I. AGENDA SCHEDULE

Please register to speak 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 Hearings: 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:

   FIRE
   A1. Dell Marketing LP (computers and accessories) $24,953.28
1. (Cont’d):

**INFORMATION TECHNOLOGY**

**B1. Proficient Information Technologies, Inc.** (Oracle database and WebLogic upgrade as needed through 12/31/21) $18,583.90

**POLICE**

**C1. Kiesler Police Supply** (ammunition) $491,215.65

**PLANNING**

**D1. American Ramp Company, Inc.** (bicycle playground system and installation) $36,002.40

- Depts. of Fire, CS/Information Technology, Police, Planning and Community Development.

**Total:** $570,755.23

2. **JobAps, Inc. – Contract Modification** – First Amendment for applicant tracking and testing software – Civil Service Board $153,900.00 (Thru 04/30/24)

3. **Optica Consulting, Inc. – Service Agreement** – enterprise technical services – Department of CS/Information Technology $630,864.00 (Thru 3/31/22)

4. **STEM Study Tours – Service Agreement** – to provide tour services to Chicago, Illinois as part of the Four City Young Leader Academy Program – Department of Planning and Community Development/Mediation Center $25,224.00 (Thru 9/24/21)

D. **Neighborhood Agreements:**

5. **Anthony James Painting and Contracting – Development Agreement** – to assist with funding the acquisition and rehabilitation of a building located at 1436 Cincinnati Street - Department of Economic Development $100,000.00 (Thru 12/31/2022)
6. **Invictus Development Group, Inc. – Development Agreement** – to assist with the redevelopment of vacant commercial space along the Germantown Street Business District Corridor - Department of Economic Development

   $100,000.00

   (Thru 12/31/23)

II. **LEGISLATION:**

**Emergency Ordinance – First and Second Reading:**

7. **No. 31876-21** Authorizing the City Manager to Establish a Policy Prohibiting Goods and Services from Being Procured by the City of Dayton that were Produced or Procured Under Certain Inhumane Conditions, and Declaring an Emergency.

**Resolution – First Reading:**

8. **No. 6570-21** Honorarily Naming East Monument Avenue Between North Main Street and North Patterson Boulevard as “Det. Jorge Del Rio Way.”

**ORDINANCE NO. 31877-21**

**RESOLUTION NO. 6571-21**

**IMPROVEMENT RESOLUTION NO. 3599-21**

**INFORMAL RESOLUTION NO. 988-21**
City Manager’s Report

Date: April 14, 2021
Expense Type: Purchase Order
Total Amount: $570,755.23

From: 2730 – PMB/Procurement
Supplier, Vendor, Company, Individual: See Below
Name: See Below
Address: See Below

2021 Purchase Orders

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>See below</td>
<td>See below</td>
<td>See below</td>
</tr>
</tbody>
</table>

Includes Revenue to the City: Yes ☑ No □
Affirmative Action Program: Yes ☑ No □ N/A

Description:

FIRE

(A1) P0210807 – DELL MARKETING LP, ROUND ROCK, TX

- Computers and accessories.
- This equipment is required to replace end of life equipment used by the Department of Fire.
- The City has standardized on Dell computing equipment; therefore, this purchase was negotiated.
- The Department of Fire recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
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<tbody>
<tr>
<td>2021</td>
<td>General Fund</td>
<td>10000-6340-1301-72</td>
<td>$24,953.28</td>
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</tbody>
</table>

Signatures/Approval

Melisa A. Wilson, CAFM
Division Director
Diane J. Maxwell 4/5/2021

Approved by City Commission

Clerk
Date

FORM NO. MS-16

Updated 06/2016
INFORMATION TECHNOLOGY

(B1) P0210809 – PROFICIENT INFORMATION TECHNOLOGIES, INC., OAKWOOD, OH

- Oracle Database and WebLogic upgrade, as needed through 12/31/2021.
- These services are required to complete the transition of the Oracle database and Weblogic component of the Finance income tax system into the new VMWare environment.
- Proficient Information Technologies, Inc. ("Pi-Tech") is recommended based upon proven past performance to ensure consistent quality, compatibility and operational continuity, for which Pi-Tech was the original systems developer; therefore, this purchase was negotiated.
- The Department of InformationTechnology recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<tr>
<td>2021</td>
<td>Technology Fund</td>
<td>40018-5560-1159-65</td>
<td>$18,583.90</td>
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</tbody>
</table>

POLICE

(C1) P0210788 – KIESLER POLICE SUPPLY, JEFFERSONVILLE, IN

- Ammunition.
- These goods are required for duty, qualifications and training of officers.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 19013S with pricing through 3/31/2023.
- The Department of Police recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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</thead>
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<tr>
<td>2021</td>
<td>Public Safety Photo Enforcement</td>
<td>16122-6210-1301-71</td>
<td>$161,215.65</td>
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<td>2022</td>
<td>Public Safety Photo Enforcement</td>
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<tr>
<td>2023</td>
<td>Public Safety Photo Enforcement</td>
<td>16122-6210-1301-71</td>
<td>$165,000.00</td>
</tr>
</tbody>
</table>

PLANNING

(D1) P0210811 – AMERICAN RAMP COMPANY, INC., JOPLIN, MO

- Bicycle playground system and installation.
- These goods and services are required to expand the playground at Welcome Park.
- Rates are in accordance with Sourcewell Contract #112420-ARC with pricing through 12/29/2024.
- The Department of Planning recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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</thead>
<tbody>
<tr>
<td>2021</td>
<td>Community Development Projects</td>
<td>40024-2340-1159-31</td>
<td>$36,002.40</td>
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</table>

The aforementioned departments recommend approval of these orders.
City Manager’s Report

From 1300 - Civil Service Board
Supplier, Vendor, Company, Individual
Name JobAps, Inc.
Address 1323 Anacapa Street
          Santa Barbara, CA  93101

Fund Source(s)  Fund Code(s)  Fund Amount(s)
General        10000-1300-1164-62  $153,900.00

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

Description

Renewal and First Amendment to Service Agreement

Civil Service requests permission for the renewal and first amendment of the Service Agreement with JobAps, Inc. for the City’s applicant tracking and testing software, in the amount of $153,900.00.

JobAps, Inc. provides the application tracking and testing software that includes software license, user license, upgrades, technical support, training, etc. The software provides the tracking and processing of applicants relative to recruitment, screening, administration of examinations and eligible certifications.

