHALL BE INDEPENDENT OF, SEVERABLE FROM, AND ENFORCED INDEPENDENTLY OF ANY OTHER ENFORCEABLE OR UNENFORCEABLE PROVISION OF THIS AGREEMENT, AND SHALL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED ITS ESSENTIAL PURPOSE. EACH PARTY ACKNOWLEDGES AND AGREES THAT IT HAS A DUTY TO MITIGATE DAMAGES AND COVENANTS THAT IT WILL USE COMMERCIALLY REASONABLE EFFORTS TO MINIMIZE ANY DAMAGES FOR WHICH THE OTHER MAY BE RESPONSIBLE HEREUNDER.

c) A PARTY IS NEVER LIABLE TO THE OTHER PARTY FOR ANY DAMAGES RESULTING FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE OTHER PARTY. VERTEX IS NOT RESPONSIBLE FOR ITS OBLIGATIONS TO THE EXTENT COMPANY OR OTHER SERVICE PROVIDERS OF COMPANY HAVE FAILED TO CARRY OUT THEIR RESPECTIVE OBLIGATIONS, OR TO THE EXTENT THAT CHANGES, ERRORS, OR OTHER SERVICE FAILURES CAUSED BY COMPANY OR OTHER CONTRACTORS OF COMPANY CAUSE DELAY, ERROR OR OTHER FAILURES IN THE SERVICES.

d) ALL CAUSE OF ACTIONS SHALL BE BROUGHT WITHIN THE TIMEFRAME SET FORTH IN O.R.C. § 2305.06 OR OTHER APPLICABLE OHIO REVISED CODE SECTION.

e) The limitations set forth in Section 4.1(a) shall not apply to a breach by either Party of its obligations for intentional acts with respect to Confidential Information.

5. DUE DILIGENCE

a) Company acknowledges that Vertex, utilizing its know-how and expertise, has provided a solution based on the information provided by Company in written or electronic form prior to the Effective Date.

b) Company warrants that the information provided to Vertex in connection with this Agreement is accurate and up to date, and as at the Effective Date all material information relevant to the Services has been disclosed to Vertex to allow Vertex to take account of the information in its solution and Charges. Company further warrants that it shall promptly provide all necessary updates to such information.

c) Each Party will notify the other Party as soon as reasonably practical if the first Party becomes aware (whether prior to or after the Effective Date) of: (i) any inaccuracies in any information provided by it to the other Party; or (ii) any additional information which should have been provided by the first Party in accordance with Section 5(b) which adversely affects Vertex's ability to perform the Services or meet any Service Levels, or that has the potential to increase the costs which Vertex incurs in delivering the Services.

e) Should any matters or inaccuracies be notified in accordance with Section 5(c):

(i) Vertex shall be relieved from any failure to perform parts or all of its obligations under this Agreement to the extent such failure is caused by Vertex having been provided with inaccurate, misleading or incomplete information by or on behalf of Company; and

(ii) Company shall agree to any necessary and relevant changes that Vertex may propose be implemented through the Change Control Procedures and Company shall bear all reasonable costs incurred in connection with Vertex's subsequent implementation of such changes.

6. FEES, INVOICING & TERMS OF PAYMENT

6.1 Fees

In consideration for the Services, Company shall pay Vertex the remuneration set out in Schedule B attached hereto. Fees for Services shall be billed once monthly. In the event the fees payable by Vertex to any subcontractor for the performance of any portion of the Services increase, the fees set forth herein may be increased by such amount.

Company, shall pay when due any sales, use, excise, value added, services, consumption, or other tax imposed by any taxing jurisdiction ("Taxes") as of the Effective Date on the provision of Services or any component thereof, as the rate of such Tax may change from time to time during the term of this Agreement. The Parties shall cooperate with each other to enable the Parties to determine accurately their respective tax liabilities and to reduce such liabilities to the extent permitted by law. Vertex invoices to Company shall separately state the amount of any Taxes Vertex is collecting from Company as applicable. Each Party shall provide to the other any resale certificates, exemption certificates, information regarding out-of-state or out-of-country sales or use of equipment and services, and such other similar information as the other Party may reasonably request.

If any taxing jurisdiction imposes after the Effective Date a new sales, use, excise, value-added, services, consumption, or other Tax on the provision of the services or any component thereof, Company shall be liable for any such new Tax that is imposed on the charges for the provision of the Services.

Charges, including any required taxes to be paid by Company, related to procurement of products will be billed at time of order. All figures shall be in US dollars unless otherwise specified.

6.2 Invoices

Company agrees to pay Vertex invoices within thirty (30) days of receipt. If an amount remains overdue ten (10) days after the Company receives written notice from Vertex of an overdue payment then such overdue invoice shall bear interest at the rate of the lesser of 1.5% per month or the maximum permitted by law.

Company will not be obligated to pay charges that are subject to good faith dispute during the period of the dispute and until time of resolution. Company will notify Vertex of any billing problems or disputed amounts in an invoice within thirty (30) days of receipt of such invoice.

If it is determined by the Parties, acting reasonably, that Company has been overcharged or undercharged through a billing error, such overcharge or undercharge can be deducted or added on a subsequent invoice.

Unless otherwise agreed and specified in Schedule B, payment of fees shall be made by wire transfer by Company to a bank account in the U.S. specified by Vertex.

6.3 Additional Charges

Vertex's fees set out in the Service Schedules do not include any taxes or duties that may be levied against Company or otherwise against transactions under this Agreement. Company is responsible for the payment of all duties and applicable sales, use, excise or similar taxes levied against the Services or otherwise against transactions under this Agreement, exclusive of income taxes based upon Vertex's income.

6.4 Travel Costs

The Company acknowledges and agrees that Vertex is not required to travel in performance of any part of the Services. However, if the Parties agree to Vertex travelling as part of the Services then he Company agrees to reimburse Vertex for its travel expenses reasonably incurred in performance of the Services provided under this Agreement in an amount not to exceed SEVEN THOUSAND DOLLARS AND ZERO CENTS ($7,000.00) per annum. The Company will not request Vertex to travel in performance of the Services if such travel would exceed the foregoing travel expenses financial cap. However, payment for such reimbursable expenses is subject to the following limitations:

1. Travel costs shall be billed only for approved, on-site training specifically requested by the Director of the City of Dayton Finance Department. Air travel reimbursement is limited to coach/economy rates. Local automobile travel expenses are included in the hourly rates paid as compensation for services. Automobile travel expenses for any destination outside of Montgomery County, Ohio will be reimbursable at the rate of as set by the U. S. Internal Revenue Service for business mileage reimbursement.

2. Reimbursable expenses are limited to those out-of-pocket expenses paid by Consultant to some third party, excluding itself, and its employees, excluding any other consultant and sub-consultants and excluding any third party in which Consultant has an ownership interest or Consultant receives payments or benefits in consideration for service or product orders given to that third party.

3. Amounts billed as reimbursable expenses are limited to direct costs incurred by Consultant and shall not include any multiple or additional percentage of those costs.

4. In order to be reimbursable, expenses must have been reasonably appropriate or must have been necessary, when evaluated in the light of the services to be performed. The cost of alcoholic beverages or entertainment shall not be reimbursed.

5. Signed, legible and explanatory receipts must be submitted for all reimbursable expenses.

6.5 Indexation

Subject to express provisions in Schedule B, if the Parties renew this Agreement as permitted by Section 2 and have not agreed alternate pricing for such renewal, then Vertex may increase the fees payable under this Agreement on an annual basis with effect from the third anniversary of the Effective Date in line with the percentage increase in the Consumer Price Index for All Urban Consumers published by the U.S. Bureau of Labor Statistics (the "Index") in the preceding twelve (12) month period.

7. PROPRIETARY RIGHTS & CONFIDENTIAL INFORMATION

7.1 Vertex Intellectual Property

a) Vertex does not convey, nor does Company obtain, any right, title or interest in or to any Vertex Intellectual Property. Subject to the obligations of confidentiality set forth in this Agreement, Vertex hereby grants to Company a non-exclusive license to access, operate and use the Vertex Intellectual Property, subject to the terms and conditions of this Agreement, solely for Company's internal business purposes related to its receipt of the services from Vertex during the term of this Agreement. ***"Vertex Intellectual Property"*** shall mean (i) programs, systems, data, tools, methods, materials, processes, know-how, trade secrets or other intellectual property of Vertex, and related documentation, existing on the effective date of this Agreement or independent and apart from its obligations under this Agreement, including any intellectual property used or provided by Vertex in connection with its performance hereunder; (ii) multi-purpose libraries or routines, or development tools that may be provided or used in connection with the Services; (iii) any modifications, improvements, enhancements, new versions or derivative works of any Vertex Intellectual Property developed by Vertex or its employees or contractors (either solely or jointly with employees of Company or others), in connection with Vertex's performance hereunder or otherwise; and (iv) any inventions, discoveries, ideas, concepts, know-how, materials or techniques that are developed at least in part by Vertex's employees or contractors in connection with their performance under this Agreement.

(b) Notwithstanding anything in this Agreement to the contrary, Vertex shall have the right to retain and use any multi-purpose libraries or routines, or development tools that may be provided or used in connection with the Services and any general skills ideas, concepts, know-how and expertise that Vertex learns, obtains, uses, develops or creates in rendering Services for Company, insofar as such ideas, concepts and know-how are of generic applicability and are acquired and applied without disclosure of any confidential or proprietary information of Company.

7.2 Company Intellectual Property

Company does not convey, nor does Vertex obtain, any right, title or interest in or to any Company Intellectual Property. Subject to the obligations of confidentiality set forth in this Agreement, Company hereby grants to Vertex a non-exclusive license to access, operate and use the Company Intellectual Property, subject to the terms and conditions of this Agreement, solely to the extent required by Vertex to provide the Services during the term of this Agreement. ***"Company Intellectual Property"*** shall mean (i) programs,

systems, data, tools, methods, materials, processes, know-how, trade secrets or other intellectual property of Company, and related documentation, existing on the effective date of this Agreement or independent and apart from its obligations under this Agreement, including any intellectual property used or provided by Company in connection with this Agreement; (ii) multi-purpose libraries or routines, or development tools that may be provided or used in connection with the Services; (iii) any modifications, improvements, enhancements, new versions or derivative works of any Company Intellectual Property developed by Company or its employees or contractors; and (iv) any inventions, discoveries, ideas, concepts, know-how, materials or techniques that are developed by Company's employees or contractors.

7.3 Ownership of Company Data

All Company Data shall remain the sole and exclusive property of Company. Company Data shall not be: (i) used by Vertex other than in connection with providing the Services, (ii) disclosed, sold, assigned, leased or otherwise provided to third parties by Vertex, or (iii) commercially exploited by or on behalf of Vertex, its employees or agents.

7.4 Definition of Confidential Information

For the purpose of this Agreement, Company and Vertex agree that all information, whether oral or written or via computer disk or electronic media, to which the other is given access or is made available to the other is referred to hereinafter as "Confidential Information." Information shall include, without limitation, all materials, documents, data, technology, know-how, processes, software, databases, trade secrets, contracts, proprietary information, all historical and financial information, business strategies, operating data and organizational and cost structures, product descriptions, pricing information, customer information and customer lists, whether received before or after the date hereof, except information that:

1) is disclosed lawfully by a third party who has no obligation of confidentiality with respect to the disclosed information;
2) is independently developed by a Party without use of the other Party's confidential information;
3) is, or becomes, generally known to the public, other than by a breach of obligations hereunder; or
4) is already known before disclosure hereunder as evidenced by written records and which is not the subject of a previous confidentiality agreement between the Parties.

Information also includes information of any parent, subsidiary or affiliates of Company or Vertex.

7.5 Confidentiality

Except as expressly provided below or with the other Party's prior written consent, Company and Vertex agree: (i) to hold all Confidential Information of the other in confidence; (ii) not to disclose any Confidential Information of the other to any third party, other than directors, officers, employees, affiliates, agents, subcontractors, or representatives (collectively, the "Representatives") who have a need to know such information in connection with the Services; and (iii) not to use any such Confidential Information for purposes other than in connection with the Services. Each Party shall exercise the same care in preventing unauthorized disclosure or use of the other Party's

Confidential Information that it takes to protect its own information of a similar nature, but in no event less than reasonable care. Reasonable care shall include (a) informing its Representatives of the confidential nature of the Confidential Information and the terms of this Agreement, directing them to comply with these terms, and obtaining their written acknowledgement that they have been so informed and directed or having them sign a confidentiality agreement with similar terms and conditions, and (b) notifying the other Party immediately upon discovery of any loss, unauthorized disclosure or use of Confidential Information, or any other breach of this Article by the other Party, and assisting such other Party in every reasonable way to regain possession of the Confidential Information and to prevent further unauthorized disclosure or use.

Either Company or Vertex may disclose Confidential Information pursuant to a requirement or request of a governmental agency or pursuant to a court or administrative subpoena, order or other such legal process or requirement of law, or in defense of any claims or causes of action asserted against it; provided, however, that it shall attempt to obtain a protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information that is disclosed. Nothing herein shall require either Company or Vertex to fail to honor a subpoena, court or administrative order, or similar requirement on a timely basis.

Both Parties acknowledge that the Confidential Information has tangible value and contains trade secrets and proprietary information of the disclosing Party and that the disclosing Party will suffer irreparable damage for which money damages will not be sufficient remedy in the event of a breach of any provision of this Agreement. The disclosing Party will be entitled to specific performance and injunctive relief as remedies for any breach or threatened breach of these confidentiality requirements.

8. TERMINATION

This Agreement may be immediately terminated by written notice in the event of or under any of the following circumstances:

1. A receiver for Vertex's assets is appointed by a court of competent jurisdiction.
2. Vertex is divested of its rights, powers, and privileges under this contract by operation of law.
3. Vertex's failure to comply with any material term, covenant or condition of this contract to be kept, performed and observed by it, and the failure of Vertex to remedy such failure within thirty (30) days from the date of written notice from Company.
4. Vertex's violation of any applicable federal, state, or local law applicable to the project and construction thereof or services required by this Agreement.
5. If, prior to the receipt of any funding from Company hereunder and upon giving thirty (30) days prior written notice, Vertex desires to terminate this contract.
6. Company's failure to comply with any material term, covenant or condition of this Agreement to be kept, performed and observed by it, and the failure of Company to remedy such failure within thirty (30) days from the date of written notice from Vertex.

Any such termination shall not relieve Vertex of any liability to the Company for damages sustained by virtue of any breach by Vertex. The Company will be under no further monetary obligation or commitment to Vertex.

In the event of termination, either Party may, at its option, exercise any remedy available to it according to Ohio law.

9. CONTRACT & RELATIONSHIP MANAGEMENT

9.1 Relationship Management

The Parties will abide by Schedule B, including the appointment of a person or persons to manage the relationship between Company and Vertex as outlined in Schedule C. The Parties will promptly notify the other Party of such appointment and any changes related thereto.

9.2 Dispute Resolution

In the event a dispute arises out of or in connection with this Agreement the Parties will follow the correction and resolution procedure set out below:

1) The non-breaching Party will advise the other Party in writing of the alleged breach. The Party allegedly in breach will investigate and provide a written report to the other Party within fifteen (15) business days of receiving the notice alleging breach given to the effect that: (a) the investigation reveals that the alleged breach was not committed, (b) the breach has been cured, or (c) the breach remains uncured.
2) If the Party alleging the breach is not satisfied that the other Party is not, or is no longer, in breach or wishes to pursue the dispute, then that Party will immediately advise the other Party in writing it wishes to escalate the dispute.
3) Each Party will, within ten (10) business days, submit a written report on the facts of the dispute, any relevant provisions of this Agreement, and any other relevant information: on behalf of Vertex, General Manager of Business Unit, or as otherwise designated by Vertex; on behalf of Company, Director of Finance or as otherwise designated by Company.
4) Upon receiving the reports in the previous step, such executives will jointly and diligently work to resolve the dispute within ten (10) business days of receipt of the reports.
5) If the Company and Vertex are unable to resolve a dispute by negotiation, both parties agree to submit it to non-binding mediation conducted by the Dayton Mediation Center.
6) Except for disputes resolved in accordance with this Section, the City and Contractor agree to exercise any right or remedy in connection with this Agreement exclusively in, and hereby submit to the jurisdiction of, the courts of Montgomery County, Ohio.

10. STANDARD OF CARE

Vertex shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily possessed and exercised by a professional under similar circumstances. Vertex shall have no liability for defects in the Services attributable to its reliance upon or use of data or other information furnished by the Company or third parties retained by the Company.

If, during the one year period following completion of the Services, it is shown there is an error in the services caused by Vertex's failure to meet such standards and the Company has notified Vertex in writing of any such error within that period, proposer

shall perform, at no additional cost to the Company, such services within the original scope of Services as may be necessary to remedy such error.

11. INSURANCE

During the term of this contract, Vertex shall maintain, at its sole cost and expense, no less than the following insurance issued by an insurance company authorized to conduct business in the State of Ohio and having an "A" rating or better by A.M. Best:

A) General Liability Insurance, having a combined single limit of $1,000,000.00 for each occurrence and $1,000,000.00 in the aggregate.
B) Automobile Liability Insurance, having a combined single limit of $1,000,000.00 for each person and $1,000,000.00 for each accident.
C) Employers' Liability Insurance, having a limit of $500,000.00 for each occurrence.
D) Professional Liability Insurance, having a limit of $1,000,000.00 annual aggregate.
E) Performance Bond: Vertex shall be required to obtain a Surety Bond, in an amount not less than, $100,000.00, as a condition to award of this Agreement. Said bond is to be delivered to the Company's Division of Purchasing prior to the beginning date of contract and shall be in place until the third anniversary of the Effective Date.
F) Vertex shall maintain errors and omissions insurance in the amount of $1,000,000.00.

Current certificates of insurance for all policies and concurrent policies required to be maintained by Vertex pursuant to this Section shall be furnished to the the Company. All such insurance policies, excluding Professional Liability Insurance, shall name the Company, its elected officials, officers, agents, employees, and volunteers as additional insurers, but only to the extent of the extent of the policy limits stated herein. All policies of insurance required hereunder shall contain a provision requiring a minimum of thirty (30) days advance written notice to the Company in the event of cancellation or diminution of coverage.

Vertex also shall maintain Workers' Compensation Insurance in such amounts as required by law for all employees, and shall furnish to the Company evidence of same.

12. GENERAL PROVISIONS

12.1 Assignment

Neither Party has the right to assign this Agreement without the written consent of the other Party; which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, each Party has the right to assign this Agreement to an affiliate of such Party as part of a bona fide corporate restructuring of its group, to an entity which acquires all or substantially all of the assets of the assigning party or to any successor in a divestiture, merger or acquisition upon notice to the other Party. However, any assignment by Vertex in accordance with the foregoing sentence would be inoperative if the assignee is; (i) an entity that had bid for the services covered by this Agreement; or (ii) is an entity that the Company has disbarred from providing goods or services to the Company.

12.2 Severability

If one or more of the provisions in this Agreement shall, for any reason, be unenforceable or invalid in any respect, such unenforceability or invalidity shall not affect any other provision of the Agreement which can be given effect without the unenforceable or invalid provision or provisions, and to such end the provisions of this Agreement are declared severable. To the extent possible, any such invalid term shall be replaced with a similar but valid provision.

12.3 Indemnity

Vertex shall indemnify and defend the Company and its elected officials, officers, employees and agents from and against all third party claims, losses, damages, and expenses (including reasonable attorneys' fees) of whatsoever kind and nature, to the extent that such claims, losses, damages, or expenses are directly caused by or arise out of the gross negligence or willful misconduct of Vertex and its agents, employees, contractors, sub-contractors and representatives in undertaking and performing the Services.

This Section shall survive early termination or expiration of this contract.

12.4 Force Majeure

Neither Party to this Agreement shall be held responsible for delay or failure to perform its obligations under this Agreement if such delay or failure is due to circumstances beyond its reasonable control. Each Party agrees to notify the other as soon as reasonably possible of circumstances that cause failure or delay to perform an obligation hereunder. Except for the payment of monies when due and owing for the period and to the extent that a Party hereto is prevented from fulfilling, in whole or in part, its obligations hereunder, where such disability arises by reason of flood, war, fire, earthquake, explosion or other natural catastrophe or act of God ("Force Majeure Event"), acts of war, terrorism, threats of terrorism, riots, civil disorders, rebellions or revolutions, strikes, work stoppages, quarantines, embargoes and other similar governmental action, or any other similar cause beyond the reasonable control of such party; such Party will be temporarily excused from obligations as a result and to the extent so prevented until the abatement of such Force Majeure Event.

The Term of this Agreement will not be extended by the period of duration of the Force Majeure Event. Notice of any such disability and any abatement will be forthwith given to the other Party by the Party claiming same.

Both Parties shall make reasonable efforts to minimize the frequency, severity, and duration of Force Majeure Events.

12.5 Actions of Other Parties

Neither Party shall be liable for any failure or delay in the performance of its obligations under this Agreement if and to the extent such failure or delay is caused by the actions or omissions of the other Party or breaches of this Agreement by the other Party provided that the Party that is unable to perform has provided the other Party with reasonable notice of such non-performance and has used commercially reasonable efforts to perform notwithstanding the actions, omissions or breaches of the other Party.

12.6 Waiver

The failure of either Party to insist in one or more instances upon strict performance of the covenants of this Agreement, or to exercise any option herein contained, shall not be construed as a waiver, or relinquishment for the future, and such covenant shall remain and continue in full force and effect. Any waiver shall be effective only if made in writing and executed by the waiving Party.

A waiver or breach or default under the Agreement shall not be a waiver of any other subsequent default. Failure of either Party to enforce compliance with any term or condition of the Agreement shall not constitute a waiver of such term or condition.

12.7 Mutual Representations

Each Party represents and warrants that, as of the Effective Date:

(a) it is a legal entity duly incorporated or formed, as the case may be, validly existing and in good standing under the laws of the province in which it is was incorporated or formed, and is in good standing in each other jurisdiction where the failure to be in good standing would have a material adverse effect on its business or its ability to perform its obligations under this Agreement.

(b) it has all the necessary power and authority to enter into this Agreement and to perform its obligations hereunder, and the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary actions on its part.

(c) this Agreement constitutes a legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms; and

(d) it is not a party to, and is not bound or affected by or subject to, any instrument, Agreement, charter, or bylaw provision, law, rule, regulation, judgment or order that would be contravened or breached as a result of the execution of this Agreement, or consummation of the transactions contemplated by this Agreement.

12.8 Warranty

EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THERE ARE NO WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED BY LAW OR OTHERWISE, BY VERTEX, INCLUDING BUT NOT LIMITED TO ANY IMPLIED AND/OR STATUTORY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS ANY IMPLIED AND/OR STATUTORY WARRANTIES OR CONDITIONS ARISING FROM THE COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE, AND COMPANY HEREBY WAIVES ALL OTHER WARRANTIES. VERTEX MAKES NO WARRANTY THAT THE OPERATION OF THE SERVICES WILL BE ERROR FREE OR WITHOUT INTERRUPTION.

12.9 Notices

Notices required or authorized to be given hereunder shall be deemed sufficiently given if in writing and sent by registered mail or courier to the address of the Party set forth

below or by facsimile to the fax number of a party set forth below, and if so mailed shall be deemed to have been received by the other Party on the fifth business day following the date of mailing (excluding periods during which strikes or other occurrences interfere with normal mail service), or if sent by fax or courier, the notice will be deemed to have been received on the next business day following dispatch.

If to Vertex:

General Counsel
Vertex Business Services
501 W. President Bush Hwy, Suite 350
Richardson,
Texas 75080

If to Company:
Valerie Hudson
101 W. Third St
Dayton, Ohio 45401
Valerie.hudson@daytonohio.gov
(937) 333-3533

LaShea Smith
101 W. Third St
Dayton, Ohio 45401
LaShea.smith@daytonohio.gov
(937) 333-1705

12.10 Governing Law & Jurisdiction

Vertex shall comply with all laws and regulations applicable to the performance of the Services at the place or places at which the Services are performed. This Agreement and performance under it shall be governed by and construed in accordance with the laws of the State of Ohio, without the application of its conflict of laws provisions. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state or federal (if permitted by law and a party elects to file an action in federal court) courts located in Ohio.

12.11 Personnel and Subcontractors

Vertex shall cause its personnel and subcontractors to abide by the terms of this Agreement. Vertex shall have the right to subcontract any of its responsibilities under this Agreement. Vertex shall remain liable for all actions of subcontractor, as between Vertex and Company, as if Vertex was performing the Services. The rights and licenses granted to Vertex hereunder shall be deemed to include the grant of such rights or

licenses to subcontractors, subject to the provisions of this Agreement. Vertex shall be solely liable and responsible for any and all payments and other compensation to, and the performance of, all subcontractors and their officers, employees, agents, and independent contractors.

12.12 Independent Contractor

By executing this Agreement for professional services, Vertex acknowledges and agrees that it will be providing services to the Company as an "independent contractor." As an independent contractor for the Company, Vertex shall be prohibited from representing or allowing others to construe the parties' relationship in a manner inconsistent with this Section. Vertex shall have no authority to assume or create any obligation on behalf of, or in the name of the Company, without the express prior written approval of a duly authorized representative of the Company.

Vertex, its employees and any persons retained or hired by Vertex to perform the duties and responsibilities under this Agreement are not Company employees, and therefore, such persons shall not be entitled to, nor will they make a claim for, any of the emoluments of employment with the Company. Further, Vertex shall be responsible to withhold and pay, or cause such agents, contractors and sub-contractors to withhold and pay, all applicable local, state and federal taxes. Vertex acknowledges its employees are not public employees for purposes of Ohio Public Employees Retirement System ("OPERS") membership.

12.13 Access

Company will provide Vertex such access to its facilities, information, materials, files, equipment and qualified personnel, as reasonably necessary for the performance by Vertex of the Services.

12.14 Restriction on Solicitation

At all times prior to termination of this Agreement and for a period of six months after termination, the Parties shall not, directly or indirectly, induce or attempt to induce any "employee" (as defined below) of another Party to terminate his or her employment, nor, without the prior written consent of the other Party, offer employment, except in the course of a public solicitation for employees, to any "employee" of the other Party. For purposes of this Section, the term "employee" shall mean any employees, agents or subcontractors of either Party who are substantially involved in the development, marketing, servicing, distribution, maintenance, support or use of the Host System, or the Services or who were so involved within the twelve (12) months prior to the date of termination.

12.15 Publicity and Promotion

Neither Party shall use the names(s), trademark(s), or trade name(s) (whether registered or not) of the other Party without securing the other Party's prior written approval. Notwithstanding the foregoing, Vertex shall be entitled to: (i) publicly announce the award of this Agreement by Company to Vertex, its length, its estimated total contract value, location, number of employees deployed by Vertex under this Agreement, and a brief description of the Services (no other details may be announced by Vertex; (ii) refer to the existence of this Agreement in any proposal to any third party by specifying the

details set out in in this Section 10.15; (iii) publicize and refer to the existence of this Agreement in any internal Vertex communication and publication.

12.16 Remedies Cumulative

Notwithstanding any other provision of this Agreement, and unless otherwise expressly stated herein, all rights and remedies of either Party are in addition to such Party's other rights and remedies and are cumulative, not alternative.

12.17 Entire Agreement/Integration

This Agreement, including the Schedules hereto, constitutes the entire agreement between the Parties with respect to the subject matter hereof. There are no agreements, representations, warranties, promises, covenants, commitments or undertakings other than those expressly set forth in this Agreement. This Agreement supersedes all other agreements, representations, warranties, promises, covenants, commitments or undertakings, whether written or oral, with respect to its subject matter.

A reference to approval, authorization or consent in this Agreement means written approval, authorization or consent regardless of whether expressly so stated. Each Party will execute and deliver such further and other agreements, documents and instruments and do such further acts and things as are within its power and as may be necessary or desirable to fully implement or carry out the intent of this Agreement.

This Agreement may be signed in any number of counterparts or facsimile counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same document.

12.18 Contract Amendment or Modification

Notwithstanding any other term of this Agreement, any modification or amendment to any provisions of this Agreement (including any Schedules) must be made in writing and signed by an authorized representative of each Party, and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.

12.19 Non-Discrimination

Vertex shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap with respect to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, lay-off, termination, rates of pay or other forms of compensation, or selection for training, including apprenticeship.

It is expressly agreed and understood that Section 35.14 of the Revised Code of General Ordinances of the City of Dayton constitutes a material condition of this Agreement as fully and as if specifically rewritten herein and that failure to comply therewith shall constitute a breach thereof entitling the Company to terminate this Agreement at its option and may bar Vertex from receiving future contracts from the Company.

12.20 Political Contributions

Vertex affirms and certifies that it complies with Ohio Revised Code § 3517.13 limiting political contributions.

In witness whereof the Parties hereto have executed this Agreement as of the date first written above.

CITY OF DAYTON, OHIO

for _____
City Manager

Vertex Data Utility Services LLC d/b/a Vertex Business Services

By: _____

Name: Todd N Buchholz

Title: EVP

APPROVED AS TO FORM AND CORRECTNESS:

_____
City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

February 25, 2015

Min./Bk. F13 Page: _____

_____
Clerk of the Commission

SCHEDULES

Schedule A **Implementation, Services, Service Levels**

Schedule B **Pricing**

Schedule C **Relationship Management**

Schedule A: Services & Service Levels

A.1 Service Definition

Vertex will provide the Company with access to the following Services; thereby allowing the Company to manage their Document print/mail and Electronic Bill Presentment and Payment activities.

A.1.1 Document Composition, Print and Mail Services

Document Composition Services

The document composition services to be enabled for the Company are:

- Data receipt & routing - Receipt of your CIS extract billing data in a structured file format from your existing CIS system via Internet FTP communication vehicle using PGP encryption software, for data parsing extraction and composition applications.
- Data extraction & parsing - Data extraction and parsing tools split, parse and route the identified data fields into a relational database for further processing and eventual document composition.
- Document Composition - The initial design and configuration of the electronic document templates for the monthly utility bills and reminder notice applications. The monthly utility bills and reminder notices would require approximately 3 templates to support the applications in question. These templates are then linked to data elements processed in the extraction and parsing routines.
- Business rules application - Sophisticated rules-based logic captures and automates all pre-defined business rules and manual operations associated with traditional document printing and insertion processes.
- Postal processing - The postal processing software facilitates address correction/verification (ACE/CASS Certified) editing/reports and the mail stream database is coded (appended with zip + 4 data) and package codes are appended to indicate weight class. These codes are then passed to the pre-sort process to be sorted and qualified for the proper rate categories. The presort software produces all of the necessary documentation (CASS Certificate) needed for mail presentation to the USPS BMEU (Business Mailing Entry Unit).
- Personalization/Data Management –Composition software that applies personalized messaging applications through the use of barcodes for selective insertion (offline). Advanced data mapping and data management applications enable targeted messaging within the document (online/floating text boxes). Bar-codes are also assigned to each document at this stage to support our intelligent insertion equipment, selective insertion applications, amalgamation/commingling of documents and our quality control processes.
- Print File Construction - Data elements and the associated document templates are composed and assembled into electronic documents and rendered into a print file for routing and on-demand production printing. Vertex will utilize a primary production facility and a disaster recovery facility, as required.

Document Printing

The document printing services to be enabled for the Company are:

- High-volume printing – Dynamic laser printing of the composed print file via our distributed print network environment. Quality control checks and balances along with our bar-coding technology ensure the highest levels of data integrity, accuracy and document print quality.

Document Insertion

The document insertion services to be enabled for the Company are:

- Intelligent folding & insertion – Bills are grouped, based on barcode identifiers, folded, Business Reply Envelope (BRE) and selective/global inserts sourced and the items inserted into Outer Mailing envelopes (OME).
- Selective and global insertion - Through the use of barcodes and our database management software, inserts are selectively or globally sourced from a series of insert stations (6 insert stations of which 1 is reserved for the BRE) and added to the document package for insertion into the mailing envelope.
- Postal sorting & mail finishing - Processed mail packages are applied with the appropriate postage based on the job account profile information. The sequence of the mail packages is pre-determined from the Postal Processing step. Mail packages are grouped, containerized and labelled according to postal processing regulations.
- Postal facility delivery - The finished mail pieces are audited and delivered to the USPS BMEU (Business Mailing Entry Unit) for postal processing and recipient delivery supporting the defined Service Level Agreement.

Business Process Management

The business process management services to be enabled for the Company are:

- Hosting and support for on-line administrative portal for:
  - Monitoring of processes
  - Accessing of operational reports
  - Management of on-document messaging
  - Management of inserts
  - Postage account monitoring
  - Inventory management

Responsibility Matrix

#	Function	Dayton	Vertex
1.	Generation of the invoice and letter data files	X	
2.	Set-up of FTP and PGP encryption process to send the invoice and letter data files from the Company billing system to Vertex	X	
3.	Design and provide inserts for inclusion in the print and mail process	X	
4.	Define statement messages and configure business rules for placement on the printed documents	X	
5.	Compose the invoice data file, insert Company defined and provided inserts, print and mail invoices		X

#	Function	Dayton	Vertex
6.	Hosting and management of on-line administrative portal for use by Company employees		X
7.	Access to the on-line administrative portal for management of day-to-day operations (i.e. review of reports, configuration of inserts, messages)	X	X
8.	Support for business use of on-line administrative portal		X
9.	Training for use of on-line administrative portal		X
10	Establishment and funding of CAPS account for postage	X	
11	Funding of postage metering account for residual, metered mail	X	

A.1.2 Electronic Document Archival, Presentment and Payment Services

Document Archival

The document archival services to be enabled for the Company are:

- Data receipt & routing - Receipt of your core data extract billing files in a flat file format from your billing system via Internet FTP communication vehicle using PGP encryption software, for data parsing extraction and composition applications. After a series of validation, balance acknowledgement/reconciliation and quality control applications the data files are routed to the parsing and extraction engine.
- Data extraction & parsing - Data extraction and parsing tools split, parse and route the identified data fields into a relational database for further processing and eventual document composition. PDF/PNG presentment of source content via a Web browser.
- Composition & Presentment – Upon a request from an authorized internal user, data elements along with the associated document templates are mapped to PNG pages utilizing a robust set of APIs and presented to the Customer in the form of a dynamic web page.
- Storage & Hosting – Storage and archival of all documents loaded within our redundant and secure data centers. Support of up to 8 search criteria for internal access across each document catalogue or type.
- Administration – Access to the Admin and User Consoles for enterprise tracking, management, and support tools.
- Single Sign-on (SSO) - Integration to Company customer care application(s).

Electronic Presentment

The electronic presentment services to be enabled for the Company are:

- Hosting and Support of a Company branded, customer facing web portal.
    - Continued use of existing Company URL
- Enrolment Processing – Support of a customized enrolment, validation, activation and de-activation program on a biller-direct site Standard Single Sign-On (SSO) support.
- Composition and Presentment - Validation, composition and dynamic rendition of legacy Bill data files into an interactive branded summary and detailed electronic

formats allowing for the granular presentment, customer self-service, and online account management support applications upon request from the Customer.

- Summary register – Supports an actionable summary register (sortable fields with bill date, amount due, account number, etc.) with options to view, pay, download, and get current balance information with links to payment details, filed bills, profile information, and historical payments.
- Decision Support – Display of data in multiple formats with options for downloads and navigation on-demand.
- Notification - e-mail notification/reminders of e-bills availability, forgotten passwords, and new enrolments.
- Self-service – Capture and routing of on-line customer inquiries/issues.
- User Interface Design – Support of a customized User Interface with regards to framing, navigation, and all associated cosmetic elements.
- Balance Update Engine - Support for receipt and processing of customer account balance update file.

Payment Processing

The payment processing services to be enabled for the Company are:

- Real-time payment enrolment and validation for ACH, credit card, debit card and ATM PIN-less Debit payment accounts.
- The capture and construction of consolidated, recurring, one-time), future and e-bill integrated payment instruction file creation and delivery.
- Warehousing of payment accounts, profiles, preferences, and payment transactional history.
- Support of a payment scheduling interface (one-time, recurring variable, recurring fixed) and a payment profile and history interface with varying levels of detail.
- Delivery of the payment instruction files to the noted ACH originators and credit/debit card processors for settlement.
    - Merchant service integration to Elavon.
    - ACH banking integration to US Bank.
- Capture and processing of the remittance advice from the processors for A/R posting and reconciliation.
- Integrated reporting and management tools.
- Warehousing and display of transactional payment history, forecasting data and payment profile information in the form of reports and online records.
    - Vertex will migrate 18 months of historical payment information from the Company's CIS as provided to Vertex in Vertex's defined file format.
- EFT engine supports the processing of payment files and warehousing of payment profiles along with management tools for new users.

Responsibility Matrix

#	Function	Dayton	Vertex
1	Establishment and on-going management of merchant agreements	X	
2	Establishment and on-going management of ACH banking accounts	X	
3	Collection of payment information from customer and delivery to merchant and ACH processors		X

#	Function	Dayton	Vertex
4	PCI compliance for all stored and/or managed customer payment data		X
5	Creation of remittance file and FTP delivery of PGP encrypted file to Company		X
6	Processing of remittance file for purpose of posting to customer account within the CIS	X	
7	Balancing of remittance file to CIS and depository bank account	X	
8	Definition of historical payment data import file		X
9	Extraction of up to 18 months historical payment data for the Company's CIS and FTP delivery of file to Vertex in defined format	X	
10	Loading of historical payment data into Vertex's database for on-line, end customer viewing		X
11	Providing branding requirements for the Vertex hosted and managed web portal	X	
12	Configuration of the Company provided branding to the web portal		X

A.1.3 Electronic Marketing

The electronic marketing services to be enabled for the Company are:

- On-site (web site) marketing tools enabling:
    1. e-inserts
    2. pop-up ads
    3. emails
    4. on-site messaging
    5. banner ads

Responsibility Matrix

#	Function	Dayton	Vertex
1	Definition and configuration of Electronic Marketing strategy	X	
2	Hosting and support of on-line administrative portal for configuration of Electronic Marketing strategy		X

A.1.4 Mobile Self-Service

The mobile self-service services to be enabled for the Company are:

- The Mobile Browser solution supports the integration with the traditional Biller-direct site [SSO] enrolled one-time and recurring payments, bill viewing, and payment history review. Initial enrolment and set-up of payment/customer accounts needs to be done at the traditional Biller-direct site [Traditional browser]. Mobile Brower supports the Android® and Apple® mobile browser platforms.
- Mobile app supports all functions with the Biller-direct site for the Apple® mobile app platform. Vertex will develop a Mobile App for the Apple devices that will be available within the App Store.

Responsibility Matrix

#	Function	Dayton	Vertex
1	Definition of Company branding information for the mobile self-service application	X	
2	Application and configuration of the supplied branding information to the mobile self-service application		X
3	Hosting and management of the mobile self-service application		X

A.1.5 Implementation of Solution

The implementation project will be executed using the structure and processes described in this section.

Project Roles

Vertex will staff a project team consisting of:

- Executive sponsorship
- Overall program manager
- Business, solution and functional subject matter experts
  - Business Analysis
  - Development
  - Testing
  - IT operations

The anticipated Company resources include:

- Executive sponsorship
- Company project manager
- Business and functional subject matter experts
- Technology support

The Project Team: The core project team, led by the program manager will meet weekly or as needed to do the following;

- Tactical management of implementation project activities
- Track key project deliverables and milestones
- Address any project level issues that arise
- Track project performance against timeline

The Steering Committee: Executive sponsorship and program management will meet every two weeks to:

- Review high level project status
- Review the Transition Program Plan (project plan) and progress made to schedule.
- Identify project risks, explore alternatives and report status to executive sponsors.

- Identify change requests via the project change control process.
- Track project performance against timeline
- Escalation management

Review changes to scope and/or assumptions that impact the project timeline or budget and provide resulting direction to project team.