The original Agreement was approved on April 4, 2018 in the amount of $232,200.00. This first amendment will increase the contract amount to $386,200.00. This first amendment shall commence on May 1, 2021 and expire April 30, 2024.

We are requesting authority of payment for:

- 5/1/2021 – 12/31/2021  $34,200.00
- 1/1/2022 – 4/30/2023  $68,400.00
- 5/1/2023 – 4/30/2024  $51,300.00

The renewal and amendment have been reviewed by the Law Department as to form and correctness.

A Certificate of Funds and a copy of the renewal and amendment are attached.

Signatures/Approval

Approved by City Commission

Clerk

Date

FORM NO. MS-16  Updated 8/2016
## SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>New Contract</th>
<th>Renewal Contract</th>
<th>Change Orders</th>
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<td>Expiration Date</td>
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<td>Original Commission Approval</td>
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<td></td>
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<td>Initial Encumbrance</td>
<td>$232,200.00</td>
<td></td>
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<tr>
<td>Remaining Commission Approval</td>
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<td></td>
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<tr>
<td>Original CT/CF</td>
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<tr>
<td>Increase Authority</td>
<td>$153,900.00</td>
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</tr>
<tr>
<td>Increase Encumbrance</td>
<td>$34,200.00</td>
<td></td>
</tr>
<tr>
<td>Decrease Encumbrance</td>
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<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$119,700.00</td>
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</tbody>
</table>

### Required Documentation

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

### Attach additional pages for more FOAPALs

**Vendor Name:** JobAps, Inc.

**Vendor Address:** 322 East Arrellaga Street, Santa Barbara, CA 93101

**Street:**

**City:**

**State:**

**Zipcode + 4:**

**Federal ID:** 77-0550009

**Commodity Code:** 920-45

**Purpose:** Software maintenance, technical support, and upgrades for the testing and application system.

### Contact Person:

**Sheila Crum**

**Civil Service Department/Division:**

**Date:** 3/29/2021

**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 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.

**Finance Director Signature:**

**Date:** 3/30/2021

**CF Prepared by:**

**Date:** 3/30/2021

**CF/CT Number:** CT18-1994

---
AGREEMENT FOR
LICENSED SOFTWARE AND SERVICES

THIS LICENSED SOFTWARE AND SERVICES AGREEMENT ("Agreement") is made and entered into on this ____ day of __________, 2021, between the City of Dayton, Ohio ("City"), a municipal corporation in and of the State of Ohio, and JobAps, Inc. ("JobAps" or "Licensor"), with its principal office at 1323 Anacapa Street, Santa Barbara CA 93101.

WITNESSETH THAT:

WHEREAS, The City identified a need for specific software and corresponding professional services; and

WHEREAS, The Licensor provides non-exclusive licenses to its applicant management and exam software and provides ancillary services related to its software and desires to grant such non-exclusive license and to provide such services to City of Dayton.

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

SECTION 1. SCOPE OF SERVICES

1.1 The Licensor shall provide the software licenses and services set forth in Exhibit A, titled "Scope of Services", which is attached hereto and incorporated herein by reference. Exhibit A defines the scope of the license granted hereunder in Licensor’s software (the "Software") and the term of such license (the “Subscription Period” as defined on Exhibit A).

SECTION 2. LICENSE

2.1 Grant of License. Subject to the terms and conditions set forth herein, JobAps hereby grants to City of Dayton, and City of Dayton accepts, a personal, limited, non-transferable and non-exclusive worldwide license for use of the software installed by JobAps on the Server to be operated over the World Wide Web ("Server Programs"), related software provided by JobAps for installation on City of Dayton’s computers ("Local Programs") if any, and any updates, enhancements, modifications, revisions, additions, replacements or conversions thereof (collectively, "Enhancements") if paid for by City of Dayton or provided generally by JobAps to its customers free of charge, and any related documentation (the “Documentation”), all as set forth or identified on Exhibit A attached hereto and incorporated herein by this reference (collectively, the "Software"). The Server Programs, Local Programs and Enhancements are collectively referred to hereafter as the “Programs".
2.2 **Scope of Use.** City of Dayton shall use the Software solely for its own business purposes and City of Dayton shall not permit any entity, affiliate, organization or political subdivision other than City of Dayton to use the Software to collect data or process information. City of Dayton may allow its job applicants to use the Software solely pursuant to the “Terms of Use” Agreement accepted by all job applicants as part of the online application process. In the event City of Dayton learns of or has reason to believe that any job applicant has violated or intends to violate the terms of the Terms of Use Agreement, City of Dayton shall cooperate with JobAps in seeking injunctive or other relief in the name of City of Dayton or JobAps against any such job applicant.

2.3 **No Copies and Modifications by City of Dayton.** Unless otherwise agreed to in writing by JobAps, City of Dayton may use the Software but may not view or access the Programs stored on the Server or on City of Dayton’s computers or make copies of any of the Programs. Unlimited copies of the electronic documentation may be printed for use by the City of Dayton only. No identifying marks, copyright or proprietary right notices may be deleted from any copies of the Programs made by City of Dayton. City of Dayton shall not copy, download, translate, decompile, or create by reverse engineering or otherwise, the source code from the object code supplied hereunder, or adapts the Software in any way or uses it to create a derivative work. City of Dayton shall not make any modifications or revisions of, or additions to the Software without JobAps prior written consent. JobAps shall not be responsible for providing any updates, enhancements, modifications, revisions, additions, replacements or conversions to the Software, or for otherwise maintaining the Software, if the Software is modified by City of Dayton.

2.4 **Copies of Applicant Data.** City of Dayton may make unlimited copies of the applicant data collected through the use of the Programs installed for City of Dayton. These copies shall only be obtained in the manner permitted by and expressly set forth in the Software.

**SECTION 3. DELIVERY OF SOFTWARE TO CITY OF DAYTON**

3.1 The Programs shall be delivered as a set of operational web pages generated using Programs run on the Server (as defined in Section 3.5), configured/customized for City of Dayton as provided in Exhibit A, directly on the Servers (as defined in Section 3.5), and JobAps shall make available in electronic form only any related Documentation to City of Dayton. **WEB HOSTING, MAINTENANCE, AND TECHNICAL SUPPORT**

3.2 JobAps shall provide web hosting, maintenance and technical support services as described in Exhibit C attached hereto. City of Dayton shall pay JobAps the Web Hosting, Maintenance and Technical Support Fees described in Exhibit B on the terms and conditions set forth in Exhibit B.

**ADDITIONAL SOFTWARE CUSTOMIZATION**

3.3 Additional Software Customization may be delivered per request of the City according to Exhibit D.

**SERVER AND INSTALLATION**

3.4 The Programs shall be installed on a server that JobAps shall select in its sole discretion (the “Server”).
3.5 **Acceptance.** City of Dayton acknowledges that the Software and/or any Software updates shall be deemed accepted upon the installation of the Programs by JobAps, unless City of Dayton notifies JobAps in writing within thirty (30) days after the completion of training of any material non-conformity in the Programs as compared with the Documentation. In the event that City of Dayton does so notify JobAps, JobAps shall promptly begin to use its reasonable efforts to correct non-conformity in the programs. In the event that JobAps cannot correct the Programs within one hundred and eighty (180) days after City of Dayton notifies JobAps, City of Dayton may terminate this Agreement by notifying JobAps in writing thereof.

**SECTION 4. PROPRIETARY RIGHTS**

4.1 **Proprietary Rights.** JobAps represents that it is the owner of or otherwise has the rights to the Software and that it has the right to grant the License. The foregoing notwithstanding, JobAps makes no representation or warranty with respect to intellectual property rights in any jurisdiction other than the United States of America. JobAps retains title to the Software and any other deliverables hereunder, including without limitation, all copies and audiovisual aspects thereof and all rights to patents, copyrights, trademarks, trade secrets and other intellectual property rights inherent therein and appurtenant thereto. City of Dayton shall not, by virtue of this Agreement or otherwise, acquire any proprietary rights whatsoever in the Software or in any other deliverables hereunder, which shall be confidential information of JobAps and the sole and exclusive property of JobAps. Any right not expressly granted to City of Dayton by this Agreement is hereby expressly reserved by JobAps. No identifying marks, copyright or proprietary right notices may be deleted from any copy of the Software provided to or made by City of Dayton.

**SECTION 5. WARRANTIES**

5.1 **Statement of Warranties.** JobAps warrants that, for a period of Three hundred and sixty five (365) days following the completion of training as described in Exhibit B (the “Warranty Period”), the operation of the Programs shall substantially conform to the description set forth in Exhibit A, provided that City of Dayton has not altered any portion of the Programs, that the Server Programs are operated on the Server and in an operating environment necessary to operate the Software, that the Local Programs, if any, are operated on the City of Dayton’s machines and in an operating environment necessary to operate the Software, as described in Exhibit A. JobAps sole obligation or liability under this Warranty shall be to use reasonable efforts to correct the Programs, in a reasonable time, to perform in accordance with the documentation, upon written notice of its failure to so perform from the City of Dayton. In the event JobAps fails to remedy material defects in the Programs under this Warranty, City of Dayton’s sole remedy and JobAps sole liability shall be to receive a refund of any License Fee paid hereunder for the portion of the Programs, if any, which does not conform to the description set forth in Exhibit A.

5.2 **Disclaimer of Warranty.** THE WARRANTY SET FORTH IN SECTION 5.1 IS A LIMITED WARRANTY AND IT IS THE ONLY WARRANTY MADE BY JOBAPS. JOBAPS EXPRESSLY DISCLAIMS, AND City of Dayton HEREBY EXPRESSLY WAIVES,
ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. JOBAPS DOES NOT WARRANT AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS THAT THE SOFTWARE WILL MEET City of Dayton’s REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE AND/OR ITS USE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE, IF ANY, WILL BE CORRECTED. JOBAPS’S LIMITED WARRANTY IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF JOBAPS FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY AND USE OF THE SOFTWARE OR RELATED SERVICES. EXCEPT FOR THE ABOVE LIMITED WARRANTY, THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SOFTWARE IS WITH THE City of Dayton.

SECTION 6. LIMITATION OF LIABILITY

6.1 JOBAPS SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE AGGREGATE LIABILITY OF JOBAPS FOR ANY REASON AND UPON ANY CAUSE OF ACTION OR CLAIM SHALL BE LIMITED TO THE AMOUNT OF LICENSE FEES PAID TO JOBAPS BY City of Dayton HEREUNDER FOR THE SPECIFIC PORTION OF SOFTWARE GIVING RISE TO SUCH CAUSE OF ACTION OR CLAIM. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION OR CLAIMS IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, INDEMNITY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS.

SECTION 7. BACKGROUND CHECK

7.1 Licensor's personnel assigned to perform services specifically for the City under this Agreement may be subject to criminal history background check(s) (including but not restricted to fingerprinting and identify verification).
SECTION 8. COMPENSATION FOR SOFTWARE LICENSE

LICENSE FEES
8.1 Total remuneration in this Agreement shall not exceed ONE HUNDRED FIFTY-THREE THOUSAND NINE HUNDRED DOLLARS AND ZERO CENTS ($153,900.00) inclusive of expenses, for the license to the Software granted by the Licensor in accordance with this Agreement. These fees include the license fees and training as outlined in Exhibit B and are inclusive of annual subscription fees.

BILLING FREQUENCY
8.2 Licensor shall submit an invoice as outlined in Exhibit B, titled “COMPENSATION” upon the completion of each task listed in Exhibit B of this Agreement. Unless disputed, the City shall tender payment within thirty (30) days of receipt of the Licensor’s invoice. If payment is not disputed and not tendered within 30 days of receipt of the Licensor’s invoice, then simple, non-compounded interest at the statutory rate for the State of Ohio shall begin to accrue. Late payment does not relieve the City of its duty per this Agreement for timely payment. In the event the City disputes an invoiced amount in good faith, the City shall notify Licensor of such dispute, providing sufficient detail of the basis of the dispute within 30 days of date of invoice and the parties shall work together promptly and in good faith to resolve such dispute. The City shall not be obligated to pay any amount so disputed in good faith until such dispute is resolved.

SECTION 9. TERM

9.1 This Agreement shall commence upon execution by the City and it shall terminate, unless renewed or amended, and subject to Section 16, below, three years after the City has commenced its first annual subscription as provided in Exhibit A. The City, at its sole discretion, may choose to renew the Agreement for additional twelve (12) month periods (“Options”). In order to execute its renewal Options, the City must provide written notice of its intent to renew to Licensor prior to termination. The total cost for each twelve-month Option period shall only be the Annual Subscription Cost as provided in Exhibit B, which shall not increase by more than five (5) percent over the preceding year.