Methodology

The implementation project will be based on a 6 phase (sometimes overlapping) approach:

1. Project Planning
2. Analysis and Design
3. Build
4. Test
5. User Acceptance
6. Implementation

Project Planning

This phase consists of:

- Assigning and ramping-up the project team
- Delivery to Company the project start-up kit
- Initial creation of the implementation specific business requirements document and project plan
- Facilitation of the project kick-off meeting(s)

Analysis and Design

This phase consists of:

- Completion of the project start-up kit
- Documentation of configuration options
- Gathering and documentation of any custom business requirements
- Final agreement of the implementation specific business requirements document and project plan

Build

This phase consists of:

- Implementation of the base solution components and administration portal
- Document form design, data mapping and composition
- Job set-up and initial operational configuration
- Web and mobile site configuration and branding
- Payment processing configuration and integration
- Stock design and consumable ordering

- Test planning
- Unit and Systems testing

Test

This phase consists of:

- End-to-end and integration testing

User Acceptance

This phase consists of:

- User training
- User acceptance testing

Implementation

This phase consists of:

- Deployment to production of the final solution
- Migration of historical data and existing user profiles
- Go-live of systems

The final project and implementation plan with milestone and Go-live dates will be determined and finalized over the Project Planning & Analysis and Design phases.

Company shall provide inputs, review documents and complete acceptance testing promptly, and in any event within timelines set forth in the Responsibility Matrix below. Failure by the Company to comply with the foregoing requirement may lead to changes in timelines, costs and/or fees and any such changes shall be addressed through a PCR issued by Vertex.

Responsibility Matrix

#	Function	Dayton	Vertex
1	Program and project management for overall implementation		X
2	Creation and maintenance of project schedule and status reporting		X
3	Deliverable Acceptance *(Within 3 business days of submission)*	X	
4	Management for Company activities and associated resources	X	
5	Change Request Approval – *(within 3 business days of submission)*	X	
6	Change Request Estimate – *(with 10 business days of request)*		X
7	Release management, risk management, quality control, communication management and transition management		X

#	Function	Dayton	Vertex
8	Issue and scope management	X	X
9	Selection of configuration and business options	X	
10	Documentation and system configuration and business requirements		X
11	Acceptance of system configuration and business requirements	X	
12	One day user training	X	X
13	Execution and acceptance of one week user acceptance testing	X	
14	UAT Support		X

A.2 Service Level Summary (SLA)

Vertex shall perform the Services in accordance with the service levels set forth in this Section A.2.. Changes to the business or operating processes or environment may require the Parties to re-negotiate appropriate service levels in accordance with Section 3 of this Agreement.

Key Service Criteria	Measurement Period	Hours	Target
On-line bill images available to the consumer		Available on-line within 12 hours of receipt of billing file	99%
System availability via the Internet for all Vertex supported applications	Monthly	Systems available 24 x 7 excluding scheduled maintenance	99% system uptime Events that are beyond the control of Vertex, such as web brownouts, consolidator/payment processor unscheduled downtime, and scheduled maintenance are not included. Vertex will provide 48

			hours advance notice for unscheduled system maintenance; for regularly scheduled maintenance (no notice) the window is established as 2:00am to 6:00 am Eastern Standard time on Sundays.
Delivery of payment request (draft request) files to the Company's payment providers	Monthly	Payments will be sent to the payment providers at 2 PM ET and 8 PM ET each business day. Payments made after the 8 PM ET cutoff will go out on the 2 PM ET file the following day. Payments made after the 2 PM ET cutoff and prior to the 8 PM ET cutoff will go out on the 8 PM ET transmission	99% of payment items delivered on-time.
Delivery of remittance files to the Company for processing	Monthly	Remittance files will be delivered to Company by 6 AM ET containing payments made up to the 8 PM ET cutoff the previous day.	99% of payment items delivered on-time.
Timely email delivery	Monthly	Emails to be sent within 4 hours of triggering event	99% of emails delivered on-time.
Document print and mail	Monthly	Percentage of	99% of documents

Schedule B: Pricing

B.1 Pricing

The Company shall pay Vertex the fees for the Services in accordance with the prices contained in this Schedule and the payment terms contained in Section 6 of the Agreement.

B.1.1 Implementation Fees:

Service Implementation Fees	USD
Print and Mail	$ 52,992.00
Electronic Bill Presentment and Payment	$ 35,833.00
Mobile Self-service	$ 16,667.00

Payment of the implementation fees set forth above shall become due and payable by the Company to Vertex as follows:

(i) $52,746 on the Effective Date; and

(ii) $52,746 on the Services being operational (or available to be operational).

Implementation fees include:

- Project management
- Business requirements gathering
- Business requirements documentation and project planning
- Processing of Company provided data files for composition data extraction and mapping
- Document template construction
- Business rules application (configuration)
- Programming (as needed)
- Consumables sourcing (paper and envelopes)
- Bar-code and OCR compliance testing
- System testing
- User Training
- Activation of the following application modules:
    - Document composition
    - Document template manager

		documents delivered to the USPS, excluding re-prints. Files received prior to 6 PM ET will have delivery to the USPS by 6 PM ET the next business day	delivered to the USPS on-time.

- On-document messaging manager
- Insert manager
- Document archival
- Payment processing
- On-site (web site) marketing
- Mobile self-service

Implementation templates will be as follows:

- 3 application/form templates per template category
- 1 invoice template category
- 2 notice template categories
- 1 final and adjusted invoice template category

B.1.2 Hosting and Support Fees:

Monthly Hosting and Support Fees	USD
Monthly Hosting and Support	$ 799.00

B.1.3 Print and Mail Transactional Fees

Print and Mail Transactional Fees	USD	
Pre-processing composition	$ 0.00267	per impression
Printing (Cut Sheet)	$ 0.01659	per sheet
Automated Folding and Insertion (6 insert station)	$ 0.03016	per package
Marketing Insert Fees	$ 0.00217	per marketing insert, business return envelope is inserted at no charge
Oversized Folding and Insertion up to 50 pages (Oversized package)	$ 0.36179	per occurrence
Manual Folding and Insertion for > 50 pages (Oversized package)	$ 1.81	per occurrence
NCOA Link - Address Update	$ 0.43290	per occurrence
Courier preparation	$ 1.66	per occurrence
IMB (Intelligent Mail Bar-Code)	$ 217	per month

Consumable Fees		
Postage	Pass through	
Outer Mailing Envelope # 10 (OME)	$ 0.01960	per envelope
Business Reply Envelope #9 (BRE)	$ 0.02270	per envelope
Form Type #1 (cut sheet paper)	$ 0.01680	per page
Form Type #2 (cut sheet paper page 2)	$ 0.01680	per page
9 x 12 Outer Mailing Envelope (OME)	$ 0.25000	per page
Insert Production	Specific per request	
Inventory storage fee	$ 36.07	per pallet, per month
Inventory recycling fee	$ 0.00144	per item recycled
Inventory return fee	$ 36.07	

Print and Mail Transactional fee definitions	Definition
Pre-processing	This fee is applied per image received irrelevant of eventual document production and includes all core document composition activities including Communication/Data Receipt, Data extraction & parsing, Document composition, Business rules application, Personalization, Postal processing and Print File Construction and Routing.
Printing	This fee is applied per impression and includes the actual application of the ink on a document at the noted distribution facility. This fee includes the actual service of printing and the ink consumables.
Automated Folding and Insertion	This fee includes the intelligent folding and insertion of said documents into an OME (Outer Mailing Envelope). This fee supports up-to 6 pages into a number 10 OME. This fee does include the insert of a BRE.
Oversized Folding and Insertion	This fee includes the insertion of said documents into an OME (Outer Mailing Envelope). This fee supports up-to 50 pages into a 9 * 12 OME.
Manual Folding and Insertion	This fee supports processing of mail pieces that contain more than 50 pages
Marketing Inserts	Fee charged per insert applied. The BRE is NOT considered a billable Marketing insert.

IMB	USPS Intelligent Mail Bar-code monthly service fee. This is for the confirm service to track delivery of mail to the customer.
NCOA Link	Real-time processing of National Change of Address allows for addresses to be appended on "the fly" and mailed to the updated or new address. All addresses are processed through NCOA cleansing with only addresses appended incurring fees.
Courier Preparation	Fee includes the creation of the courier label, packaging and preparation activities.

Consumable Fee definitions	Definition
Form Type#1	Includes 1 standardized 24 pound, 8 ½ x 11 cut sheet form with a horizontal perf and pre-printed Company colors (2/1).
Form Type#2 (Page 2)	Includes 1 standardized 24 pound, 8 ½ x 11 cut sheet form, pre-printed Company colors (2/1).
Outer Mailing Envelope (#10)	Includes a a # 10 custom, single window envelope, 24 pound, white wove, within liner, a standard window placement and One color
Business Reply Envelope	Includes a # 9 Custom BRE (3 ¾ * 8 ¾), 24 pound, with 1 color, non- window
9 x 12 Outer Mailing Envelope	Includes 1 standard #9 X 12 Outer Mailing Envelope, 24 pound, white wove with standard window(s)
Insert Production	Fees are based on size, quantities, colors, stock weight, size, volume, etc. Our insert production department will provide quotes per insert project.
Inventory Recycle	Applies to OME, BRE, letterhead and inserts. When physical inserts are recycled, the insert will automatically deactivate the inventory item and will not be available for use in any future campaign.
Inventory Return	Use of a third party courier to ship inventories back to the Company. Courier charges are extra.

Pricing Notes:

1. Post implementation Professional Services hours are billed out at rate outlined in **the professional services rate card** for adjustments to the in-production system. An estimate will be created with respect to the number of billable hours required and a statement of work signed prior to work commencing.
2. Adjustments to the in-production system requiring less than 4 hours of total professional services can be managed through the ticketing system.

3. Provider reserves the right to increase consumable pricing (paper and envelopes) based on an industry wide increase which is established through public articles from at least two pulp and paper mills.
4. Black is considered a color if pre-printed on the form but not if dynamically printed on the document.
5. Form definitions do not support form "bleeds" (there must be a white margin).
6. Colors can be used on front and back of the form but are limited to 4 colors in total (i.e. 4/0 or 2/2).
7. Customized consumable orders support a minimum 3 month order (50,000) and usage rate of 17,000 per month – situations outside of these requirements require special pricing.
8. Requirements to order or change consumables prior to depletion of current stock will result in additional fees (cost to destroy existing stock and/or premium fee for low volume consumable orders).
9. Upon termination of the agreement Customer is required to pay for any remaining consumable inventory at the noted fees referenced within this schedule.
10. Vertex is not responsible for the delivery timelines within the postal system and can only control and adhere to SLA with regards to the receipt, production, print, insertion and mail finishing services supported within our solution.
11. Requirements to destroy inserts or stock will result in a destruction fee – reference Applicable schedule.
12. In the event that changes are required that would alter the scope defined by this contract, a Project Change Request ("PCR") will be initiated.
13. Client must leverage Vertex and the then current pricing specific to the consumable elements of the Vertex solution.
14. Document Template Manager upfront fee does includes the establishment of two (2) client specific document templates.
15. Storage Fees are charged for the storage of Consumables/inserts under the following circumstances:
    (i) If Consumables are not secured through Vertex directly. Consumables are defined as Letterhead, Outer Mailing Envelopes and Business Reply Envelopes.
    (ii) Inserts received two months or more prior to insert start date.
    (iii) Request to store inserts after initial campaign run for future usage. (Exceeds 90 days)
16. A maximum limit of 3 months' worth of consumable inventory can be stored at our facilities. Any requests for greater than 3 months storage for Consumables will result in Storage Fees.
17. Post campaign; residual inserts that have been inactive for more than 2 months will result in Storage Fees.

B.1.4 Electronic Bill Presentment and Payment Transactional Fees

EBPP Transactional Fees	USD	
Document archival transaction fee	$ 0.00361	per impression
Archived document customer viewing	$ 0.08658	Per initial view of archived document by end customer. Subsequent views are at no cost. Views by Company support staff are at no cost.
Email notification with attached, secure .pdf	$ 0.14430	Per email sent with attached .pdf
Email notification with embedded link	no charge	
Attached, secure .pdf processing	$ 0.02886	Per page of attached .pdf
Credit card and ACH processing	$ 0.06490	Per payment transaction
Biller-direct remittance	$ 0.01450	Per item included in remittance file
Notification Manager SMS	$ 0.07215	Per SMS message

Pricing Notes:

1. Document archival transaction fee applies to the back-loading of historical data (data migration).
2. Viewed pricing metric is only levied towards outside customers. Internal employees can access all bills an unlimited number of times with no presentment fees.
3. View pricing metric refers to bills that have been viewed by the Customer. Transaction fees are only applied once. Bill can be viewed an unlimited number of times.
4. View fee is applied irrelevant if the end customer is viewing on a mobile browser or a traditional desktop browser.
5. SMS transactional fees are applied per SMS transactions (in-bound and outbound).
6. ACH transactional fees do not include ACH origination charges – levied directly by originator.
7. Credit card authorization, settlement and interchange fees are separate and applied directly by the acquirer.
8. Return fees are applied to all returns (i.e. invalid account number, NSF, NOC, etc. for ACH) and are levied directly by the ACH originator to the Biller.
9. The Payment Module supports a non-convenience fee or Biller-Fund payment model, pricing in this schedule assumes a non-convenience fee model.
10. EFT Application supports legacy EFP processing and support for existing and net new EFT customers.

11. Biller Direct remittance fee is applied to each payment settled within the Payment Module –one-time, recurring, or EFT.
12. Notice of change (NOC) processing is available based on the ODFI.
13. The payment fee is applied irrelevant if the payment is made on the website, via e-mail, or a mobile device.
14. Presentment and payment fees are consistent across e-mail, traditional browser, mobile browser, and mobile app delivery channels.
15. There is no presentment fees apply for summary delivery of content delivered via a SMS/Text. Only fee is the text charge and the existing payment fee [same fee for all other channels] if they pay via this device.
16. Activation of pay by text functionality will require an incremental implementation fee.
17. The Verizon carrier is not certified at this time for payments.

B.1.5 Professional Services Fees

Professional Services Rates	USD	
Professional Services	$ 180.00	per hour

Schedule C: Relationship Management

C.1 Governance Process Description

The implementation of an effective Governance methodology will allow Company to manage the relationship with reasonable effort to ensure that services with minimal defects are delivered in the most effective way. The Governance process is intended to establish the working structure of communication between Company and Vertex as well as to define Company's expectations and criteria regarding the provision of the described processes. The stipulations within this document will provide the framework for the ongoing management, measurement and maintenance of the Vertex-provided services and the responsibility to the relationship between Company and Vertex.

Business Objective: (1) To provide Company and Vertex with an effective vehicle for Communication.

Scope: Vertex will provide governance and has full responsibility to perform all in-scope functions for deploying technical resources in a cost-effective and measurable manner. The stipulations stated in this document include, but are not limited to: timely billing of Company accounts, management of strategic additions or function upgrade function requests, contract change management, performance and status reporting/reviews, problem management, change management and project management. The scope of services provided by Vertex will be documented and measured against the stated Service Level Specifications.

Vertex and Company will hold management meetings to review the success and performance of the services provided by Vertex using phones and online meetings.

	Status Meetings and Review of Services
Monthly Conference Call	*Purpose:* • To discuss any issues relating to Vertex's provision of services, problem status and updates, operational issues, end user complaints, and delivery successes. • To discuss any issues relating to Vertex's provision of services that need immediate attention of management. *Action:* • To hold a monthly meeting and to produce and communicate a list of updates, topics and actions.
Quarterly Conference Call	*Purpose:* • To review Vertex performance over the previous three (3) months, including Service Metrics, costs, and process issues. • Attendees would include Company's Solution Coordinator and Company Manager from Vertex. *Action:* • To hold the meeting quarterly (as required) and to produce and communicate a list of topics and actions.

Annual	*Purpose:* • To review the service metrics and determine if there are changes to be made. *Action:* • To hold an annual meeting (conference call) to review the service metrics and determine if changes are to be made.

BACK

City Manager's Report

6.

From **3420- Water/Water Engineering**

Date **February 26, 2020**

Expense Type **Award of Contract**

Supplier, Vendor, Company, Individual

Total Amount **$749,666.94 (thru 5/31/2021)**

Name **L.J. DeWeese Co., Inc.**

Address **3616 Tipp-Cowlesville Rd., Tipp City, OH 45371**

Fund Source(s)	Fund Code(s)	Fund Amount(s)
Series 2018 Water Const. Fund	53816-3445-1424-54-WF2001	$524,766.86
2020 Water Capital Fund	53005-3445-1424-54-WF2001	$224,900.08

Includes Revenue to the City ☐ Yes ☑ No **Affirmative Action Program** ☑ Yes ☐ No ☐ N/A

Description

SALEM AVENUE WATER MAIN IMPROVEMENTS PHASE 3
(20% MBE-GOAL / 20.07% MBE-ACHIEVED)

The Department of Water requests permission to enter into a Contract with L.J. DeWeese Co., Inc. in the amount of $749,666.94 for the Salem Avenue Water Main Improvements Phase 3 project. This amount includes the base bid of $681,515.40 and Alternate No. 1 – Contingency Allowance for $68,151.54. This project consists of approximately 1,800 linear feet of new 12" water main in Salem Avenue from Fountain Avenue to Manhattan Avenue. Work includes the installation of ductile iron pipe and fittings, gate valves, fire hydrants and doing other work incidental thereto.

Five bids were received for this project on December 12, 2019. After evaluating the bids, L.J. DeWeese Co., Inc.'s bid was determined to be the lowest. The estimated cost for the project was $850,000.00. The time of completion is May 31, 2020. The expiration date identified on the Certificate of Funds is May 31, 2021.

This project is being funded using Series 2018 Water Construction Fund (Debt) and 2020 Water Capital Funds (Cash). This project supports the Asset Management Capital Reinvestment Program by replacing existing water main installed in 1912 to improve performance of the water distribution system.

A Certificate of Funds, Tabulation of Bids, Human Relations Council's verification letter, and the Bid Form from the firm recommended for award are attached.

Signatures/Approval

Division

Department

City Manager

Approved by City Commission

Clerk

Date

FORM NO. MS-16

Updated 8/2016

CERTIFICATE OF FUNDS

CT20-2532

SECTION I - to be completed by User Department

NO DRAFT DOCUMENTS PERMITTED

X New Contract _____ Renewal Contract _____ Change Order

Contract Start Date	2/26/2020
Expiration Date	5/31/2021
Original Commission Approval	$ 749,666.94
Initial Encumbrance	$ 749,666.94
Remaining Commission Approval	$ -

Original CT/CF	
Increase Encumbrance	$ -
Decrease Encumbrance	$ -
Remaining Commission Approval	$ -

Required Documentation

X	Initial City Manager's Report
X	Initial Certificate of Funds
X	Initial Agreement/Contract
	Copy of City Manager's Report
	Copy of Original Certificate of Funds

Amount: $ 524,766.86	Amount: 224.900.08
Fund Code 53816 (Fund) 3445 (Org) 1424 (Acct) 54 (Prog) WF2001 (Act) - (Loc)	Fund Code 53005 (Fund) 3445 (Org) 1424 (Acct) 54 (Prog) WF2001 (Act) - (Loc)
Amount:	Amount:
Fund Code (Fund) - (Org) - (Acct) - (Prog) - (Act) - (Loc)	Fund Code (Fund) - (Org) - (Acct) - (Prog) - (Act) - (Loc)

Attach additional pages for more FOAPALs

Vendor Name: L,J. DeWeese Co., Inc.

Vendor Address: 3616 Tipp-Cowlesville Rd. (Street) Tipp City (City) OH (State) 45371 (Zipcode + 4)

Federal ID: 31-0602186

Commodity Code: 96896

Purpose: Award of Contract for Salem Avenue Water Main Improvements Phase 3

Contact Person: Lisa Burton-Yates

Water/Water Engineering (Department/Division) 2/7/2020 (Date)

Originating Department Director's Signature:

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropirated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

Finance Director Signature — 2/18/2020 (Date)

CF Prepared by — 2/17/2020 (Date) — CT20-2532 (CF/CT Number)

2/14/2020

Finance Department

October 18, 2011

DAYTON, OHIO
DEPARTMENT OF WATER

PROPOSAL TABULATION FOR:
SALEM AVENUE - PHASE III WATER MAIN IMPROVEMENTS (20 % MBE PARTICIPATION)

Bid Opening Date:	**Engineer's Estimate:**[1]	**Estimated Time of Completion:**
December 12, 2019	$850,000.00	31-May-20

Bidders	**Actual Amount**[1] **of Bid**	**Adjustment for Work Days**	**Adjustment for Comparison Purposes Only**
***L.J. Deweese**	$749,666.94	$0.00	$749,666.94
CG Construction	$805,018.50	$0.00	$805,018.50
Double Jay Const	$815,628.00	$0.00	$815,628.00
Milcon	$847,499.23	$0.00	$847,499.23
Adleta	$1,008,101.71	$0.00	$1,008,101.71

*** RECOMMENDED FOR AWARD**

[1] includes Base Bid and Alternate No. 1 - Contingency Allowance

MEMORANDUM | DAYTON

January 13, 2020

TO: Nick Dailey P.E., Chief Engineer
Department of Water,
Division of Water Engineering

FROM: Chrisondra Goodwine, Contract Compliance Officer C. G.
Human Relations Council (HRC)

SUBJECT: **Salem Avenue Water Main Improvements Phase 3 (20% MBE Participation Goal)**

The apparent low bidder, LJ DeWeese, submitted a bid utilizing three (3) PEP-certified contractor to meet the project's participation goal. The HRC's contract compliance analysis has verified LJ DeWeese is an approved bidder in the City of Dayton's Affirmative Action Assurance program and that the company's authorized representative signed the Contractor's Certification to indicate fair hiring practices.

The recommended company to receive the above-mentioned construction award is as follows:

PRIME CONTRACTOR	AMOUNT OF BASE BID	
LJ DeWeese	**$681,515.40**	
CERTIFIED BUSINESS PARTICIPATION	COMMITTED DOLLAR AMT	% TOWARD GOAL
Davidas Trucking & Excavating	**$52,480.00**	**7.7% MBE**
EWOL Trucking & Construction	**$56,000.00**	**8.27% MBE**
W.C. Jones Asphalt Paving Co.,	**$28,000.00**	**4.1% MBE**
	TOTAL COMMITTED PARTICIPATION	**20.07% MBE**

The attached participation forms should be included with the contract agreement. Contract compliance will include meeting verified participation and minimal worker utilization goals as stated in the Affirmative Action Program Equal Employment Opportunity form certified in the bid submission. If you have any questions or concerns, please feel free to contact me at (937) 333-1405.

CAG

L.J. DeWeese Co., Inc.

3616 Tipp-Cowlesville Rd.
Tipp City, Ohio 45371
Phone – (937) 440-1736 Fax- (937) 440-0745

City of Dayton, Ohio
Human Relations Council
371 West Second Street, Suite 100
Dayton, Ohio 45402-1417

RE: Salem Ave.- Phase III Water Main Replacement

Name of Project:
Salem Ave.- Phase III Water Main Replacement

Name of Prime Contractor:
L.J. DeWeese Co., Inc.
3616 Tipp-Cowlesville Rd.
Tipp City, Ohio 45371

Name of Subcontractor:
Ewol Trucking & Construction
4645 Wolf Creek Pk.
Dayton, Ohio 45417-9435

Work Division Area Performed By Subcontractor:
Trucking

Material vs. Labor Breakdown*

Description	Quantity	Unit Cost	Total
Trucking - Tandem	350 HRS	$80.00	$28,000.00
		Total . .	**$28,000.00**

L.J. DeWeese Co., Inc.
3616 Tipp-Cowlesville Rd.
Tipp City, Ohio 45371

Phone – (937) 440-1736 **Fax – (937) 440-0745**

City of Dayton, Ohio
Human Relations Council
371 West Second Street, Suite 100
Dayton, Ohio 45402-1417

RE: Salem Ave.- Phase III Water Main Replacement

Name of Project:
Salem Ave.- Phase III Water Main Replacement

Name of Prime Contractor:
L.J. DeWeese Co., Inc.
3616 Tipp-Cowlesville Rd.
Tipp City, Ohio 45371

Name of Subcontractor:
WC Jones Asphalt Paving Co., Inc.
905 S. Broadway St.
Dayton, Ohio 45417

Work Division Area Performed By Subcontractor:
Asphalt

Material vs. Labor Breakdown*

Item #	Description	Quantity	Unit Cost	Total
442	Superpave Asphalt Concrete	320 TONS	$175.00	$56,000.00
				$56,000.00

Markup or Profit on Materials Purchased
Materials purchased by WC Jones Asphalt Paving Co., Inc. for the Salem Ave.- Phase III Water Main Replacement are ordinarily stocked by the Subcontractor.

Davidas Trucking & Excavating

1109 Snow Shoe Trail Unit 18 Dayton, Ohio 45449 Phone: 937/361-1063

City of Dayton Ohio
Human Relations Council
371 West Second Street, suite 100
Dayton, Ohio 45402-1417

RE: Salem Ave Phase III Water Main Replacement

Name of Project:

Salem Ave Phase III Water Main Replacement

Name of Prime Contractor:

L.J DeWeese co. Inc.

3616 Tipp-Cowlesville Rd.

Tipp City, Ohio 45371

Name of Subcontractor:

Davidas Trucking & Excavating

1109 Snow Shoe Trail Unit 18

Dayton, Ohio 45449

Work Division Area Performed By Subcontractor:

Trucking

Material vs. Labor Breakdown

Description	Quantity	Unit Cost	Total
Trucking-Tandem	656 HRS	$80.00	$52,480
		Total	$52,480

Ewol Trucking & Construction
5231 Kentwood Rd
Dayton, Ohio 45417
(937) 470-1624
ewoltrucking30@yahoo.com

1) Name Of Project: Salem Ave Phase III Water Main Replacement

2) Prime Contractor Name: LJ Deweese Co, Inc.
   3616 Tipp-Cowlesville Rd
   Tipp City, Ohio 45371

3) Scope Of Work to be performed: Trucking
4) Unit Cost: $ 28,000.00
5) N/A
6) N/A
7) Number Of Trucks: 7
   Type Of Trucks: Tandem
   Work Performed: Trucking
   Materials to be obtained: gravel, sand, dirt, stone etc...
   Number Of Hours: 350 hours
   Hourly Rate: $ 80.00

12/30/19

WC Jones Asphalt Paving Co., Inc.

905 South Broadway St.
Dayton, Ohio 45408
Ph. (937) 228-1253
Fax (937) 228-9300
cell (937) 313-4695

AD 12-24-2019

City of Dayton, Ohio
Human Relation Council
371 West Second Street, Suite 100
Dayton, Ohio 45417

Project
Salem Avenue - Phase III Water Main Replacement (20% MBE Goal)

Prime Contractor

L. J. DeWeese Co., Inc.
3616 Tipp-Cowlesville Rd.
Tipp City, Ohio 45371
(937) 440-1736

Type of Work
Asphalt Paving

Item#	Description	Quantity	Labor	Material	Unit Cost	Total
442	Superpave Asphalt	320 Tons	$98.00	$77.00	$175.00	$56,000.00

Leo C. Lucas1
President

NOTE TO CONTRACTORS:

Since there will be copies made of the bid form of this improvement, please use black ink or a typewriter to fill in the bid prices and extensions.

CITY OF DAYTON, OHIO

DEPARTMENT OF PUBLIC WORKS

Bid Form Salem Ave - Phase III
Water Main Improvements

Bidder

L.J. DeWeese Co., Inc.
3616 Tipp Cowlesville Rd.
Tipp City, Ohio 45371

BID FORM

To: Director, Department of Public Works
The City of Dayton

The undersigned, having full knowledge of the site and the provisions of the plans and specifications for the following improvement, and the conditions of this bid, hereby agrees to furnish all services, labor, materials and equipment, and to construct in every respect complete:

SALEM AVENUE - PHASE III WATER MAIN IMPROVEMENTS

(20 % MBE PARTICIPATION)

in accordance with said plans and specifications on file in the office of the City Engineer at the unit prices hereinafter set forth.

Bid Form (Continued)

SALEM AVENUE - PHASE 3
WATER MAIN IMPROVEMENTS
(20% MBE PARTICIPATION)

ITEM NO.	DESCRIPTION	EST. QUANT.	UNIT	UNIT PRICE	TOTAL $
201	Clearing and Grubbing	1	LUMP	5.-	5.-
202	Pipe Removed, 10"	70	L.F.	15.-	1050.-
207	Temporary Soil Erosion and Sediment Control	1	LUMP	2000.-	2000.-
305	Concrete Base (ODOT 499, Class FS)	2000	S.Y.	38.-	76000.-
442 ODOT	Superpave Asphalt Concrete	320	TONS	185.-	59200.-
608	Concrete Walk	875	S.F.	12.-	10500.-
609	Barrier Curb	175	L.F.	32.-	5600.-
614	Maintaining Traffic	1	LUMP	34550.-	34550.-
615	Low Strength Mortar Backfill, Type 1	1750	C.Y.	40.-	70000.-
623	Construction Layout Stakes	1	LUMP	2500.-	2500.-
632	Detector Loop	2	EA.	2250.-	4500.-
642	Lane Line	150	L.F.	1.-	150.-
642	Centerline	150	L.F.	6.-	900.-
642	Channel Line	50	L.F.	5.-	250.-
642	Stop Bar	50	L.F.	25.-	1250.-
642	Crosswalk	20	L.F.	15.-	300.-
653	Topsoil Furnished and Placed, 4"	10	C.Y.	100.-	1000.-

Bid Form (Continued)

SALEM AVENUE - PHASE 3
WATER MAIN IMPROVEMENTS
(20% MBE PARTICIPATION

ITEM NO.	DESCRIPTION	EST. QUANT.	UNIT	UNIT PRICE	TOTAL $
659	Seeding and Mulching (Hydro-Seed)	100	S.Y.	10.-	1000.-
810	Street Cut Permit	1	LUMP	$ 3,110.40	$ 3,110.40
810	Excavation and Backfill for 4" Water Pipe with Structural Backfill	30	L.F.	45.-	1350.-
810	Excavation and Backfill for 6" Water Pipe with Structural Backfill	210	L.F.	50.-	10500.-
810	Excavation and Backfill for 8" Water Pipe with Structural Backfill	150	L.F.	50.-	7500.-
810	Excavation and Backfill for 10" Water Pipe with Structural Backfill	120	L.F.	75.-	9000.-
810	Excavation and Backfill for 12" Water Pipe with Structural Backfill	1860	L.F.	60.-	111,600.-
824	4" Ductile Iron Water Pipe and Fittings	30	L.F.	50.-	1500.-
824	6" Ductile Iron Water Pipe and Fittings	210	L.F.	50.-	10500.-
824	8" Ductile Iron Water Pipe and Fittings	150	L.F.	50.-	7500.-
824	10" Ductile Iron Water Pipe and Fittings	120	L.F.	55.-	6600.-
824	12" Ductile Iron Water Pipe and Fittings	1860	L.F.	50.-	93000.-
837	Abandoned, Special (Water Valves)	11	EA.	250.-	2750.-
840	4" Gate Valve and Appurtenances	1	EA.	1500.-	1500.-

Bid Form (Continued)

SALEM AVENUE - PHASE 3
WATER MAIN IMPROVEMENTS
(20% MBE PARTICIPATION

ITEM NO.	DESCRIPTION	EST. QUANT.	UNIT	UNIT PRICE	TOTAL $
840	6" Gate Valve and Appurtenances	5	EA.	2100.-	10500.-
840	8" Gate Valve and Appurtenances	3	EA.	2400.-	7200.-
840	12" Gate Valve and Appurtenances	4	EA.	3200.-	12800.-
843	Fire Hydrant, Installed	3	EA.	3800.-	11400.-
843	Fire Hydrant, Removal	3	EA.	500.-	1500.-
844	12"X12" Water Main Tap	1	EA.	2500.-	2500.-
844	10"X10" Water Main Tap	2	EA.	2500.-	5000.-
844	16"X10" Water Main Tap	1	EA.	2500.-	2500.-
845	Service Replacement, Method "B", 1"	875	L.F.	62.-	54250.-
845	Curb Stop, 1"	35	EA.	150.-	5250.-
845	Curb Box, 1"	35	EA.	50.-	1750.-
847	Cut and Plug 4" Water Line	1	EA.	900.-	900.-
847	Cut and Plug 6" Water Line	5	EA.	900.-	4500.-
847	Cut and Plug 8" Water Line	3	EA.	900.-	2700.-
847	Cut and Plug 10" Water Line	4	EA.	900.-	3600.-
WTR	InsertValve 12", Right	1	EA.	18000.-	18000.-

TOTAL BASE BID $ 681,515.40

In determining the lowest and best bid the City Commission may give consideration to the following alternate bids:

ALTERNATE NO. 1
CONTINGENCY ALLOWANCE

This Alternate is for a **"CONTINGENCY ALLOWANCE"** to be used in the event of unforeseen work which must be undertaken to complete this project. The work could be as additional quantities to the bid items or as non-bid items. For evaluation of the bids, the amount of this **"CONTINGENCY ALLOWANCE"** shall be equal to **Ten Percent (10%) of the Contractor's Total Base Bid**. For contract award, the amount of this **"CONTINGENCY ALLOWANCE"** may vary as determined by the City, but shall not exceed the maximum of **Ten Percent (10%) of the Contractor's Total Base Bid**.

ITEM NO.	DESCRIPTION	EST. QUANT.	UNIT	UNIT PRICE	TOTAL $
A-1	Contingency Allowance (Shall equal 10% of the Contractor's Total Base Bid)	1	LUMP	68151.54	68151.54

TOTAL ALTERNATE NO. 1 $ 68151.54

The consideration to be paid for the performance of the Contract of the above described project is provided as follows: This information provides for the issuance of the tax-exempt form for the purchase of materials for this project.

DESCRIPTION	CONSIDERATION FOR MATERIALS	CONSIDERATION FOR OBLIGATIONS	TOTAL $
TOTAL BASE BID	$ 400,000.-	$ 281,515.40	$ 681,515.40
TOTAL ALT. NO 1 (Contingency Allowance)	$ -0-	$ 68151.54	$ 68151.54

The time of completion fixed by the City is May 31, 2020

Following are the names of all persons, firms, and corporations interested in the above bid as principals. If none, state that "No person or party other than the bidder is interested in this Bid."

NAME	ADDRESS
No person or party other than the bidder is interested in this Bid	

DISCLOSURE OF LITIGATION

Disclosure of Litigation: Have you or any person, group, partnership, company, or corporation affiliated with you been engaged in the past three (3) years in litigation, mediation or any form of contractual dispute resolution with any state government or any political subdivision thereof including, without limitation, the State of Ohio, the City of Dayton, Ohio, or Montgomery County, Ohio? For the purpose of your response, "affiliated" means directly or indirectly controlling, controlled by, or under common control, with "control" meaning legally or operationally in a position to exercise restraint or direction over the other.

RESPONSE: YES _____ NO X

If your response is "YES" please separately identify each lawsuit, mediation or dispute resolution process in which you or your affiliate have been engaged during the past three (3) years. Identify the nature of the dispute, the parties involved, and the current status of the dispute. Attach or include any information you believe pertinent to a full understanding of the disputed matters.

Bidder is

An Individual
Firm Name _____

Business Address _____

Telephone _____

Partnership
Firm Name _____

Members of Firm and
Their Business Address _____

_____

_____

Telephone _____

Corporation
Name L.J. DeWeese Co. Inc

State of Incorporation Ohio

Name and Title of
Officers with Authority
to Sign Contract Jeremy Hench, Vice-President
Kristen Dilbone, President

Home Office Address 3616 Tipp Cowlesville Rd, Tipp City, Ohio 45371

Local Address Same

Telephone 937-440-1736 Fax 937-440-0745

E-mail kldilbone@yahoo.com

Federal I.D.# 31-0602186

Dated this 19 day of December, 2019

Bidder: L.J. DeWeese Co. Inc
(Person, Firm, or Corporation)

By: [signature], V.P. LJD

Title: Vice-President

If a certified or cashier's check is submitted with Bid Form, please furnish the following information:

_____Certified Check

_____Cashier's Check

Amount _____ Dollars

on _____ Bank

of _____ is Attached

_____
Bidder

Cash in the amount of _____
Dollars is attached.

_____
Bidder

BID BOND

AMOUNT $ 10% of Total Bid

We, the undersigned, are held and firmly bound unto the City of Dayton, Ohio, in the sum of 10% of Total Bid Dollars for the payment of which, well and truly to be made, we hereby, jointly and severally, bind ourselves, our heirs, executors and administrators, firmly by these presents.

The condition of this obligation is such that, if the Bid attached hereto is accepted and the contract awarded to the bidder, L.J. DeWeese Co., Inc. named therein, and the said bidder shall within ten (10) days after being advised that said contract has been awarded to the bidder, enter into a Contract in the form hereto attached and give bond in a form to be furnished by the Director, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Signed and sealed at Dayton, Ohio this 19th day of December 2019.

L.J. DeWeese Co., Inc.

V.P. LJD

Bidder

Western Surety Company

Mark Arnold Surety Attorney-In-Fact

Arnold Insurance Agency, Inc.
Name of Insurance Agency

1400 Haft Dr., Reynoldsburg, OH 43068
Address of Insurance Agency

Telephone 614-863-0455 Fax 614-863-2474

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Mark Arnold, Harry J Bound, Jason D Daniels, Rebecca Bryner, Brittany Walton, Individually

of Reynoldsburg, OH, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 7th day of October, 2019.

WESTERN SURETY COMPANY

Paul T. Bruflat, Vice President

State of South Dakota
County of Minnehaha } ss

On this 7th day of October, 2019, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires
June 23, 2021

J. MOHR
NOTARY PUBLIC
SOUTH DAKOTA

J. Mohr, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 19 day of December, 2019.

WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

Form F4280-7-2012

Go to www.cnasurety.com > Owner / Obligee Services > Validate Bond Coverage, if you want to verify bond authenticity.

Office of Risk Assessment
50 West Town Street
Third Floor - Suite 300
Columbus,Ohio 43215
(614)644-2658
Fax(614)644-3256
www.insurance.ohio.gov

Ohio Department of Insurance

Mike DeWine - Governor

Jillian Froment - Director

Certificate of Compliance

Issued 03/14/2019

Effective 04/02/2019

Expires 04/01/2020

I, Jillian Froment, hereby certify that I am the Director of Insurance in the State of Ohio and have supervision of insurance business in said State and as such I hereby certify that

WESTERN SURETY COMPANY

of South Dakota is duly organized under the laws of this State and is authorized to transact the business of insurance under the following section(s) of the Ohio Revised Code:

Section 3929.01 (A)

Fidelity

Other Liability

Surety

WESTERN SURETY COMPANY certified in its annual statement to this Department as of December 31,2018 that it has admitted assets in the amount of $2,083,835,493, liabilities in the amount of $542,268,146, and surplus of at least $1,541,567,347.

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused my seal to be affixed at Columbus, Ohio, this day and date.