SECTION 10. CITY'S RESPONSIBILITIES

10.1 The City will furnish Licensor, at no cost or expense, all reports, records, and data that might be necessary or useful to complete the services required under this Agreement.

10.2 Licensor shall be able to rely on the accuracy and completeness of all information provided by the City, without independent audit or verification thereof (except where any verification is specifically part of the scope of services to be provided).

SECTION 11. STANDARD OF CARE

11.1 Licensor shall exercise the same degree of care, skill, and diligence in the performance of
services under this Agreement as is ordinarily possessed and exercised by a professional under similar circumstances. Licensor shall have no liability for defects in such services attributable to Licensor's reliance upon or use of data or other information furnished by the City or third parties retained by the City.

SECTION 12. CONFIDENTIALITY AND NON-DISCLOSURE

12.1 All information provided to and/or gathered by Licensor from the City during the term of this Agreement shall be deemed "confidential" information to the extent that it is classified as "private" under the laws of the State of Ohio or is not independently available to the general public. To the extent permitted by law, Licensor agrees that it shall not disclose such information to any third party without the City's written consent. Licensor shall also take all reasonable steps to protect against the disclosure of the City's confidential information.

12.2 Nothing in this Section shall prohibit or limit Licensor's disclosure of confidential information when such disclosure is required by an order of a Court or under state or federal law, or when such disclosure is authorized in writing by the City.

12.2 Use of Software. Except as otherwise provided in this Agreement or except with the express written permission of JobAps, City of Dayton shall not sell, transfer, publish, disclose, display or otherwise make available to others any portion of the Software including but not limited to programs, documentation, screen shots, training materials, or other materials provided by JobAps. City of Dayton shall use its reasonable best efforts to cooperate with and assist JobAps in identifying and preventing any unauthorized use, copying or disclosure of the Software or any portion thereof or any of the algorithms or logic contained therein, if any.

12.3 JobAps Proprietary Information. City of Dayton acknowledges that, in the course of meeting its obligations under this Agreement, it will obtain information relating to the Licensed Software and to JobAps that is of a confidential and proprietary nature ("JobAps Proprietary Information"). Such JobAps Proprietary Information includes, without limitation, trade secrets, know-how, inventions, techniques, algorithms, programs, documentation and data (except for applicant data). City of Dayton will at all times, both during the term of this Agreement and for a period of at least five (5) years after its termination, keep in confidence and trust all such JobAps Proprietary Information, and will not use such JobAps Proprietary Information other than as permitted under the terms of this Agreement, nor will City of Dayton disclose any of such JobAps Proprietary Information without the written consent of JobAps and pursuant to a standard proprietary information agreement.

12.4 City of Dayton Proprietary Information. JobAps acknowledges that, in the course of meeting its obligations under this Agreement, it may obtain information relating to the Designated Products and to City of Dayton that is of a confidential and proprietary nature ("City of Dayton Proprietary Information"). Such City of Dayton Proprietary Information may include, but not by way of limitation, trade secrets, know-how, inventions, techniques, programs, documentation, and data. JobAps will at all times, both during the term of this Agreement and for a period of at least five (5) years after its termination, keep in confidence and trust all such
City of Dayton Proprietary Information, and will not use such City of Dayton Proprietary Information other than in the course of its duties under this Agreement, nor will JobAps disclose any of such City of Dayton Proprietary Information without the written consent of City of Dayton and pursuant to a standard proprietary information agreement.

12.5 JobAps will at all times, both during the term of this Agreement and after its termination, keep in confidence and trust all applicant data collected on the Server by the Programs, and will not use such applicant data other than in the course of its duties under this Agreement, nor will JobAps disclose any of such applicant data without the written consent of City of Dayton and pursuant to a standard proprietary information agreement.

12.6 Terms of Agreement. City of Dayton will immediately report to JobAps any and all unauthorized disclosures or uses of JobAps Proprietary Information of which City of Dayton is aware or has knowledge. City of Dayton acknowledges that any publication or disclosure of JobAps Proprietary Information to others may cause immediate and irreparable harm to JobAps.

12.7 Exclusions. The obligations pursuant to Sections 12.1, 12.2, 12.3, 12.4, 12.5 and 12.6 above will not apply to information which (a) was in possession of, or was known by the receiving party prior to its receipt from the disclosing party; (b) is received without restriction on disclosure by the receiving party from a source other than the disclosing party who received the information not in violation of any confidentiality restriction; (c) is or becomes available on an unrestricted basis to a third party from the disclosing party or someone acting under its control; (d) is publicly known or becomes publicly known through no fault of the receiving party; or (e) is revealed pursuant to a statute, regulation, or order of a court of competent jurisdiction requiring such disclosure, provided the party revealing such information promptly notifies the other party to allow the other party to take appropriate protective measures.

SECTION 13. TRADEMARKS AND TRADE NAMES

13.1 Any and all trademarks and trade names that JobAps uses in connection with this Agreement are and shall remain the exclusive property of JobAps. Nothing contained in this Agreement shall be deemed to give City of Dayton any right, title or interest in any trademark or trade name of JobAps. The Parties agree that JobAps may use City of Dayton seal and name on its website and promotional literature. Any use by JobAps of City of Dayton Seal shall not be deemed to give JobAps any right, title or interest in such seal.

SECTION 14. INDEMNIFICATION AND LIABILITY

14.1 Licensor shall indemnify and defend the City and its elected officials, officers, employees and agents (collectively, "Indemnitees") 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 caused by or arise from undertaking and performing its obligations under this Agreement; however, no indemnification will be required for any claims, losses, damages or expenses resulting from any negligence or willful misconduct of the City or any of the other Indemnitees. This Article shall survive early termination or expiration of this Agreement.
14.2 Notwithstanding the terms of any other provisions, (I) the total liability of Licensor and its subsidiaries, officers, employees, and agents for all claims of any kind arising out of Licensor’s services, whether in contract, tort, or otherwise, shall be limited to the total fees paid to Licensor under this agreement; and (II) neither party shall in any event be liable for any indirect, consequential, or punitive damages, even if it has been advised of the possibility of such damages.

SECTION 15. INSURANCE

15.1 During the term of this Agreement, Licensor 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:

- General Liability Insurance, having a combined single limit of $1,000,000 for each occurrence and $1,000,000 in the aggregate.
- Automobile Liability Insurance, having a combined single limit of $1,000,000 for each accident.
- Employers’ Liability Insurance, having a limit of $500,000 for each occurrence.
- Licensor shall maintain errors and omissions insurance in the amount of $1,000,000.

15.2 Current certificates of insurance for all policies and concurrent policies required to be maintained by Licensor pursuant to this Article shall be furnished to the City upon reasonable request. All such insurance policies, excluding Errors and Omissions Insurance, shall name the City, its elected officials, officers, agents, employees, and volunteers as additional insureds, but only to the extent of the policy limits stated herein. Licensor shall endeavor to provide a minimum of thirty (30) days advance written notice to the City in the event of cancellation or diminution of coverage below the amounts required hereunder.

15.3 Licensor 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.

SECTION 16. TERMINATION

16.1 This Agreement may be immediately terminated by the City upon written notice in the event of substantial failure by Licensor to perform in accordance with the terms of this Agreement. Licensor shall have thirty (30) calendar days from the date of the termination notice to cure or submit a plan for cure acceptable to the City.

16.2 In addition, the City may, upon twenty (20) days written notice, terminate the Agreement for convenience. Should the City terminate the Agreement for convenience, the Licensor shall only be entitled to payment for work and services completed and accepted by the City as of the date of termination. The Licensor shall not be entitled to any profit or overhead for work not performed, and in no event shall the Licensor be entitled to compensation in excess of the Agreement price.
16.3 Any such termination shall not relieve Licensor of any liability to the City for damages sustained by virtue of any breach by Licensor. The City will be under no further monetary obligation or commitment to Licensor.

16.4 In the event of termination, the City may, at its option, exercise any remedy available to it, including the Uniform Commercial Code, according to Ohio law.

16.5 Termination by JobAps In addition to other express rights of JobAps to terminate this Agreement set forth herein, JobAps shall also have the right to terminate this Agreement immediately and cancel any unfilled portion of it by written notice to City if: (i) City enters into any arrangement or composition with its creditors or if a receiver is appointed to direct the business of City, (ii) upon City’s breach of the License or confidentiality and nondisclosure provisions of section 12 contained herein, or (iii) upon a violation of JobAps proprietary rights described in section 12 contained herein. JobAps shall have the right to terminate this Agreement upon any breach of any other material provision of this Agreement by City, its officers, directors, partners, employees, or agents, if JobAps has notified City of such breach in writing and City has not cured such breach within thirty (30) days after receiving such written notice, or (iv) upon non-payment of invoices which are past due for more than 6 months. In the event that JobAps learns of a material breach by City, relating to the confidentiality obligations of the Software as described in section 12, JobAps agrees to immediately notify City in writing, by fax, or by email of these allegations. City shall have 30 days from the date of notice to recover and deliver to JobAps any materials which have been distributed in violation of the confidentiality obligations of section 12. City will have 30 days from the date of notice to cure any other violation of the confidentiality obligations of section 12 in a reasonable manner. Upon notice of a breach with respect to the confidentiality obligations of section 12, the City will immediately cease and desist in the unauthorized conduct. In the event that City persists in unauthorized conduct as determined by JobAps, JobAps may at its sole discretion terminate this Agreement. Nothing in this section shall be deemed as a waiver of the parties’ rights or remedies in the event of litigation commenced to enforce this Agreement.

16.6 Post-Termination Obligations Within thirty (30) days after the termination of this Agreement, City of Dayton shall return any copies of the Software, including Programs and Documentation, to JobAps, or at JobAps sole discretion, erase any copies of the Software from all storage media in its possession, and certify the completion of such destruction in writing to JobAps. Notwithstanding the foregoing, all provisions hereof relating to Confidentiality as described in Section 12 and Proprietary Rights as described in Section 4, and non-solicitation shall survive the termination or expiration of this Agreement.

Within thirty (30) days after the termination of this Agreement, JobAps shall return the City’s JobAps specific data in delimited text files accompanied by a Data Dictionary document which describes the table structures and identifies the primary and foreign keys. The files will be made available to the City in electronic form.

SECTION 17. GENERAL PROVISIONS
A. **DELAY IN PERFORMANCE**

Neither the City nor Licensor 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 Licensor under this Agreement, provided the aforementioned circumstances are not due to the negligence or fault of the asserting party or any of its agents, employees, consultants, sub-consultants and/or representatives.

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 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.

C. **NOTICES**

Any notices shall be deemed to have been given “in writing” if received by the non-transmitting party electronically and either given (i) if by hand delivery, upon receipt thereof; or (ii) if mailed, three (3) business days after deposit in the U.S. mails, postage prepaid, certified mail, return receipt requested.

All notices shall be addressed to the parties at the addresses set forth below or such other address as either party may from time to time designate in writing to the other party:

If by email to JobAps: sales@JobAps.com;

If by email to City of Dayton: ken.thomas@daytonohio.gov.

Any written communication may be delivered personally, sent by express delivery, certified mail or first-class U.S. mail, postage pre-paid to the address specified below:
City:
City of Dayton, Ohio
Civil Service Board
371 W. Second Street, Suite 231
Dayton, Ohio 45402
Attn: Ken Thomas, Secretary and Chief Examiner

Licensor:
JobAps, Inc.
322 East Arrellaga Street
Santa Barbara, CA 93101
Attn: Jenna Berg, Ph.D., Chief Executive Officer

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

D. **EQUAL EMPLOYMENT OPPORTUNITY**
Licensor 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 and may bar Licensor from receiving future City contracts.

E. **WAIVER**
A waiver by the City or Licensor 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 void, unenforceable, invalid or illegal provision shall be deemed severed from this Agreement. Any void, unenforceable, invalid or illegal provisions 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.
G. **INDEPENDENT CONTRACTOR**
By executing this Agreement, Licensor acknowledges and agrees that it will be providing services to the City as an "Independent Contractor". As an Independent Contractor for the City, Licensor shall be prohibited from representing or allowing others to construe the parties' relationship in a manner inconsistent with this Article. Licensor 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.

Licensor, its employees and any persons retained or hired by Licensor 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. Licensor acknowledges its employees are not "public employees" for the purpose of membership and/or participation in the Ohio Public Employees Retirement System ("OPERS"). Further, Licensor shall be responsible to withhold and pay, or cause such agents, consultants and sub-consultants to withhold and pay, all applicable local, state and federal taxes.