Jillian Froment,Director

WESTERN SURETY COMPANY
Sioux Falls, South Dakota
Statement of Net Admitted Assets and Liabilities
December 31, 2018

ASSETS

Bonds	$	1,935,428,756
Stocks		28,070,811
Cash, cash equivalents, and short-term investments		28,110,934
Receivables for securities		-
Investment income due and accrued		17,684,883
Premiums and considerations		48,092,741
Amounts recoverable from reinsurers		2,689,618
Current federal and foreign income tax recoverable and interest thereon		109,624
Net deferred tax asset		11,721,985
Receivable from parent, subsidiaries, and affiliates		11,902,908
Other assets		23,233
Total Assets	$	2,083,835,493

LIABILITIES AND SURPLUS

Losses			$	216,656,892
Loss adjustment expense				58,374,620
Commissions payable, contingent commissions and other similar charges				10,355,618
Other expenses (excluding taxes, license and fees)				-
Taxes, License and fees (excluding federal and foreign income taxes)				3,752,460
Federal and foreign income taxes payable				1,295,647
Unearned premiums				240,838,348
Advance premiums				5,412,052
Ceded reinsurance premiums payable (net of ceding commissions)				61,346
Amounts withheld or retained by company for account of others				5,262,414
Provision for reinsurance				182,147
Payable to parent, subsidiaries and affiliates				-
Payable on security transactions				-
Other liabilities				76,602
Total Liabilities			$	542,268,146
Surplus Account:				
Common stock	$	4,000,000		
Gross paid in and contributed surplus		280,071,837		
Unassigned funds		1,257,495,510		
Surplus as regards policyholders			$	1,541,567,347
Total Liabilities and Capital			$	2,083,835,493

I, Victoria Baltrus, Vice President of Western Surety Company hereby certify that the above is an accurate representation of the financial statement of the Company dated December 31, 2018, as filed with the various Insurance Departments and is a true and correct statement of the condition of Western Surety Company as of that date.

WESTERN SURETY COMPANY

By Victoria L Baltrus
Vice President

Subscribed and sworn to me this 7th day of March 2019
My commission expires:

"OFFICIAL SEAL"
CHRISTOPHER LOPATOWSKI
Notary Public, State of Illinois
My Commission Expires 01/14/2020

By Christopher Lopatowski
Notary Public

CITY OF DAYTON, OHIO
Department of Public Works

Responsible Contractor Bidding Requirements
(Form 1 of 3)

In accordance with Ordinance No. 31487-16 of the City of Dayton, Ohio Revised Code of General Ordinances, I, Jeremy Hatch, V.P. hereby certify that
(print name – an Officer of the company)

L.J. DeWeese Co, Inc. meets the following Contractor requirements relating
(company)

to this City of Dayton construction project (check all that apply):

- [X] Comply with all City of Dayton income tax obligations and requirements
- [X] Maintain worker's compensation insurance for all employees as required by the State of Ohio
- [X] Comply with State or Federal prevailing wage rate laws, as applicable and required by the funding of this project
- [X] Comply with the State of Ohio Bureau of Worker's Compensation Drug Free Workplace Policy
- [X] Maintain an unemployment compensation insurance policy registered with the State of Ohio Department of Job and Family Services
- [X] Made a good faith effort to contract with one or more qualified minority business enterprises to perform work required by this project, in accordance with bid documents, ordinances, and applicable Federal and State law

By: V.P. LJD
(signature)

Title: Vice President

Date: 12/19/19

CITY OF DAYTON, OHIO
Department of Public Works

Responsible Contractor Bidding Requirements
(Form 2 of 3)

A. Please provide a complete listing of the fringe benefits provided to employees, including but not limited to health insurance and retirement benefits.

SRA - medical
401(k) - retirement

B. Please identify any "bona fide apprentice training program" in which this company participates in accordance with the Ohio Bureau of Apprenticeship Training and the U. S. Department of Labor.

N/A

C. Please provide a list of subcontractors whose quotes or information are included or used in the bid submitted for this project.

Ewol Trucking
Davidson Trucking & Excavating
WC Jones Asphalt Paving

CITY OF DAYTON, OHIO
Department of Public Works

Responsible Contractor Bidding Requirements
(Form 3 of 3)

D. Please provide a list of all minority business enterprises contacted for the purpose of obtaining quotes to perform work for this project.

A to Z Maintenance
EWOL Trucking
Green Star Trucking
WC Jones Asphalt Paving
Davidas Trucking & Excavating
Fall View Palladium

E. Provide a complete listing of any determinations of the bidder's violations of federal, state, or local laws, including a list of all citations, orders, or recommendations issued to or against the bidder within the previous 3 years.

- None -

CERTIFICATION
OF COMPLIANCE WITH OHIO REVISED CODE SECTION 3517.13
FOR CONTRACTS IN EXCESS OF FIVE HUNDRED DOLLARS ($500.00)

STATE OF OHIO,
COUNTY OF Miami ,ss:

Jeremy Hirch, V.P. being duly sworn, deposes and states as follows:

1. I am duly authorized to make the statements contained herein on behalf of L.J. DeWeese Co Inc ("the Contracting Party").

2. The Contracting Party is a/an (select one):

   ☐ Individual, partnership, or other unincorporated business association (including without limitation, a professional association organized under Ohio Revised Code Chapter 1785), estate, or trust.

   ☒ Corporation organized and existing under the laws of the State of Ohio.

   ☐ Labor organization.

3. I hereby affirm that the Contracting Party and each of the individuals specified in R.C. 3517.93(I)(3) (with respect to non-corporate entities and labor organizations) or R.C. 3517.93(J)(3) (with respect to corporations) are in full compliance with the political contributions limitations set forth in R.C. 3517.93(I) and (J), as applicable. I understand that a false representation on this certification constitutes a felony of the fifth degree pursuant to R.C. 3517.93(AA) and 3517.992(R)(3). Any contract that contains a falsified certification shall be rescinded.

By: V.P. L.J.D.

Title: Vice President

STATE OF OHIO,
COUNTY OF Miami ,ss:

Sworn to before me and subscribe in my presence by Jeremy Hirch, V.P.
this 19 day of Dec, 2019.

Kristen Dilbone
Notary Public

KRISTEN L DILBONE
NOTARY PUBLIC - OHIO
MY COMMISSION EXPIRES
JANUARY 20, 2022

{00046535.DOC;1}

CITY OF DAYTON
CONTRACTOR NON-COLLUSION AFFIDAVIT
TO BE NOTARIZED AND SUBMITTED WITH BID FORM

STATE OF Ohio)
) SS:
COUNTY OF Miami)

Jeremy Hesch, being first duly sworn deposes and states that:

(1) He/~~she~~ is Vice-President of
(owner, partner, officer, representative, or agent)

L.J. DeWese Co. Inc that
(business or organization name)

(2) He/She is fully informed respecting the preparation and contents of the attached Bid and all pertinent circumstances respecting such Bid.

(3) Such offering is genuine and is not a collusive or sham offering

(4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly with any other Bidder, firm or person to submit a sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from offering in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Dayton, its employees, or citizens.

(5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest including the affiant.

Sworn to before me and subscribed in my presence

this 19 day of December, 2019.

V.P. L.J.D.
SIGNED

Kristen Dilbone
NOTARY PUBLIC

Vice-President
TITLE

KRISTEN L DILBONE
NOTARY PUBLIC - OHIO
MY COMMISSION EXPIRES
JANUARY 20, 2022

FAILURE TO SIGN AND SUBMIT THIS DOCUMENT WITH YOUR BID WILL RESULT IN YOUR BID NOT BEING READ

AFFIRMATIVE ACTION PROGRAM
EQUAL EMPLOYMENT OPPORTUNITY

PROJECT: Salem Ave - Phase III Water Main Improv. (NAME) Dayton, Ohio (LOCATION)

During the performance of this contract:

L.J. DeWeese Co, Inc (CONTRACTOR) 36116 Supp Coldwater Rd. Supp City, Ohio 45371 (ADDRESS) 937-440-1736 937-440-0745 (TELEPHONE / FAX)

being the general contractor, assumes the responsibility and obligation to institute an Affirmative Action Program which complies with revised City Ordinances 24059 and 26090 and Executive Order 11246 on any city, federal or federally-assisted construction project, to insure Equal Employment Opportunity regardless of race, color, religion, sex, national origin, ancestry, place of birth, age, or marital status.

The successful contractor using one or more trades of construction employees must comply with Part I of these Affirmative Actions Program conditions to each such trade.

Part I: Requirements. To be eligible for award of a contract under this Invitation to Bid, contractors must certify as prescribed in Paragraph 1a, of the certification specified in Part II hereof that it adopts the minimum goals and timetables of minority and female worker utilization, and specific Affirmative Action steps set forth in Sections 1 and 2 of this Part I.

1.) **Goals & Timetables**. The goals of minority and female worker utilization required of the contractor are applicable to each trade which will be used on any project in Greene, Miami, Montgomery, and Preble Counties, OH (hereinafter the Economic Area).

The required goals and timetables are as follows:

	Goals of Minority Worker Utilization Expressed in Percentage Terms
From 1/1/2000 to Present	11.5%

	Goals of Female Worker Utilization Expressed in Percentage Terms
From 4/1/80 to Present	6.9%

The percentage goals of minority and female worker utilization are expressed in terms of working hours of training and employment as a proportion of the total working hours to be worked by the contractor's entire work force in that trade on all projects (both federal and non-federal) in the Economic Area during the performance of this contract. The working hours for minority and female work and training must be uniform throughout the length of this contract, on all projects and for each of the trades. Further, the transfer of minority and/or female or trainee from employer-to-employer or from project-to-project for the sole purpose of meeting the contractor's goals shall be a violation of this Affirmative Action Program.

In reaching the goals for minority and female utilization, every effort shall be made to find and employ qualified journey-persons. Provided, however, and pursuant to the requirements of the Department of Labor Regulations, 29 CFR 5a.3, twenty-five percent (25%) of apprentices or trainees shall be employed on all projects and shall be in their first year of training, where feasible.

In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and/or trainees at the completion of the training subject to the availability of employment opportunities. Apprentices and trainees must be trained pursuant to programs which have been approved by The U.S. Department of Labor and/or The State of Ohio.

A contractor shall be deemed to be in compliance with the terms and requirements of this Part I by the employment and training of minorities and females in the appropriate percentage of the contractor's aggregate work force in the Ecomonic Area for each trade for which it is committed to the goals under Part I.

However, no contractor shall be found to be in noncompliance solely on account of the contractor's failure to meet the goals and timetables, but such contractor shall be given the opportunity to demonstrate that all of the specific Affirmative Action steps specified in Part I have been instituted and has made every "good faith" effort to make these steps work towards the attainment of the goals and timetables.

2.) **Specific Affirmative Action Steps**. A contractor subject to Part I, must engage in Affirmative Action directed at increasing minority and female utilization, which is at least as extensive and as specific as the following steps:

a) The contractor shall notify community organizations that the contractor has employment opportunities available and shall maintain records of the organizations' responses.

b) The contractor shall maintain a file of the names and addresses of each minority and female referred and what action was taken with respect to each referred worker. If the worker was not employed, the reason therefor. If the worker was not sent to the union hiring hall for referral, the contractor's file shall document this and the reasons therefor.

c) The contractor shall promptly notify the Dayton Human Relations Council (HRC) when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority and/or female, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

d) The contractor should participate in training programs in the area; especially those approved by the U.S. Department of Labor and/or the State of Ohio.

e) The contractor shall disseminate the EEO Policy within the organization by including it in any policy manual, by publicizing it in company newspapers, annual reports, etc.; by conducting staff, employee and union representatives' meetings to explain and discuss the policy; by posting of the policy; and by specific review of the policy with minority and female employees.

f) The contractor shall ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to all projects (both federal and non-federal) in the Economic Area during the performance of its contract or subcontract.

g) The contractor shall make specific and constant personal (both written and oral) recruitment efforts directed at all minority and female organizations, schools, minority and female recruitment training organizations with the Dayton Economic Area.

h) The contractor shall make specific efforts to encourage present minority and female employees to recruit other minorities and females.

i) The contractor shall validate all tests and other selection requirements.

j) The contractor should develop on-the-job training opportunities; participate and assist in any association or employer-group training programs relevant to the contractor's employees needs consistent with its obligations under Part I.

k) The contractor shall evaluate all minority and female personnel for promotional opportunities and encourage employees to seek such opportunities.

l) The contractor shall ensure that seniority practices, job classifications, etc., do not have a discriminatory effect.

m) The contractor shall make certain that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

n) The contractor will monitor all personnel activities to ensure that its EEO Policy is being carried out.

o) The successful contractor shall solicit bids for work to be performed on this project under a subcontract from minority and female contractors and other business associations.

3.) Nothing herein is intended to relieve any contractor during the term of this project from compliance with any other local bid requirements. Further, it shall be the responsibility of each contractor to comply with all terms, condictions, and provisions of the Affirmative Action Programs.

Part II: Contractor's Certification. A contractor will not be eligible for award of a contract under this Invitation to Bid, unless such contractor has submitted as a part of the bid the following certification, which will be deemed a part of the resulting contract:

CONTRACTOR'S CERTIFICATION

L.J. DeWeese Co. Inc. (Contractor)

certifies that:

1. The following listed construction trades will be used in performance of this project.

Operator
Labor
Cement Mason

a) as to those trades set forth in the preceding paragraph one hereof, it adopts the minimum minority and female utilization goals and the specific Affirmative Action steps contained in this Affirmative Action Program. Compliance is measured in each trade of the contractor's aggregate work force for all construction work (both federal and non-federal) in the four Counties (Greene, Miami, Montgomery and Preble) subject to this Affirmative Action Program; and

b) the successful contractor will obtain from each subcontractor and submit to the contracting or administering agency prior to the award of any subcontract under this contract, the subcontractor certification required by the Affirmative Action Program.

SIGN: V.P. C.J.D.
(Signature of Authorized Representative of Bidder)

FAILURE TO SUBMIT AND SIGN THIS DOCUMENT WITH YOUR BID WILL RESULT IN YOUR BID NOT BEING READ

Worker Utilization Report

CONTRACT # & NAME OF PROJECT: _____

REPORTING PERIOD: _____ (MONTH) _____ (YEAR)

TO: Contract Compliance Officer
HUMAN RELATIONS COUNCIL
371 W. SECOND ST. STE. 100
DAYTON OH 45402
bta@daytonohio.gov

FROM:	
COMPANY:	
ADDRESS:	
CITY/ST/ZIP:	
TELEPHONE:	
E-MAIL:	

ALL INFORMATION WILL BE KEPT CONFIDENTIAL TO THE EXTENT ALLOWED BY LAW.
AGGREGATE REPORTS OF WORKER UTILIZATION FOR THIS PROJECT MAY BE MADE PUBLIC.

			Ethnic Group					Gender		Trade	Classification				# of Hours Wrkd			
Name of Employee	Employee ID #	Address	White (Not of Hispanic Origin)	Black (Not of Hispanic Origin)	Hispanic	Asian or Pacific Islander	American Indian or Alaskan Native	Male	Female		Journeyman	Helper	Apprentice	Trainee	1st Week	2nd Week	3rd Week	4th Week

INSTRUCTIONS: Mark each applicable Ethnic Group and Gender description with an "X". Complete the information above for ALL employees for the preceding month. Make copies of this sheet as needed. Submit the form to the address listed on this form.

Workforce Goals:	11.5% MINORITY	6.9% FEMALE	

Revised 3/2017

PEP-CERTIFIED MBE (SELECT ONE) PARTICIPATION FORM

Instructions for Bidders / Proposers: *Submit one executed copy of this form for each Procurement Enhancement Plan (PEP)-Certified Firm whose participation you plan to count toward the project/contract's participation goal(s). This form must be included with your Bid. To split a PEP-Certified Firm's participation among more than one goal, submit a separate form for each goal (i.e., SBE, MBE, WBE, or DLSB).*

SECTION 1: BIDDER / PROPOSER INFORMATION

Name of Bidder / Proposer's Firm: L.J. DeWeese Co., Inc.

Address: 3616 Tipp-Cowlesville Rd.

City: Tipp City State: OH ZIP: 45371

Telephone: 937-440-1736 Email: kldilbone@yahoo.com

Primes Base Bid $ 681,515.40

Name of Project: Salem Ave. Phase III Water Main Improvements

SECTION 2: PEP-CERTIFIED BUSINESS & PARTICIPATION INFORMATION

Name of PEP-Certified Firm: Davidas Trucking & Excavating

PEP-Certified Firm's Tax ID#: 274055138

Scope of Work to Be Performed by Certified Firm: Trucking

	Total Dollar Amount Towards Goal	Percentage Towards Goal	Amount to Be Paid to This PEP Firm for the Work Described:
Total Bid	$ 52480.-	% 7.7%	$ 52,480.-
Materials	$ —	% —	$ —
Labor	$ 52480.-	% 7.7%	$ 52480.-

SECTION 3: AFFIRMATIONS

The above-named **Bidder / Proposer** affirms, under penalty of perjury, that it has negotiated in good faith with the above-named PEP-Certified Firm and will utilize the above-named PEP-Certified Firm for the type(s) of work and for the dollar amount(s) described above.

Kristen Dilbone
(Signature of Bidder/Proposer's Authorized Agent)

Kristen Dilbone
(Printed Name of Bidder/Proposer's Authorized Agent)

President 12/19/19
(Title of Bidder/Proposer's Authorized Agent) (Date)

The above-named **PEP-Certified Firm** affirms, under penalty of perjury, that it has negotiated in good faith with the above-named Bidder / Proposer and that it will perform, and is certified to perform, the type(s) of work described above for the dollar amount(s) as stated above.

(Signature of PEP-Certified Firm's Authorized Agent)

Brian McDonell
(Printed Name of PEP-Certified Firm's Authorized Agent)

Owner 12-19-19
(Title of PEP-Certified Firm's Authorized Agent) (Date)

IF THE BIDDER/OFFEROR IS NOT AWARDED A CONTRACT, OR IF THE HRC DOES NOT APPROVE OF THE TERMS AS STATED ABOVE, THEN ANY AND ALL REPRESENTATIONS ON THIS PARTICIPATION FORM SHALL BE NULL AND VOID.

PEP-CERTIFIED MBE (SELECT ONE) PARTICIPATION FORM

Instructions for Bidders / Proposers: *Submit one executed copy of this form for each Procurement Enhancement Plan (PEP)-Certified Firm whose participation you plan to count toward the project/contract's participation goal(s). This form must be included with your Bid. To split a PEP-Certified Firm's participation among more than one goal, submit a separate form for each goal (i.e. SBE, MBE, WBE, or DLSB).*

SECTION 1: BIDDER / PROPOSER INFORMATION

Name of Bidder / Proposer's Firm: L. J. DeWeese Co., Inc.

Address: 3616 Tipp-Cowlesville Rd

City: Tipp City State: OH ZIP: 45371

Telephone: 937-440-1736 Email: kldilbone@yahoo.com

Primes Base Bid $ 681,515.40

Name of Project: Salem Ave. Phase III Water Main Improvements

SECTION 2: PEP-CERTIFIED BUSINESS & PARTICIPATION INFORMATION

Name of PEP-Certified Firm: W. C. Jones Asphalt Paving Co., Inc.

PEP-Certified Firm's Tax ID#: [illegible]

Scope of Work to Be Performed by Certified Firm: Asphalt Paving

	Total Dollar Amount Towards Goal	Percentage Towards Goal	Amount to Be Paid to This PEP Firm for the Work Described:
Total Bid	$ 56,000.-	% 8.2%	$ 56,000.-
Materials	$ 39,200.-	% 5.7%	$ 39,200.-
Labor	$ 16,800.-	% 2.5%	$ 16,800.-

SECTION 3: AFFIRMATIONS

The above-named **Bidder / Proposer** affirms, under penalty of perjury, that it has negotiated in good faith with the above-named PEP-Certified Firm and will utilize the above-named PEP-Certified Firm for the type(s) of work and for the dollar amount(s) described above.

Signature of Bidder/Proposer's Authorized Agent

Kristen Dilbone

(Printed Name of Bidder/Proposer's Authorized Agent)

President

(Title of Bidder/Proposer's Authorized Agent) Date: 12/19/19

The above-named **PEP-Certified Firm** affirms, under penalty of perjury, that it has negotiated in good faith with the above-named Bidder / Proposer and that it will perform and is certified to perform the type(s) of work described above for the dollar amount(s) as stated above.

(Signature of PEP-Certified Firm's Authorized Agent)

(Printed Name of PEP-Certified Firm's Authorized Agent)

President

(Title of PEP-Certified Firm's Authorized Agent) Date: 12-17-2019

IF THE BIDDER/OFFEROR IS NOT AWARDED A CONTRACT, OR IF THE HRC DOES NOT APPROVE OF THE TERMS AS STATED ABOVE, THEN ANY AND ALL REPRESENTATIONS ON THIS PARTICIPATION FORM SHALL BE NULL AND VOID.

PEP-CERTIFIED MBE (SELECT ONE) PARTICIPATION FORM

Instructions for Bidders / Proposers: *Submit one executed copy of this form for each Procurement Enhancement Plan (PEP)-Certified Firm whose participation you plan to count toward the project/contract's participation goal(s). This form must be included with your Bid. To split a PEP-Certified Firm's participation among more than one goal, submit a separate form for each goal (i.e., SBE, MBE, WBE, or DLSB).*

SECTION 1: BIDDER / PROPOSER INFORMATION

Name of Bidder / Proposer's Firm: L.J. DeWeese Co., Inc.

Address: 3616 Tipp-Cowlesville Rd.

City: Tipp City State: OH ZIP: 45371

Telephone: 937-440-1736 Email: kldilbone@yahoo.com

Primes Base Bid $ $681,515.40

Name of Project: Salem Ave. Phase III Water Main Improvements

SECTION 2: PEP-CERTIFIED BUSINESS & PARTICIPATION INFORMATION

Name of PEP-Certified Firm: Ewol Trucking & Construction

PEP-Certified Firm's Tax ID#: 31-1478486

Scope of Work to Be Performed by Certified Firm: Trucking

	Total Dollar Amount Towards Goal	Percentage Towards Goal	Amount to Be Paid to This PEP Firm for the Work Described:
Total Bid	$ 28,000.—	% 4.1%	$ 28,000.—
Materials	$ —	% —	$ —
Labor	$ 28,000.—	% 4.1%	$ 28,000.—

SECTION 3: AFFIRMATIONS

The above-named **Bidder / Proposer** affirms, under penalty of perjury, that it has negotiated in good faith with the above-named PEP-Certified Firm and will utilize the above-named PEP-Certified Firm for the type(s) of work and for the dollar amount(s) described above.

Kristen Dilbone
(Signature of Bidder/Proposer's Authorized Agent)

Kristen Dilbone
(Printed Name of Bidder/Proposer's Authorized Agent)

President 12/19/19
(Title of Bidder/Proposer's Authorized Agent) (Date)

The above-named **PEP-Certified Firm** affirms, under penalty of perjury, that it has negotiated in good faith with the above-named Bidder / Proposer and that it will perform, and is certified to perform, the type(s) of work described above for the dollar amount(s) as stated above.

(Signature of PEP-Certified Firm's Authorized Agent)

Kelvin Lowe
(Printed Name of PEP-Certified Firm's Authorized Agent)

President 12/10/19
(Title of PEP-Certified Firm's Authorized Agent) (Date)

IF THE BIDDER/OFFEROR IS NOT AWARDED A CONTRACT, OR IF THE HRC DOES NOT APPROVE OF THE TERMS AS STATED ABOVE, THEN ANY AND ALL REPRESENTATIONS ON THIS PARTICIPATION FORM SHALL BE NULL AND VOID.

PEP PARTICIPATION COMMITMENT AND/OR WAIVER REQUEST FORM

Instructions for Bidders/Proposers: *Submit one (1) executed copy of this form with your Bid/Proposal.*

- *If Option 1 is selected you must also submit one (1) executed PEP-Certified SBE/MBE/WBE/DLSB Participation Form for each PEP-Certified Firm whose participation you plan to count toward the project/contract's participation goal(s).*
- *If Option 2 (WAIVER REQUEST) is selected you must also submit documentation of your Good Faith Efforts to the City of Dayton Human Relations Council (HRC) within two (2) business days of the Bid Opening / Proposal Due Date.* ***Bidders/Proposers will receive no further reminders about this deadline.***

The undersigned affirms that the Bidder/Proposer has satisfied the requirements of the Bid/RFP Specification in the following manner: *(Check the box for Option 1 and/or Option 2, complete the appropriate spaces, and sign below.)*

☒ **Option 1. The Bidder/Proposer has secured enough commitment(s) from one or more PEP-Certified Firms to meet or exceed the project's PEP participation goal(s).** The Bidder/Proposer is committed to a minimum of:

% SBE	20 % MBE	% WBE	% DLSB

participation on this contract, as detailed on the executed PEP-Certified SBE/MBE/WBE/DLSB Participation Form(s) submitted with this Bid/Proposal.

☐ **Option 2 (WAIVER REQUEST). The Bidder/Proposer is unable to meet the project's PEP participation goal(s) and requests that the following goal(s) be waived:** *(Check all that apply.)*

☐ SBE ☐ MBE ☐ WBE ☐ DLSB

The Bidder/Proposer's documentation of Good Faith Efforts to meet the participation goal(s) checked above must be submitted to the HRC within two (2) business days of the Bid Opening / Proposal Due Date. *The Bidder/Proposer will receive no further reminders about this deadline.*

A waiver will be granted based on a Bidder/Proposer's documented Good Faith Efforts, and only when the HRC determines that the Bidder/Proposer has completed all of the following activities:

1. *Solicited the interest of all PEP-Certified Firms having the capability to perform the work of the contract.* The Bidder/Proposer must solicit this interest at least ten (10) business days before the Bid Opening / Proposal Due Date in order to allow the PEP-Certified Firm sufficient time to respond to the solicitation. Electronic communication will not be deemed as sufficient Good Faith Efforts, if it is the sole method of communication used.
2. *Divided contract work items into economically feasible units to facilitate PEP participation,* even when the Bidder/Proposer might otherwise prefer to perform these work items with its own forces.
3. *Negotiated in good faith with PEP-Certified Firms,* and considered the firms' prices and capabilities as well as the contract goals. Rejected PEP-Certified Firms as being unqualified only for reasons based on a diligent investigation of their capabilities. The Bidder/Proposer's standing within its industry; membership in specific groups, organizations, or associations; and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes to reject or not solicit bids from particular PEP-Certified Firms.
4. *Provided interested PEP-Certified Firms with plans and specifications at no cost,* or directed them to the Greater Dayton Minority Business Assistance Center (Dayton MBAC) for information about the project's plans, specifications, and requirements at least ten (10) business days prior to the Bid Opening / Proposal Due Date in order to assist them in responding to a solicitation.
5. *Sought the Dayton MBAC's assistance* or used the services of community organizations; contractors' groups; local, state or federal business assistance offices; or similar organizations to find PEP-Certified Firms. Contacting the HRC for a list of certified companies will not be deemed as sufficient Good Faith Efforts.

NOTE: In determining whether a Bidder/Proposer has made Good Faith Efforts, the HRC may take into account the performance of other Bidders/Proposers in meeting the goal(s). For example, when the apparent low bidder fails to meet a participation goal but others meet it, the HRC may reasonably raise the question of whether, with additional reasonable efforts, the apparent low bidder could have met the goal.

Kristen Dilbone	L.J. Dewese Co. Inc.
(Signature of Bidder/Offeror's Authorized Agent)	(Name of Bidder/Proposer's Firm)
Kristen Dilbone	President — 12/19/19
(Printed Name of Bidder/Offeror's Authorized Agent)	(Title of Bidder/Offeror's Authorized Agent) — (Date)

BACK

City Manager's Report

7.

From 6450 - PW/Civil Engineering

Date February 26, 2020

Expense Type Award of Contract

Total Amount $2,193,817.73 thru 11/25/22

Supplier, Vendor, Company, Individual

Name R.B. Jergens Contractors, Inc.

Address 11418 North Dixie Drive
Vandalia, Ohio 45377

Fund Source(s)	Fund Code(s)	Fund Amount(s)
Jefferson Street Reconstruction	41228-6450-1424-54	$2,193,817.73

Includes Revenue to the City ☐ Yes ☑ No **Affirmative Action Program** ☑ Yes ☐ No ☐ N/A

Description

JEFFERSON STREET RECONSTRUCTION
(8% DBE PARTICIPATION GOAL/16.2% DBE PARTICIPATION ACHIEVED)
(FEDERAL CONSTRUCTION FUNDS)

This project shall reconstruct Jefferson Street from East Fourth Street to East Second Street in concrete pavement, including new curbs, sidewalks, driveways, street lighting, storm sewer catch basins, landscaping, and other work incidental thereto.

Six bids were received for this project. It is recommended that the contract be awarded to the lowest bidder, R.B. Jergens Contractors, Inc., in the amount of $2,193,817.73, the base bid. The estimated cost for the project was $2,060,000.00. The time bid for completion is November 25, 2020.

This project is being funded using Federal Construction Funds and State Issue I Funds.

A Certificate of Funds, Tabulation of Bids, ODOT's verification letter, Bid from the firm recommended for award, and location map are attached.

Signatures/Approval

Division

Keith Stuber for

Department

Tammy J. Clements

for City Manager

Approved by City Commission

Clerk

Date

FORM NO. MS-16

Updated 06/2016

CT20-2529

SECTION I - to be completed by User Department

NO DRAFT DOCUMENTS PERMITTED

X NEW CONTRACT ____ RENEWAL CONTRACT ____ CHANGE ORDER

Contract Start Date	February 26, 2020
Expiration Date	November 25, 2022
Original Commission Approval	$ 2,193,817.73
Initial Encumbrance	$ 2,193,817.73
Remaining Commission Approval	
Original CT/CF	$ -
Increase Encumbrance	$ -
Decrease Encumbrance	$ -
Remaining Commission Approval	$ -

Required Documentation

- X Initial City Manager's Report
- X Initial Certificate of Funds
- X Initial Agreement/Contract
- ____ Copy of City Manager's Report
- ____ Copy of Original Certificate of Funds

Amount: $ 2,193,817.73

Fund Code 41228 (Fund) 6450 (Org) - 1424 (Acct) - 54 (Prog) - ____ (Act) - ____ (Loc)

Amount: ____

Fund Code ____ (Fund) - ____ (Org) - ____ (Acct) - ____ (Prog) - ____ (Act) - ____ (Loc)

Amount: ____

Fund Code ____ (Fund) - ____ (Org) - ____ (Acct) - ____ (Prog) - ____ (Act) - ____ (Loc)

Amount: ____

Fund Code ____ (Fund) - ____ (Org) - ____ (Acct) - ____ (Prog) - ____ (Act) - ____ (Loc)

Attach additional pages for more FOAPALs

Vendor Name: R.B. Jergens Contractors, Inc. (937) 669-9799

Vendor Address: 11418 North Dixie Drive (Street) Vandalia (City) OH (State) 45377 (Zipcode + 4)

Federal ID: 31-1207962

Commodity Code: 91831

Purpose: Jefferson Street Reconstruction
(8% DBE Participation Goal) (Federal Construction Funds)

Contact Person: Keith Steeber, City Engineer — Public Works/Civil Eng. (Department/Division) — 333.3838 (Phone Number)

Originating Department Director's Signature: Keith Steeber — 2/11/2020 (Date)

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

C L Hafton — 2/18/2020

Finance Director Signature — Date

Jeffrey h Marshall — 2/17/2020 — CT20-2529

SA 02-13-2020

KB Keith

Dayton, Ohio

Department of Public Works

Bid Tabulation For: Jefferson Street Reconstruction

(8% DBE Participation Goal) (Federal Construction Funds)

Bid Opening Date:	Cost Estimate:	Estimated Time Of Completion:
January 23, 2020	$2,060,000.00	November 25, 2020

Bidders	Actual Amount Of Base Bid	Adjustment For Work Days	Adjustment For Comparison Purposes Only
***R.B. Jergens Contractors, Inc.**	$2,193,817.73	-0- November 25, 2020	$2,193,817.73
Double Jay Construction, Inc.	$2,331,790.00	-0- November 25, 2020	$2,331,790.00
Adleta Construction	$2,464,138.11	-0- November 25, 2020	$2,464,138.11
Milcon	$2,484,981.40	-0- November 25, 2020	$2,484,981.40
Sunesis Construction	$2,680,147.97	-0- November 25, 2020	$2,680,147.97
L.J. DeWeese Co., Inc.	$2,842,496.20	-0- November 25, 2020	$2,842,496.20

***Awarded**

Revised 9/14/98

ODOT received a DBE Utilization Plan from the apparent low bidder (ALB) & Certified DBE showing a bid amount of and an acceptable DBE Utilization Plan.

The DBE Plan for the subject project is acceptable as follows: **R.B. Jergens Contractors $2,193,817.73 x 8% = $175,505.42**

The DBE Goal will be met with participation from:

Crystal Brook performing SWPPP weekly and monthly inspections in the amount of $9,900.00
Security Fence Group performing electrical work in the amount of $344,419.72

Please remember that the DBE Goal is a percentage of the overall contract. If the project increases or decreases the dollar amount of the DBE Goal may change accordingly. Please let the district CCO and myself know if you should have any changes to the DBE Plan for the subject project.

As far as DBE goal is concerned you may now proceed with contract signing. Within 30 days of the prime contract execution (or before the date the DBE sub needs to start work – whichever comes first) the prime needs to have executed sub agreements/purchase orders for all DBEs submitted to the District CCO- (included in this email) for review and acceptance.

Julie Dick
Goal Attainment Coordinator
ODOT Division of Opportunity, Diversity & Inclusion
1980 W. Broad Street, MS: 3270, Columbus, Ohio 43223
(p) 614.644.5649; (m) 614.512.8895
transportation.ohio.gov

EXCELLENCE IN GOVERNMENT

CITY OF DAYTON, OHIO

DEPARTMENT OF PUBLIC WORKS

Bid Jefferson Street Reconstruction

(8% DBE Participation Goal)

(Federal Construction Funds)

Bidder R.B. Jergens Contractors, Inc.

11418 North Dixie Drive

Vandalia, Ohio 45377

Bid Bond Submitted Electronically

R.B. Jergens contractors Inc.

Line Item	Item Code	Item Description	UofM	Quantit	Unit Price	Extension
						$1,995,317.73
1	201	Stump Removed, Size 6" to 18"	EA	1	$162.82	$162.82
2	201	Tree Removed, Size 6" to 18"	EA	18	$379.93	$6,838.74
3	202	Catch Basin Removed	EA	19	$507.19	$9,636.61
4	202	Concrete Alley Removed	S.F.	570	$10.51	$5,990.70
5	202	Concrete Driveway Removed	S.F.	4085	$1.09	$4,452.65
6	202	Concrete Pavement Removed	S.Y.	390	$10.51	$4,098.90
7	202	Curb Removed	L.F.	1585	$2.81	$4,453.85
8	202	Light Pole Foundation Removed	EA	13	$436.87	$5,679.31
9	202	Luminaire Removed	EA	20	$107.03	$2,140.60
10	202	Manhole Removed	EA	2	$532.66	$1,065.32
11	202	Manhole Frame & Cover Removed	EA	41	$171.61	$7,036.01
12	202	Parking Meter Post Removed	EA	25	$140.72	$3,518.00
13	202	Pavement Removed (Asphalt on Concrete)	S.Y.	9432	$11.51	$108,562.32
14	202	Planter Removed	EA	2	$175.90	$351.80
15	202	Sidewalk Removed	S.F.	28765	$0.59	$16,971.35
16	202	Trash Receptacle Removed	EA	3	$84.70	$254.10
17	202	Tree Grate Removed	EA	27	$130.30	$3,518.10
18	203	Embankment (#2 Stone)	TON	325	$42.28	$13,741.00
19	203	Excavation	C.Y.	469	$17.45	$8,184.05
20	203	Excavation (Undercut)	C.Y.	250	$19.00	$4,750.00
21	304	Aggregate Base	C.Y.	2225	$43.85	$97,566.25
22	452	10" Plain Concrete Pavement	S.Y.	9670	$75.94	$734,339.80
23	453	Concrete Driveway, Class "MS" Concrete	S.F.	3976	$7.08	$28,150.08
24	608	Curb Ramp	S.F.	2200	$8.78	$19,316.00
25	609	Barrier Curb (12" w/4" Exposure)	L.F.	1306	$26.15	$34,151.90
26	611	ODOT Catch Basin, Type 6	EA	1	$1,763.10	$1,763.10
27	614	Maintaining Traffic	LUMP	1	$29,403.68	$29,403.68
28	623	Construction Layout Stakes and Surveying	LUMP	1	$14,220.20	$14,220.20
29	623	Monument Box Adjusted to Grade	EA	1	$559.54	$559.54
30	625	#4 AWG 600 Volt Distribution Cable	L.F.	7852	$3.23	$25,361.96
31	625	#12 AWG Pole and Bracket Cable	L.F.	1650	$2.10	$3,465.00
32	625	Conduit, 2", PVC, Concrete Encased	L.F.	2738	$5.43	$14,867.34
33	625	Conduit, Jacked or Drilled, 2", 725.04	L.F.	445	$68.31	$30,397.95
34	625	Connection, Fused Pull Apart	EA	68	$122.65	$8,340.20
35	625	Ground Rod	EA	30	$169.83	$5,094.90
36	625	Light Pole, Decorative w/Fixture, APP	EA	19	$4,579.73	$87,014.87
37	625	Light Pole, Type II	EA	1	$4,151.43	$4,151.43
38	625	Luminaire Arm, 12'	EA	6	$1,511.50	$9,069.00

39	625	Luminaire, LED, APP	EA	24	$579.29	$13,902.96
40	625	Pole Foundation, RTA Type P4	EA	2	$7,684.71	$15,369.42
41	625	Pole Foundation, RTA Type P5	EA	2	$7,361.91	$14,723.82
42	625	Pole Foundation, RTA Type P7	EA	6	$4,706.15	$28,236.90
43	625	Pole Foundation, Type II	EA	20	$2,254.10	$45,082.00
44	625	Pullbox, 17" x 30" x 24", 725.06	EA	9	$1,238.79	$11,149.11
45	625	Trench	L.F.	1784	$3.29	$5,869.36
46	630	Ground Mounted Support, No. 2 Post	L.F.	168	$11.00	$1,848.00
47	630	Removal of Ground Mounted Sign and Disposal	EA	32	$30.56	$977.92
48	630	Sign, Flat Sheet	S.F.	105	$21.99	$2,308.95
49	630	Sign Support Assembly, Pole Mounted	EA	19	$14.05	$266.95
50	632	Pedestrian Signal Head (LED), Type D2, Countdow	EA	8	$760.96	$6,087.68
51	632	Vehicular Signal Head, (LED), 3-Section, 12" Lens,	EA	6	$962.20	$5,773.20
52	633	Uninterruptable Power Supply (UPS)	EA	1	$7,846.94	$7,846.94
53	644	Center Line	L.F.	292	$1.25	$365.00
54	644	Channelizing Line, 8"	L.F.	1200	$0.98	$1,176.00
55	644	Crosswalk Line	L.F.	2900	$1.25	$3,625.00
56	644	Dotted Line, 6"	L.F.	118	$2.06	$243.08
57	644	Edge Line, 6"	L.F.	5874	$1.09	$6,402.66
58	644	Lane Line, 4"	L.F.	2080	$0.71	$1,476.80
59	644	Stop Line	L.F.	620	$3.42	$2,120.40
60	644	Transverse/Diagonal Line	L.F.	1620	$3.31	$5,362.20
61	647	Bike Lane Symbol Marking, Type B125	EA	16	$428.78	$6,860.48
62	647	Lane Arrow, Type B125	EA	5	$195.39	$976.95
63	653	Topsoil Furnished and Placed	C.Y.	5	$54.27	$271.35
64	659	Seeding and Mulching, APP	S.Y.	5	$5.43	$27.15
65	661	Deciduous Tree, 2" Caliper	EA	23	$325.66	$7,490.18
66	810	Excavation and Backfill for 10" Pipe w/Structural	L.F.	167	$45.77	$7,643.59
67	810	Excavation and Backfill for 12" Pipe w/Structural	L.F.	303	$51.99	$15,752.97
68	821	Reinforced Concrete Pipe, 12" Storm	L.F.	248	$17.22	$4,270.56
69	825	High Density Polyethylene Pipe, 6", Storm	L.F.	73	$23.05	$1,682.65
70	825	High Density Polyethylene Pipe, 8", Storm	L.F.	26	$37.45	$973.70
71	825	High Density Polyethylene Pipe, 10", Storm	L.F.	68	$50.62	$3,442.16
72	825	High Density Polyethylene Pipe, 12", Storm	L.F.	55	$60.89	$3,348.95
73	830	Manhole Type A Frame and Cover, Including Adju	EA	41	$508.23	$20,837.43
74	831	Catch Basin Type 3	EA	8	$3,282.12	$26,256.96
75	831	Catch Basin Type 3A	EA	6	$2,000.94	$12,005.64
76	831	Catch Basin Type C	EA	2	$3,425.60	$6,851.20
77	831	Catch Basin Type E	EA	1	$2,028.79	$2,028.79
78	832	Stormwater Pollution Prevention Plan	LUMP	1	$10,746.56	$10,746.56
79	833	Lamphole	EA	6	$546.08	$3,276.48
80	835	Plug Type C, 6"	EA	1	$1,439.89	$1,439.89
81	835	Plug Type C, 12"	EA	2	$1,439.89	$2,879.78
82	836	Catch Basin Adjusted to Grade	EA	1	$612.17	$612.17
83	846	Curb Box Adjusted to Grade	EA	35	$194.83	$6,819.05
84	SPL	Furnish Banner & Pole Bracket Set, and Install, AP	EA	11	$1,413.37	$15,547.07
85	SPL	Furnish Tree Grate and Install, APP	EA	16	$3,911.95	$62,591.20

86	SPL	Hardwood Mulch, APP	C.Y.	30	$43.42	$1,302.60
87	SPL	Monolithic Curb and Sidewalk, APP	S.F.	24600	$7.57	$186,222.00
88	SPL	Parking Meter Post, APP	EA	25	$163.82	$4,095.50
89	SPL	Parking Meter, APP	EA	25	$1,090.24	$27,256.00
90	SPL	Remove and Reinstall Existing Banner	EA	2	$274.68	$549.36
91	SPL	Remove and Reinstall Existing Bike Rack	EA	6	$186.23	$1,117.38
92	SPL	Remove and Reinstall Existing Bus Shelter & Stati	EA	1	$3,531.55	$3,531.55
93	SPL	Remove and Reinstall Existing Trash Receptacle	EA	10	$55.87	$558.70
94	SPL	Remove and Reset Brick Pavers, APP	S.F.	280	$17.90	$5,012.00
95	SPL	Remove and Store Brick Pavers, APP	S.F.	885	$2.47	$2,185.95
						$10,000.00
96	625	Maintain Existing Lighting	LUMP	1	$10,000.00	$10,000.00
						$3,500.00
97	832	Erosion Control Allowance	LUMP	1	$3,500.00	$3,500.00
						$10,000.00
98	SPL	City Owned Vault Repair Allowance	LUMP	1	$10,000.00	$10,000.00
						$175,000.00
99	SPL	Contingency Allowance	LUMP	1	$175,000.00	$175,000.00
						$181,587.82
100	202	Grind Existing Pavement	S.Y.	12947	$2.28	$29,519.16
101	407	Non-Tracking Tack Coat	GAL	1100	$3.26	$3,586.00
102	442	Asphalt Concrete Surface Course, 12.5 MM, Type	TON	1090	$97.70	$106,493.00
103	623	Monument Box Adjusted to Grade	EA	2	$559.54	$1,119.08
104	836	Major Manhole Adjusted to Grade	EA	20	$999.76	$19,995.20
105	836	Minor Manhole Adjusted to Grade	EA	30	$508.23	$15,246.90
106	846	Valve Box Adjusted to Grade	EA	20	$254.12	$5,082.40
107	836	Lamphole Adjusted to Grade	EA	1	$546.08	$546.08
						$89,409.15
108	SPL	Colored and Stamped Concrete Crosswalk, APP	S.Y.	643	$139.05	$89,409.15
						$64,439.59
109	202	Concrete Pavement Removed	S.Y.	455	$37.74	$17,171.70
110	203	Excavation (Undercut)	C.Y.	40	$114.73	$4,589.20
111	304	Aggregate Base	C.Y.	40	$80.59	$3,223.60
112	452	10" Plain Concrete Pavement	S.Y.	455	$85.78	$39,029.90
113	846	Valve Box Adjusted to Grade	EA	3	$141.73	$425.19
						$732,240.00
114	SPL	Concrete Fibers, APP	S.Y.	10125	$72.32	$732,240.00
						$170,445.70
115	SPL	Decorative Fence, APP	L.F.	1046	$162.95	$170,445.70
						$23,304.70
116	SPL	Treating Concrete Surface with SRS	S.Y.	9670	$2.41	$23,304.70
						$25,000.00
117	SPL	Wayfinding Sign Allowance ($25,000)	EA	1	$25,000.00	$25,000.00
						$2,193,817.73

Bidder is

An Individual
Firm Name _____

Business Address _____

Telephone _____

Partnership
Firm Name _____

Members of Firm and
Their Business Address _____

_____

_____

Telephone _____

Corporation
Name R.B. Jergens Contractors, Inc.