H. **ASSIGNMENT**
This Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and upon their permitted successors in interest and permitted assigns.

Licensor 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 Licensor from employing independent consultants, associates, and sub-consultants to assist in the performance of its obligations under this Agreement.

City of Dayton may not assign, without the prior written consent of JobAps, City of Dayton’s rights, duties or obligations under this Agreement to any person or entity, in whole or in part, whether by assignment, merger, transfer of assets, sale of stock, operation of law or otherwise, and any attempt to do so shall be deemed a material breach of this Agreement.

I. **NO THIRD-PARTY BENEFICIARIES**
The Parties agree that this Agreement is for the benefit of the Parties hereto and is not intended to confer any rights or benefits on any third party, and that there are no third-party beneficiaries as to this Agreement or any part or specific provision of this Agreement.
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.

K. **POLITICAL CONTRIBUTIONS**
Licensor affirms and certifies that it complies with Ohio Revised Code § 3517.13 limiting political contributions.

L. **INTEGRATION**
This Agreement, including all Exhibits and attachments, evidences the complete understanding and agreement of the parties with respect to the subject matter hereof and supersedes and merges all previous proposals of sale, communications, representations, understandings and agreements, whether oral or written, between the parties with respect to the subject matter hereof. This Agreement may not be modified except by a writing subscribed to by authorized representatives of both parties.

M. **FORCE MAJEURE**
Neither party shall be liable to the other for any delay or failure to perform any of the services nor obligations set forth in this Agreement due to cause beyond its reasonable control. Performance times shall be considered extended for a period of time equivalent to the time lost because of such delay.

N. **SURVIVAL**
All provisions of this Agreement relating to proprietary rights as described in Section 4, Confidentiality and Non-Disclosure as described in Section 12, or to payment of any other fees that have accrued for services rendered that have not been paid by City of Dayton shall survive the termination of this Agreement. Any disputes arising after the termination of this agreement shall be settled as defined in Section 16.

O. **ENFORCEABILITY**
If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to affect the intent of the Parties, and the remainder of this Agreement shall continue in full force and effect.
P. REMEDIES
Unless otherwise specified herein, the rights and remedies of both Parties set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to it at law or in equity.

Q. HEADINGS
The headings of the sections of this Agreement are inserted for convenience only and shall not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement.

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

CITY OF DAYTON, OHIO

______________________________
City Manager

JOBAPS, INC.

By: ________________________________

______________________________
Print: Jenna Berg

______________________________
Its: CEO

APPROVED AS TO FORM AND CORRECTNESS:

3/26/2021

X Amelia N. Blankenship for

City Attorney
Signed by: Blankenship, Amelia
APPROVED BY THE COMMISSION
OF THE CITY OF DAYTON, OHIO
______________________________, 2021

Min./Bk._______ Pg. ________

______________________________
Clerk of the Commission

Page 14 of 15
EXHIBIT A
SCOPE OF SERVICES

1. Software Licensing and Products
The Software licensed under this Agreement is licensed for a 36-month term (the “Subscription Period”) beginning on May 1, 2021 and going through April 30, 2024.

<table>
<thead>
<tr>
<th>Product</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enterprise Recruiting Solution with Private Database and Branded site</td>
</tr>
<tr>
<td>• Class Specs</td>
</tr>
<tr>
<td>• Online Employment Center</td>
</tr>
<tr>
<td>• Schedule and Score</td>
</tr>
<tr>
<td>• Track and Hire</td>
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<tr>
<td>Staging site for Testing and Training with Private Database</td>
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<td>Integrated on-line testing suite</td>
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<td>• Salaries</td>
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<tr>
<td>• Hire Extract</td>
</tr>
<tr>
<td>*City of Dayton to provide the job class and salary data in a JobAps specified format and layout.</td>
</tr>
<tr>
<td>Instructor led, hands on training sessions Product update trainings for new software releases</td>
</tr>
<tr>
<td>Electronic documentation for use of the Programs is provided on-line.</td>
</tr>
</tbody>
</table>

*Annual subscription includes hosting, disaster recovery, scheduled data back-ups, maintenance with scheduled upgrades, email, and Phone Support.

2. Scope of Work and Project Requirements

Technical and User Support:
JobAps technical support is provided directly to our customers and is included in our annual hosting, maintenance and support offering. Technical support includes:

- Unsurpassed live help desk support from 9:00 A.M. to 6:00 P.M. Eastern Time.
- Users can report issues online at any time and will receive an immediate email response with a ticket number.
- 24 x 7 x 365 emergency technical support available for critical hosting or network issues.
- Quarterly JobAps update releases.
- Regularly scheduled online users group meetings.
- Input into future direction and strategy of the JobAps product.
- General product video training sessions.
- Product Documentation and User Guides covering the entire JobAps system ongoing monthly User Groups.
Software Upgrades:
The JobAps Upgrade Schedule provides for Quarterly Releases. Quarterly Releases can include system enhancements and defect fixes. Quarterly Releases are implemented by the JobAps Engineering team and are tested by the JobAps Quality Assurance team.

Quarterly Releases are made available to customers in their Stage sites approximately two weeks before the production release date. The quarterly releases are accompanied by Release Notes and an online webinar where JobAps Trainers describe and demonstrate new functionality.

Software Description:
JobAps Class Specs™ provides for the centralized storage and maintenance of Job Class, Description, Salary and Posting information. This information is used to facilitate the automated creation of Class Description and Job Announcements and enable applicants to search for job classifications as easily as they can search open jobs. JobAps Class Specs provides the City of Dayton with a library of all Job Classification data. Job Class specifications include job title, working title, class number, bargaining units, benefits, salary, applicant search categories and more. From Class Specs, you can create and edit detailed and professionally formatted online and printable job descriptions and job announcements without knowledge of HTML. You can easily specify screening questions and weight the responses. These questions can be mapped to the class and can be used to automatically assess and screen applicants for minimum qualifications.

JobAps Online Employment Center™ (OEC): the electronic lobby of the system. The OEC is available to applicants 24 hours a day, 365 days a year. The OEC enables applicants to view open jobs, create, update and submit applications, track the status of their applications, view notices they have received, and sign up to receive automatic email notices when a job opens in their desired job class.