State of Incorporation Ohio

Name and Title of
Officers with Authority
to Sign Contract William Jergens - President, Kevin Harshberger - Vice President

Vic Roberts - Vice President, Andrew Jergens - Secretary, Ruth Jergens - Treasurer

Home Office Address 11418 North Dixie Drive, Vandalia, Ohio 45377

Local Address 11418 North Dixie Drive, Vandalia, Ohio 45377

Telephone (937) 669-9799 Fax (937) 669-0301

E-mail greg.siefring@rbjergens.com

Federal I.D.# 31-1207962

Dated this 23 day of January, 20 20

Bidder: R.B. Jergens Contractors, Inc.
(Person, Firm, or Corporation)

By: _____

Title: Vic Roberts, P.E., Vice President

6. FEDERALLY REQUIRED EEO CERTIFICATION FORM

The bidder hereby certifies that he has , participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that he has , filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements. ***The Bidder must select the appropriate "has or has not" above.***

CITY OF DAYTON, OHIO
Department of Public Works

Responsible Contractor Bidding Requirements
(Form 1 of 2)

In accordance with Ordinance No. 31487-16 of the City of Dayton, Ohio Revised Code of General Ordinances,

I, Vic Roberts, P.E. hereby certify that
(print name – an Officer of the company)

R.B. Jergens Contractors, Inc. meets the following Contractor requirements
(company)
relating to this City of Dayton construction project.

Check All That Apply:

- [x] Comply with all City of Dayton income tax obligations and requirements
- [x] Maintain worker's compensation insurance for all employees as required by the State of Ohio
- [x] Comply with State or Federal prevailing wage rate laws, as applicable and required by the funding of this project
- [x] Comply with the State of Ohio Bureau of Worker's Compensation Drug Free Workplace Policy

By: _____
(signature)

Title: Vic Roberts, P.E., Vice President

Date: 1/23/2020

CITY OF DAYTON, OHIO
Department of Public Works

Responsible Contractor Bidding Requirements
(Form 2 of 2)

A. Please provide a complete listing of the fringe benefits provided to employees expected to be utilized at the project site, including, but not limited, to health insurance and retirement benefits. {Reference to benefits traditionally provided on past, similar projects can be made.}

R.B. Jergens is a union contractor.

All benefits are paid through the union

the employees are a member of.

(Operators, Laborers)

B. Please identify any "bona fide apprentice training program" in which this company participates in accordance with the Ohio Bureau of Apprenticeship Training and the U. S. Department of Labor.

R.B. Jergens is a union contractor.

All Apprenticeship Training is through the

union the employee is a member of.

(Operators, Laborers)

C. Please provide a list of subcontractors whose quotes or information are included or used in the bid submitted for this project.

A&A Safety

Crystal Brook, LLC

John R. Jurgensen Construction

South Paw LLC

Brumbaugh Engineering

Donley Concrete Cutting & Drilling

Security Fence Group

CERTIFICATION
OF COMPLIANCE WITH OHIO REVISED CODE SECTION 3517.13
FOR CONTRACTS IN EXCESS OF FIVE HUNDRED DOLLARS ($500.00)

STATE OF OHIO,
COUNTY OF Montgomery ,ss:

Vic Roberts, P.E. being duly sworn, deposes and states as follows:

1. I am duly authorized to make the statements contained herein on behalf of R.B. Jergens Contractors, Inc. ("the Contracting Party").

2. The Contracting Party is a/an (select one):

   Individual, partnership, or other unincorporated business association (including without limitation, a professional association organized under Ohio Revised Code Chapter 1785), estate, or trust.

   Corporation organized and existing under the laws of the State of Ohio.

   Labor organization.

3. I hereby affirm that the Contracting Party and each of the individuals specified in R.C. 3517.93(I)(3) (with respect to non-corporate entities and labor organizations) or R.C. 3517.93(J)(3) (with respect to corporations) are in full compliance with the political contributions limitations set forth in R.C. 3517.93(I) and (J), as applicable. I understand that a false representation on this certification constitutes a felony of the fifth degree pursuant to R.C. 3517.93(AA) and 3517.992(R)(3). Any contract that contains a falsified certification shall be rescinded.

By: _____

Title: Vic Roberts, P.E., Vice President

CITY OF DAYTON
CONTRACTOR NON-COLLUSION AFFIDAVIT
TO BE SUBMITTED WITH THE BID

STATE OF Ohio)
) SS:
COUNTY OF Montgomery)

Vic Roberts, P.E., being first duly sworn deposes and states that:

(1) He/she is Vice President of
(owner, partner, officer, representative, or agent)
R.B. Jergens Contractors, Inc. that
(business or organization name)

(2) He/She is fully informed respecting the preparation and contents of the attached Bid and all pertinent circumstances respecting such Bid.

(3) Such offering is genuine and is not a collusive or sham offering

(4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly with any other Bidder, firm or person to submit a sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from offering in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Dayton, its employees, or citizens.

(5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest including the affiant.

SIGNED

Vic Roberts, P.E., Vice President

TITLE

Contract Number:	6621109
Contractor ID:	6648407
Bond ID:	SOH20124043
BondType:	0001
BondForm:	Bid Bond in accordance with Contract Specifications
BidDate:	1/23/2020
JobDescription:	Jefferson Street Reconstruction Project
BidSecurity:	Ten Percent Of Total Bid (10%)---
BidSecurityPercent:	10
BidSecurityMaximum:	

/

AFFIRMATIVE ACTION PROGRAM
EQUAL EMPLOYMENT OPPORTUNITY

PROJECT: Jefferson Street Reconstruction — Dayton, Ohio

NAME — LOCATION

During the performance of this contract:

R.B. Jergens Contractors, Inc.	11418 N. Dixie Dr., Vandalia, OH 45377	937-669-9799 / 937-669-0301
CONTRACTOR	ADDRESS	TELEPHONE / FAX

being the general contractor, assumes the responsibility and obligation to institute an Affirmative Action Program which complies with revised City Ordinances 24059 and 26090 and Executive Order 11246 on any city, federal or federally-assisted construction project, to insure Equal Employment Opportunity regardless of race, color, religion, sex, national origin, ancestry, place of birth, age, or marital status.

The successful contractor using one or more trades of construction employees must comply with Part I of these Affirmative Actions Program conditions to each such trade.

Part I: Requirements. To be eligible for award of a contract under this Invitation to Bid, contractors must certify as prescribed in Paragraph 1a, of the certification specified in Part II hereof that it adopts the minimum goals and timetables of minority and female worker utilization, and specific Affirmative Action steps set forth in Sections 1 and 2 of this Part I.

1.) **Goals & Timetables.** The goals of minority and female worker utilization required of the contractor are applicable to each trade which will be used on any project in Greene, Miami, Montgomery, and Preble Counties, OH (hereinafter the Economic Area).

The required goals and timetables are as follows:

	Goals of Minority Worker Utilization Expressed in Percentage Terms
From 1/1/2000 to Present	11.5%

	Goals of Female Worker Utilization Expressed in Percentage Terms
From 4/1/80 to Present	6.9%

The percentage goals of minority and female worker utilization are expressed in terms of working hours of training and employment as a proportion of the total working hours to be worked by the contractor's entire work force in that trade on all projects (both federal and non-federal) in the Economic Area during the performance of this contract. The working hours for minority and female work and training must be uniform throughout the length of this contract, on all projects and for each of the trades. Further, the transfer of minority and/or female or trainee from employer-to-employer or from project-to-project for the sole purpose of meeting the contractor's goals shall be a violation of this Affirmative Action Program.

In reaching the goals for minority and female utilization, every effort shall be made to find and employ qualified journey-persons. Provided, however, and pursuant to the requirements of the Department of Labor Regulations, 29 CFR 5a.3, twenty-five percent (25%) of apprentices or trainees shall be employed on all projects and shall be in their first year of training, where feasible.

In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and/or trainees at the completion of the training subject to the availability of employment opportunities. Apprentices and trainees must be trained pursuant to programs which have been approved by The U.S. Department of Labor and/or The State of Ohio.

A contractor shall be deemed to be in compliance with the terms and requirements of this Part I by the employment and training of minorities and females in the appropriate percentage of the contractor's aggregate work force in the Ecomonic Area for each trade for which it is committed to the goals under Part I.

However, no contractor shall be found to be in noncompliance solely on account of the contractor's failure to meet the goals and timetables, but such contractor shall be given the opportunity to demonstrate that all of the specific Affirmative Action steps specified in Part I have been instituted and has made every "good faith" effort to make these steps work towards the attainment of the goals and timetables.

2.) **Specific Affirmative Action Steps**. A contractor subject to Part I, must engage in Affirmative Action directed at increasing minority and female utilization, which is at least as extensive and as specific as the following steps:

a) The contractor shall notify community organizations that the contractor has employment opportunities available and shall maintain records of the organizations' responses.

b) The contractor shall maintain a file of the names and addresses of each minority and female referred and what action was taken with respect to each referred worker. If the worker was not employed, the reason therefor. If the worker was not sent to the union hiring hall for referral, the contractor's file shall document this and the reasons therefore.
c) The contractor shall promptly notify the Dayton Human Relations Council (HRC) when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority and/or female, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

d) The contractor should participate in training programs in the area; especially those approved by the U.S. Department of Labor and/or the State of Ohio.

e) The contractor shall disseminate the EEO Policy within the organization by including it in any policy manual, by publicizing it in company newspapers, annual reports, etc.; by conducting staff, employee and union representatives' meetings to explain and discuss the policy; by posting of the policy; and by specific review of the policy with minority and female employees.

f) The contractor shall ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to all projects (both federal and non-federal) in the Economic Area during the performance of its contract or subcontract.

g) The contractor shall make specific and constant personal (both written and oral) recruitment efforts directed at all minority and female organizations, schools, minority and female recruitment training organizations with the Dayton Economic Area.

h) The contractor shall make specific efforts to encourage present minority and female employees to recruit other minorities and females.

i) The contractor shall validate all tests and other selection requirements.

j) The contractor should develop on-the-job training opportunities; participate and assist in any association or employer-group training programs relevant to the contractor's employees needs consistent with its obligations under Part I.

k) The contractor shall evaluate all minority and female personnel for promotional opportunities and encourage employees to seek such opportunities.

l) The contractor shall ensure that seniority practices, job classifications, etc., do not have a discriminatory effect.

m) The contractor shall make certain that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

n) The contractor will monitor all personnel activities to ensure that its EEO Policy is being carried out.

o) The successful contractor shall solicit bids for work to be performed on this project under a subcontract from minority and female contractors and other business associations.

3.) Nothing herein is intended to relieve any contractor during the term of this project from compliance with any other local bid requirements. Further, it shall be the responsibility of each contractor to comply with all terms, conditions, and provisions of the Affirmative Action Programs.

Part II: Contractor's Certification. A contractor will not be eligible for award of a contract under this Invitation to Bid, unless such contractor has submitted as a part of the bid the following certification, which will be deemed a part of the resulting contract:

CONTRACTOR'S CERTIFICATION

R.B. Jergens Contractors, Inc. (Contractor) certifies that:

1. The following listed construction trades will be used in performance of this project.

Operators

Laborers

a) as to those trades set forth in the preceding paragraph one hereof, it adopts the minimum minority and female utilization goals and the specific Affirmative Action steps contained in this Affirmative Action Program. Compliance is measured in each trade of the contractor's aggregate work force for all construction work (both federal and non-federal) in the four Counties (Greene, Miami, Montgomery and Preble) subject to this Affirmative Action Program; and

b) the successful contractor will obtain from each subcontractor and submit to the contracting or administering agency prior to the award of any subcontract under this contract, the subcontractor certification required by the Affirmative Action Program.

SIGN: _____

(Signature of Authorized Representative of Bidder) Vic Roberts, P.E., Vice President

FAILURE TO SIGN AND SUBMIT THIS DOCUMENT WITH YOUR BID WILL RESULT IN YOUR BID NOT BEING READ

DEMONSTRATION OF GOOD FAITH EFFORTS FORM

Instructions for Bidders: *Submit one executed copy of this form with your Bid, along with:*

- *An executed DBE Participation Form (Letter of Intent) for each certified Disadvantaged Business Enterprise (DBE) firm whose participation you plan to count toward the project's DBE participation goal, and*
- *Documentation of your good faith efforts, if applicable.*

SECTION 1: BIDDER'S AFFIRMATION OF GOOD FAITH EFFORTS

The undersigned Bidder has satisfied the DBE participation requirements of the Bid Specification in the following manner:

(Check one of the following boxes, complete the appropriate spaces, and submit the required documents with your Bid.)

☑ **The Bidder has secured enough DBE participation to meet or exceed the project's DBE participation goal.**

The Bidder is committed to a minimum of 8 % DBE participation on this project, as described on the enclosed DBE Participation Form(s).

☐ **The Bidder made good faith efforts to meet the project's DBE participation goal but was unable to do so.**

However, the Bidder is committed to a minimum of _____% DBE participation on this project, as described on the enclosed DBE Participation Form(s). The Bidder is also enclosing documentation of its good faith efforts with this Bid.

SECTION 2: BIDDER'S SIGNATURE

(Signature of Bidder's Authorized Agent) — (Date) 01/23/2020

Vic Roberts, P.E.

(Printed Name of Bidder's Authorized Agent)

Vice President

(Title of Bidder's Authorized Agent)

R.B. Jergens Contractors, Inc.

(Bidding Firm's Name)

DBE PARTICIPATION FORM (LETTER OF INTENT)

Instructions for Bidders: Submit one executed copy of this form for each certified Disadvantaged Business Enterprise (DBE) firm whose participation you plan to count toward the project's DBE participation goal. This form must be included with your Bid.

SECTION 1: BIDDER INFORMATION

Name of Bidder's Firm: R B Jergens Contractors, Inc.

Address: 11418 N Dixie Dr

City: Vandalia **State:** OH **ZIP:** 45377

Telephone: 937-669-9299 **Email:** ryan.wheeler@rbjergens.com

SECTION 2: DBE FIRM & PARTICIPATION INFORMATION

Name of DBE Firm: Security Fence Group, Inc.

DBE Firm's Tax ID#: 31-1276340

Address: 4260 Dane Ave

City: Cincinnati **State:** OH **ZIP:** 45223

Telephone: (513)681-3700 **Email:** cfrankenstein@sfence.com

Name of Project: Jefferson St. Reconstruction

Type(s) of Work to Be Performed by This DBE Firm If Bidder is Awarded*:	Amount to Be Paid to This DBE Firm for the Work Described*:
Base Bid: Electrical + Signs	$ 334,419.72
Alternate ~~#1~~ #5: Decorative Fence, APP	$ 154,808.00
Alternate #2:	$
Alternate #3:	$

** IF BID INCLUDES MORE THAN THREE (3) ALTERNATES, ATTACH ADDITIONAL PAGES AS NEEDED.*

SECTION 3: AFFIRMATIONS

The above-named **Bidder** affirms, under penalty of perjury, that it has negotiated in good faith with the above-named DBE firm and will utilize the above-named DBE Firm for the type(s) of work and for the dollar amount(s) described above.

(Signature of Bidder's Authorized Agent)

Vic Roberts P.E. Vice President
(Printed Name of Bidder's Authorized Agent)

Vice President (Title of Bidder's Authorized Agent) 1/23/20 (Date)

The above-named **DBE Firm** affirms, under penalty of perjury, that it has negotiated in good faith with the above-named Bidder and that it will perform, and is certified to perform, the type(s) of work described above for the dollar amount(s) as stated above.

(Signature of DBE Firm's Authorized Agent)

Angela Case
(Printed Name of DBE Firm's Authorized Agent)

Corporate Secretary (Title of DBE Firm's Authorized Agent) 1-22-2020 (Date)

IF THE BIDDER IS NOT AWARDED A CONTRACT, OR IF THE HRC DOES NOT APPROVE OF THE TERMS AS STATED ABOVE, THEN ANY AND ALL REPRESENTATIONS ON THIS PARTICIPATION FORM SHALL BE NULL AND VOID.

OHIO DEPARTMENT OF TRANSPORTATION

Confirmation Page

Please Confirm that you are ready to submit the DBE Use List Form.

Total Project Bid Amount: $ 2193817.73

DBE Committment Total: $ 554775.10

DBE Percentage Met: $ 25.29

Select the Submit DBE Bid Form Button to proceed or the Previous Button to continue editing the docu

Previous

Jefferson Street Reconstruction

DAYTON
GEOGRAPHIC INFORMATION SYSTEM

Disclaimer: Map and parcel data are believed to be accurate, but accuracy is not guaranteed. This is not a legal document and should not be substituted for a title search, appraisal, survey, or for zoning verification.

BACK

City Manager's Report

8.

From **6550 - RYS/Golf**

Date **February 26, 2020**

Expense Type **Contract Modification**

Total Amount **$22,000.00 (thru 3/31/2021)**

Supplier, Vendor, Company, Individual

Name **CK3 LLC**

Address **3383 Chuck Wagner Lane**
Dayton, OH 45414

Fund Source(s)	Fund Code(s)	Fund Amount(s)
Golf Operating Fund	59000-6550-24111-56	$22,000.00

Includes Revenue to the City ☑ Yes ☐ No **Affirmative Action Program** ☐ Yes ☐ No ☑ N/A

Description

SERVICE AGREEMENT – SECOND RENEWAL
FOR FOOD AND BEVERAGE CONCESSIONS AT KITTYHAWK GOLF CENTER

The Department of Recreation and Youth Services Golf Division is requesting approval to exercise a one-year renewal agreement with CK3 LLC for Food and Beverage Concessions at Kittyhawk Golf Center. The agreement renewal shall begin on March 31, 2020 and expire on March 31, 2021.

The contractor agrees to pay the City a percentage concession fee of ten percent (10%) of operator's gross revenues. Gross revenues shall not include tips/gratuities and any federal, state and local excise or sales tax.

The Law Department has reviewed and approved this agreement as to form and correctness.

A Certificate of Revenue for the agreement is attached in order to receive all revenue generated.

Signatures/Approval

Kelly Pressel
Division

Stephan C Mandlus for RLW
Department

Tommy P Clements
for City Manager

Approved by City Commission

Clerk

Date

FORM NO. MS-16

Updated 8/2016

CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name CK3 LLC

Address 3383 Chuck Wagner Ln

City Dayton State OH Zip+4 45414 -

Customer # _____ Address Location # G1

Federal ID# 83-2946356

Revenue Information: Fund 59000 Organization 6550 Revenue 24111 Program 56

Contract Information: Contract Start Date 3/31/2020 Contract Expiration Date 3/31/2021

Billing Information: Rate: _____ Arrears X Pre-bill _____

Monthly (1st month of billing) April 2020

Quarterly (1st month of quarter) _____

Semi-annual (1st month of half) _____

Annual (1st month of billing) _____

Other (explain) _____

Rate Change Date _____ Rate Change Amount _____

Description of Services (wording on invoice):

Contractor shall pay percentage concession fee (PCF) monthly based on 10% of gross revenue. On or before the 15th of each month, Contractor will submit monthly statement to Golf with PCF payment. Golf will Pay-in monthly payments through the department's POS system.

Departmental Approval Stephen C Mullins 2/4/2020 for RLW

TO BE COMPLETED BY FINANCE

Revenue Contract Number 3-6356 Auditor Latonna Jones Date 2/4/2020

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

Director of Finance _____

SECOND RENEWAL TO KITTYHAWK GOLF COURSE FOOD AND BEVERAGE CONCESSION AGREEMENT

This **SECOND RENEWAL TO KITTYHAWK GOLF COURSE FOOD AND BEVERAGE CONCESSION AGREEMENT** ("Second Renewal"), entered into this ____ day of _____, 2020, is between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio, ("City") and CK3 LLC., an Ohio limited liability company created and existing under the laws of the State of Ohio ("Operator").

WITNESSETH THAT:

WHEREAS, City and Varikay Enterprises, LLC. entered into the Kittyhawk Golf Course Food and Beverage Concession Agreement on the 23rd day of March, 2016 ("Agreement"); and,

WHEREAS, Varikay Enterprises, LLC. assigned its rights and obligations under the Agreement to Operator and the City consented to this assignment by the Assignment and Assumption of Lease; Consent by Landlord on 30th day of January, 2019 ("Assignment"); and,

WHEREAS, City and Operator desire to renew the terms of the Agreement and Operator is willing to provide the services in accordance with the terms of the Agreement.

NOW, THEREFORE, the City and Operator hereby agree as follows:

Section 1. Pursuant to Article III- Term and Renewal, subsection B., the City and Operator agree to renew the terms and condition of the Agreement for an additional one (1) year term. The renewal term shall commence on March 31, 2020, and shall terminate on March 31, 2021, unless earlier terminated or renewed pursuant to the terms of the Agreement.

Section 2. Except as modified by this Second Renewal and any other prior amendments, assignments, or renewals, the Agreement between the City and Operator remains unchanged and in full force and effect.

[THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF the City and Operator, each by a duly authorized representative, have executed this Second Renewal as of the day and date first set forth above.

THE CITY OF DAYTON, OHIO

_____
City Manager

CK3, LLC.

By: _____

Print: Christina Koogler

Title: owner Operations manager

APPROVED AS TO FORM AND CORRECTNESS:

_____
City Attorney mwg

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

_____, 2020

Min. / Bk. _____ Pg. _____

_____
Clerk of the Commission

BACK

City Manager's Report

9.

From **3210 - Aviation/AP Admin & Finance**

Date **February 26, 2020**

Expense Type **Lease Agreement**

Total Amount **$94,800.00 thru 2/28/25**

Supplier, Vendor, Company, Individual

Name **Delta Air Lines, Inc.**

Address **Hartsfield-Atlanta International Airport**
Dept. 877, 4SW24
Atlanta, GA 30354

Fund Source(s)	Fund Code(s)	Fund Amount(s)
Aviation Operating	51000-3213-23203-43	$40,800.00
Aviation Operating	51000-3213-23395-43	$54,000.00

Includes Revenue to the City ☑ Yes ☐ No **Affirmative Action Program** ☐ Yes ☐ No ☑ N/A

Description

Ground Service Maintenance Facility Lease

The Department of Aviation requests permission to enter into a Ground Service Maintenance Facility Lease ("Lease") with Delta Air Lines, Inc. ("Delta") for a 1,800 square foot building situated on 34,000 square feet of ground space (collectively "Premises") having the address of 3701 Cargo Road at the James M. Cox Dayton International Airport ("Airport"). Delta provides scheduled commercial transportation by air of persons, property, mail, and/or cargo at the Airport. Under this Lease, Delta will use the Premises for ground vehicle and service equipment maintenance, as part of its authorized business operations.

If approved, Delta will pay a total of $94,800.00 annually ($40,800.00 for the ground space and $54,000.00 for the commercial space) during the initial five-year term. Delta may elect to renew the Lease for two (2) five-year periods. Renewal rates will increase no less than 3% for each five-year renewal period.

The Department of Law has reviewed and approved the Lease as to form and correctness.

A Certificate of Revenue is attached.

Signatures/Approval

Division

Department

City Manager

Approved by City Commission

Clerk

Date

FORM NO. MS-16

Updated 8/2016

CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name Delta Air Lines, Inc.

Address Hartsfield-Atlanta International Airport - Dept. 877,4SW24

City Atlanta State GA Zip+4 30354 -

Customer # _____ Address Location # _____

Federal ID# 58-0218548

Revenue Information: Fund 51000 Organization 3213 Revenue 23203 Program 43

Contract Information: Contract Start Date 3/1/2020 Contract Expiration Date 2/28/25 H/O& Renewals

Billing Information: Rate: $680.00 Arrears _____ Pre-bill X

Monthly (1st month of billing) March 2020

Quarterly (1st month of quarter) _____

Semi-annual (1st month of half) _____

Annual (1st month of billing) _____

Other (explain) _____

Rate Change Date *3/1/2025 **3/1/2030 Rate Change Amount *$699.83 **719.67

Description of Services (wording on invoice): Airline Ground Lease at the Dayton International Airport

Please note rate changes required; Holding Over Page 17

Initial 5-yr. Term 34,000 sf at $0.24 psf/year = $8,160.00/12=$680.00/mo.

*3/1/25: First 5-yr Renewal Term 34,000 sf at $0.247 psf/year=$8,398.00/12=$699.83/mo.

**3/1/30: Second 5-yr Renewal Term 34,000 sf at $0.254 psf/year=$8,636.00/12=$719.67/mo.

Departmental Approval _____

TO BE COMPLETED BY FINANCE

Revenue Contract Number 1-8548 Auditor Katenna Jones Date 2/11/2020

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

Director of Finance _____ 2/14/2020

CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name Delta Air Lines, Inc.

Address Hartsfield-Atlanta International Airport - Dept. 877,4SW24

City Atlanta State GA Zip+4 30354 -

Customer # Address Location #

Federal ID# 58-0218548

Revenue Information: Fund 51000 Organization 3213 Revenue 23395 Program 43

Contract Information: Contract Start Date 3/1/2020 Contract Expiration Date 2/28/25 H/O& Renewals

Billing Information: Rate: $900.00 Arrears Pre-bill X

Monthly (1st month of billing) March 2020

Quarterly (1st month of quarter)

Semi-annual (1st month of half)

Annual (1st month of billing)

Other (explain)

Rate Change Date *3/1/25 **3/1/30 Rate Change Amount *927.00 **954.00

Description of Services (wording on invoice): Commercial space rent at the Dayton International Airport

Please note rate changes required; Holding Over Page 17

Initial 5-yr Term 1,800 sf at $6.00 psf/year=$10,800.00/12=$900.00/mo.

**3/1/25: First 5-yr Renewal Term 1,800 sf at $6.18 psf/year=$11,124.00/12=$927.00/mo.

**3/1/30: Second 5-yr Term Renewal 1,800 sf at $6.36 psf/year=$11,448.00/12=$954.00/mo.

Departmental Approval

TO BE COMPLETED BY FINANCE

Revenue Contract Number 1-8548-1 Auditor Katenna Jones Date 2/11/2020

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

Director of Finance 2/14/2020

CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name Delta Air Lines, Inc.

Address Hartsfield-Atlanta International Airport - Dept. 877,4SW24

City Atlanta State GA Zip+4 30354 -

Customer # Address Location #

Federal ID# 58-0218548

Revenue Information: Fund 51000 Organization 3213 Revenue * Program 43

Contract Information: Contract Start Date 3/1/2020 Contract Expiration Date 2/28/25 H/O& Renewals

Billing Information: Rate: Arrears X Pre-bill

Monthly (1st month of billing)

Quarterly (1st month of quarter) July (Water & Sewer)

Semi-annual (1st month of half) July (Property Tax)

Annual (1st month of billing)

Other (explain)

Rate Change Date N/A Rate Change Amount N/A

Description of Services (wording on invoice):

Please Note Holding Over Page 17

Water & Sewer Charges @ Dayton Intl. Airport *23204

Cost of Property Taxes @ Dayton Intl. Airport *23207

Departmental Approval

TO BE COMPLETED BY FINANCE

Revenue Contract Number 1-8548-2 Auditor Katenna Jones Date 2/11/2020

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

Director of Finance 2/14/2020

GROUND SERVICE
EQUIPMENT FACILITY LEASE

(Delta Air Lines, Inc.)

This **GROUND SERVICE EQUIPMENT FACILITY LEASE**, (this "Lease"), is made and entered into this _____ day of _____, 20__, ("Effective Date") between the City of Dayton, Ohio ("Lessor"), a municipal corporation in and of the State of Ohio, and Delta Air Lines, Inc. ("Lessee"), a Delaware corporation authorized to conduct business in the State of Ohio.

WITNESSETH THAT:

WHEREAS, Lessor is the owner and operator of the improved real property, known and referred to as the James M. Cox Dayton International Airport (the "Airport"), situated in the City of Dayton, Counties of Montgomery and Miami, State of Ohio; and,

WHEREAS, Lessee is engaged in the business of scheduled commercial transportation by air of persons, property, mail, and/or cargo provided for under the Airport Operating and Terminal Building Occupancy Permit (the "Permit"); and,

WHEREAS, Lessee desires to lease the ground service equipment facility to support its airline transportation business; and,

WHEREAS, Lessor deems it advantageous to itself and the operation of the Airport to lease said premises and facilities and all improvements thereon to Lessee under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreement herein contained by and between the parties hereto, it is agreed as follows:

ARTICLE I – DESCRIPTION OF LEASED PROPERTY

A. Lessor leases to Lessee the ground service equipment facility located at the Airport and having the address of 3701 Cargo Road, which facility is situated on 34,000 square feet of ground space ("Ground Space") and containing a building having approximately 1,800 square feet of office and warehouse space ("Building", and, the Building and the Ground Space collectively referred to as the "Premises"). The exact location of the Premises at the Airport is depicted in Exhibit A, which is attached hereto and incorporated herein.

B. Lessee will have the right to operate and use all appurtenances, equipment, and fixtures located and/or situated upon or otherwise serving the Premises.

C. Lessee represents and warrants that it has inspected the Premises and all appurtenances, equipment, and fixtures therein and, subject to Lessor's obligations and express representations and warranties herein, accepts same on an "as-is" basis. Except as may be expressly set forth herein, Lessor makes no representation or warranty as to such appurtenances, equipment, and/or fixtures, their fitness for a particular or merchantability or condition. Subject to Lessor's obligations herein, Lessee is responsible for use, operation, replacement, repair, and maintenance of all appurtenances, equipment, or fixtures.

ARTICLE II – USE OF PREMISES

A. Lessee shall have the exclusive use of the Premises to operate an aeronautical ground service equipment maintenance facility in support of its airline transportation business at the Airport and other uses ancillary thereto ("Permitted Uses"). Nothing contained in this Lease shall be construed as allowing Lessee to operate scheduled or non-scheduled commercial air transportation services which are not specifically authorized under the Permit or its successor. No other use of the Premises shall be permitted unless Lessor's Director of Aviation approves such alternative use(s) in writing.

B. Lessee shall not, at any time, cause the Premises to become vacant for more than ninety (90) days without the prior written consent of Lessor, unless such vacancy is the result of force majeure, fire, or other damage or other such event beyond the reasonable control of Lessee. Additionally, failure to actively use the Premises for ninety (90) days as the result of (1) a work stoppage by Lessee's employees, or (2) the repair or restoration or making of alterations, additions, and changes to the Premises, will not constitute a default or breach of this Lease.

C. Lessee shall not do or authorize anything to be done on or about the Premises which will in any way conflict with any applicable and legally enforceable law, ordinance, rule, or regulation issued by any competent governmental authority; or, allow the Premises to be used for any improper, immoral, or unlawful purpose.

D. With the prior written approval of Lessor (not to be unreasonably withheld, conditioned, or delayed), Lessee may make any necessary minor alterations to the Premises required for its operations.

E. Lessee shall, upon termination of this Lease, remove all its personal property and trade fixtures and repair any damage or injury to the Premises resulting from such removal and deliver the Premises, all personalty owned by Lessor and located at the Premises ("Personalty"), and the fuel tank (if any) located on the Premises to Lessor in substantially

the same condition as existed as of the date hereof, normal wear and tear and damage from casualty and condemnation, excepted.

ARTICLE III – FEDERAL REQUIREMENTS

Lessee shall comply with the following provisions:

A. Lessor reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of the Lessee (but subject to its rights herein and in the Permit) and without interference or hindrance, provided that no such development shall render the Premises unusable to Lessee for its Permitted Uses, reduce the number of parking spaces available to Lessee or adversely affect access to the Premises. (For purposes of this Lease, "Landing Area" means those portions of the Airport providing for the landing, taking off and taxiing of aircraft, including without limitation, approach and turning zones, avigation or other easements, runways, taxiways, runway and taxiway lights, and other appurtenances in connection therewith).

B. Lessor shall maintain and keep in repair the Landing Area of the Airport and all publicly-owned facilities of the Airport, and shall have the right to direct and control all activities of the Lessee in this regard.

C. The Lease shall be subordinate to the provisions of and requirements of any existing or future agreements between Lessor and the United States, relative to the development, operation, or maintenance of the Airport.

D. Lessee agrees to comply with the applicable notification and review requirements covered in 14 CFR Part 77 (FAA Form 7460-1) in the event any future structure or building is planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises.

E. Lessor reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises herein leased. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operation on the Airport.

F. Lessee expressly agrees for itself, its successors and assigns that it will not construct, nor permit to stand, on said Premises any building, structure, poles, trees, or other object, whether natural or otherwise, of a height in excess of applicable 14 CFR Part 77 standards and requirements regarding obstructions in navigable airspace.

G. Lessor reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of entry onto the real property herein leased to cut, remove, or lower any building, structure, poles, trees, or other object, whether natural or otherwise, of a height in excess of applicable 14 CFR Part 77 standards and requirements regarding obstructions in navigable airspace. This public right shall include the right to mark or light as obstructions to air navigation, any and all buildings, structures, poles, trees, or other object that may at any time project or extend above said surfaces.

H. Lessee expressly agrees for itself, its successors and assigns, to not hereafter use, nor permit, nor suffer use of the Premises in such a manner as to create electrical interference with radio communication between the installation upon the Airport and aircraft or as to make it difficult for fliers to distinguish between airport lights and others, or as to impair visibility in the vicinity of the Airport, or as otherwise to endanger the landing, taking off, or maneuvering of aircraft.

I. Lessee expressly agrees for itself, its successors and assigns, to not hereafter use, nor permit, nor suffer the use of the Premises in such a manner as to create a potential for attracting birds and other wildlife which may pose a hazard to aircraft.

ARTICLE IV - RIGHTS AND OBLIGATIONS OF LESSEE

A. Lessee shall have no right to conduct the carriage of passengers or cargo by air under this Lease. Any such right to use the airfield may only be granted through a separate written instrument between Lessor and Lessee.

B. Except as otherwise provided in Article VIII, Lessee shall at its expense, provide for the maintenance of the Premises, which maintenance activities include, but are not limited to:

1. Complete custodial and janitorial service;
2. Minor and routine interior and exterior maintenance and repairs, including, but not limited to all doors, including personnel and overhead doors, and minor plumbing and electrical repairs;
3. Minor and routine maintenance, testing and service of the fire suppression system in accordance with applicable codes;
4. Minor and routine maintenance, test and service of the fire alarm system serving the facility to the lease line; and
5. Snow and ice removal from the entrance area to the Premises and the sidewalk leading to and extending along the Lessee's designated parking spaces and general snow removal in the vehicular parking and entrances drive.

C. Lessee previously installed, owns and has continuously operated the existing aboveground oil (used ground equipment oil only) storage and containment system ("Oil Facility"), which is located on the Premises and consists of a 55-gallon drum with secondary

containment. Lessor shall maintain the Oil Facility in operational condition at its sole expense and pay or reimburse Lessor for all applicable licenses, inspections, fines, insurance, and other fees and charges that may be incurred by or levied upon Lessor due to Lessee's activities or omissions related to the Oil Facility. In addition, Lessee or Lessor, as applicable, shall fully comply with all applicable current and future requirements of all regulatory agencies having jurisdiction over the Oil Facility, including, but not limited to, the Ohio Department of Commerce, Division of State Fire Marshall, EPA, OEPA, and the Fire Department of the City of Dayton, Ohio, or their respective successors and designees. In the event of a conflict between regulatory agencies, the decision of the Lessor's Director of Aviation will be final. Lessee further agrees to register the Oil Facility, as may be required, with any regulatory agency having jurisdiction. If, at any time during the Lessee's occupancy of the Premises, there is a spill or release of Hazardous Materials from the Oil Facility, Lessee shall immediately notify the Lessor and take all necessary steps to repair the Oil Facility and clean the impacted area in accordance with all applicable federal, state, or local laws, rules, and regulations. In the event the Oil Facility must be removed, Lessee shall be responsible for the cost of the removal and resolution of any environmental issues caused by or relating to the Oil Facility to the extent required by applicable environmental law. This subsection shall survive the termination and/or expiration of this Lease.

D. Lessee shall obtain from all authorities having jurisdiction over the business and operations of Lessee on the Premises, including, but not limited to the Federal Aviation Administration ("FAA"), Transportation Security Administration ("TSA"), U. S. Environmental Protection Agency ("EPA"), Ohio Environmental Protection Agency ("OEPA"), and state and local building and fire protection agencies, all licenses, certificates, permits or other authorizations which may be lawfully required for the conduct of its business and operations upon the Premises or necessary to comply with any requirements of this Lease or in the exercise of any right or obligation granted herein. Lessee, however, shall not be deemed to have waived any right to exhaust administrative and/or judicial remedies, which may be available to Lessee regarding any dispute or contest related to any authorizations required.

E. The storage, handling and disposal of all Hazardous Materials, as defined by federal, state and local laws, shall be in compliance with all applicable licenses, permits, certificates or other authorizations obtained by Lessee or Lessor and in compliance with all applicable federal, state and local laws governing the storage, handling and disposal of same.

F. Lessee shall repair or pay for any and all damages to Lessor and its property caused by any wrongful or negligent act or omission of Lessee, its agents, employees and/or contractors arising out of the use or occupancy of the Premises or in the exercise of any right or obligation granted herein.

G. Lessee shall, at its expense, provide and use suitable covered receptacles for the storing of all trash, garbage and other refuse created in the conduct of its business or operations upon the Premises or arising from Lessee's exercise of any right or obligation under this Lease. Lessee shall, at its expense, provide for the complete, proper and routine removal and disposal away from the Airport of all refuse generated from the activities on the Premises. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner on or about the Premises is forbidden.

H. Lessee, its agents, employees, patrons, guests, invitees and suppliers of service or furnishers of materials shall have the unrestricted right of ingress to and egress from the Premises and shall have the right in common with others to use the public roadways serving the Airport.

I. Lessee shall have all utility accounts, exclusive of water and sewer utility services, that serve the Premises placed in Lessee's name and shall pay, while this Lease is effective, all utility charges (i.e. telephone, natural gas and electric) directly to the utility companies or municipalities providing such utility services or as otherwise required by the utility service provider. Lessee agrees to notify Lessor promptly upon termination of any utility account; and Lessor may, at its option, after ten (10) days prior written notice to Lessee, place such terminated utility account in its name. In the event Lessor, willingly or otherwise, assumes the responsibilities for providing natural gas or electric services to Lessee during the term of this Lease, Lessee shall pay to Lessor the actual cost incurred by Lessor in providing the utility service to the Lessee. If Lessor bills Lessee for any involuntary assumption of utilities, Lessor may include a five percent (5%) administrative charge.

J. All water and sewer services for the Premises shall be sub-metered by Lessor during the term of this Lease. The rates and charges for the sub-metered water and sewer services for the Premises are included on Lessor's master meter billing for the entire Airport. Accordingly, Lessor shall bill Lessee directly for its sub-metered water and sewer service for the Premises, which Lessee agrees to pay within thirty (30) days of Lessee's receipt of invoice.

K. Lessee shall not erect, allow or permit to be maintained on the Premises, or upon the exterior of any improvement on the Premises, any billboards or advertising signs, except those which have the prior written approval of Lessor. Notwithstanding, Lessee may maintain on the exterior of the Premises its name or trade name, in neatly arranged electric, neon or other type sign or signs; the size and type of sign or signs subject to Lessor's prior reasonable approval.

L. Lessee may make minor alterations and changes to the Premises and improvements constructed thereon as Lessee may, at any time during the term hereof, find necessary or convenient for its purpose, including, but not limited to, relocating or adding outlets and light switches. Any additions, alterations, demolition or changes to the Premises and improvements of a material, substantial or structural nature, shall not be permitted under

this Lease without Lessor's prior written consent, not to be unreasonably withheld, conditioned, or delayed, and which in Lessor's reasonable opinion would not require a separate construction agreement.

M. In addition to all rents and fees, Lessee shall, at its expense, pay all taxes and assessments of whatsoever nature that are now and may be levied or imposed on any tangible personal property situated or placed thereon, provided, however, that real property taxes and assessments shall be prorated so as to require Lessee to pay such taxes and assessments only for the period of Lessee's tenancy. Lessee understands that the property taxes and assessments are assessed on the entire Airport parcel, of which the Premises are a portion thereof. The calculation of real property taxes for the Premises shall be based on the then current Montgomery County Auditor's Industrial Report ("Report") for Parcel R727-174-13-0001 (or the Report's successor), in which the Premises have been identified as land and improvements numbered 49 (or such other successor number or manner of identifying the land and building in said Report). Lessee shall have the right to protest or contest by legal proceeding, or in such other manner as it may deem suitable, the validity or amount of any such tax or assessment under this provision. Lessee shall notify Lessor of any such protest or contest and Lessor shall fully cooperate with such protest or contest. Lessor shall bill and lessee shall pay the invoiced amount to Lessor within thirty (30) days after receipt of invoice unless such amount is not due and owing from Lessor to the taxing authority pending resolution of a protest or contest by Lessee.

N. As applicable or required by Lessor, Lessee shall, at its expense, arrange for and ensure that its employees, agents, contractors and subcontractors having access to the Premises are properly identified with the Airport's access media issued by Lessor and that said access media is prominently displayed at all times while such persons are in the Airport's Security Identification Display Area ("SIDA") and Airport Operations Area ("AOA"), as these terms are defined under Title 49 U.S. Code of Federal Regulations, Part 1542, as may be amended or revised, and/or the City's approved Airport security program. Lessee shall comply with and cause all persons seeking said access media to comply with all Lessor's requirements for the issuance of the Airport access media. Further, Lessee shall waive any claim against Lessor resulting from refusal to issue or revocation of said access media, pursuant to applicable laws, rules, regulations, policies and procedures.

O. Upon termination of this Agreement, Lessee, at its expense, shall retain a competent firm to complete "Environmental Site Assessments" in accordance with the standards, rules, regulations, and procedures of the American Society for Testing and Materials ("ASTM") or such equivalent standards. In the event the results of the assessments indicate a recognized environmental condition as defined by ASTM E 1527-05 or latest standard that is caused by Lessee and in violation of applicable environmental laws, Lessee agrees to address and, as applicable remediate, such environmental condition attributable to Lessee's activities and operations on or about the Premises in accordance with all applicable federal, state, and local

environmental laws, rules regulations, orders, and procedures. This Subsection O shall survive termination of this Lease.

ARTICLE V - TITLE TO IMPROVEMENTS

A. Lessor owns the real property and all improvements to the Premises, including the Oil Tank and all Personalty. Title to any additional improvements made to and upon the Premises, excluding trade fixtures, shall vest in Lessor at such time as this Lease is terminated.

B. Lessee's obligation to deliver the Premises and improvements in accordance with Article V, Section A above shall survive the termination of this Lease.

ARTICLE VI - TERM

A. This Lease shall be effective for a period of five (5) years commencing on the Effective Date ("Initial Term"), unless terminated earlier in accordance with the provisions of this Lease. Either party may terminate the Lease, without cause, with thirty (30) days' advance, written notice.

B. This Lease may be renewed for two (2) additional five (5) year periods, exercisable by Lessee giving 90 days' advance, written notice to the Lessor (each a "Renewal Term").

ARTICLE VII – RENTALS

A. Lessee shall pay to Lessor the following annual rentals for the Premises:

1. An Annual Ground Rental for the Ground Space, as follows:

   i. For the Initial Term beginning on the Effective Date for a five (5) year period, the sum of Eight Thousand One Hundred Sixty Dollars ($8,160.00) per year, which is based upon the rate of Twenty-Four Cents ($0.24) per square foot per year on the 34,000 square feet of ground space.

   ii. For any subsequent Renewal Term(s), the Annual Ground Rental shall increase by a negotiated rate at fair market value that is mutually agreed upon by Lessor and Lessee. This negotiated increase shall be no less than three percent (3%). If Lessor and Lessee cannot agree on such a rate, Lessee may rescind its option to extend this Lease.

2. An Annual Building Rental for the Building, as follows:

   i. For the Initial Term beginning on the Effective Date for a five (5) year period, the sum of Ten Thousand Eight Hundred Dollars ($10,800.00) per year,

which is based upon the rate of Six Dollars ($6.00) per square foot per year on the 1,800 square feet of building space.

ii. For any subsequent Renewal Term(s), the Annual Building Rental shall increase by a negotiated rate at fair market value that is mutually agreed upon by Lessor and Lessee. This negotiated increase shall be no less than three percent (3%). If Lessor and Lessee cannot agree on such a rate, Lessee may rescind its option to extend this Lease.

B. Without waiving any other right or action available to Lessor in the event of default in payment of any undisputed rentals, fees or charges due to the Lessor hereunder, if Lessee is delinquent for a period of thirty (30) days or more in paying to Lessor any rental due and owing to Lessor pursuant to this Lease, Lessee shall pay to Lessor a late charge thereon calculated at the rate of two percent (2%) per month from the date such item was due and owing until full payment including late charges have been paid. Such late charges shall not occur with respect to disputed items being contested in good faith by Lessee.

C. The annual rent due under this Lease shall be paid in equal monthly installments, which shall be due on the first day of each month and without notice to Lessee, to the following address:

City of Dayton, Ohio
P. O. Box 632094
Cincinnati, OH 45263-2094

or at such other place as Lessor shall, in writing, direct.

ARTICLE VIII - RIGHTS AND OBLIGATIONS OF LESSOR

A. Lessor shall have the right to adopt and enforce reasonable rules and regulations, with respect to the use of the Airport and facilities thereon, which Lessee agrees to observe and obey provided that (a) Lessor enforces such rules and regulations in a non-discriminatory manner, and (b) such rules and regulations do not materially increase Lessee's obligations, or decrease Lessee's rights, hereunder. In the event of any conflict between this Lease and such rules and regulations, this Lease shall govern and control.

B. Lessor shall have the full and unrestricted right, at any and all times during normal business hours upon reasonable notice to Lessee, to access and enter the Premises for the purpose of inspecting the Premises and doing any and all things which the Lessor is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport and in the exercise of the Lessor's police power, provided that Lessor shall use commercially reasonable efforts not to unreasonably

interfere with Lessee's operations. This provision shall in no way limit or restrict Lessor's right to enter upon the Premises in the event of an emergency. Reasonable notice, as used in this subsection, shall in no event be interpreted to require more than twenty-four (24) hour advance notification.

C. Lessor warrants quiet enjoyment of the rights and privileges granted herein, during the term hereof, upon the performance of Lessee's covenants contained herein and subject to Section B of this Article VIII.

D. Nothing contained herein shall prohibit Lessor from granting easements, utility or otherwise, as long as said easements would not unreasonably interfere with Lessee's use or utility of the Premises for the purposes stated herein.

E. Except as provided for in Article IV, Lessor will provide general snow removal on the adjacent roads to the Premises in accordance with its snow operations schedule. Lessor shall be responsible for replacement and repairs to the exterior paved surfaces and the exterior of the building (including painting) and for the structural, roof, and mechanical systems of the Premises as well as plumbing and electrical repairs, HVAC system repairs, replacement of fixtures, roof maintenance and/or repair and all other repairs to the Premises that are not minor and routine. In addition, Lessor shall maintain the storm drainage structures and storm lines, the oil/water separator in storm and sanitary sewer lines, and all utility lines serving the Premises. Lessor shall be responsible for mowing, planting, and maintenance of grass areas and landscaping on the Premises. Structural components, as used herein, shall not include overhead, dock, entrance or interior doors. It is understood and agreed that Lessor shall have no obligation to modify the Premises for Lessee's use, needs or convenience during the term hereof.

F. If Lessee fails to provide and maintain proper trash removal or other required maintenance, Lessor shall have the right, but not the obligation, to provide or perform said services and to bill Lessee for the actual cost to provide said services, plus a five percent (5%) administrative fee, which Lessee agrees to pay within thirty (30) days after demand therefor.

G. Lessor shall, at its expense, operate and maintain the water, sanitary sewer and storm sewer system serving the Airport and to the lease line of the Premises. Lessor will be responsible for the mowing and landscape maintenance of all grounds and will provide general police and fire protection for the Premises as it does for other areas of the Airport.

ARTICLE IX - NON-DISCRIMINATION

A. Lessee, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that, in the event facilities are constructed, maintained or otherwise operated on the

Premises described in this Lease for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provisions of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all applicable requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended, superseded or modified.

B. Lessee, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities, (2) in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) Lessee shall use the Premises in compliance with all other applicable requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 and as said regulations as may be amended, superseded or modified.

C. In the event of breach of any of the above non-discrimination covenants, Lessor shall have the right to terminate this Lease and to re-enter and repossess the Premises and facilities thereon and hold the same as if said Lease had never been made or issued. Notwithstanding the foregoing, it is specifically agreed that nothing in this Article shall prevent Lessee from exhausting all administrative and/or judicial remedies available to Lessee in resisting or defending against any claims or claim of breach or default or noncompliance hereunder.

ARTICLE X – INDEMNIFICATION

A. Lessee shall defend, indemnify, save and hold harmless Lessor, its elected officials, officers, agents and employees, from and against any and all claims and actions, and all expenses incidental to the investigation and defense thereof, based upon or arising out of any wrongful or negligent act or omission of Lessee, its agents, contractors and employees occurring during the Term of this Lease.

It is agreed that, to the extent permitted by law, no agreement or covenant by Lessee under this Article X (A) shall include liability or damages for injury to persons or damage to property caused by or resulting from the acts, errors or omissions of Lessor, its elected officials, agents, contractors or employees.

B. Lessee shall defend, indemnify, save and hold harmless Lessor, its elected officials, officers, agents and employees, from and against any mechanics or other lien or order for the payment of money filed against the Premises, Lessor or any property of Lessor, arising out of any act or omission of Lessee, its tenants or subtenants or anyone claiming through or under Lessee. Lessee shall, at Lessee's expense, cause the same to be terminated or discharged of record and shall save and hold harmless Lessor from and against any and all costs, expenses, claims, losses or damages including reasonable counsel fees resulting therefrom or by reason thereof.

C. Lessor shall not be liable to Lessee or to Lessee's subtenants, agents, representatives, contractors or employees, for any injury to, or death of, any of them or of any other person or for any damage to any of Lessee's property or loss of revenue, caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport. Lessor shall not be liable to Lessee for damage to property of Lessee or any loss of revenues to Lessee unless resulting from Lessor's acts or omissions in the maintenance and operation of the Airport or failure to operate the Airport.

D. Except as provided in Article X (A) above, the obligations of Lessee under this Article X shall survive the termination date of this Lease and shall not be affected in any way by the amount of or the absence in any case of covering insurance, or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any part thereof.

E. The Lessor's elected officials, officers, agents and employees, shall, to the extent permitted by law, have absolutely no personal liability with respect to any provision of this Lease or any obligation or liability arising from this Lease or in connection with this Lease or the Premises in the event of a breach or default by Lessor of any of its obligations. Lessee's officers, agents and employees, shall, to the extent permitted by law, have absolutely no personal liability with respect to any provision of this Lease or any obligation or liability arising from this Lease or in connection with this Lease or the Premises in the event of a breach or default by Lessee of any of its obligations.

F. Notwithstanding any other provision of this Lease to the contrary, and to the extent permitted by law, Lessee waives any and every claim for recovery from the Lessor for any and all loss or damage to the Premises or to the contents thereof, which loss or damage is covered by valid and collectable physical damage insurance policies maintained by Lessee or which would have been recoverable if the insurance required hereunder had been maintained by Lessee, to the extent that such loss or damage is recoverable, or would have been recoverable, as applicable, under said insurance policies. As this waiver will preclude the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), Lessee agrees to give each insurance company which has issued, or in

the future may issue, its policies of physical damage insurance, written notice of the terms of this waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverage by reason of said waiver. Lessee shall require any subtenant to include similar waivers of subrogation in favor of the Lessor.

G. In the event Lessee, its agents, contractors or employees, violate any security measure at the Airport in connection with its operations hereunder, including, but not limited to, any Federal Aviation Administration or Transportation Security Administration security laws rules, regulations, orders and directives, Lessee shall assume full and complete responsibility for such violations, including payment of any penalty imposed, and shall defend, indemnify and hold the Lessor, its elected officials, officers, agents and employees harmless therefrom.

ARTICLE XI - INSURANCE

A. Lessee, at its sole cost and expense, shall procure and maintain, or cause to be maintained, at all times during the term of this Lease, the following insurance, with insurance companies authorized to do business in the State of Ohio and having at least an "A-" rating from A. M. Best (or an equivalent S&P financial strength rating or international rating) and covering all operations under this Lease, whether performed by Lessee or by its contractors:

1. Aviation Liability Insurance (Primary and Umbrella):

   Aviation Liability Insurance with limits of not less than One Million Dollars ($1,000,000) per occurrence combined single limit, for bodily injury and property damage liability. Coverage extensions shall include the following: All Premises and operations, products/completed operations, explosion, collapse, underground, independent contractors, broad form property damage, separation of insured and contractual liability (with no limitation endorsement). The Lessor, its elected officials, officers, agents, volunteers, and employees shall be named as additional insureds, on a primary, non-contributory basis for any liability arising directly or indirectly from this Lease.

B. Original certificates of insurance evidencing the required coverage to be in force on the effective date of this Lease as set forth herein, and all renewal certificates of such insurance, shall be provided to Lessor. The receipt of any certificate does not constitute agreement by the Lessor that the insurance requirements in the Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Lease. The failure of the Lessor to obtain certificates or other insurance evidence from Lessee or its contractors shall not be deemed to be a waiver by the Lessor. Lessee or its contractors shall advise all insurers of these Lease provisions regarding insurance. Non-conforming insurance shall not relieve Lessee or its contractors

of their obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Lease, and the Lessor retains the right to terminate this Lease as provided in Article XVI until proper evidence of insurance is provided. All policies of insurance, excluding the insurance required of Lessee's contractors, shall provide for a minimum of thirty (30) days prior written notice to be given to the Lessor in the event coverage is substantially changed, canceled, or non-renewed.

C. If Lessee fails to obtain or maintain any of the insurance policies under this Lease or to pay any premium in whole or in part when due, Lessor may (without waiving or releasing any obligation or default by Lessee hereunder) obtain and maintain such insurance policies and/or take any action which Lessor deems appropriate. In such instances, reasonable attorneys' fees, court costs, and expenses shall be reimbursed by the Lessee upon demand by Lessor.

D. Lessee shall require all contractors to carry the insurance required herein, or Lessee or its contractors may provide the coverage for any or all contractors, and, if so, the evidence of insurance submitted shall so stipulate. Any and all deductibles or self-insured retentions on referenced insurance coverages shall be borne by Lessee or its contractors. Lessee shall requires its insurer, and request its contractors require their insurer, waive their rights of subrogation against the Lessor, its employees, elected officials, agents, or representatives. Lessee expressly understands and agrees that any coverages and limits furnished by Lessee or its contractors shall in no way limit the Lessee or its contractors' liabilities and responsibilities specified within this Lease or by law. Lessee expressly understands and agrees that any insurance or self-insurance programs maintained by the Lessor shall not contribute with insurance provided by the Lessee or its contractors under this Lease. If Lessee or its contractors desire additional coverage, higher limits of liability, or other modifications for its own protection, then Lessee or its contractors shall each be responsible for the acquisition and cost of such additional protection.

E. The insurance required hereunder shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.

F. The insurance required by this Lease, at the option of Lessee or contractors, may be effected by blanket or umbrella policies issued to Lessee or contractors covering the Premises and other properties owned or leased by Lessee or contractors, provided that the policies otherwise comply with the provisions of this Lease and allocate to the Premises the specified coverage, without possibility of reduction or coinsurance by reason of, or damage to, any other premises covered therein.

G. Lessee shall maintain, at all times during the term hereof, Workers' Compensation for its employees employed or providing service(s) upon the Premises in such amounts as prescribed under Ohio law.

ARTICLE XII – DAMAGE AND DESTRUCTION

A. If the Premises are damaged, in whole or in part, by fire or casualty, Lessee shall repair the damage to the improvements as soon as reasonably possible at Lessee's expense or, upon mutual agreement, shall take such other actions as is mutually agreed between Lessor and Lessee. Lessee may use insurance proceeds from insurance it carried to pay for the work as it progresses, and the Lessor shall permit any such proceeds to be made available.

B. During any period which Lessee is unable to use all or a substantial portion of the Premises due to damage or destruction of the Premises and which significantly impacts Lessee's operations and use of the Premises, then the rent payable for the Premises shall be abated or appropriately adjusted for the period during which such damage renders the Premises unusable or operations are so curtailed or terminated. However, if Lessor reasonably determines that such damage resulting in inability to use all or a substantial portion of the Premises is caused by the negligence or willful misconduct of Lessee, its employees, agents and/or contractors, Lessee shall not be entitled to an abatement of rents as provided herein Except for such abatement of rents due, as applicable, Lessee shall have no claim against the Lessor for any damage suffered by reason of any such damage, destruction, repair or restoration, except if and to the extent the same was caused by the negligence or willful misconduct of Lessor, its employees, agents and/or contractors. Lessee shall have the right to terminate this Lease if it determines that a substantial portion of the Premises are damaged.

ARTICLE XIII - ASSIGNMENT AND SUBLETTING

The leasehold estate and rights granted herein are the personal property of Lessee. Lessee shall not be permitted to sell, assign, transfer, sublet or underlet the same, or any portion thereof, except to its parent corporation or any subsidiary or affiliate thereof or any successor corporate entity resulting from acquisition or merger, without consent of the Lessor. Any assignment in violation hereof shall be void.

ARTICLE XIV - SUCCESSORS AND ASSIGNS BOUND BY COVENANTS

All covenants, stipulations and agreements in this Lease shall extend to and bind the legal representatives, successors and assigns of the respective parties hereto.

ARTICLE XV – TERMINATION BY LESSEE

A. In addition to all other remedies available to the Lessee under this Lease or at law, Lessee may terminate this Lease if Lessor defaults in the performance of any material covenant or agreement required to be performed by it herein, and the failure of Lessor to remedy such

default, or to take prompt action to remedy such default, within a period of thirty (30) days after receipt from Lessee of written notice to remedy the same. If by reason of the nature of such default the same cannot be remedied within said thirty (30) days, then Lessee may terminate this Lease only if the Lessor shall have failed to commence the remedying of such default within the thirty (30) day period following such written demand, or having so commenced, fails thereafter to continue with diligence the remedying thereof.

B. Lessee shall exercise its rights of termination by giving written notice to Lessor at any time after the lapse of the applicable periods of time and this Lease shall terminate as of that time. Rental and other payments due hereunder shall be payable (and prorated, as applicable) to the date of termination.

C. Lessee may terminate this Lease without cause, upon giving Lessor thirty (30) days' prior written notice of termination.

ARTICLE XVI - TERMINATION BY LESSOR

A. In addition to all other remedies available to Lessor hereunder or at law, Lessor may terminate this Lease should any one or more of the following events occur:

1. If a receiver for Lessee's assets is appointed by a court of competent jurisdiction; or if Lessee shall be divested of its rights, powers and privileges under this Lease by operation of law;

2. If Lessee fails to make any undisputed payments required of it hereunder at the times and in the amounts as required of it under this Lease and said default is not cured by tendering the full amounts due and owing within thirty (30) days after Lessor notifies Lessee in writing of the default in payment(s);

3. If Lessee shall fail to perform, keep and observe all of the covenants and conditions contained in this Lease to be performed, kept and observed by it (excluding non-payment of the rents, charges and fees), and said failure is not cured, or action taken to correct such failure, within thirty (30) days after Lessor notifies Lessee in writing of said failure; of if by reason of the nature of such default, the same cannot be remedied within said thirty (30) days, then Lessor shall have the right to terminate this Lease, if the Lessee shall have failed to commence the remedying of such default within said thirty (30) days following such written demand, or having so commenced, shall fail thereafter to continue with diligence the remedying thereof; or

4. Violations by Lessee, its agents or employees of applicable laws, ordinances, codes, rules and regulations issued by any competent governmental authority, or revocations of permits or licenses required in the performance of this Lease, if the

same shall not be corrected or action taken to correct, within thirty (30) days after Lessee's receipt of written notice, which shall state in detail the violation.

B. Lessor may terminate this Lease without cause, upon giving Lessee thirty (30) days' prior written notice of termination.

ARTICLE XVII – HOLDING OVER

In the event that Lessee holds over and remains in possession of the Premises and rights granted herein after termination of this Lease and without any written renewal thereof, such holding over shall not be deemed to operate as a renewal or extension of this Lease but shall only create a month-to-month tenancy, which may be terminated at any time by Lessor or Lessee. Lessor will provide Lessee with sixty (60) days' advance written notice of any increase in the rental amount due during such holdover tenancy period in excess of 1/12th the rental amount for the immediately preceding 12-month period.

ARTICLE XVIII - INVALID PROVISIONS

In the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision herein contained shall not constitute a material breach of this Lease; provided that the validity of any such covenant, condition or provision does not materially prejudice either Lessor or Lessee in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Lease.

ARTICLE XIX - WAIVER

A. No waiver by either party at any time, of any of the terms, conditions, covenants or agreements of this Lease, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the other. Receipt by Lessor of rent with knowledge of the breach by Lessee of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by either party of any provisions of this Lease shall be deemed to have been made unless expressed in writing and signed by Lessor or Lessee as the case may be.

B. No option, right, power, remedy or privilege of either party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to each party by this Lease are cumulative and no one of them shall be exclusive of the other or exclusive of any remedies provided by law except as specifically provided herein and that the exercise of one right,

power, option or remedy by either party shall not impair its right or any other right, power, option or remedy, except as specifically provided herein

ARTICLE XX – GENERAL PROVISIONS

A. The term Lessor, as used in this Lease, means the City of Dayton, Ohio and where this Lease speaks of approval and consent by Lessor, such approval is understood to be manifested by act of Lessor's Director of Aviation, except as otherwise expressly stated in this Lease. Whenever in this Lease, the approval or consent of Lessor is required, such approval or consent will not be unreasonably withheld, conditioned or delayed.

B. Notices to Lessor given in connection with or provided for in this Lease shall be in writing and sent by personal delivery, certified mail, postage prepaid, or nationally recognized overnight courier (such as FedEx or UPS), shipping costs prepaid, addressed to:

James M. Cox Dayton International Airport
Department of Aviation
3600 Terminal Drive, Suite 300
Dayton, Ohio 45377
Attn: Director of Aviation

or such other address as Lessor shall direct by written notice given in accordance with this Article XXI (B). Any notice given in accordance with this Article XXI (B) shall be deemed given as of the date personally delivered or as of the date of mailing or deposit with the overnight courier, as applicable, and shall be deemed received as of the date personally delivered or as of the date of receipt shown on the receipt provided by the United States Postal Service or overnight courier, as applicable.

C. Notices to Lessee given in connection with or provided for in this Lease shall be in writing and sent by personal delivery, certified mail, postage prepaid, or nationally recognized overnight courier (such as FedEx or UPS), shipping costs prepaid, addressed to:

Delta Air Lines, Inc.
Hartsfield-Atlanta International Airport
Dept. 877, 4SW24
Atlanta, GA 30354
Attn: Regional Director, Properties & Facilities

or such other address as Lessee shall direct by written notice given in accordance with this Article XXI (C). Any notice given in accordance with this Article XXI (C) shall be deemed given as of the date personally delivered or as of the date of mailing or deposit with the overnight courier, as applicable, and shall be deemed received as of the date personally

delivered or as of the date of receipt shown on the receipt provided by the United States Postal Service or overnight courier, as applicable.

D. Lessee and Lessor each represent that it has carefully reviewed the terms and conditions of this Lease and is familiar with such terms and conditions and agrees faithfully to comply with the same to the extent to which said terms and conditions apply to its activities as authorized and required by the Lease.

E. Any headings in this Lease are for convenience of reference only and do not define or limit the provisions thereof. In this Lease, unless the context otherwise requires, the terms "hereby", "herein", "hereof", "hereto", "hereunder" and any similar terms used in this manner refer to this Lease. All section references, unless otherwise expressly indicated, are to sections in this Lease. Any references to any exhibit or document shall be deemed to include all supplements and/or amendments to any such exhibits or documents. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties, and obligations of such persons or entities in accordance with this Lease.

F. By execution of this Lease, Lessee hereby irrevocably submits to the original jurisdiction of the courts located within State of Ohio, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Lease.

G. Lessee (and any person claiming by or through Lessee) shall look solely to legally available Airport discretionary funds for enforcement of any liability of the Lessor under this Lease, and not any other funds or assets of the City of Dayton, Ohio whatsoever.

H. Neither Lessee nor any contractor of Lessee shall be entitled to claim any exemption from sales or use taxes or similar taxes by reason of the Lessor's ownership of fee title to the Premises.

I. By entering into this Lease, Lessor shall in no way be deemed a partner or joint venturer with Lessee, nor shall any term or provision hereof be construed in any way to grant, convey or create any rights or interests to any person or entity not a party to this Lease.

J. The parties may amend or modify this Lease, at any time, provided that no such amendment or modification shall be effective unless it is reduced to a writing, which makes specific reference to this Lease, executed by a duly authorized representative of Lessor and Lessee and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.

K. This Lease, and its attached and incorporated exhibits, represents the entire and integrated agreement between Lessor and Lessee. This Lease supersedes all prior and

contemporaneous communications, representations, understandings, agreements or contracts, whether oral or written, relating to the subject matter of this Lease.

L. This Lease shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws.

IN WITNESS WHEREOF, Lessor and Lessee, by duly authorized representatives, have executed this Lease as of the day and year first above written.

WITNESSED BY:

_____

CITY OF DAYTON, OHIO

_____
City Manager

WITNESSED BY:

DELTA AIR LINES, INC.

By: Hank Moody

Title: GM CIRE

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

_____, 20___

Min./Bk.:_____ Page:_____

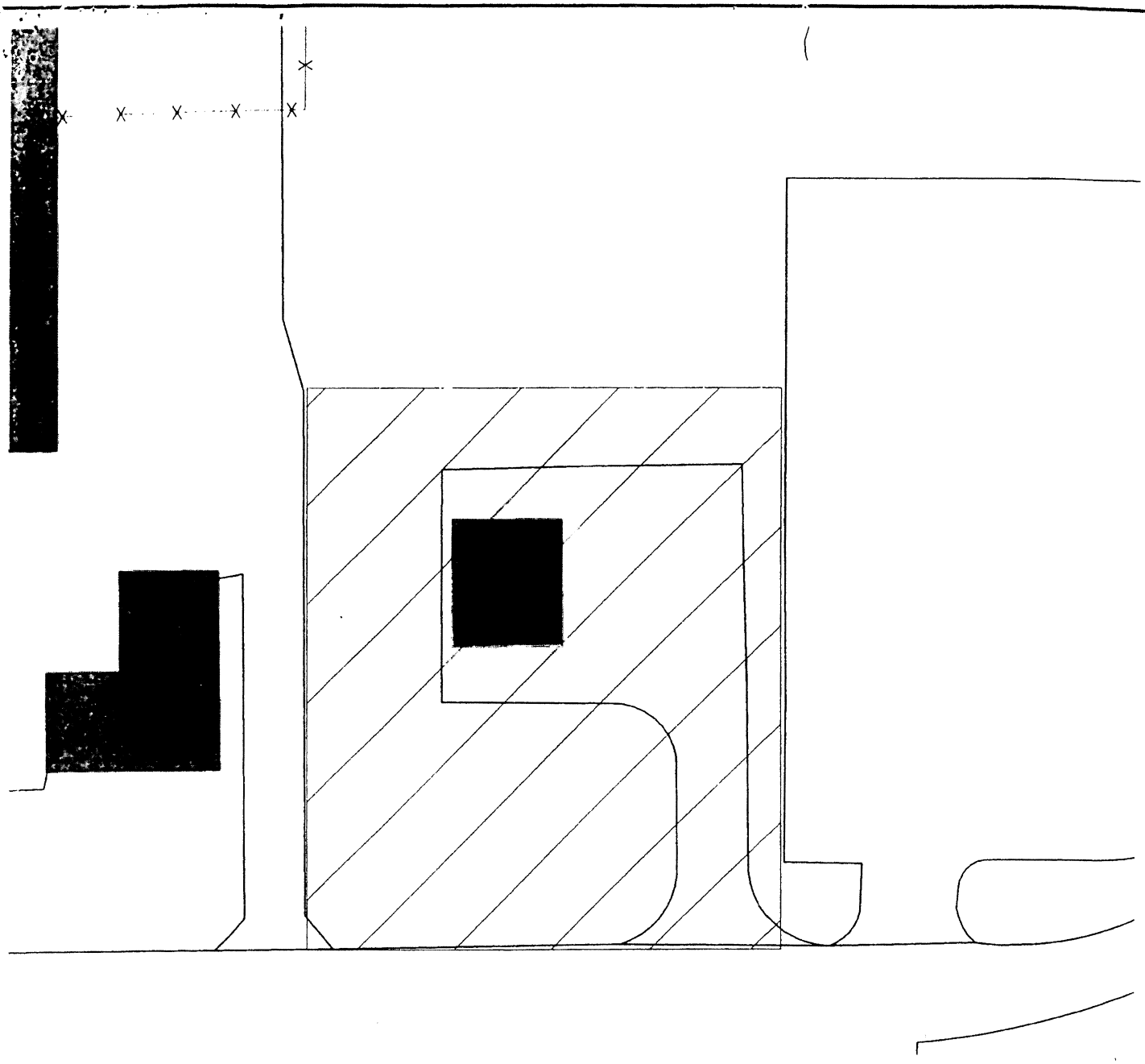
_____
Clerk of the Commission

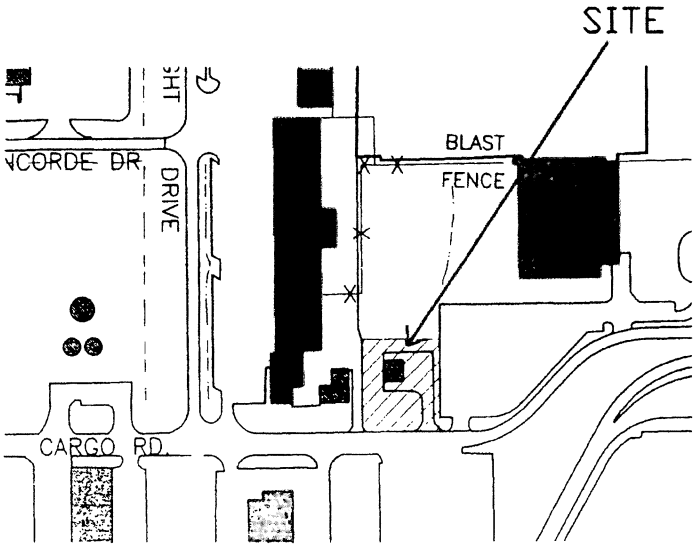
APPROVED AS TO FORM AND CORRECTNESS

CITY ATTORNEY MWG

EXHIBIT A

PREMISES





DAYTON
INTERNATIONAL AIRPORT

EXHIBIT A

3701 Cargo Rd.

Building: 1,800 sq. ft.

Ground: 34,000 sq. ft.

BACK

City Manager's Report

10.

From **2390 - Planning & CD/Community Dev**

Date **February 26, 2020**

Expense Type **Other, (See Description Below)**

Supplier, Vendor, Company, Individual

Total Amount **$29,250.00 (thru 01/31/2021)**

Name **Homefull**

Address **829 S. Gettysburg Ave**
Dayton, Ohio 45417

Fund Source(s)	Fund Code(s)	Fund Amount(s)
2019 Emergency Solutions Grant (ESG)	25002-2390-1159-31-PL1940	$29,250.00

Includes Revenue to the City ☐ Yes ☑ No **Affirmative Action Program** ☑ Yes ☐ No ☐ N/A

Description

Emergency Solutions Grant Subrecipient Agreement - Homefull

The Department of Planning and Community Development requests approval to enter into an Agreement with Homefull for the Preventing Homelessness by Aligning Systems Effectively (PHASE) Program. The Agreement provides $29,250.00 in FY2019 Emergency Solution Grant (ESG) funds to the project that will run March 1, 2020, through January 31, 2021.

The City of Dayton has been awarded 2019 ESG funding from the U.S. Department of Housing & Urban Development (HUD) to provide homelessness prevention, diversion, and rapid re-housing services. These funds are provided to achieve the goals of reducing the number of individuals and families that become homeless through homelessness diversion and prevention programs and reducing the length of time that they experience homelessness through rapid re-housing programs.

The City of Dayton participates in the Dayton-Montgomery County Continuum of Care process in which applications were accepted to address the need for providing prevention services through a collective impact model in the community. The PHASE program was chosen through this process and will implement a high functioning crisis response collective impact project to prevent homelessness by focusing on effective targeting in school-based prevention and in eviction prevention (including legal assistance) for high-risk households living in subsidized, public housing.

This Agreement shall commence upon execution and terminate on January 31, 2021.

This Agreement has been reviewed by the Law Department as to form and correctness.

A Certificate of Funds and a copy of the Agreement are attached.

Signatures/Approval

Division

Department

for City Manager

Approved by City Commission

Clerk

Date

FORM NO. MS-16

Updated 8/2016

CERTIFICATE OF FUNDS

CT20-2528

SECTION I - to be completed by User Department

NO DRAFT DOCUMENTS PERMITTED

X New Contract ____ Renewal Contract ____ Change Order

Contract Start Date	Execution by the City
Expiration Date	01/31/21
Original Commission Approval	$ 29,250.00
Initial Encumbrance	$ 29,250.00
Remaining Commission Approval	
Original CT/CF	
Increase Encumbrance	
Decrease Encumbrance	$ -
Remaining Commission Approval	$ -

Required Documentation

X	Initial City Manager's Report
X	Initial Certificate of Funds
X	Initial Agreement/Contract
	Copy of City Manager's Report
	Copy of Original Certificate of Funds

Amount: $ 29,250.00

Fund Code 25002 - 2390 1159 - 31 - PL1940 - XXXX
Fund Org Acct Prog Act Loc

Amount: ____

Fund Code XXXXX - XXXX - XXXX - XX - XXXX - XXXX
Fund Org Acct Prog Act Loc

Amount: ____

Fund Code XXXXX - XXXX - XXXX - XX - XXXX - XXXX
Fund Org Acct Prog Act Loc

Amount: ____

Fund Code XXXXX - XXXX - XXXX - XX - XXXX - XXXX
Fund Org Acct Prog Act Loc

Attach additional pages for more FOAPALs

Vendor Name: Homefull

Vendor Address: 829 S Gettysburg Avenue Dayton Ohio 45417
Street City State Zipcode + 4

Federal ID: 311236989

Commodity Code: 96199

Purpose: The PHASE program will implement a high functioning crisis response, collective impact project to prevent homelessness.