With the JobAps OEC, administrators can create and post jobs online to one or hundreds of job boards; post job information to social media sites; find hard to reach candidates by searching the Internet; accept, track, screen, and score online applications; review attachments; and use the JobAps Question Library to create supplemental questionnaires to be used for automatic minimum qualifications screening and scoring applications. JobAps provides a branded, mobile friendly, online applicant portal, an online application tailored to your specifications and access to social media sharing.

The JobAps Administrative Suite is available to every employee in your organization via a secure web-browser, with no installation. With just a browser, your staff can post jobs, create sophisticated supplemental questionnaires, design and share recruitment plans online with staff
and hiring departments, search the applicant database, track recruitment status, and communicate with applicants via public status boards and batch or individual email.

**JobAps Track&Hire™**: a flexible, comprehensive online web-based system that helps you manage your hiring process by providing:

- The E-List Manager to share eligible lists and referral/certification lists and associated applications with hiring authorities via the web.
- Online Requisition Manager and applicant referral suite for HR and all hiring departments.
- A correspondence management system that allows for the creation of notice templates and the sending of bulk or individual email or paper notices with “mail merge” fields, complete with tracking of the delivery of the notices.

**JobAps Schedule & Score™**:

- Comprehensive examination planning.
- Detailed application workflow and exam scoring management.
- Test scheduling and applicant self-scheduling.
- Database of oral interview raters and oral interview panel design.
- A State-of-the-art statistical analysis suite with rich graphics, test analysis with overall statistics, score histograms, analysis of test items, pass-point analysis, final scores and reports.
- JobAps Written exam module includes statistical tools for automating test analysis, including Item Analysis, Adverse Impact Analysis and Pass-Point Analysis utilities for any objective tests in your test bank.
- Score reuse and test retake policy management.
- Test modularity to enable the reuse of tests and subtests and ability for applicants to take tests at walk-in centers and “flow” through the JobAps system independently of other applicants.
- JobAps provides the ability to send invitations to take online tests via e-mail, or post the invitations on an applicant’s Personal Status Board. JobAps provide the ability for applicants to self-schedule for examinations over the web as well.

**JobAps Online Testing Module**:  
- Creation and Administration of Online Tests  
- Support for Proctored or Un-proctored tests  
- Printed Test generation
• A unique test scheduling interface for quick and easy appointment scheduling

• State-of-the-Art Statistical analysis suite with rich graphics and robust reports to provide for ease of test and item analysis, pass-point analysis, histograms and adverse impact analysis.

• Test Analysis Suite with graphical item analysis statistics, passpoint analysis with histograms, and adverse impact analysis

• Test Modularity allowing the reuse of tests and subtests

• Ability for applicants to take tests at walk-in centers

**Supported Browser and Operating System Versions:**

The JobAps Online Employment Center, the applicant portal, supports modern Internet browsers, including mobile browsers.

The JobAps Administrative Suite supports modern Internet browsers for much of the system. There are some areas of the JobAps Administrative Suite that currently support Internet Explorer version 8 and above in Compatibility View mode.

• JobAps does not have specific requirements on the operating system version.

• JobAps certifies that the Administrative Suite’s functionality can be fully accessed utilizing the current Microsoft Internet Explorer browser in compatibility mode within a Microsoft Windows 7 and 10 client environment.
EXHIBIT B
COMPENSATION

1. The Annual Subscription Cost is Fifty-One Thousand Three Hundred Dollars and Zero Cents ($51,300.00). These amounts include all direct and indirect labor charges, material cost, overheads, and profits plus all other fees and charges including direct expenses. Total remuneration for this Agreement shall not exceed One Hundred Fifty-Three Thousand Nine Hundred Dollars and Zero Cents ($153,900.00) inclusive of expenses, for the license to the Software granted by the Licensor in accordance with this Agreement.

2. The contracted amounts are broken down and will be invoiced as described below:

<table>
<thead>
<tr>
<th>Product</th>
<th>Annual Subscription Cost*</th>
</tr>
</thead>
<tbody>
<tr>
<td>JobAps Enterprise Recruiting Solution with Private Database and Branded site</td>
<td>$ 32,100</td>
</tr>
<tr>
<td>• Class Specs</td>
<td></td>
</tr>
<tr>
<td>• Online Employment Center</td>
<td></td>
</tr>
<tr>
<td>• Schedule and Score</td>
<td></td>
</tr>
<tr>
<td>• Track and Hire</td>
<td></td>
</tr>
<tr>
<td>Staging site for Testing and Training with Private Database</td>
<td>$ 4,500</td>
</tr>
<tr>
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<tr>
<td>Instructor led, hands on, training sessions</td>
<td>$5,000</td>
</tr>
<tr>
<td>• Product update trainings for new software releases</td>
<td></td>
</tr>
<tr>
<td>Sub-Totals:</td>
<td>$ 51,300</td>
</tr>
<tr>
<td>Year One Total:</td>
<td>$ 51,300</td>
</tr>
<tr>
<td>Year Two Total:</td>
<td>$ 51,300</td>
</tr>
<tr>
<td>Year Three Total:</td>
<td>$ 51,300</td>
</tr>
<tr>
<td>Grand Total:</td>
<td>$153,900</td>
</tr>
</tbody>
</table>

*Annual Subscription Includes Hosting, Disaster Recovery, Scheduled Data Back-ups, Maintenance with scheduled upgrades, Email and Phone Support.
The full annual subscription fee of $51,300.00 is due within 30 days of receipt of invoice. Upon renewal of this Agreement for additional terms, the annual subscription fee shall increase by no more than 5% based on the final or previous year of the contract.
EXHIBIT C
WEB HOSTING, MAINTENANCE AND TECHNICAL SUPPORT

1. WEB HOSTING

The Programs shall be installed on servers provided by JobAps. JobAps reserves the right to change the Server location at any time.

JobAps cannot guarantee continuous web service, service at any particular time, or integrity of data stored or transmitted via the Internet. JobAps will not be liable for the inadvertent disclosure, or the corruption or erasure of data transmitted or received or sorted over the Internet. JobAps will not be liable to City of Dayton for any claims or damages which may be suffered by City of Dayton, including, but not limited to losses or damages of any and every nature resulting from the loss of data, inability to use the Internet or the Web site relating to the City of Dayton’s use of the Software, or the inability to transmit or receive information, caused by or resulting from, delays, non-deliveries, or service interruptions.