Contact Person: Erin Ritter x3816 Planning & Community Development 2/5/2020
Department/Division Date

Originating Department Director's Signature: [signature]

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

[signature] 02/14/2020
Finance Director Signature Date

Tonika Williams 02/10/2020 CT20-2528
CF Prepared by Date CF/CT Number

SA 02-07-2020

EMERGENCY SOLUTIONS GRANT PROGRAM
SUBRECIPIENT AGREEMENT
HOMEFULL – PREVENTING HOMELESSNESS BY ALIGNING SYSTEMS EFFECTIVELY (PHASE) PROGRAM
CFDA 14.231

THIS SUBRECIPIENT AGREEMENT ("Agreement") is entered into this day ____ of _____, 2020, between the CITY OF DAYTON, OHIO (hereinafter referred to as "City") and HOMEFULL, INC., a not-for-profit corporation organized under the laws of the State of Ohio, (hereinafter referred to as "Subrecipient").

WITNESSETH THAT:

WHEREAS, The United States Department of Housing and Urban Development ("HUD") awarded the City grant funding under the "Emergency Solutions Grant Program," as authorized by the Stewart B. McKinney Homeless Assistance Act, including Subpart B of Title IV of the Act; and,

WHEREAS, The Subrecipient operates and manages a non-profit organization that serves individuals that may be at risk for homelessness and will provide prevention financial assistance and case management services ("Program"); and,

WHEREAS, The Program qualifies for the receipt of funding under the Emergency Solutions Grant Program, and that providing a portion of the City's grant award from HUD to the Subrecipient for its Program is consistent with the objectives of the Emergency Solutions Grant Program.

NOW, THEREFORE, In consideration of the mutual promises and covenants hereinafter set forth, the parties hereto mutually agree as follows:

I. GRANT OF FUNDS

The City grants the Subrecipient a portion of its 2019 Emergency Solutions Grant Program award from HUD in an amount not to exceed **TWENTY-NINE THOUSAND TWO-HUNDRED FIFTY DOLLARS AND ZERO CENTS ($29,250.00)** for the costs of managing and operating the Program.

II. SCOPE OF SERVICES

A. Program

The Subrecipient shall, in a manner satisfactory to the City, manage and operate the PHASE Program, as described in Exhibit A, which is attached hereto and incorporated herein. The Subrecipient shall be solely responsible for all aspects of operating the Program, and shall use the funds provided hereunder for those costs listed in Exhibit A under the heading "Use of Funds."

B. Special Requirements

1. The Subrecipient agrees to provide matching funds equal to the amount of grant funding to be provided by the City hereunder. Calculation of the matching funds shall be determined according to the HUD regulations set forth in 24 Code of Federal Regulations ("CFR") Part 576 et seq., and particularly, Section 576.201.

2. Any building for which Emergency Solutions Grant Program funds are used must be maintained as a shelter for the homeless for the period prescribed by the HUD regulations set forth in 24 CFR Part 576.

3. Any Emergency Solutions Grant Program funds used for building renovation, conversion, or major rehabilitation must meet the local government standard of being in a safe and sanitary condition.

4. Individuals at risk of homelessness must be given assistance in obtaining appropriate supportive services, including permanent housing, medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living and obtaining other federal, state, local, and private assistance that may be available for such individuals.

5. To the maximum extent practicable, homeless individuals and families must be involved in the construction, renovation, maintenance, and operation of facilities assisted under the Emergency Solutions Grant Program, and in providing services for occupants of these facilities.

6. The Subrecipient must comply with applicable federal laws concerning non-discrimination and equal opportunity accessibility, lead-based paint, flood insurance, drug and alcohol free facility and use of debarred, suspended, or ineligible subrecipients. (See 24 CFR Part 576.)

C. Monitoring and Evaluation

1. Subrecipient agrees that the City and HUD, or its agents shall monitor, evaluate and may provide guidance and direction to Subrecipient in the conduct of the work and activities to be performed under the terms of this Agreement.

2. The City will monitor the performance of the Subrecipient against goals and performance standards as set forth in Exhibit C. Substandard performance as determined by the City will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the City, Agreement suspension or termination procedures may be initiated.

III. TIME OF PERFORMANCE

This Agreement shall be effective upon approval by the City Commission and shall terminate on January 31, 2021. The services and work to be performed by the Subrecipient shall commence March 1, 2020, through January 31, 2021, at which time all work must be satisfactorily completed in compliance with this Agreement.

IV. BUDGET AND PAYMENT PROCEDURES

A. Budget

Exhibit B, which is attached hereto and incorporated herein, shall serve as the official line item budget for the Program to be funded under this Agreement. In order to provide sufficient flexibility in the operation of the Program, the Subrecipient may amend the budget by transfer of funds between budget line items, so long as no line item is changed by more than 10% of that amount presently set out for that particular line item and such change would not violate 2 CFR Subpart D and E. A transfer of funds greater than 10% in any one line item shall not be effective until copies of the proposed amended budget are presented to and approved by the City's Director of Planning and Community Development.

B. Payment Procedures

The City shall reimburse to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and city policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. In addition, the City reserves the right to liquidate funds available under this Agreement for costs incurred by the City on behalf of the Subrecipient.

1. Disbursements shall be made for merchandise or services that have been properly budgeted and authorized which are accompanied by an invoice, Agreement, purchase order, or other authorization properly approved. Disbursements shall be made after certification by the Subrecipient that the Subrecipient has received the merchandise or services. All disbursements are to be made by check. No checks are to be payable to Cash. All checks shall be pre-numbered.

2. Expenditures under this Agreement shall be made solely for Program goods and services, which will be utilized during the Agreement term. The Subrecipient shall not spend funds for services, which are to be furnished beyond the Agreement term. Funds spent for services, supplies, or consumed in whole or in part beyond the term of the Agreement shall be unallowable expenses with respect to that portion of goods or services consumed or supplied beyond the term hereof.

The City shall reimburse Subrecipient for eligible activities that occur between March 1, 2020, and January 31, 2021. No funds are to be encumbered for the payment of Program costs incurred prior to the order to proceed, or costs incurred with respect to any action of the Subrecipient after the City has requested that the Subrecipient furnish data concerning such action prior to proceeding further, unless and until the Subrecipient is thereafter advised in writing that the City does not object to so proceeding.

Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in 24 CFR Part 200.

V. GENERAL CONDITIONS

A. Compliance

The Subrecipient agrees that the HUD regulations set forth in 24 CFR Part 576 and 2 CFR Part 200 are applicable to the grant funds it receives pursuant to this Agreement.

1. The Subrecipient agrees that the work and services authorized by this Agreement shall be performed in accordance with any and all applicable local, state, and federal regulations, directives, or guidelines.
2. The Subrecipient agrees to prohibit the use of federal funds for lobbying in compliance with the following:

   (a) No federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with the awarding of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.

   (b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with this federal agreement, grant, loan or cooperative agreement, the Subrecipient shall notify the City, and complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The Subrecipient shall include the requirements of this Subsection A in award documents for all sub-awards at all times (including sub-contracts, subgrants, and Agreements) and require that all sub-award recipients disclose the same accordingly.

B. Independent Contractor

By executing this Agreement, Subrecipient acknowledges and agrees that it will be providing Services to the City as an "independent contractor." As an independent contractor for the City, Subrecipient is prohibited from representing or allowing others to construe the parties' relationship in a manner inconsistent with this Paragraph. Subrecipient shall have no authority to assume or create any obligation on behalf of, or in the name of the City, without the express prior written approval of a duly authorized representative of the City.

Subrecipient, its employees and any person retained or hired by Subrecipient to perform duties and responsibilities under this Agreement are not the City employees, and therefore, such persons will not be entitled to, nor will they make a claim for, any of the emoluments of employment with the City of Dayton. Further, Subrecipient will be responsible to withhold and pay, or cause such agents, contractors and subcontractors to withhold and pay, all applicable local, state and federal taxes. Subrecipient further acknowledges and agrees that none of his employees are public

employees for the purpose of membership and/or participation in the Ohio Public Employees Retirement System (OPERS).

C. Indemnification

The Subrecipient shall defend, indemnify and hold harmless the City, its elected officials, officers, employees and agents from and against legal liability for all claims, losses, damages and expenses to the extent that such claims, losses, damages, or expenses are caused by or arise out of the performance or non-performance of this Agreement and/or the Program, including any violation of state, federal or local laws, rules and regulations governing the use or expenditure of Emergency Solutions Grant Program funding and/or the acts, omissions or conduct of the Subrecipient, its employees, contractors and/or agents.

In the event the Subrecipient violates any HUD regulations or requirements, and specifically those related to the Emergency Solutions Grant Program, the Subrecipient shall assume full and complete responsibility for said violations, including payment of the penalty imposed or re-payment of improperly expended funds, and shall defend, indemnify, and hold the City, its elected officials, officers, agents, and employees harmless.

D. Insurance & Bonding

The Subrecipient shall carry sufficient insurance coverage to protect Agreement assets from loss due to theft, fraud, and/or undue physical damage, and at a minimum, shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances by the City. The Subrecipient shall comply with the bonding and insurance requirements of 2 CFR Part 200 Subpart D.

E. Amendments

The City and the Subrecipient may amend this Agreement. However, no such amendment shall be effective unless it is reduced to writing, which shall reference this Agreement, executed by a duly authorized representative of each party, and, if required or applicable, approved by the Commission of the City of Dayton.

F. Entire Agreement / Integration

This Agreement, together with all Exhibits and attachments referenced herein, represents the entire and integrated Agreement between the City and the Subrecipient. This Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreements, or contracts, whether oral or written, relating to the subject matter of this Agreement.

G. Waiver

A waiver by either party of any breach of this Agreement shall be in writing. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it is given and shall not affect the waiving party's rights with respect to any other or further breach.

H. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws.

I. Reference to Laws

All references to local, state, and federal laws, regulations, rules or orders contained in this Agreement shall include any and all subsequent amendments, modifications, additions or other changes as may be enacted or codified by the proper governmental authority during the term of this Agreement.

J. Notices

All communications or notices required or permitted under this Agreement, including invoices for payment, shall be sufficient if sent to the City or the Subrecipient by regular U. S. Mail, postage pre-paid, and addressed as follows:

To City:
City of Dayton, Ohio
Department of Planning and Community Development
101 West Third Street
Dayton, Ohio 45402
Attn: Erin N. Ritter
Erin.ritter@daytonohio.gov

To Subrecipient:
Homefull, Inc.
829 Gettysburg Avenue
Dayton, OH 45417
Attn: Tina Patterson
tinap@homefull.org

Nothing contained in this subsection shall be construed to restrict the transmission of routine communications between representatives of the City and the Subrecipient.

VI. FINANCIAL MANAGEMENT

A. Accounting Standards

The Subrecipient agrees to comply with 2 CFR Part 200 Subparts D and E, and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

B. Cost Principles

The Subrecipient shall administer its program in conformance with 2 CFR Part 200 Subparts D and E. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis

VII. DOCUMENTATION AND RECORD KEEPING

A. Records to be Maintained

1. The Subrecipient shall maintain all records required by the federal regulations specified in 2 CFR Part 200 and 24 CFR Part 576 that are pertinent to the activities to be funded under this Agreement. Such records shall include, but not be limited to:

   (a) Records providing a full description of each activity undertaken;

   (b) Records demonstrating that each activity undertaken meets one of the Emergency Solutions Grant eligible activities;

   (c) Records required to determine the eligibility of activities;

   (d) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with Emergency Shelter Grant assistance;

   (e) Records maintained in the Dayton Montgomery County Homeless Management Information System (HMIS), with continuous participation and at a minimum of a 90% completion rate for Universal Data Elements by the Subrecipient;

   (f) Financial records as required by 24 CFR Part 576 and 2 CFR Part 200.

2. All costs and expenditures shall be supported by properly executed payrolls, time records, invoices, Agreements, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement and shall be clearly identified and readily accessible to the City.

3. At any time during normal business hours and as often as the City may deem necessary, the Subrecipient shall make available to the City all of its records with respect to all matters covered by this Agreement, and will permit the City to audit, examine, and make excerpts of transcripts from such records and to make audits of all agreements, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. The City may require the Subrecipient to provide by an independent CPA at the Subrecipient's expense, an audit of this Agreement. In performing such audits, the Subrecipient shall require the auditor to comply with all City rules and regulations governing auditing.

B. Retention

The Subrecipient shall retain all records pertinent to expenditures incurred under this Agreement for a period of three (3) years after the termination of all activities funded under this Agreement. Records for non-expendable property acquired with funds

under this Agreement shall be retained for three (3) years after receipt of final payment. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the three-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the three-year period, whichever occurs later.

C. Client Data

The Subrecipient shall maintain client data demonstrating client eligibility for the services to be provided under the terms of this Agreement. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of services provided. Such information shall be made available to the City or its designees for review upon request.

D. Disclosure

The Subrecipient understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the City's or Subrecipient's responsibilities with respect to services provided under this Agreement, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian or otherwise required by law or court order.

E. Property Records

The Subrecipient shall maintain real property inventory records, which clearly identify properties purchased, improved, or sold. Properties retained shall continue to meet eligibility criteria and shall conform to the "changes in use" restrictions specified in 24 CFR Part 576 and 2 CFR Part 200 as applicable.

F. Close-Outs

The Subrecipient's obligation to the City shall not end until all closeout requirements are completed. Activities during this close-out include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and receivable accounts to the City), and determining the custodianship of records.

G. Audits & Inspections

All Subrecipient's records with respect to any matters covered by this Agreement shall be made available to the City, City agency, its designees or the Federal Government and its agencies or designees, at any time during normal business hours, as often as the City or the Federal Government, its agencies or designees deem necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after completion. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning subrecipient audits and, as applicable, 2 CFR 200 Subpart F.

H. Subcontracting

1. The Subrecipient represents that it has or will secure at its own expense, all personnel required to perform the work and services under this Agreement for the Program. All of the work and services required will be performed by the Subrecipient or under its supervision and all personnel engaged in the work and services shall be fully qualified and shall be authorized or permitted under federal, state and local law to perform such work and services.
2. None of the work or services covered by this Agreement shall be subcontracted without written approval of the City. Any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

VIII. REPORTING AND PAYMENT PROCEDURES

A. Program Income

The Subrecipient shall report quarterly all "program income," as defined at 2 CFR 200.307 generated by activities carried out with Emergency Shelter Grant funds made available under this Agreement. The use of program income by the Subrecipient shall comply with the requirements set forth at 2 CFR 200.307. By way of further limitations, the Subrecipient may use such income during the Agreement period for activities permitted under this Agreement and shall reduce requests for additional funds by the amount of any such program balances on hand. All unused program income shall be returned to the City at the end of the Agreement period. Any interest earned on cash advances from the U.S. Treasury is not program income and shall be remitted promptly to the City.

B. Indirect Costs

If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient share of administrative costs and shall submit such plan to the City for approval, in a form specified by the City.

C. Progress Reports

The Subrecipient shall submit a Progress Report to the City in the form, content, and frequency as required by the City.

D. Annual Reports

The Subrecipient shall submit an Annual Report to the City in the form, content, and frequency as required by the City and the SAGE HMIS system, as described in Exhibit D.

D. Procurement

The Subrecipient shall comply with the City's policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the City upon termination of this Agreement.

1. The Subrecipient shall procure all materials, property, or services in accordance with the requirements of 2 CFR 200 Subpart D, Procurement, and shall subsequently follow Property Management Standards as modified by 2 CFR 200 Subpart D, covering utilization and disposal of property.

IX. EQUAL EMPLOYMENT OPPORTUNITY

A. The Subrecipient shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap with respect to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff determination, rates of pay of other forms of compensation, or selection for training, including apprenticeship.

It is expressly agreed and understood by the Subrecipient that Section 35.14 of the Revised Code of General Ordinances of the City of Dayton, constitutes a material condition of this Agreement as fully and as if specifically rewritten herein and that failure to comply therewith shall constitute a breach thereof entitling the City to terminate this Agreement at its option.

B. The Subrecipient shall comply with all other applicable federal, state, and local laws, regulations, and/or orders pertaining to equal employment opportunity.

X. TERMINATION

In addition to all other remedies provided under this Agreement or at law, the City may terminate this Agreement in the event or for the following reasons:

A. The Subrecipient's failure, for any reason, to fulfill in a timely and proper manner its obligations under this Agreement;

B. The Subrecipient's breach of any term or condition of this Agreement;

C. The Subrecipient's violation of any applicable federal, state and/or local law, rule, regulation, OMB Circular, executive order or directive, including any provision of the Stewart B. McKinney Homeless Assistance Act, as amended by the National Affordable Housing Act;

D. The Subrecipient's submission of any invoices, reports or records that are incorrect, fraudulent and/or incomplete in any material respect;

E. Ineffective or improper use of the funds provided under this Agreement;

F. Suspension or termination of the Emergency Solutions Grant Program grant award to the City under which this Agreement is made. However, if the grant is merely reduced and in the absence of any contrary grantor agency directive, the Subrecipient may readjust its budget and recommend amendment(s) to the City; or

G. When required or directed by HUD to terminate, assign, or transfer this Agreement.

In the event the City terminates this Agreement for reasons (a) through (g) above, the Subrecipient may be required to repay, at the City's discretion, all or a portion of the funds disbursed to the Subrecipient under this Agreement. Notwithstanding, it is understood that in the event of termination for any of the aforementioned reasons, all unexpended funds in the Subrecipient's possession on the date of termination shall be immediately returned to the City.

XI. CONFLICT OF INTEREST

No member of the governing body of the City and no other officers, officials, agents or employees of the City or government of the United States of America, shall have any personal financial interest, direct or indirect, in this Agreement. The Subrecipient shall take appropriate steps to insure compliance.

XII. INTEREST OF SUBRECIPIENT

The Subrecipient covenants that no person who presently exercises any function or responsibilities in connection with the program has any personal financial interest, direct or indirect, in the Agreement. The Subrecipient covenants that it presently has no interest and shall not acquire any interest, direct or indirect, in any parcels of property within the City which thereby causes conflict in any manner or degree with the performance of its work or services hereunder.

XIII. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the City and subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the City and subrecipient with respect to this Agreement.

XIV. REFERENCES TO LAW

All references to federal, state or local laws, regulations, or orders contained in this Agreement shall include any and all subsequent amendments, modifications, additions or other changes as may be enacted or codified by the proper governmental authority during the term of this Agreement.

IN WITNESS WHEREOF, the City, and the Subrecipient, each by a duly authorized representative, have executed this Agreement as of the date first set forth above.

THE CITY OF DAYTON, OHIO

_____
City Manager

HOMEFULL, INC.

_____
Chief Executive Officer

APPROVED AS TO FORM AND CORRECTNESS:

_____
City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

_____, 2020

Min. / Bk. _____ Page _____

_____
Clerk of the Commission

EXHIBIT A
SCOPE OF SERVICES
HOMEFULL EMERGENCY SOLUTIONS GRANT
PREVENTING HOMELESSNESS BY ALIGNING SYSTEMS EFFECTIVELY (PHASE) PROGRAM

1. PROGRAM

Preventing Homelessness by Aligning Systems Effectively (PHASE) proposes to implement a high functioning crisis response collective impact project to prevent homelessness by focusing on effective targeting in school-based prevention and in eviction prevention (including legal assistance) for high-risk households living in subsidized, public housing.

The target population is households at imminent risk of literal homelessness. Prevention assistance becomes clearer the nearer households are to homelessness. Based on local data, these households are most likely to have been homeless before and/or at risk for eviction from subsidized housing. The PHASE partnership will offer a menu of problem-solving and practical Progressive Engagement options to meet the needs of these high-risk households with the right resources at the right time.

2. COMMUNITY DEVELOPMENT GOALS AND OBJECTIVES

- Provide temporary assistance to individuals that would have become homeless but for this assistance;
- Reduce the number of households entering shelter

3. OUTCOME MEASUREMENTS: PERFORMANCE AND OUTCOME MEASURES

In accordance with U.S. Department of Housing and Urban Development (HUD) requirements, the City has implemented a performance measurement system that is based on an outcomes-based approach to funding projects. The City requires recipients of federal funds to assess the productivity and impact of their programs. This Performance and Outcome Measurement System will help to quantify the effectiveness of programs and establish clearly defined outcomes.

Outcomes-based measurement focuses on results rather than processes and provides an assessment tool for the City and its grantees. The implementation of an outcomes funding framework intends to improve results, accountability, and cost-effectiveness of funded programs.

The City shall report outcomes accomplishments to HUD. The City therefore requires the Subrecipient to submit performance measurement reports that focus on establishing clearly articulated objectives, performance measures, outputs, and program outcomes (desired end results). The City shall review the reports to track progress, provide feedback, and when necessary, provide technical assistance. Program performance is also considered in the decision-making process for fund allocation.

4. SUBRECIPIENT RESPONSIBILITIES

The Subrecipient will be responsible for the following aspects of managing the program:

- Comply with all ESG regulations;
- Market program in conjunction with the City;
- Provide prevention assistance to eligible families and individuals; and,
- Preparation of reports to the City as detailed in Article VIII of the Agreement.

5. BUDGET

TWENTY-NINE THOUSAND TWO-HUNDRED FIFTY DOLLARS AND ZERO CENTS ($29,250.00) in ESG funds will be used solely for the PHASE Program, as specified in Exhibit B, "Budget"

6. STAFFING

The Subrecipient shall assign the following staff as Key Personnel to the ESG Prevention program:

Any changes in the Key Personnel assigned or their general responsibilities under this project are subject to the prior approval of the Grantee.

Staff	Title	Percentage of time
Open	Case Manager	23%

7. PAYMENT PROCEDURES

The City will reimburse Subrecipient for expenditures for the Project and in accordance with the line-item budget set forth in Exhibit B. Subrecipient shall submit all invoices and supporting records and documentation to the City's Department of Planning and Community Development. Subrecipient shall comply with the following requirements for the submission of requests for reimbursement:

A. Invoice Information

Subrecipient's invoice shall contain the following:

1. City Contract Number;
2. Invoice Number;
3. Period Covered;
4. Accomplishments Summary, etc.;
5. Written documentation verifying that weekly payroll reports were reviewed and comply with approved wage determination;
6. Total Amount Requested;
7. List of Enclosed Documents;
8. Agreement funding Balance;
9. Other information Subrecipient desires to communicate to the City's Project Coordinator; and
10. Signature of Subrecipient's Fiscal Officer or Chief Official.

B. Supporting Documentation

Subrecipient shall collect, maintain and submit the following documentation and information with invoices for payment.

For Project administration, the Subrecipient will include:

1. Number of hours worked on the program/project funded, and
2. Summary of work performed by employee during the time for which payment was made.

For supplies/materials, the documentation and information shall include:

1. Invoice from vendor or company detailing the item(s)/services purchased and a copy of Contractor's check showing that Subrecipient paid the vendor for goods/services.

For professional services provided by a subcontracted entity, the documentation and information shall include:

1. A copy of the subcontract must be submitted (at least one during the Agreement period, if Contractor will seek reimbursement on several invoices); and

2. Contractor must require that the subcontracted agency submit the same level of documentation and information that Contractor must provide to seek payment from the City and such information and documentation must be submitted by the Contractor to the City with its invoice. At a minimum, the subcontracted agency should provide Contractor a cover memo, on company letterhead, which summarizes the request for payment, the amount requested, services provided for the requested amount, and information on clients served, if applicable.

Unless disputed or the City determines that there is insufficient documentation to substantiate the invoice, the City will tender payment to Subrecipient within thirty (30) days from the date the City receives the invoice.

8. DOCUMENTATION AND RECORD KEEPING

In order to ensure that program participants and activities meet the program eligibility criteria, the Subrecipient must keep the following documents:

A. Referrals from social service agencies documenting that program participant were indeed homeless at the time they entered the Program;

B. Dates when participating families/individuals entered and exited from the Program;

C. The services that each Program participant received; and

D. Follow-up services provided to those Program participants who exit the Program during this program.

Subrecipient will maintain case files, including above information for a period of not less than five (5) years after completion of the program. Subrecipient will maintain these and other documents and financial records in accordance with the requirements for record retention specified in Article VII of the Agreement.

9. REPORTING PROCEDURES

The City will require timely and consistent reports to ensure that the program is proceeding according to the work program and in accordance with federal regulations. The Subrecipient agrees to submit the following reports:

A. Initial Progress Report

No later than fifteen (15) days from the effective date of this Agreement, the Subrecipient shall submit to the City an initial report, which summarizes progress, initiated to date.

B. Quarterly Progress Report

On the fifth (5th) day of the month following the end of a quarter, beginning with the last quarter of the 2018 Program Year, the Subrecipient must submit a progress report which details at a minimum the following:

1. Total number of individuals who applied for assistance;
2. Total number of individuals approved for assistance;
3. Demographic profile of applicants and approved recipients;
4. Number of individuals assisted;
5. Description of assistance completed for each individual assisted;
6. Percentage of applicants who were from low and moderate income households; and
7. Status of funding i.e. expenditures and remaining balance.

All reports shall be submitted to the City's Department of Planning and Community Development.

EXHIBIT B
BUDGET
HOMEFULL EMERGENCY SOLUTIONS GRANT
PHASE PROGRAM

The Subrecipient will be reimbursed for eligible costs shown in the following budget and based on the appropriate documentation up to a maximum of $29,250.00 per the term of the Agreement.

	City ESG FY2019	Matching Funds	Project Total
Eligible Activities	**Activity Amount**	**Activity Amount**	**Activity Amount**
Homelessness Prevention	**$26,760**	**$35,000**	**$61,760**
Stabilization Services	$10,760	$25,000	$35,760
Tenant-Based Rental and Utility Assistance	$16,000	$10,000	$26,000
Administation	**$2,490**	**$0**	**$2,490**
Emergency Solutions Grants Total	**$29,250**	**$70,000**	**$102,610**

EXHIBIT C
MONITORING SCHEDULE
HOMEFULL EMERGENCY SOLUTIONS GRANT
PHASE PROGRAM

Grantee: City of Dayton, Department of Planning and Community Development

Subrecipient: Homefull

Project/Program: ESG PHASE PROGRAM

Monitoring Subject Area	Date of Review	City Representative
Section I. Required Monitoring for ALL ESG Subrecipient Agreements		
Financial and Program Eligibility and Records Management	Prior to submission of first invoice then ongoing	Erin Ritter
Program Performance	Ongoing on a quarterly basis until termination of Agreement	Erin Ritter

EXHIBIT D
CAPER

BACK

City Manager's Report

From **2340 - Planning & CD / Land Use Administration**

Date **February 26, 2020**

Expense Type **Other, (See Description Below)**

Supplier, Vendor, Company, Individual

Total Amount **$65,102.42 (through 12/31/2020)**

Name **Miami Valley Regional Planning Commission (MVRPC)**

Address **10 N. Ludlow Street, Suite 700**
Dayton, OH 45402

Fund Source(s)	Fund Code(s)	Fund Amount(s)
General fund	10000-2340-1231-53	$65,102.42

Includes Revenue to the City ☐ Yes ☑ No **Affirmative Action Program** ☑ Yes ☐ No ☑ N/A

Description

2020 Miami Valley Regional Planning Commission Annual Membership Dues

The Department of Planning and Community Development requests approval to pay the attached invoice in the amount of $65,102.42 for the City of Dayton's 2020 Miami Valley Regional Planning Commission (MVRPC) membership dues. Dues are based on U.S. Bureau of Census population figures from the 2010 U.S. Census, and are computed at forty-six cents ($0.46) per capita, as specified in the Agency's funding assessment provisions. For the City of Dayton, this is 141,527 (our 2010 Census population count) multiplied by $0.46 for a total of $65,102.42.

This membership allows the City of Dayton to participate in and vote on important regional planning and transportation issues. Most importantly, this membership provides the City access to the Ohio Department of Transportation's funding process.

A Certificate of Funds and invoice are attached.

Signatures/Approval

Tony Kroeger
Division

D.M. Kmil
Department

for City Manager

Approved by City Commission

Clerk

Date

FORM NO. MS-16

Updated 8/2016

CERTIFICATE OF FUNDS

CF020-121

SECTION I - to be completed by User Department **NO DRAFT DOCUMENTS PERMITTED**

x New Contract ____ Renewal Contract ____ Change Order

Contract Start Date	01/02/20
Expiration Date	12/31/20
Original Commission Approval	$ 65,102.42
Initial Encumbrance	$ 65,102.42
Remaining Commission Approval	$ -

Original CT/CF	$ -
Increase Encumbrance	$ -
Decrease Encumbrance	$ -
Remaining Commission Approval	$ -

Required Documentation

X	Initial City Manager's Report
X	Initial Certificate of Funds
X	Initial Agreement/Contract/**Invoice**
	Copy of City Manager's Report
	Copy of Original Certificate of Funds

Amount: $65,102.42	Amount:
Fund Code 10000 - 2340 - 1231 - 53 - XXXX - XXXX (Fund, Org, Acct, Prog, Act, Loc)	Fund Code XXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund, Org, Acct, Prog, Act, Loc)
Amount:	Amount:
Fund Code XXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund, Org, Acct, Prog, Act, Loc)	Fund Code XXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund, Org, Acct, Prog, Act, Loc)

Attach additional pages for more FOAPALs

Vendor Name: Miami Valley Regional Planning Commission

Vendor Address: 10 N. Ludlow Street, Suite 700 (Street) Dayton, (City) Ohio (State) 45402 (Zip code + 4)

Federal ID: 54-2188250

Commodity Code: 918-96

Purpose:

2020 Miami Valley Regional Planning Annual Membership dues (invoice attached)

Contact Person: Tony Kroeger x3673 Planning & Community Development (Department/Division) 2/10/2020 (Date)

Originating Department Director's Signature: [signature]

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

[signature] 2/17/2020

Finance Director Signature Date

[signature] 2/17/2020 CF020-121

CF Prepared by Date CF/CT Number

SA 02-13-2020

MIAMI VALLEY
Regional Planning Commission
10 N. Ludlow St., Suite 700
Dayton, OH 45402
Phone (937) 223-6323 Fax (937) 223-9750
FEDERAL ID NO. 54-2188250

To: City Of Dayton
101 W Third Street
Dayton, OH 45401-0022

INVOICE	
INVOICE #	**DATE**
791	**1/02/2020**

Date Ordered	Customer Order No.	Ordered/Authorized By:	Terms
			Due February 1, 2020

Description	Quantity	Unit Price	Amount
MVRPC Membership Investment CY2020	141,527	0.46	65,102.42

Quantity represents the population figures from 2010 U.S Census

Invoice Total **65,102.42**

For internal use only

GL #	Project #	Cust	CR
4610		DAYT CI	65,102.42

THANK YOU

Please make check payable to: Miami Valley Regional Planning Commission
10 N. Ludlow Street, Suite 700
Dayton, OH 45402-1855

BACK

City Manager's Report

12.

From **2390 - Planning & CD/Community Dev**

Date **February 26, 2020**

Expense Type **Other, (See Description Below)**

Total Amount **$291,061.00 (thru 6/30/2020)**

Supplier, Vendor, Company, Individual

Name **St. Vincent de Paul Social Services, Inc.**

Address **124 W. Apple St.**
Dayton, Ohio 45402

Fund Source(s)	Fund Code(s)	Fund Amount(s)
2019 Emergency Solutions Grant (ESG)	25002-2390-1159-31-PL1944	$291,061.00

Includes Revenue to the City ☐ Yes ☑ No **Affirmative Action Program** ☑ Yes ☐ No ☐ N/A

Description

Subrecipient Agreement - 2019 Emergency Solutions Grant

The Department of Planning and Community Development requests approval to enter into an Agreement with St. Vincent de Paul Social Services, Inc., in the amount of $291,061.00, to provide shelter for homeless individuals and families. The City of Dayton has been awarded 2019 Emergency Solutions Grant (ESG) funding from the U.S. Department of Housing & Urban Development (HUD) to improve the quality of existing emergency shelters and provide critical social and supportive services necessary to assist homeless individuals in becoming self-sufficient.

The St. Vincent de Paul Gateway Shelters are the only two emergency shelters for the general homeless population in our community. The St. Vincent de Paul Gateway Shelters provide vital operational and basic human services to the homeless men, women and families in our community, in order to ensure their secure and safe shelter during the length of their homelessness and while they are working with case management on housing-focused plans. Operational and human services provide beds, shower facilities, three daily meals, clothing, personal hygiene items, mail and message services, lockers to store belongings, infants' and children's needs, and 24-hour contracted security.

This Agreement shall commence upon execution and it shall terminate on June 30, 2020.

This Agreement has been reviewed by the Law Department as to form and correctness.

A Certificate of Funds and a copy of the Agreement are attached.

Signatures/Approval

Division

Department

City Manager

Approved by City Commission

Clerk

Date

FORM NO. MS-16

Updated 8/2016

CERTIFICATE OF FUNDS

CT20-2531

SECTION I - to be completed by User Department **NO DRAFT DOCUMENTS PERMITTED**

X New Contract _____ Renewal Contract _____ Change Order

Contract Start Date	Execution by City
Expiration Date	06/30/20
Original Commission Approval	$ 291,061.00
Initial Encumbrance	$ 291,061.00
Remaining Commission Approval	$ -

Original CT/CF	$ -
Increase Encumbrance	$ -
Decrease Encumbrance	$ -
Remaining Commission Approval	$ -

Required Documentation

X	Initial City Manager's Report
X	Initial Certificate of Funds
X	Initial Agreement/Contract
	Copy of City Manager's Report
	Copy of Original Certificate of Funds

Amount: $ 291,061.00	Amount:
Fund Code 25002 - 2390 1159 - 31 - PL1944 - XXXX (Fund, Org, Acct, Prog, Act, Loc)	Fund Code XXXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund, Org, Acct, Prog, Act, Loc)
Amount:	Amount:
Fund Code XXXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund, Org, Acct, Prog, Act, Loc)	Fund Code XXXXX - XXXX - XXXX - XX - XXXX - XXXX (Fund, Org, Acct, Prog, Act, Loc)

Attach additional pages for more FOAPALs

Vendor Name: St. Vincent de Paul Social Services, Inc.

Vendor Address: 124 W. Apple Street (Street) Dayton (City) OH (State) 45402 (Zipcode + 4)

Federal ID: 311132259

Commodity Code: 96199

Purpose: Provide emergency shelter for the general homeless population in Dayton.

Contact Person: Erin Ritter x3816 Planning & Community Development (Department/Division) 2/13/2020 (Date)

Originating Department Director's Signature: [signature]

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

[signature] 2/18/2020
Finance Director Signature Date

[signature] 2/17/2020 CT20-2531
CF Prepared by Date CF/CT Number

SA 02-17-2020

EMERGENCY SOLUTIONS GRANT PROGRAM
SUBRECIPIENT AGREEMENT
ST. VINCENT DE PAUL SOCIAL SERVICES, INC.
CFDA 14.231
E-19-MC-39-0010

THIS SUBRECIPIENT AGREEMENT ("Agreement") is entered into this day ____ of _____, 2020, between the CITY OF DAYTON, OHIO (hereinafter referred to as "City") and ST. VINCENT DE PAUL SOCIAL SERVICES, INC. a not-for-profit corporation organized under the laws of the State of Ohio, (hereinafter referred to as "Subrecipient").

WITNESSETH THAT:

WHEREAS, The United States Department of Housing and Urban Development ("HUD") awarded the City grant funding under the "Emergency Solutions Grant Program," as authorized by the Stewart B. McKinney Homeless Assistance Act, including Subpart B of Title IV of the Act; and,

WHEREAS, The Subrecipient operates and manages night homeless shelters for men, women, and dependent children ("Program"); and,

WHEREAS, The Program qualifies for the receipt of funding under the Emergency Solutions Grant Program, and that providing a portion of the City's grant award from HUD to the Subrecipient for its Program is consistent with the objectives of the Emergency Solutions Grant Program.

NOW, THEREFORE, In consideration of the mutual promises and covenants hereinafter set forth, the parties hereto mutually agree as follows:

I. GRANT OF FUNDS

The City grants the Subrecipient a portion of its Emergency Solutions Grant Program award from HUD in an amount not to exceed **TWO HUNDRED NINETY-ONE THOUSAND SIXTY-ONE DOLLARS AND ZERO CENTS ($291,061.00)** for the costs of managing and operating the Program.

II. SCOPE OF SERVICES

A. Program

The Subrecipient shall, in a manner satisfactory to the City, manage and operate the Program, as described in Exhibit A, which is attached hereto and incorporated herein. The Subrecipient shall be solely responsible for all aspects of operating the Program, and shall use the funds provided hereunder for those costs listed in Exhibit A under the heading "Use of Funds."

B. Special Requirements

1. The Subrecipient agrees to provide matching funds equal to the amount of grant funding to be provided by the City hereunder. Calculation of the matching funds

shall be determined according to the HUD regulations set forth in 2 CFR Part Subpart D 200.36.

2. Any building for which Emergency Solutions Grant Program funds are used must be maintained as a shelter for the homeless for the period prescribed by the HUD regulations set forth in 2 CFR Subpart D 200.311.

3. Any Emergency Solutions Grant Program funds used for building renovation, conversion or major rehabilitation must meet the local government standard of being in a safe and sanitary condition.

4. Homeless individuals must be given assistance in obtaining appropriate supportive services, including permanent housing, medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living and obtaining other federal, state, local, and private assistance that may be available for such individuals.

5. To the maximum extent practicable, homeless individuals and families must be involved in the construction, renovation, maintenance, and operation of facilities assisted under the Emergency Solutions Grant Program, and in providing services for occupants of these facilities.

6. The Subrecipient must comply with applicable federal laws concerning non-discrimination and equal opportunity accessibility, lead-based paint, flood insurance, drug and alcohol free facility and use of debarred, suspended, or ineligible subrecipients. (See Appendix II to Part 200)

C. Monitoring and Evaluation

1. Subrecipient agrees that the City and HUD, or its agents shall monitor, evaluate and may provide guidance and direction to Subrecipient in the conduct of the work and activities to be performed under the terms of this Agreement.

2. The City will monitor the performance of the Subrecipient against goals and performance standards as set forth in Exhibit C. Substandard performance as determined by the City will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the City, Agreement suspension or termination procedures may be initiated.

III. TIME OF PERFORMANCE

This Agreement shall be effective upon approval by the City Commission. The services and work to be performed by the Subrecipient shall commence July 1, 2019, through June 30, 2020, at which time all work must be satisfactorily completed in compliance with this Agreement.

IV. BUDGET AND PAYMENT PROCEDURES

A. Budget

Exhibit B, which is attached hereto and incorporated herein, shall serve as the official line item budget for the Program to be funded under this Agreement. In order to provide sufficient flexibility in the operation of the Program, the Subrecipient may amend the budget by transfer of funds between budget line items, so long as no line item is changed by more than 10% of that amount presently set out for that particular line item and such change would not violate 2 CFR Subpart D and E. A transfer of funds greater than 10% in any one line item shall not be effective until copies of the proposed amended budget are presented to and approved by the City's Director of Planning and Community Development.

B. Payment Procedures

1. The City shall reimburse to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and City policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. In addition, the City reserves the right to liquidate funds available under this Agreement for costs incurred by the City on behalf of the Subrecipient.

2. Disbursements shall be made for merchandise or services that have been properly budgeted and authorized which are accompanied by an invoice, Agreement, purchase order, or other authorization properly approved. Disbursements shall be made after certification by the Subrecipient that the Subrecipient has received the merchandise or services. All disbursements are to be made by check. No checks are to be payable to Cash. All checks shall be pre-numbered.

3. Expenditures under this Agreement shall be made solely for Program goods and services, which will be utilized during the Agreement term. The Subrecipient shall not spend funds for services, which are to be furnished beyond the Agreement term. Funds spent for services, supplies, or consumed in whole or in part beyond the term of the Agreement shall be unallowable expenses with respect to that portion of goods or services consumed or supplied beyond the term hereof.

4. No funds are to be encumbered for the payment of Program costs incurred prior to the order to proceed, or costs incurred with respect to any action of the Subrecipient after the City has requested that the Subrecipient furnish data concerning such action prior to proceeding further, unless and until the Subrecipient is thereafter advised in writing that the City does not object to so proceeding.

5. Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in Part 200-Uniform Administrative Requirements, Cost Principles, and Audit Requirements for federal awards.

V. GENERAL CONDITIONS

A. Compliance

1. The Subrecipient agrees that the HUD regulations set forth in 2 CFR Part 200 Subpart D are applicable to the grant funds it receives pursuant to this Agreement.

2. The Subrecipient agrees that the work and services authorized by this Agreement shall be performed in accordance with any and all applicable local, state and federal regulations, directives or guidelines.

3. The Subrecipient agrees to prohibit the use of federal funds for lobbying in compliance with the following:

   (a) No federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with the awarding of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.

   (b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with this federal agreement, grant, loan or cooperative agreement, the Subrecipient shall notify the City, and complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

4. The Subrecipient shall include the requirements of this Subsection A in award documents for all sub-awards at all times (including sub-contracts, subgrants and Agreements) and require that all sub-award recipients disclose the same accordingly.

B. Independent Contractor

The parties hereby agree that at all times, the Subrecipient shall be an Independent Contractor and not subject to control by the City, except as provided herein. As an Independent Contractor, the parties hereby agree that the relationship between the parties shall not be held out or construed as employer-employee, joint-venture, or principal-agent. Neither party shall act or represent itself in such a manner as to assume or create any obligation on behalf of, or in the name of the other party, without the prior written and express authority to do so by a duly authorized representative of the other party.

Subrecipient understands and agrees that any and all persons retained or hired to perform the duties and responsibilities under this Agreement are not City employees, and not entitled to any of the emoluments of City employment, including for the purposes of Ohio Employee Retirement System membership. Further, the

Subrecipient shall be responsible for paying such agents, Subrecipients and sub-Subrecipients, withholding from their pay, all local, state and federal taxes, and Workers Compensation Insurance. Subrecipient further acknowledges and agrees that none of its employees are public employees for the purpose of membership and/or participation in the Ohio Public Employees Retirement System (OPERS).

C. Indemnification

The Subrecipient shall defend, indemnify and hold harmless the City, its elected officials, officers, employees and agents from and against legal liability for all claims, losses, damages and expenses to the extent that such claims, losses, damages, or expenses are caused by or arise out of the performance or non-performance of this Agreement and/or the Program, including any violation of state, federal or local laws, rules and regulations governing the use or expenditure of Emergency Solutions Grant Program funding and/or the acts, omissions or conduct of the Subrecipient, its employees, contractors and/or agents.

In the event the Subrecipient violates any HUD regulations or requirements, and specifically those related to the Emergency Solutions Grant Program, the Subrecipient shall assume full and complete responsibility for said violations, including payment of the penalty imposed or re-payment of improperly expended funds, and shall defend, indemnify, and hold the City, its elected officials, officers, agents and employees harmless.

D. Insurance & Bonding

The Subrecipient shall carry sufficient insurance coverage to protect Agreement assets from loss due to theft, fraud and/or undue physical damage, and at a minimum, shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances by the City. The Subrecipient shall comply with the bonding and insurance requirements of 2 CFR Part 200 Subpart D.

E. Amendments

The City and the Subrecipient may amend this Agreement. However, no such amendment shall be effective unless it is reduced to writing which shall reference this Agreement, executed by a duly authorized representative of each party and, if required or applicable, approved by the Commission of the City of Dayton.

F. Entire Agreement / Integration

This Agreement, together with all Exhibits and attachments referenced herein, represents the entire and integrated Agreement between the City and the Subrecipient. This Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreements or contracts, whether oral or written, relating to the subject matter of this Agreement.

G. Waiver

A waiver by either party of any breach of this Agreement shall be in writing. Any such waiver shall be effective only in the specific instance and for the specific

purpose for which it is given and shall not affect the waiving party's rights with respect to any other or further breach.

H. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws.

I. Reference to Laws

All references to local, state, and federal laws, regulations, rules or orders contained in this Agreement shall include any and all subsequent amendments, modifications, additions or other changes as may be enacted or codified by the proper governmental authority during the term of this Agreement.

J. Notices

All communications or notices required or permitted under this Agreement, including invoices for payment, shall be sufficient if sent to the City or the Subrecipient by regular U. S. Mail, postage pre-paid, and addressed as follows:

To City:
City of Dayton, Ohio
Department of Planning and Community Development
101 West Third Street
Dayton, Ohio 45402
Attn: Erin N. Ritter
Erin.Ritter@daytonohio.gov

To Subrecipient:
St. Vincent de Paul Social Services
124 W. Apple St.
Dayton, Ohio 45402
Attn: Rob Andrews
randrews@stvincentdayton.org

Nothing contained in this subsection shall be construed to restrict the transmission of routine communications between representatives of the City and the Subrecipient.

VI. FINANCIAL MANAGEMENT

A. Accounting Standards

The Subrecipient agrees to comply with Attachment F of 2 CFR Part 200 Subparts D and E, and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

B. Cost Principles

The Subrecipient shall administer its program in conformance with 2 CFR Part 200 Subparts D and E. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

VII. DOCUMENTATION AND RECORD KEEPING

A. Records to be Maintained

1. The Subrecipient shall maintain all records required by the federal regulations specified in 2 CFR Subparts D and E that are pertinent to the activities to be funded under this Agreement. Such records shall include, but not be limited to:

   (a) Records providing a full description of each activity undertaken;

   (b) Records demonstrating that each activity undertaken meets one of the Emergency Solutions Grant eligible activities;

   (c) Records required to determine the eligibility of activities;

   (d) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with Emergency Shelter Grant assistance;

   (e) Records maintained in the Dayton Montgomery County Homeless Management Information System (HMIS), with continuous participation and at minimum 90% completion rate for Universal Data Elements by the Subrecipient;

   (f) Financial records as required by 2 CFR Part 200.

2. All costs and expenditures shall be supported by properly executed payrolls, time records, invoices, Agreements, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement and shall be clearly identified and readily accessible to the City.

3. At any time during normal business hours and as often as the City may deem necessary, the Subrecipient shall make available to the City all of its records with respect to all matters covered by this Agreement, and will permit the City to audit, examine, and make excerpts of transcripts from such records and to make audits of all agreements, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. The City may require the Subrecipient to provide by an independent CPA at the Subrecipient's expense, an audit of this Agreement. In performing such audits, the Subrecipient shall require the auditor to comply with all City rules and regulations governing auditing.

B. Retention

The Subrecipient shall retain all records pertinent to expenditures incurred under this Agreement for a period of three (3) years after the termination of all activities funded under this Agreement. Records for non-expendable property acquired with funds under this Agreement shall be retained for three (3) years after receipt of final payment. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the three-year period, then such records must be retained until

completion of the actions and resolution of all issues, or the expiration of the three-year period, whichever occurs later.

C. Client Data

The Subrecipient shall maintain client data demonstrating client eligibility for the services to be provided under the terms of this Agreement. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of services provided. Such information shall be made available to the City or its designees for review upon request.

D. Disclosure

The Subrecipient understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the City's or Subrecipient's responsibilities with respect to services provided under this Agreement, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian or otherwise required by law or court order.

E. Property Records

The Subrecipient shall maintain real property inventory records, which clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform with the "changes in use" restrictions specified in 2 CFR 200 Subpart D, as applicable.

F. Close-Outs

The Subrecipient's obligation to the City shall not end until all closeout requirements are completed. Activities during this close-out include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and receivable accounts to the City), and determining the custodianship of records.

G. Audits & Inspections

All Subrecipient's records with respect to any matters covered by this Agreement shall be made available to the City, City agency, its designees or the Federal Government and its agencies or designees, at any time during normal business hours, as often as the City or the Federal Government, its agencies or designees deem necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after completion. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning subrecipient audits and, as applicable, 2 CFR 200 Subpart F.

H. Subcontracting

1. The Subrecipient represents that it has or will secure at its own expense, all personnel required to perform the work and services under this Agreement for the Program. All of the work and services required will be performed by the Subrecipient or under its supervision and all personnel engaged in the work and services shall be fully qualified and shall be authorized or permitted under federal, state and local law to perform such work and services.

2. None of the work or services covered by this Agreement shall be subcontracted without written approval of the City. Any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

VIII. REPORTING AND PAYMENT PROCEDURES

A. Program Income

The Subrecipient shall report quarterly all "program income," as defined at 2 CFR 200.307 generated by activities carried out with Emergency Shelter Grant funds made available under this Agreement. The use of program income by the Subrecipient shall comply with the requirements set forth at 2 CFR 200.307. By way of further limitations, the Subrecipient may use such income during the Agreement period for activities permitted under this Agreement and shall reduce requests for additional funds by the amount of any such program balances on hand. All unused program income shall be returned to the City at the end of the Agreement period. Any interest earned on cash advances from the U.S. Treasury is not program income and shall be remitted promptly to the City.

B. Indirect Costs

If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient share of administrative costs and shall submit such plan to the City for approval, in a form specified by the City.

C. Progress Reports

The Subrecipient shall submit a Progress Report to the City in the form, content, and frequency as required by the City.

D. Procurement

1. The Subrecipient shall comply with the City's policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the City upon termination of this Agreement.

2. The Subrecipient shall procure all materials, property, or services in accordance with the requirements of 2 CFR 200 Subpart D, Procurement, and shall subsequently follow Property Management Standards as modified by 2 CFR 200 Subpart D, covering utilization and disposal of property.

IX. EQUAL EMPLOYMENT OPPORTUNITY

A. The Subrecipient shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap with respect to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff determination, rates of pay of other forms of compensation, or selection for training, including apprenticeship.

It is expressly agreed and understood by the Subrecipient that Section 35.14 of the Revised Code of General Ordinances of the City of Dayton, constitutes a material condition of this Agreement as fully and as if specifically rewritten herein and that failure to comply therewith shall constitute a breach thereof entitling the City to terminate this Agreement at its option.

B. The Subrecipient shall comply with all other applicable federal, state and local laws, regulations, and/or orders pertaining to equal employment opportunity.

X. TERMINATION

In addition to all other remedies provided under this Agreement or at law, the City may terminate this Agreement in the event or for the following reasons:

A. The Subrecipient's failure, for any reason, to fulfill in a timely and proper manner its obligations under this Agreement;

B. The Subrecipient's breach of any term or condition of this Agreement;

C. The Subrecipient's violation of any applicable federal, state and/or local law, rule, regulation, OMB Circular, executive order or directive, including any provision of the Stewart B. McKinney Homeless Assistance Act, as amended by the National Affordable Housing Act;

D. The Subrecipient's submission of any invoices, reports or records that are incorrect, fraudulent and/or incomplete in any material respect;

E. Ineffective or improper use of the funds provided under this Agreement;

F. Suspension or termination of the Emergency Solutions Grant Program grant award to the City under which this Agreement is made. However, if the grant is merely reduced and in the absence of any contrary grantor agency directive, the Subrecipient may readjust its budget and recommend amendment(s) to the City; or

G. When required or directed by HUD to terminate, assign, or transfer this Agreement.

In the event the City terminates this Agreement for reasons (a) through (g) above, the Subrecipient may be required to repay, at the City's discretion, all or a portion of the funds disbursed to the Subrecipient under this Agreement. Notwithstanding, it is understood that in the event of termination for any of the aforementioned reasons, all unexpended funds in the Subrecipient's possession on the date of termination shall be immediately returned to the City.

XI. CONFLICT OF INTEREST

No member of the governing body of the City and no other officers, officials, agents or employees of the City or government of the United States of America, shall have any personal financial interest, direct or indirect, in this Agreement. The Subrecipient shall take appropriate steps to insure compliance.

XII. INTEREST OF SUBRECIPIENT

The Subrecipient covenants that no person who presently exercises any function or responsibilities in connection with the program has any personal financial interest, direct or indirect, in the Agreement. The Subrecipient covenants that it presently has no interest and shall not acquire any interest, direct or indirect, in any parcels of property within the City which thereby causes conflict in any manner or degree with the performance of its work or services hereunder.

XIII. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the City and subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the City and subrecipient with respect to this Agreement.

XIV. REFERENCES TO LAW

All references to federal, state or local laws, regulations, or orders contained in this Agreement shall include any and all subsequent amendments, modifications, additions or other changes as may be enacted or codified by the proper governmental authority during the term of this Agreement.

{Remainder of Page Intentionally Left Blank}

IN WITNESS WHEREOF, the City and the Subrecipient, each by a duly authorized representative, have executed this Agreement as of the date first set forth above.

THE CITY OF DAYTON, OHIO

_____
City Manager

ST. VINCENT DE PAUL SOCIAL SERVICES, INC.

_____
Executive Director

APPROVED AS TO FORM AND CORRECTNESS:

_____
City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

_____, 2020

Min. / Bk. _____ Page _____

_____
Clerk of the Commission

EXHIBIT "A"
SCOPE OF SERVICES
ST. VINCENT DE PAUL SOCIAL SERVICES, INC.

1. PROGRAM

St. Vincent de Paul Gateway Shelters are the only two emergency shelters for the general homeless population in our community. The St. Vincent de Paul Gateway Shelters provide vital operational and basic human services to the homeless men, women and families in our community in order to ensure their secure and safe shelter during the length of their homelessness and while they are working with case management on housing-focused plans.

Both facilities provide 24-hour shelter for usual capacities of 178 single men (238 in severe weather), 70 single women, and 30 families with an average of 60 children. In 2019, St. Vincent de Paul provided 161,856 units of shelter to 1,945 single men, 1,000 single women, and 408 families with 580 adults (primarily women) and 703 children.

Operational services are comprised of maintenance, security, and all other services related to providing one 24-hour day of shelter that includes a bed, shower, a place to be during the day, three meals, laundry, personal hygiene items, clothing, storage of belongings, and the use of an address and telephone.

2. COMMUNITY DEVELOPMENT GOALS AND OBJECTIVES

- Provide temporary assistance to individuals that would have become homeless but for this assistance;
- Reduce the number of households entering shelter; and
- Reduce length of time households spend in shelter.

3. OUTCOME MEASUREMENTS: PERFORMANCE AND OUTCOME MEASURES

In accordance with U.S. Department of Housing and Urban Development (HUD) requirements, the City has implemented a performance measurement system that is based on an outcomes-based approach to funding projects. The City requires recipients of federal funds to assess the productivity and impact of their programs. This Performance and Outcome Measurement System will help to quantify the effectiveness of programs and establish clearly defined outcomes.

Outcomes-based measurement focuses on results rather than processes and provides an assessment tool for the City and its grantees. The implementation of an outcomes funding framework intends to improve results, accountability, and cost-effectiveness of funded programs.

The City shall report outcome accomplishments to HUD. The City therefore requires the Subrecipient to submit performance measurement reports that focus on establishing clear articulated objectives, performance measures, outputs and program outcomes (desired end results). The City shall review the reports to track progress, provide feedback, and when necessary, provide technical assistance. Program performance is also considered in the decision-making process for fund allocation.

4. SUBRECIPIENT RESPONSIBILITIES

The Subrecipient will be responsible for the following aspects of managing the program:

- Comply with all ESG regulations;
- Market program in conjunction with the City;
- Provide prevention, and rapid re-housing assistance to eligible families and individuals; and
- Preparation of reports to the City as detailed in Article VIII of the Agreement.

5. BUDGET

The **TWO HUNDRED NINETY-ONE THOUSAND SIXTY-ONE SIX DOLLARS AND ZERO CENTS ($291,061.00)** in ESG funds will be used solely for Emergency Shelter Operations.

6. STAFFING

The Subrecipient shall assign the following staff as Key Personnel to the ESG Emergency Shelter Operations program:

Any changes in the Key Personnel assigned or their general responsibilities under this project are subject to the prior approval of the Grantee.

Staff Member Title	General Program Duties	Time Allocation
Shelter Manager	Oversight and implementation of all shelter operations; HMIS, scheduling of staff	1 FTE
Maintenance Supervisor	Performs or contracts for maintenance of buildings, appliances, equipment, outdoor property, at both shelters	1 FTE
Food Service Supervisor	Supervise kitchens and food preparation for both shelters; plan menus for 300 to 400 people daily at both shelters	1 FTE
Client Advocate	Assists clients with daily needs by providing oversight and direction	6 FTE

7. PAYMENT PROCEDURES

The City will reimburse Subrecipient for expenditures for the Project and in accordance with the line-item budget set forth in Exhibit B. Subrecipient shall submit all invoices and supporting records and documentation to the City's Department of Planning and Community Development. Subrecipient shall comply with the following requirements for the submission of requests for reimbursement:

A. Invoice Information

Subrecipient's invoice shall contain the following:

1. City Contract Number;

2. Invoice Number;

3. Period Covered;

4. Accomplishments Summary, etc.;

5. Written documentation verifying that weekly payroll reports were reviewed and comply with approved wage determination;

6. Total Amount Requested;

7. List of Enclosed Documents;

8. Agreement funding Balance;

9. Other information Subrecipient desires to communicate to the City's Project Coordinator; and

10. Signature of Subrecipient's Fiscal Officer or Chief Official.

B. Supporting Documentation

Subrecipient shall collect, maintain, and submit the following documentation and information with invoices for payment.

For Project administration, the Subrecipient will include:

1. Number of hours worked on the program/project funded, and

2. Summary of work performed by employee during the time for which payment was made.

For supplies/materials, the documentation and information shall include:

Invoice from vendor or company detailing the item(s)/services purchased and a copy of Contractor's check showing that Subrecipient paid the vendor for goods/services.

For professional services provided by a subcontracted entity, the documentation and information shall include:

1. A copy of the subcontract must be submitted (at least one during the Agreement period, if Contractor will seek reimbursement on several invoices); and

2. Contractor must require that the subcontracted agency submit the same level of documentation and information that Contractor must provide to seek payment

from the City and such information and documentation must be submitted by the Contractor to the City with its invoice. At a minimum, the subcontracted agency should provide Contractor a cover memo, on company letterhead, which summarizes the request for payment, the amount requested, services provided for the requested amount, and information on clients served, if applicable. Unless disputed or the City determines that there is insufficient documentation to substantiate the invoice, the City will tender payment to Subrecipient within thirty (30) days from the date the City receives the invoice.

8. DOCUMENTATION AND RECORD KEEPING

In order to ensure that program participants and activities meet the program eligibility criteria, the Subrecipient must keep the following documents:

A. Referrals from social service agencies documenting that program participant were indeed homeless at the time they entered the Program;

B. Dates when participating families/individuals entered and exited from the Program;

C. The services that each Program participant received; and

D. Follow-up services provided to those Program participants who exit the Program during this program.

Subrecipient will maintain case files, including above information for a period of not less than five (5) years after completion of the program. Subrecipient will maintain these and other documents and financial records in accordance with the requirements for record retention specified in Article VII of the Agreement.

9. REPORTING PROCEDURES

The City will require timely and consistent reports to ensure that the program is proceeding according to the work program and in accordance with federal regulations. The Subrecipient agrees to submit the following reports:

A. Initial Progress Report

No later than fifteen (15) days from the effective date of this Agreement, the Subrecipient shall submit to the City an initial report, which summarizes progress, initiated to date.

B. Quarterly Progress Report

On the fifth (5th) day of the month following the end of a quarter, beginning with the fourth quarter of the 2020 Fiscal Year, the Subrecipient must submit a progress report which details at a minimum the following:

1. Total number of individuals who applied for assistance;

2. Total number of individuals approved for assistance;

3. Demographic profile of applicants and approved recipients;

4. Number of individuals assisted;

5. Description of assistance completed for each individual assisted;

6. Percentage of applicants who were from low and moderate income households; and,

7. Status of funding i.e. expenditures and remaining balance.

All reports shall be submitted to the City's Department of Planning and Community Development.

EXHIBIT "B"
ESG EMERGENCY SHELTER OPERATIONS
ST. VINCENT DE PAUL SOCIAL SERVICES, INC.

The Subrecipient will be reimbursed for eligible costs shown in the following budget and based on the appropriate documentation up to a maximum of $291,061.00 per the term of the Agreement.

	City ESG FY2018	Matching Funds	Project Total
Eligible Activities	**Activity Amount**	**Activity Amount**	**Activity Amount**
Staff & Benefits	**$291,061.00**	**$2,078,104**	**$2,369,165**
Food, food service			
Utilities – gas, water, elec, phone			
Professional services			
Supplies – cleaning, office, shelter			
Maintenance/repair			
Security			
Misc Op Costs			
Administration			
Emergency Solutions Grants Subtotal	**$291,061.00**	**$2,078,104**	**$2,369,165**

EXHIBIT "C"
ESG Monitoring Schedule

Grantee: City of Dayton, Department of Planning and Community Development

Subrecipient: St. Vincent de Paul Social Services, Inc.

Project/Program: ESG – Emergency Shelter Operations

Monitoring Subject Area	Date of Review	City Representative
Section I. Required Monitoring for ALL Subrecipient Agreements		
Financial and Program Eligibility and Records Management	Prior to submission of first invoice then ongoing	Erin N. Ritter
Program Performance	Ongoing on a quarterly basis until termination of Agreement	Erin N. Ritter

EXHIBIT "D"
Annual Report

BACK

City Manager's Report

13.

From **3410 - Water Director**

Date **February 26, 2020**

Expense Type **Other, (See Description Below)**

Supplier, Vendor, Company, Individual

Total Amount **$51,000.00 (thru 6/30/2022)**

Name **University of Dayton**

Address **1801 Edwin C. Moses Boulevard**
Dayton, OH 45417

Fund Source(s)	Fund Code(s)	Fund Amount(s)
2020 Water Operating Fund	53000-9970-1192-54	$17,000.00
2021 Water Operating Fund	53000-9970-1192-54	$17,000.00
2022 Water Operating Fund	53000-9970-1192-54	$17,000.00

Includes Revenue to the City ☐ Yes ☑ No **Affirmative Action Program** ☑ Yes ☐ No ☐ N/A

Description

UNIVERSITY OF DAYTON AGREEMENT AND MARKETING SPONSORSHIP

The Department of Water requests permission to enter into a Marketing Sponsorship with the University of Dayton in the amount of $51,000.00 to bring outreach, awareness, and educational opportunities about the City's award-winning water utility. The Water Department will be featured throughout the University of Dayton Basketball Season and utilizing several media styles.

In return, the Water Department will have use of the University of Dayton Arena for two events during the year, provide outreach and awareness to all future Flyers Club members, including the Department's logo on all merchandise given to the members, and a half-page advertisement in the game day Scorecard.

The terms set forth in the Marketing Sponsorship shall commence upon execution by the City and shall expire upon expenditure of all funds provided herein or on June 30, 2022.

The Marketing Sponsorship has been reviewed by the Law Department as to form and correctness.

A Certificate of Funds is attached.

Signatures/Approval

Division

Department

for City Manager

Approved by City Commission

Clerk

Date

FORM NO. MS-16

Updated 8/2016

CERTIFICATE OF FUNDS

CT20-2525

SECTION I - to be completed by User Department

NO DRAFT DOCUMENTS PERMITTED

X New Contract ____ Renewal Contract ____ Change Orders

Contract Start Date	2/26/2020
Expiration Date	6/30/2022
Original Commission Approval	$ 51,000.00
Initial Encumbrance	$ 17,000.00
Remaining Commission Approval	$ 34,000.00

Original CT/CF	
Increase Encumbrance	
Decrease Encumbrance	$ -
Remaining Commission Approval	$ -

Required Documentation

X	Initial City Manager's Report
X	Initial Certificate of Funds
X	Initial Agreement/Contract
	Copy of City Manager's Report
	Copy of Original Certificate of Funds

Amount: $ 17,000.00 Fund Code 53000 - 9970 - 1192 - 54 - ___ - ___ Fund Org Acct Prog Act Loc	Amount: ___ Fund Code ___ - ___ - ___ - ___ - ___ - ___ Fund Org Acct Prog Act Loc
Amount: ___ Fund Code ___ - ___ - ___ - ___ - ___ - ___ Fund Org Acct Prog Act Loc	Amount: ___ Fund Code ___ - ___ - ___ - ___ - ___ - ___ Fund Org Acct Prog Act Loc

Attach additional pages for more FOAPALs

Vendor Name: University of Dayton

Vendor Address: 1801 Edwin C. Moses Blvd. (Street) Dayton (City) Ohio (State) 45417 (Zipcode + 4)

Federal ID: 31-0536715

Commodity Code: 80158

Purpose: Marketing Agreement Sponsorship

Contact Person: Lisa Burton-Yates Water/ Water Engineering (Department/Division) 2/7/2020 (Date)

Originating Department Director's Signature: [signature]

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropirated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

[signature] 02/17/2020
Finance Director Signature Date

Sonia Williams 02/14/2020 CT20-2525
CF Prepared by Date CF/CT Number

2/14/2020

PROFESSIONAL SERVICES AGREEMENT FOR MARKETING SPONSORSHIP AND ADVERTISEMENT

THIS AGREEMENT is between the City of Dayton, Ohio, ("City") and the University of Dayton, 1801 Edwin C. Moses Boulevard, Dayton, OH 45417 (University).

W I T N E S S E T H:

WHEREAS, The City is seeking the opportunity to market Dayton Water and water services ("Services") with the University; and,

WHEREAS, A sponsorship and advertising agreement with the University will provide the opportunity for the Water Department to be featured throughout the University of Dayton Basketball season utilizing several media styles; and,

WHEREAS, The University is qualified and available to provide the Services to the City.

NOW THEREFORE, in consideration of the promises contained in this Agreement ("Agreement"), the City and the University agree as follows:

ARTICLE 1. TERM
The Agreement shall commence upon execution by the City and it shall terminate upon expenditure of all funds provided herein or on June 30, 2022, whichever date is earlier. The University and the City shall enter into this Agreement with options to renew the contract for two (2) additional 12-month periods, contingent upon satisfaction with the work, availability of funds and mutual agreement of both parties.

ARTICLE 2. SERVICES TO BE PERFORMED BY THE UNIVERSITY
The University shall provide all professional services necessary to complete the Services that are described in Attachment A, Scope of Services, which is incorporated herein by reference.

ARTICLE 3. COMPENSATION
The total remuneration in this Agreement shall not exceed FIFTY-ONE THOUSAND DOLLARS AND ZERO CENTS ($51,000.00) and shall be paid as follows:

- Year One (Present thru June 30, 2020) – Seventeen Thousand Dollars ($17,000.00)
- Year Two (July 1, 2020 thru June 30, 2021) – Seventeen Thousand Dollars ($17,000.00)
- Year Three (July 1, 2021 thru June 30, 2022) – Seventeen Thousand Dollars ($17,000.00)

The City shall pay University according to the cost estimate and fee schedule in attachment B, which is incorporated herein by reference. The University shall submit one invoice per contract year.

ARTICLE 4. CITY'S RESPONSIBILITIES
The City will furnish to the University, at no cost or expense, all marketing materials that might be necessary or useful to help complete the Services required under this Agreement.

ARTICLE 5. STANDARD OF CARE
The University shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily possessed and exercised by a professional under similar circumstances. The University shall have no liability for defects in the Services attributable to the University's reliance upon

or use of data or other information furnished by the City or third parties retained by the City.

ARTICLE 6. LIABILITY AND INDEMNIFICATION
The University shall indemnify and defend the City and its elected officials, officers, agents and employees, from and against all claims, losses, damages, and expenses for bodily injury, death, or third party property damage to the extent such claims, losses, damages, or expenses are caused by the University's negligent or willful acts, errors, or omissions.

This Article 6 shall survive early termination of this Agreement.

ARTICLE 7. INSURANCE
During the term of this Agreement, University shall maintain, at its sole cost and expense, no less than the following insurance issued by an insurance company authorized to conduct business in the State of Ohio and having an "A" rating or better by A.M. Best:

(1) General liability insurance, having a combined single limit of $1,000,000 for each occurrence and $1,000,000 in the aggregate.
(2) Automobile liability insurance, having a combined single limit of $1,000,000 for each person and $1,000,000 for each accident.
(3) Employers' liability insurance, having a limit of $500,000 for each occurrence.
(4) Professional liability insurance, having a limit of $1,000,000 annual aggregate.

Current certificates of insurance for all policies and concurrent policies required to be maintained by University pursuant to this Article shall be furnished to the City. All such insurance policies, excluding Professional Liability Insurance, shall name the City and its elected officials, officers, agents, employees, and volunteers as additional insureds, but only to the extent of University's legal liability and to the extent of the policy limits stated herein. All policies of insurance required hereunder shall contain a provision requiring a minimum of thirty (30) days advance written notice to the City in the event of cancellation or diminution of coverage. In the event of a claim, University shall make copies of applicable insurance policies available for review by the City. University, however, shall retain its right to restrict disclosure of University's proprietary information contained in such policies in accordance with Article 8.

University also shall maintain Workers' Compensation Insurance in such amounts as required by law for all employees, and shall furnish to the City evidence of same.

ARTICLE 8. OWNERSHIP OF DOCUMENTS & INTELLECTUAL PROPERTY
Except as otherwise provided in this Agreement, documents and reports prepared by the University as part of the Services shall become the sole and exclusive property of the City upon payment. However, the University shall have the unrestricted right to their use.

The University shall retain its rights in pre-existing and standard scripts, databases, computer software, and other proprietary property. Rights to intellectual property that is not specifically designed or created exclusively for the City in the performance of this Agreement shall also remain the property of the University.

ARTICLE 9. TERMINATION
This Agreement may be terminated by the City upon written notice in the event of substantial failure by the University to perform in accordance with the terms of this Agreement. The University shall have fifteen (15) calendar days from the date of the termination notice to cure or to submit a plan for cure

acceptable to the other party.

The City may terminate or suspend performance of this Agreement for the City's convenience upon thirty (30) days prior written notice to the University. In the event of termination by the City hereunder, the City will pay the University for services actually provided up to the date of termination.

Any such termination shall not relieve the University of any liability to the City of damages sustained by virtue of any breach by the University. The City will be under no further monetary obligation or commitment to the University. The City may terminate this Contract at any time upon thirty (30) days written notice to the University.

ARTICLE 10. STANDARD TERMS

A. DELAY IN PERFORMANCE

Neither the City nor the University shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either the City or University under this Agreement.

Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

B. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws.

C. COMMUNICATIONS

Any written communication or notice required or permitted by this Agreement shall be made in writing and shall be delivered personally, sent by express delivery, certified mail or first class U.S. mail, postage pre-paid to the address specified below:

University: University of Dayton
1801 Edwin C. Moses Boulevard
Dayton, Ohio 45417
Attention: Mr. Mark Gazdik, Director

City: City of Dayton, Department of Water
320 West Monument Avenue
Dayton, Ohio 45402
Attention: Mr. Michael Powell, Director

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the University and the City.

D. EQUAL EMPLOYMENT OPPORTUNITY

The University shall not discriminate against any employee or applicant for employment because of race,

color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap with respect to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, lay-off, termination, rates of pay or other forms of compensation, or selection for training, including apprenticeship.

It is expressly agreed and understood that Section 35.14 of the Revised Code of General Ordinances of the City of Dayton constitutes a material condition of this Agreement as fully and as if specifically rewritten herein and that failure to comply therewith shall constitute a breach thereof entitling the City to terminate this Agreement at its option.

E. WAIVER

A waiver by the City or the University of any breach of this Agreement shall be in writing. Such a waiver shall be effective only in the specific instance and for the specific purpose for which it is given and shall not affect the waiving party's rights with respect to any other or further breach.

F. SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void, unenforceable, invalid or illegal provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision, which is of the essence of this Agreement, be determined void.

G. INDEPENDENT CONSULTANT

By executing this Agreement for professional services, the University acknowledges and agrees that it will be providing services to the City as an "independent consultant". As an independent consultant for the City, the University shall be prohibited from representing or allowing others to construe the parties' relationship in a manner inconsistent with this Article. The University shall have no authority to assume or create any obligation on behalf of, or in the name of the City, without the express prior written approval of a duly authorized representative of the City.

The University, its employees and any persons retained or hired by the University to perform the duties and responsibilities under this Agreement are not City employees, and therefore, such persons shall not be entitled to, nor will they make a claim for, any of the emoluments of employment with the City of Dayton. Further, the University shall be responsible to withhold and pay, or cause such agents, the University and sub-contractors to withhold and pay, all applicable local, state and federal taxes.

The University acknowledges its employees are not public employees for purposes of Ohio Public Employees Retirement System ("OPERS") membership.

H. ASSIGNMENT

The University shall not assign any rights or duties under this Agreement without the prior written consent of the City. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent the University from employing independent consultants, associates, and sub-contractors to assist in the performance of the Services.

I. THIRD PARTY RIGHTS
Except as expressly provided in this Agreement, nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the University.

J. AMENDMENT
The parties may mutually agree to amend this Agreement. However, no such amendment shall be effective unless it is reduced to a writing, which references this Agreement, executed by a duly authorized representative of each party and, if applicable or required, approved by the Commission of the City of Dayton, Ohio.

The parties may mutually agree to extend the term of this Agreement to a later date. The Director of the Department of Water is authorized to extend the term of this Agreement for the City.

K. POLITICAL CONTRIBUTIONS
The University affirms and certifies that it complies with Ohio Revised Code § 3517.13 limiting political contributions.

L. INTEGRATION
This Agreement represents the entire and integrated agreement between the City and the University. This Agreement supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the City and the University of Dayton - Division of Athletics, each by a duly authorized representative, have executed this Agreement on the date first written above.

CITY OF DAYTON, OHIO

City Manager

Date:

APPROVED:

Director, Department of Water

APPROVED AS TO FORM AND CORRECTNESS

City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO

, 2019

Min./Bk. Pg.

Clerk of Commission

UNIVERSITY OF DAYTON

By:

Its: VP & Athletic Director

ATTACHMENT A
TO
AGREEMENT FOR SERVICES

City:	**City of Dayton, Ohio**
Project:	**Professional Services Agreement for Marketing sponsorship and Advertisement**
Consultant:	**University of Dayton**

SCOPE OF SERVICES

In consideration for the Fee paid to the University of Dayton, the City will receive the following sponsorship Elements during the Term:

Team Partner Package

• *Three Point Splash Cam* – Men's and Women's Basketball
- City of Dayton Water will receive logo recognition and branding on the center hung video board and the four corner stats boards after every made three-point basket by the men's and women's basketball team.
- University of Dayton – Division of Athletics will provide dimensions and specs to City of Dayton Water.

• *Full Page Game Program Advertisement* – Men's Basketball
- City of Dayton Water will receive one (1) full page advertisement in the men's basketball game program.
- A digital copy of the game program will be available on the University of Dayton Arena Game Day App beginning in the 2019-2020 season.

• *Official Partner of Future Flyers Kids Club (FFKC)*
- City of Dayton Water will be the official partner of the Future Flyers Kids Club and will receive logo recognition on all membership material (i.e. t-shirts, backpacks).
- City of Dayton Water will receive an invitation to attend mutually agreed upon FFKC events and distribute promotional materials, with the opportunity to provide education and awareness to all FFKC members.
- All costs involved with these materials will be the responsibility of City of Dayton Water.

• *Men's Basketball Camp Marketing Table*
- City of Dayton Water will receive an invitation to staff a marketing table at a mutually agreed upon number of men's basketball summer camps.
- All materials distributed and staffing would be the responsibility of City of Dayton Water.

• *Lower Bowl Men's Basketball Tickets*
- City of Dayton Water will have the opportunity to request four (4) VIP tickets for three (3) men's basketball games, based on availability.

• *Men's Basketball Season Tickets*

- City of Dayton Water will receive ten (10) 400-level men's basketball season tickets.

- *Facility Meeting Package*
  - City of Dayton Water will have the ability to host a maximum of six (6) business functions at UD Arena areas (Flight Deck, Boesch Lounge, Concourse Clubs) rent-free, based on availability.
  - All staffing, food and beverage, and other hard costs would be the responsibility of City of Dayton Water.
  - Any arena bowl events will be separately contracted with UD Arena.

- *Coaches and Staff Email*
  - City of Dayton Water will be included on all partner lists sent to University of Dayton Athletics' coaches and staff.

- *Business to Business Networking Opportunities*
  - City of Dayton Water will be included in all opportunities hosted by University of Dayton Athletics, to network with other UD Athletics' partners, including symposiums and corporate partner outings. There will be between one (1) and three (3) such events per year.

- *Use of Trademarks and Logos*
  - City of Dayton Water will have the right to Dayton Flyers marks and logos, provided prior approval is given by University of Dayton Athletics.

ATTACHMENT B
TO
AGREEMENT FOR SERVICES

City: **City of Dayton, Ohio**
Project: **Professional Services Agreement for Marketing Sponsorship and Advertisement**
Consultant: **University of Dayton**

COMPENSATION

Team Partner Package:

Commitment	2019-2020	2020-2021	2021-2022
Three Years	$17,000.00	$17,000.00	$17,000.00

- *Payment Options*
  - City of Dayton Water may opt to make multiple payments per year, as long as the partnership is paid in full by May 1 of each year. Actual payment due dates will be mutually agreed upon.

BACK

DRAFT

1st and 2nd Reading

14.

BY:..... NO:...6476-20.....

A RESOLUTION

Approving the Submission of a Grant Application for the Fiscal Year 2020 Ohio Airport Grant Program to the Ohio Department of Transportation, Office of Aviation; Authorizing the Acceptance of a Grant from the State of Ohio Department of Transportation, Office of Aviation in an Amount Not to Exceed Two Hundred Sixty Three Thousand Four Hundred Ninety Three Dollars and Zero Cents ($263,493.00) on behalf of the City of Dayton; and, Declaring an Emergency.

WHEREAS, The Ohio Department of Transportation, Office of Aviation, Ohio Airport Grant Program provides financial assistance to airports in the State that are publicly owned and public use commercial and cargo service NIPIAS airports; and

WHEREAS, The City of Dayton owns, operates and maintains the James M. Cox Dayton International Airport and the Dayton-Wright Brothers Airport; and

WHEREAS, The local Airport Improvement Program at the James M. Cox Dayton International Airport and Dayton-Wright Brothers Airport includes undertaking certain projects such as pavement rehabilitation and related improvements, airfield and terminal improvements, land acquisition, master planning, equipment purchases, environmental study, safety, security, and other aviation-related projects; and

WHEREAS, These projects will be funded by the Ohio Department of Transportation through the Ohio Airport Grant Program, up to 5% of the FAA AIP grant award in an aggregate amount not to exceed Two Hundred Sixty Three Thousand Four Hundred Ninety Three Dollars and Zero Cents ($263,493.00); and

WHEREAS, Section 36.10 of the Revised Code of General Ordinances of the City of Dayton authorizes the City Manager to submit grant applications on behalf of the City of Dayton; and

WHEREAS, In order to adhere to the grant application submission date it is necessary for the immediate preservation of the public peace, property, health and safety that this resolution take effect at an early date; now, therefore,

BE IT RESOLVED BY THE COMMISSION OF THE CITY OF DAYTON:

Section 1. That this Commission authorizes the City Manager, or her designee, to submit a grant application and supporting documents to the Ohio Department of Transportation, Office of Aviation for participation in the Fiscal Year 2020 Ohio Airport Grant Program for eligible projects defined as airport pavement resurfacing and

reconstruction, airport obstruction removal and marking, runway and taxiway marking, lighting rehabilitation, and other aviation-related projects at the James M. Cox Dayton International Airport and Dayton Wright-Brothers Airport.

Section 2. That the City Manager, or her designee, is authorized to execute any and all documents and agreements on behalf of the City of Dayton which are necessary to accept the grant awards in an aggregate amount not to exceed Two Hundred Sixty Three Thousand Four Hundred Ninety Three Dollars and Zero Cents ($263,493.00), from the Ohio Department of Transportation, Office of Aviation under the Fiscal Years 2020 Ohio Airport Grant Program.

Section 3. That for the reasons stated in the preamble hereof, the Commission declares this resolution to be an emergency measure that shall take effect immediately upon its adoption.

ADOPTED BY THE COMMISSION……..…, 2020

SIGNED BY THE MAYOR ……..……., 2020

_____

Mayor of the City of Dayton, Ohio

ATTEST:

_____

Clerk of Commission

APPROVED AS TO FORM:

City Attorney

MEMORANDUM | DAYTON

February 17, 2020

TO: Shelley Dickstein, City Manager

FROM: AT Gilbert Turner, Interim Director of Aviation

SUBJECT: Emergency Resolution – for the FY 2020 Ohio Airport Grant Program

The Department of Aviation submits the attached Resolution for the February 26, 2020 City Commission meeting. This resolution authorizes the City Manager or her designee to apply and accept a grant from the Ohio Department of Transportation, Office of Aviation for eligible projects at the Dayton International Airport (DAY) and Dayton Wright Brothers Airport (MGY).

This is the first year that the Ohio Department of Transportation is offering matching grants for commercial service airports, (DAY), up to 5% of the FY19 FAA AIP grant.

The two projects Aviation is requesting grant funding for is the "Rehabilitation of Terminal Apron Phase 3" and purchase of an "ARFF vehicle" at DAY. The combined AIP eligible cost of these projects is $5,269,859.00, this grant program will provide funding of a minimum of $62,500.00 up to a maximum of $263,493.00 depending on the number of applicants received. No cash match is necessary as the projects have already been funded under the FY19 FAA AIP grant (85-19).

Attached is an executable copy of the resolution approved by the Law Department, a copy of the M&B Grant Application Approval Form, the original CF and the 2020 Ohio Grant Application letter. If there are any questions regarding the resolution, please contact me at 454-8212.

GT/ems

Encl.

cc: File

MEMORANDUM | DAYTON

February 17, 2020

TO: Shelley Dickstein, City Manager

FROM: Gilbert Turner, Interim Director of Aviation

SUBJECT: Grant Application Approval Form for FY20 Ohio Airport Grant Program

In November 2019 the Ohio Department of Transportation established a Federal Matching Grant program for the commercial service airports for fiscal years 2020 and 2021. The Ohio Department of Transportation grants were previously reserved for General Aviation Airports only. The grant program is structured so that the funding will be equally distributed among each of the participating Ohio airports, matching 5% of the non-federal share up to a capped amount. The Airport Capital Project Administrator was unaware of these changes made to the Ohio Airport Grants Program.

The City Commission on behalf of Aviation previously passed and has an existing Resolution for FY2020 that authorized submission for applications to the Ohio Airport Grant Program, the description mentions Dayton Wright Brothers Airport projects only. A new Resolution for FY2020 was drafted to include both Dayton Wright Brothers Airport and Dayton International Airport. The grant application form is needed to proceed with this Resolution.

Going forward the matching grant resolution will be put in place at the beginning of the year to ensure that the Grant Application Approval Form and Resolution are processed timely.

Please contact me at (937) 454-8212 if you require anything further.

Thank you.

Encl.

cc: File

MEMORANDUM | DAYTON

February 7, 2020

TO: Diane Shannon, Director of Procurement, Management & Budget
Shelley Dickstein, City Manager

FROM: Gilbert Turner, Interim Director of Aviation GT

SUBJECT: Grant Application Approval Form for FY20 Ohio Airport Grant Program

Attached is a Grant Application Approval Form and a draft Resolution needed for the application and acceptance of the FY2020 Ohio Airport Grant Program.

This is the first year that the Ohio Department of Transportation is accepting applications for Commercial Service Matching Grants up to 5% of the FY19 FAA AIP grant award.

The two projects Aviation is requesting grant funding for is the "Rehabilitation of Terminal Apron Phase 3" and purchase of an "ARFF vehicle". The combined AIP eligible cost of these projects is $5,269,859, this grant program will provide funding of a minimum of $62,500.00 up to a maximum of $263,493.00 depending on the number of applicants received. No cash match is necessary as the projects have already been funded under the FY19 FAA AIP grant (85-19).

Please contact Elizabeth Spreng, Airport Capital Project Administrator 454-6529, once the Grant Application Approval Form has been executed so that the Resolution can move forward. Thank you for your help with this matter.

GT/ems

Encl.

cc: File

Rcvd
357pm
2/14

GRANT APPLICATION APPROVAL FORM

Date: February 7, 2020

Department/Division

Submitting Application: Department of Aviation

Project Title: FY2020 Ohio Airport Grant Program

CFDA Title and Number: N/A

Brief Description of Project:

This grant will consist of two projects, Rehabilitate Terminal Apron Phase 3 and to acquire an ARFF Vehicle. This grant will cover up to 5% of the AIP eligible grant awarded in 2019 for an amount not to exceed $263,493.00. No match is required for this grant, this grant reimburses up to 5% of the local funding already in place under the 2019 FAA AIP grant (85-19).

Name and telephone number of staff person to be called when signed application is ready: **Elizabeth Spreng 454-6529**

Name of staff person responsible for this grant: **Elizabeth Spreng**

Deadline for submission to funding agency: **February 15, 2020**

When will grant award decision be made: **March 2020**

LEVEL	AGENCY/FUNDING SOURCE	AMOUNT
Federal		$0
State of Ohio	Ohio Dept. of Transportation	$263,493.00
Montgomery County		$0
City of Dayton		$0
Other		$0
TOTAL		$263,493

(Note: City of Dayton funds committed to a grant must be accompanied by a Certificate of Funds)

I have reviewed this material and believe it to be correctly completed and believe the project proposed is appropriate for the City of Dayton.

Director's Signature: [signature] 2/07/2020
Date

NOTE: Deadline for application is Feb 15, 2020. Attached resolution can't be passed until at least Feb. 26th. Contacted C. Wimsatt regarding issue.

Review and Approval

We have reviewed this material and believe it to be correctly completed and believe the project proposed is appropriate for the City of Dayton.

[signature] 2.14.2020

Director, ~~Office~~ Department of Procurement, Management and Budget — Date

Director of Finance (**IF CASH MATCH IS REQUIRED**) — Date

Shelly Dickstein 2-18-2020

City Manager's Office — Date

INTERNATIONAL AIRPORT

Easy to and through.

February 7, 2020

James Bryant, Administrator
Office of Aviation
Ohio Department of Transportation
2829 W. Dublin-Granville Road
Columbus, Ohio 43235-2786

RE: FY20 Ohio Airport Program, Commercial Service Matching Grant Application

Dear Mr. Bryant:

The City of Dayton, Dayton International Airport hereby submits an Application for **$263,493.00** in State Fiscal Year 2020 Grant Funds under the Ohio Airport Commercial Matching Grant Program for use at the **Dayton International Airport (DAY).**

The Grant Funds will be used in conjunction with FAA AIP Grant **(3-39-0029-085-2019)** Rehabilitate Terminal Apron Phase 3, approximately 17,300 SY and to acquire an ARFF Vehicle, approx. 3,000 gal. replacement.

The amount requested from ODOT represents 5% of the total AIP eligible project cost.:

Total project value:	$5,332,765.00	
Total eligible AIP value:	$5,269,859.00	
FAA share (90% of eligible):	$4,742,872.00	
ODOT share (5% of eligible):	$263,493.00	
Applicant share (5% of eligible):	$263,494.00	$326,400.00
Applicant share of ineligible	$ 62,906.00	

The following documents are included, 1) The Standard Assurances, Appendix B, 2) Ohio Airport Protection Act, Appendix O, 3) A copy of the FAA Grant Award, and 4) A certified copy of a resolution from the **City of Dayton** authorizing the submission of the application to ODOT.

Should you have any questions or need further information, please contact **Elizabeth Spreng at (937) 454-6529.**

Respectfully,

Gilbert Turner, Interim Director
Dayton International Airport

Enclosures

Ohio Airport Grant Program
Application Procedure, For Commercial Service Airports

Fiscal Year 2020

Procedural Statement:
The purpose of this application procedure is to provide a uniform and objective program for application for Ohio Airport Grant Programs. Grants issued under this program may generally be used by sponsors of publicly owned, public use commercial and cargo service NIPIAS airports.

Authority:
Section 4561.06, 4561.07, 4561.08 and 4561.11 Ohio Revised Code (ORC)

Reference:
Federal Aviation Administration (FAA) Regulation, Orders, & Advisory Circulars.

Scope:
This procedure is applicable to the sponsors of publicly owned, public use Commercial Service and Cargo Service airports. Currently there are eight (8) airports in Ohio that meet this program's criteria (see "Airports Eligible for Commercial Service Grants" on the Office of Aviation website).

Background and Purpose:
The intent of the Ohio Airport Grant Program is to improve the safety and utility of Ohio's airports, consistent with the Ohio Airport System Plan. Total funding available for the State Fiscal Year 2020 Airport Grant Program, including direct and matching grants for General Aviation Airports as well as this program, are anticipated to be approximately $6,500,000.

Definitions:
Federal Fiscal Year (FFY): The fiscal year that the federal government follows, running from October 1 of the preceding calendar year to September 30.

State Fiscal Year (SFY): The fiscal year that the state government follows, running from July 1 of the preceding calendar year to June 30.

Commercial Service Airports: Publicly owned airports that have at least 2,500 passenger boardings each calendar year and receive scheduled passenger service.

Cargo Service Airports: Airports that, in addition to any other air transportation services that may be available, are served by aircraft providing air transportation of cargo with a total annual landed weight of more than 100 million pounds. An airport may be both a commercial service and a cargo service airport.

I. Applications

Note: All Applications are to be generated and uploaded to the Office of Aviation using the BlackCat Aviation Data and Grant Management (BlackCat) portal.
https://www.blackcataviation.com/

A. Grantee will upload an application to Blackcat as soon as the grant program is open and available, and an FAA Grant Offer has been received.

B. The application will include:

i. Application letter (see Appendix A).

ii. Signed ODOT Standard Assurances (See Appendix B).

iii. A copy of the executed FAA Grant.

iv. A certified copy of a Resolution from the Applicant's governing body authorizing the submission of the Application.

v. A completed and signed Ohio Airport Protection Act Compliance Form, Appendix O, "Ohio Airport Protection Act Compliance Form."

II. Deadline:

A. The complete application package must be received by the Office of Aviation no later than February 15, 2020 and in no circumstance may this requirement for an application be waived. Include the name, phone number and email address for the primary point of contact for the application, as well as any consultant involved in the preparation of the application.

B. All Grant Contracts must be executed no later than May 31, 2020. The Grantee risks losing grant funds if Contracts are not executed by the deadline.

C. The Administrator of the Office of Aviation may reject any application that is not complete or submitted by the deadline.

III. Grant Execution

A. Upon receipt of a valid grant application from the Grantee, the Office of Aviation will prepare and forward a copy of the Grant Agreement to the Grantee for signature.

B. The Grantee will upload a high-resolution signed copy of the Grant Agreement and resolution of grant acceptance to Blackcat.

The Office of Aviation will in turn execute the Grant Agreement and return a high-resolution scan of the fully executed Grant Agreement to the Grantee.

IV. Eligible Airports and Projects

A. To be eligible for grant funds under the program, an airport must be an eligible publicly owned, public use, Commercial Service or Cargo Service Airport.

B. Eligible projects include all projects at Commercial Service or Cargo Service Airports that are funded under the FAA Airport Improvement Program (AIP).

Ohio Airport Grant Program
Application Procedure, For Commercial Service Airports

V. Grant Amounts

A. Ohio Commercial Service Airport Matching Grants will pay up to a maximum of 5% of the FFY2019 FAA AIP grants to Commercial Service & Cargo Service Airports, not to exceed the specified funding cap.

B. Funding Cap: Total Program funding for SFY2020 is $500,000. Program funding shall be distributed equally between eligible airports based on the eligible FFY2019 FAA AIP project values. In the event that an eligible airport does not receive an FFY2019 FAA AIP grant or 5% of the FFY2019 AIP Grant Value is less than the established Funding Cap, the Office of Aviation will adjust the funding cap accordingly. The Administrator of the Office of Aviation reserves the right to adjust the funding cap as necessary.

C. Subsequent to the execution of the grant agreement, there will be no increase in the value of Ohio Commercial Service Airport Matching Grants (i.e., there will be no "change orders").

VI. Grant Payments

This program will have a single payment. The Application for Payment shall be submitted through Blackcat. Final payment shall be made when copies of the following are submitted to the Office of Aviation:

i. A letter from the Grantee requesting project closeout and final payment

ii. A completed ODOT Pay Request Form (AU-65)

iii. A final invoice summary for the entire project.

iv. The Federal Form SF425, Federal Financial Report, submitted by Grantee to FAA as part of the project closeout process

v. The Grant Closeout Letter sent by FAA to the Grantee

EMERGENCY MEASURE
1 Reading, 2 Separate Meetings ____
2 Readings at One Meeting X

BY:..... NO:.....

A RESOLUTION

Approving the Submission of a Grant Application for the Fiscal Year 2020 Ohio Airport Grant Program to the Ohio Department of Transportation, Office of Aviation; Authorizing the Acceptance of a Grant from the State of Ohio Department of Transportation, Office of Aviation in an Amount Not to Exceed Two Hundred Sixty Three Thousand Four Hundred Ninety Three Dollars and Zero Cents ($263,493.00) on behalf of the City of Dayton; and, Declaring an Emergency.

WHEREAS, The Ohio Department of Transportation, Office of Aviation, Ohio Airport Grant Program provides financial assistance to airports in the State that are publicly owned and public use commercial and cargo service NIPIAS airports; and

WHEREAS, The City of Dayton owns, operates and maintains the James M. Cox Dayton International Airport and the Dayton-Wright Brothers Airport; and

WHEREAS, The local Airport Improvement Program at the James M. Cox Dayton International Airport and Dayton-Wright Brothers Airport includes undertaking certain projects such as pavement rehabilitation and related improvements, airfield and terminal improvements, land acquisition, master planning, equipment purchases, environmental study, safety, security, and other aviation-related projects; and

WHEREAS, These projects will be funded by the Ohio Department of Transportation through the Ohio Airport Grant Program, up to 5% of the FAA AIP grant award in an aggregate amount not to exceed Two Hundred Sixty Three Thousand Four Hundred Ninety Three Dollars and Zero Cents ($263,493.00); and

WHEREAS, Section 36.10 of the Revised Code of General Ordinances of the City of Dayton authorizes the City Manager to submit grant applications on behalf of the City of Dayton; and

WHEREAS, In order to adhere to the grant application submission date it is necessary for the immediate preservation of the public peace, property, health and safety that this resolution take effect at an early date; now, therefore,

BE IT RESOLVED BY THE COMMISSION OF THE CITY OF DAYTON:

Section 1. That this Commission authorizes the City Manager, or her designee, to submit a grant application and supporting documents to the Ohio Department of Transportation, Office of Aviation for participation in the Fiscal Year 2020 Ohio Airport Grant Program for eligible projects defined as airport pavement resurfacing and

reconstruction, airport obstruction removal and marking, runway and taxiway marking, lighting rehabilitation, and other aviation-related projects at the James M. Cox Dayton International Airport and Dayton Wright-Brothers Airport.

Section 2. That the City Manager, or her designee, is authorized to execute any and all documents and agreements on behalf of the City of Dayton which are necessary to accept the grant awards in an aggregate amount not to exceed Two Hundred Sixty Three Thousand Four Hundred Ninety Three Dollars and Zero Cents ($263,493.00), from the Ohio Department of Transportation, Office of Aviation under the Fiscal Years 2020 Ohio Airport Grant Program.

Section 3. That for the reasons stated in the preamble hereof, the Commission declares this resolution to be an emergency measure that shall take effect immediately upon its adoption.

ADOPTED BY THE COMMISSION……..…, 2020

SIGNED BY THE MAYOR ……., 2020

_____
Mayor of the City of Dayton, Ohio

ATTEST:

_____
Clerk of Commission

APPROVED AS TO FORM:

_____
City Attorney MWS

INTERNATIONAL AIRPORT

Easy to and through.

APPENDIX A

February 7, 2020

James Bryant, Administrator
Office of Aviation
Ohio Department of Transportation
2829 W. Dublin-Granville Road
Columbus, Ohio 43235-2786

RE: FY20 Ohio Airport Program, Commercial Service Matching Grant Application

Dear Mr. Bryant:

The City of Dayton, Dayton International Airport hereby submits an Application for **$263,493.00** in State Fiscal Year 2020 Grant Funds under the Ohio Airport Commercial Matching Grant Program for use at the **Dayton International Airport (DAY).**

The Grant Funds will be used in conjunction with FAA AIP Grant **(3-39-0029-085-2019)** Rehabilitate Terminal Apron Phase 3, approximately 17,300 SY and to acquire an ARFF Vehicle, approx. 3,000 gal. replacement.

The amount requested from ODOT represents 5% of the total AIP eligible project cost.:

Total project value:	$5,332,765.00	
Total eligible AIP value:	$5,269,859.00	
FAA share (90% of eligible):	$4,742,872.00	
ODOT share (5% of eligible):	$263,493.00	
Applicant share (5% of eligible):	$263,494.00	$326,400.00
Applicant share of ineligible	$ 62,906.00	

The following documents are included, 1) The Standard Assurances, Appendix B, 2) Ohio Airport Protection Act, Appendix O, 3) A copy of the FAA Grant Award, and 4) A certified copy of a resolution from the **City of Dayton** authorizing the submission of the application to ODOT.

Should you have any questions or need further information, please contact **Elizabeth Spreng at (937) 454-6529.**

Respectfully,

Gilbert Turner, Interim Director
Dayton International Airport

Enclosures

APPENDIX B

STANDARD ASSURANCES, FY20 OHIO AIRPORT GRANT PROGRAM
COMMERCIAL SERVICE MATCHING GRANT

Upon execution of the Grant Contract, these Standard Assurances are incorporated into and become part of the Grant Contract. Pursuant to the Ohio Airport Grant Program Standard Procedure, the Applicant/Sponsor: City of Dayton, Department of Aviation hereby assures the Ohio Department of Transportation that:

1. The Applicant has received a Grant Offer from FAA for the eligible project and provided a copy of that executed Grant Contract to ODOT.

2. The Applicant will inform ODOT if any grants from non-ODOT sources (other than the Applicant and FAA) will be used to pay for any part of the project.

3. The Grant Funds will be used to provide 5% of the non-federal portion of the eligible funding for the project up to the funding cap, and in so case shall exceed 5% of the total AIP eligible project value.

4. There will be no increase in the amount of this ODOT Matching Grant subsequent to execution of the grant agreement (i.e., there will be no "change orders").

5. The Applicant's Governing Body has passed a resolution authorizing this Application.

6. The Applicant has sufficient funds available for that portion of the project costs which will not be paid by ODOT, and the required local funding for the project as described in the application has been appropriated.

7. The Applicant has sufficient funds available to ensure operation and maintenance of all items funded under this grant agreement which it will own or control.

8. Any equipment purchased with ODOT grant funds will be expected to be operated for at least 20 years from the date of the Grant Contract unless the Applicant receives written permission from the Director of Transportation to discontinue operating the equipment. Such written permission shall include instructions on how to dispose of the equipment and what to do with the proceeds of any sale of the equipment.

9. In the case of real property acquired with funds from this grant, if the facilities cease to be an airport at any time, the Applicant agrees to return to the State a percentage of the appraised fair market value of the real property at the time the facility ceases to be an airport. The percentage shall be the same as the original State percentage of total project cost (i.e., 5%)

10. The public shall be afforded use of the Airport and of its facilities for aviation purposes as fully and equally as all other parties, in accordance with Ohio Revised Code 4561.11 and no sale, transfer, assignment, rental, lease or sublease shall be denied because of race, color, religion, sex, military status, ancestry, disability or national origin.

11. If the facilities cease to be an airport within 20 years from the date of the Grant Contract, the Applicant agrees to return the full amount of the Grant Funds to the State.

APPENDIX B

STANDARD ASSURANCES, FY20 OHIO AIRPORT GRANT PROGRAM
COMMERCIAL SERVICE MATCHING GRANT

12. The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or rehabilitation project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of State funds for the project.

13. The Applicant will comply with all federal, state and local laws, rules and executive orders, as they apply to Airports and to the performance of the project.

14. The Applicant has submitted an executed Ohio Airport Protection Act Compliance Form (Appendix O on the Office of Aviation grant web page).

15. The Applicant agrees to maintain all Airport owned or controlled Part 77 surfaces free of obstructions that can feasibly be removed or provide a formal airspace review of the obstruction completed by the FAA.

16. The Applicant certifies that it has implemented an effective airport pavement maintenance program and assures that it will use such program for the useful life of any pavement reconstructed, rehabilitated or repaired with ODOT funds.

17. During the performance of the project, the Applicant will comply with all applicable State and Federal Environmental requirements. Examples include the National Environmental Policy Act, the Clean Air Act, the Clean Water Act, the Endangered Species Act, among others.

18. Grantee agrees to comply with all applicable state and federal laws regarding drug-free workplace. Grantee shall make a good faith effort to ensure that all Grantee employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

Applicant/Sponsor: City of Dayton, James M. Cox Dayton International Airport (DAY)

Printed Name of Signer: Gilbert Turner

Title of Signer: Interim Director of Aviation, City of Dayton

Signature: [illegible]

Date: 2/4/2020

APPENDIX O

OHIO AIRPORT PROTECTION ACT
COMPLIANCE FORM

Upon execution of the Grant Contract under the Ohio Airport Grant Program, the Applicant/ Airport Sponsor: City of Dayton, Department of Aviation hereby assures the Ohio Department of Transportation, Office of Aviation (ODOT) that:

1. Sponsor will appoint an Airspace Protection Representative to monitor all FAA aeronautical studies within the Airport's Part 77 airspace and provide ODOT with that person's name and contact information *(see Page 2)*.

2. The Airspace Protection Representative is encouraged to comment either favorably or unfavorably on all circularized notifications on proposed structures that penetrate the Part 77 airspace of the Sponsor's airport.

3. When an aeronautical study results in a determination of no hazard by the FAA but that determination is a concern to the Airport Sponsor, the Airspace Protection Representative will coordinate with ODOT to petition the FAA for a discretionary review of the aeronautical study within the 30 days provided by the FAA.

4. The Airspace Protection Representative will post in a public place, and announce at all public meetings of the sponsor, all aeronautical studies and circularized notifications to make the airport's users aware of the proposed impacts and is encouraged to solicit input from the users when appropriate.

PRINTED
NAME OF SIGNER: Gilbert Turner

PRINTED
TITLE OF SIGNER: Interim Director of Aviation

SIGNATURE: Gilbert Turner

DATE: 2/6/2020

APPENDIX O

OHIO AIRPORT PROTECTION ACT COMPLIANCE FORM

AIRSPACE PROTECTION REPRESENTATIVE

AIRPORT: James M. Cox Dayton International Airport (DAY)

NAME: Russell Kline

EMAIL ADDRESS: rkline@flydayton.com

PHONE NUMBER: (937) 264-3502

ADDRESS: 3600 Terminal Drive, Suite 300

CITY/STATE/ZIP: Vandalia, Ohio 45377

BACK

DRAFT

2nd Reading 15
31791-20

By: ..... No. .....

AN ORDINANCE

Appropriating Funds for the Year 2020 to Provide for the Operating and Capital Expenses of Various Offices, Departments, and Divisions of the Government of the City of Dayton.

WHEREAS, State law and the Charter of the City of Dayton require an Annual Appropriation Ordinance to provide for the expenses and obligations of various City Departments for the ensuing year; and,

WHEREAS, State law imposes an April 1 deadline by which each political subdivision or other taxing unit of the State of Ohio shall pass an annual appropriation measure for that fiscal year; now, therefore,

BE IT ORDAINED BY THE COMMISSION OF THE CITY OF DAYTON:

Section 1. That there shall be and hereby are appropriated out of any monies in the treasury, or any accruing revenues of the City available for said purposes, the sums of appropriation hereafter set forth in the column marked "2020 Appropriations".

		2020 Appropriations
GOVERNMENTAL FUND TYPE		
(1) General Fund - 10		
1200	Clerk of Commission	1,302,500
1300	Civil Service Board	1,525,100
1400	Human Relations Council	1,001,100
2100	City Manager's Office	1,380,800
2101	Public Affairs	1,260,800
2105	Office of Sustainability	212,500
2300	Dept. of Planning and Community Development (including Housing Inspection)	
	Expenses	3,427,000
	Transfers Out	150,000
	Total	3,577,000
2500	Clerk of Courts	3,891,900
2510	Municipal Court	4,909,600
2600	Department of Economic Development (including Zoning Admin. & Building Inspection)	3,691,000
2700	Dept. of Procurement, Management & Budget	1,852,000
3400	Department of Water	118,400
5200	Department of Law	2,903,600
5300	Department of Finance	4,050,400
5500	Department of Information Technology	7,022,100

		2020 Appropriations
5600	Department of Human Resources	1,164,500
6200	Department of Police	
	Expenses	53,121,200
	Transfers Out	850,700
	Total	53,971,900
6300	Department of Fire	42,853,900
6400	Department of Public Works	26,001,400
6500	Department of Recreation & Youth Services (incl. Convention Ctr.)	5,726,700
9980	Non-Departmental	
	Expenses	1,607,600
	Transfers Out	945,000
	Total	2,552,600
Issue 9 - General Fund - 10001		
6400	Department of Public Works	624,000
9980	Non-Departmental	
	Transfers Out	7,928,500
	Total	7,928,500
	Total Issue 9 - General Fund	8,552,500
16999	Special Projects	
	Expenses	14,562,900
	Transfers Out	3,878,000
	Total	18,440,900
75000	Income Tax Fund	
	Transfers Out	5,500,000
	Total	5,500,000
Total General Fund		**203,463,200**
(2) Special Revenue		
Roadway Maintenance Fund – 21999		
Street Maintenance Fund - 21000		
6400	Department of Public Works	6,065,700
	Total Roadway Maintenance Fund	**6,065,700**
Street Maintenance Capital - 21200		
6400	Department of Public Works	1,900,000
	Total Street Maintenance Capital	**1,900,000**
Highway Maintenance Fund - 21100		
6400	Department of Public Works	722,900
	Total Highway Maintenance Fund	**722,900**
Total Roadway Maintenance Fund		**8,688,600**

		2020 Appropriation
HUD Programs Operating		
Community Dev. Block Grant Fund - 26204-26209 and 26102		
2300	Dept. of Planning and Community Development	2,634,300
5300	Department of Finance	80,000
	Total Community Dev. Block Grant Fund	**2,714,300**
HOME Operating Fund - 27000		
2300	Dept. of Planning and Community Development	134,100
	Total HOME Operating Fund	**134,100**
Total HUD Programs Operating		**2,848,400**
HUD Programs Non-Operating		
Fair Housing Grant Fund - 23000 - 23999		
	Various Departments	50,000
	Total	**50,000**
	Prior Year's Unexpended Appropriation	**157,900**
	Total Fair Housing Grant Fund	**207,900**
Emergency Solutions Grant - 25002		
	Various Departments	466,300
	Total	**466,300**
	Prior Year's Unexpended Appropriation	**480,500**
	Total Emergency Solutions Grant	**946,800**
Continuum of Care Grant - 25525 - 25599		
	Various Departments	2,762,400
	Total	**2,762,400**
	Prior Year's Unexpended Appropriation	**1,637,200**
	Total Continuum of Care Grant	**4,399,600**
Community Dev. Block Grant Non-Operating Fund - 26001 - 26906		
	Various Departments	2,579,700
	Total	**2,579,700**
	Prior Year's Unexpended Appropriation	**8,152,900**
	Total Community Dev. Block Grant Non-Operating Fund	**10,732,600**
HOME Non-Operating Fund - 27001 - 27999		
	Various Departments	0
	Total	**0**
	Prior Year's Unexpended Appropriation	**4,200,600**
	Total HOME Non-Operating Fund	**4,200,600**
Total HUD Programs Non-Operating		**20,487,500**

		2020 Appropriation
Miscellaneous Grants - 28000; 29000		
	Various Departments	2,925,700
	Total	**2,925,700**
	Prior Year's Unexpended Appropriation	**12,710,700**
	Total Miscellaneous Grants	**15,636,400**
Other Special Revenue - 22111-515		
	Various Departments	9,622,800
	Total	9,622,800
	Prior Year's Unexpended Appropriation	**897,100**
	Total Other Special Revenue Fund	**10,519,900**
Total Special Revenue		**58,180,800**
(3) Debt Service		
General Debt Retirement Fund - 31100-33100		
5300	Department of Finance	10,447,300
	Total General Debt Retirement Fund	**10,447,300**
Total Debt Service		**10,447,300**
(4) Capital Project Funds		
General Capital Fund - 40000		
	Various Capital Projects	31,580,500
	Transfers Out	337,000
	Total	**31,917,500**
	Prior Year's Unexpended Appropriation	**39,018,300**
Total Capital Project Funds		**70,935,800**
(5) Permanent Funds		
Permanent Fund - 71000		
	Various Departments	50,000
	Total Permanent Fund	**50,000**
TOTAL GOVERNMENTAL FUND		**343,077,100**
PROPRIETARY FUND TYPE		
(6) Enterprise Funds		
Aviation Operating Fund - 51000 and 51001		
3200-9990	Department of Aviation	
	Expenses	35,237,100
	Transfers Out	1,680,200
	Total	36,917,300
	Total Aviation Operating Fund	**36,917,300**
Aviation Capital Fund - 51002 - 52999		
	Various Capital Projects	8,065,400
	Transfers Out	5,049,500
	Total	**13,114,900**
	Prior Year's Unexpended Appropriation	**27,830,000**
	Total Aviation Capital Fund	**40,944,900**

		2020 Appropriation
Water Operating Fund - 53000, 53997 and 53998		
2600	Department of Economic Development	132,000
3400	Department of Water - 3400 and 9970	
	Expenses	52,885,400
	Transfers Out	9,333,300
	Total	62,218,700
5300	Department of Finance	4,235,400
	Total Water Operating Fund	**66,586,100**
Water Capital Fund - 53001 - 53996		
	Various Capital Projects	9,358,300
	Total	**9,358,300**
	Prior Year's Unexpended Appropriation	**27,232,800**
	Total Water Capital Fund	**36,591,100**
Sanitary Sewer Operating Fund - 55000		
3400	Department of Water - 3400 and 9970	
	Expenses	33,182,800
	Transfers Out	7,000,000
	Total	40,182,800
	Total Sanitary Sewer Operating Fund	**40,182,800**
Sanitary Sewer Capital Fund - 55001 - 55999		
	Various Capital Projects	24,000,000
	Total	**24,000,000**
	Prior Year's Unexpended Appropriation	**22,129,700**
	Total Sanitary Sewer Capital Fund	**46,129,700**
Storm Water Operating Fund - 58000		
3400	Department of Water - 3400 and 9970	
	Expenses	5,550,800
	Transfers Out	1,000,000
	Total	6,550,800
6400	Department of Public Works	
	Expenses	1,377,600
	Transfers Out	0
	Total	1,377,600
	Total Storm Water Operating Fund	**7,928,400**
Storm Water Capital Fund - 58001 - 58999		
	Various Capital Projects	4,000,000
	Total	**4,000,000**
	Prior Year's Unexpended Appropriation	**3,943,400**
	Total Storm Water Capital Fund	**7,943,400**
Golf Operating Fund - 59000		
6500	Department of Recreation & Youth Services	
	Expenses	3,075,000
	Transfers Out	0
	Total	3,075,000
	Total Golf Operating Fund	**3,075,000**

		2020 Appropriation
Golf Capital - 59001		
	Various Capital Projects	0
	Total	**0**
	Prior Year's Unexpended Appropriation	**99,900**
	Total Golf Capital Fund	**99,900**
Total Enterprise Funds		**286,398,600**
(7) Internal Service Funds		
Fleet Management Fund - 61000		
6400	Department of Public Works	8,056,700
	Total Fleet Management Fund	**8,056,700**
Document Management Services Fund - 62100		
5500	Department of Central Services	617,500
	Total Stores and Reproduction Fund	**617,500**
Healthcare Self Insurance - 63000		
5600	Department of Human Resources	30,738,100
	Total Healthcare Self Insurance Fund	**30,738,100**
Workers' Compensation Fund - 65000		
5600	Department of Human Resources	4,827,700
	Total Workers' Compensation Fund	**4,827,700**
Plumbing Shop - 66000		
6400	Department of Public Works	753,200
	Total Plumbing Shop	**753,200**
Fire Fleet Management - 67000		
6330	Department of Fire	1,312,200
	Total Fire Fleet Management Fund	**1,312,200**
Total Internal Service Funds		**46,305,400**
TOTAL PROPRIETARY FUND		**332,704,000**
TOTAL ALL OPERATING FUNDS		**675,781,100**

Section 2. That the City Manager is authorized to advance up to One Million Dollars and Zero Cents ($1,000,000.00) from the General Fund to HUD Non-Operating Programs due to timing of grant agreements.

Section 3. That the City Manager is authorized to transfer funds in the amounts set forth in Section 1 and as described below:

				2020 Transfers Out
GOVERNMENTAL FUND TYPE				
(1) General Fund - 10				
	From		***To***	
10000-2300	Planning and Community Development	16999-2300	Special Projects	150,000
10000-6200	Police	28000-6200	Miscellaneous Grants	810,700
	Police	16000-2380	Special Projects	40,000
10000-9980	Non-Departmental	16999-2700	Special Projects	400,000
		16999-5600	Special Projects	295,000
		16999-1400	Special Projects	150,000
		28999-1400	Miscellaneous Grants	100,000
	Subtotal Transfers Out			**945,000**
Issue 9 - General Fund - 10001				
10001-9980	Non-Departmental	16999-2300	Special Project	4,300,000
		40000-6400	Capital	3,384,500
		40000-6400	Capital	244,000
	Subtotal Transfers Out			**7,928,500**
16999-2600	Special Projects	40000-2600	Capital	34,900
		31100-5300	G.O. Debt	598,300
		65000-5600	Workers' Compensation Fund	1,420,000
16999-9980		10000-9980	General Fund	1,824,800
	Subtotal Transfers Out			**3,878,000**
75000-5300	Income Tax Fund	16999-2600	Special Projects	3,000,000
		16999-2300	Special Projects	1,000,000
		40000-6400	Capital	1,500,000
	Subtotal Transfers Out			**5,500,000**
Total General Fund Transfers Out				**19,252,200**
(4) Capital Projects				
40001-49999	General Capital Fund	31100-5300	G.O. Debt	337,000

				2020 Transfers Out
PROPRIETARY FUND TYPE				
(6) Enterprise Funds				
51000 and 51001-9960	Aviation Operating Fund	51002 - 52999-3200	Aviation Capital	1,680,200
51002-52999-3200	Aviation Capital	51000 - 51000-3200	Aviation Operating	5,049,500
53000-9970	Water Operating Fund	53001 - 53996-3400	Water Capital	9,333,300
55000-9970	Sanitary Sewer Operating Fund	55001 - 55999-3400	Sanitary Sewer Capital	7,000,000
58000-9970	Storm Water Operating Fund	58001 - 58999-3400	Storm Water Capital	1,000,000
Total Enterprise Funds				**24,063,000**
TOTAL ALL FUNDS				**43,652,200**

Section 4. That all books of accounts, warrants, orders, vouchers, and other official documents that refer to any appropriation shall identify the fund from which monies are appropriated or drawn by the code number set forth in the detailed budget.

Section 5. That the temporary appropriations made by Ordinance Number 31761-19, which was approved by the Commission on November 13, 2019, shall be considered as part of and charged against the sum appropriated for the same purpose by this Ordinance.

PASSED BY THE COMMISSION....., 2020

SIGNED BY THE MAYOR....., 2020

Mayor of the City of Dayton, Ohio

Attest:

Clerk of the Commission

Approved as to form:

City Attorney

MEMORANDUM | DAYTON

February 5, 2020

TO: Shelley Dickstein, City Manager

FROM: Diane T. Shannon, Director
Department of Procurement, Management & Budget

SUBJECT: 2020 Original Appropriation Ordinance

Attached for your review and submission to the City Commission is the 2020 Original Appropriation Ordinance. Overall, the appropriation totals $675.8 million. It funds critical City services, our commitment to Issue 9-Your Dollars, Your Neighborhood, maintenance of vital infrastructure, and neighborhood investments including park upgrades, demolition, and our largest paving program in at least 40 years. The budget funds the 2020 Dayton Fire Recruit Class, 24 of whom are homegrown heroes, and the most diverse class in DFD history. Also funded in the 2020 appropriation is a new sustainability office and a new consolidated call center for improved customer service.

We are requesting the first reading on February 12, and second reading with City Commission approval on February 26, as a non-emergency ordinance. Please note the Mayor's State of the City address is scheduled for February 19. The Original Appropriation will take effect on March 27. The Appropriation Ordinance reflects the budget as presented and discussed with the City Commission during the two budget work sessions held in December, and as reflected in the 2020 Budget Resolution, with a few modifications.

These changes from the Budget Resolution passed by the City Commission on December 18 include $3.1 million in net budget increases, as well as $148.9 million in 2019 carry-over budget for Capital and Non-operating Funds. These changes are summarized below.

1. The original General Fund appropriation of $203.5 million includes the Departmental budgets at $185.0 million and Special Projects at $18.4 million. There is a $3.9 million change in the Special Projects budget when compared to the 2020 Budget Resolution.

    - The Non-Departmental expenditure budget was reduced by $120,000 and moved to transfers out to fund the employee development through the UD Leadership program. The net effect of this change is zero.
    - A $300,000 increase in the Judgments Special Project Fund for judgments against the City.
    - An increase of $295,500 for funding for Police in-car cameras that was inadvertently left out of the Public Safety Photo Enforcement Fund budget.
    - $120,000 increase in the Professional Development Fund for the UD Leadership program, funded from the Non-Departmental budget.
    - An addition of $730,000 in the General Fund-supported Demolition Fund to match the budget to the cash balance.
    - An increase of $140,000 for vendor expenses related to Photo Enforcement activities.
    - A $46,500 addition for the Citizen Engagement budget to match the cash balance.
    - An increase of $324,800 in transfers out from Unclaimed Funds, enabling those funds to be expended for departmental uses. This is a 2020 budget solution.

- $1.5 million transfer from the 27th Pay Fund for purposes of funding the General Fund share of the additional SA payroll.
- $423,900 transfer from the Water Street Garage Fund to the Bond Retirement Fund to support the debt on the garage.

2. A correction of $1.0 million to HOME Non-Operating to reflect the carry-over budget.

3. A General Capital increase of $80,000, of which $50,000 provides budget for facility improvements for the Paramedicine program and $30,000 for repair of Five Oaks gates.

4. Water Capital's 2020 budget increases by $25,000 for tornado-related costs that were not included in the Budget Resolution.

5. An increase of $127,700 for one position in the Sewer Operating Fund that was inadvertently omitted from the Budget Resolution.

6. The 2020 Original Appropriation includes the current year appropriation along with the prior year's unexpended appropriation balance for all Non-Operating and Capital Funds. The Budget Resolution included the 2020 current year appropriation only and did not include any carry-over budget since those amounts could not be identified until December 31. The prior year's unexpended appropriation balance (carry-over budget) adjustments are listed below.

Fund	Carry-Over
Special Projects	450,300
Fair Housing	157,900
Emergency Solutions	480,500
Continuum of Care	1,637,200
CDBG Non-Operating	8,152,900
HOME Non-Operating	4,200,600
Miscellaneous Grants	12,710,700
Other Special Revenue	897,100
General Capital	39,018,300
Aviation Capital	27,830,000
Water Capital	27,232,800
Sewer Capital	22,129,700
Storm Water Capital	3,943,400
Golf Capital	99,900
Total Carry-over Budget	**$ 148,941,300**

Please let me know if you have any questions or require additional information.

DTS/sb

Attachment

cc: Mr. Parlette, Ms. Clements, M&B Staff