JobAps shall not be liable for any delay or failure to carry or make continuously available the hosting services described in this Exhibit C if City of Dayton has not performed its obligations under this Agreement or if such delay or failure is due to any cause beyond the control of JobAps, including, without limitation, restrictions of laws or regulations, labor disputes, acts of God, or mechanical or electronic breakdowns. JobAps obligations hereunder are subject to compliance with any and all laws, regulations, orders and other governmental directives, which may be imposed on the Internet or JobAps or on the Web site relating to the City of Dayton’s use of the Software.

City of Dayton shall agree to the following web hosting Terms and Conditions for web hosting as part of this Agreement. In the event the Programs are relocated to another web hosting location or for any other reason, City of Dayton agrees to execute any such additional web hosting Terms and Conditions or related documentation as JobAps shall reasonably request in writing. Such changes shall not affect the financial terms of this agreement.

2. WEB HOSTING TERMS AND CONDITIONS

City of Dayton is bound by the following terms and conditions of use:

JobAps servers may be used for lawful purposes only and consistent with all rights of other parties. Without limiting the foregoing, JobAps servers shall not be used in a manner that would violate any law or infringe any copyright, trademark, trade secret, right of publicity, privacy right or any other right of any person or entity or for the purpose of transmitting or storing of material which is obscene, libelous or defamatory. Any abuse will subject City of Dayton's account to immediate termination or suspension. Any use of the JobAps servers that disrupts the normal use of it for other customers is considered abuse. Unauthorized access, modification, alteration, reverse engineering, or de-compiling of any software on the JobAps servers is prohibited.
JobAps does not allow pornography to be stored on its web servers. City of Dayton hereby warrants that it will not store or publish pornographic material on the web servers. JobAps may charge the City of Dayton $85 per hour for any time required to address the effects of abuse that results from City of Dayton’s actions.

JobAps reserves the right to modify these terms and conditions, change any service offered or the features of any service offered or its server with reasonable notice, including changes to access and use procedures at no cost to City of Dayton. JobAps will publish notice of contract modification at least 30 days before such changes take effect.

Use of JobAps servers and services, and the Internet in general, is at City of Dayton’s sole risk, and the use is provided on an "as is," "as available" basis without warranties or guarantees of any kind, either expressed or implied, including implied warranties of merchantability or fitness for a particular purpose, all of which warranties are hereby expressly disclaimed except to the extent any warranty cannot be disclaimed under applicable law.

Under no circumstances shall JobAps be liable for any direct, indirect, incidental, special or consequential damages, including, without limitation, damages for loss of profits, business interruption, loss of business information, and the like, even if JobAps has been advised of the possibility of such damages. The maximum liability of JobAps to City of Dayton for any and all loss, claim, damage or liability of any kind, including due to JobAps negligence, shall be limited to the amount of license fees paid to JobAps by city of Dayton hereunder for the specific portion of software giving rise to such cause of action or claim. This limitation applies to all causes of action or claims in the aggregate, including, without limitation, breach of contract, breach of warranty, indemnity, negligence, strict liability, misrepresentations, and other torts. JobAps does not warrant that its services and system will be uninterrupted or error free; nor does JobAps make any warranty as to the results or information obtained from use of its service or system or the Internet in general.

The right to use JobAps servers may not be transferred, nor resold. City of Dayton agrees to protect its password and account and to keep them secure from unauthorized use.

Electronic mail and other transmissions passing over the Internet through unsecured channels and through JobAps system are not confidential. Accordingly, JobAps will not guarantee the protection or privacy of any information transmittal to or from City of Dayton.

For troubleshooting purposes, JobAps may monitor an account at any time. JobAps reserves the right to monitor a City of Dayton's mail and transmissions as a necessary incident to providing service and otherwise to protect the rights or property of JobAps. JobAps will not disclose any such information unless required to do so pursuant to a court order, subpoena, or similar legal request or otherwise on the advice of counsel.

MAINTENANCE

Maintenance shall include periodic reviews of Programs, hosting services, and external factors, such as new internet browser versions or other new releases of software which may affect the
performance of the Programs. Enhancements, patches and modifications will be installed automatically if deemed necessary or desirable by JobAps. Monitoring of the applicant process via real-time e-mails and use of the Programs licensed by this Agreement will be performed periodically by JobAps to test and maintain the Software according to its sole discretion.

**TECHNICAL SUPPORT**

Technical support is provided to identified key contacts, individuals who have participated in JobAps training either during the initial training or through training provided by JobAps or the City and who are authorized to access JobAps technical support personnel. Those users who have participated in the training for all modules for which they have been granted access rights will be known as Registered Authorized Users. For the mutual benefit of both parties, we ask that the Registered Authorized Users will be the main point of contact for all user questions and be the conduit for technical support calls whenever possible. Additional training can be arranged to register new users.

Software Technical Support is available via email or phone during normal business hours from 9:00 A.M. to 6:00 P.M. Eastern Time, Monday through Friday, holidays excluded.

Hosting Technical Support is available 24 hours a day, 7 days a week, 365 days a year.

City of Dayton will provide support to online job applicants and will be given training to perform this function.

City of Dayton may purchase technical support for non-Registered Authorized Users as described in Exhibit E.
EXHIBIT D
ADDITIONAL SOFTWARE CUSTOMIZATION

At the written request of City of Dayton, JobAps will, at its option, perform additional Software
Customization to the licensed Programs or to City of Dayton’s Website or provide additional
services. All such work will be performed at an hourly rate of $250.00. This rate is subject to
change by JobAps provided the change is reported to City of Dayton prior to the initiation of the
customization incurring the new rate. Fees for Additional Software Customization or services
will be invoiced directly to City of Dayton via email, fax or postal letter and payment is due
within thirty (30) days of receipt of invoice. If payment is not disputed and not tendered within
30 days of receipt of the Licensor’s invoice, then simple, non-compounded interest at the
statutory rate for the State of Ohio shall begin to accrue.

The JobAps Change Request Process is as follows:

1. Conference call or email to discuss customization
2. Notice of rate change if any
3. Written authorization from City of Dayton to proceed
4. Deposit may be required
5. Specification created by JobAps and delivered to City of Dayton
6. Written approval of Specification by City of Dayton
7. Work completed by JobAps
8. Acceptance Testing by City of Dayton
9. Payment due in full upon installation of the customization work ready for use by City of Dayton
EXHIBIT E
TECHNICAL SUPPORT RATE

City of Dayton may purchase technical support, for non-registered authorized users who have not completed full JobAps training for modules for which they have been granted access rights or, for City of Dayton registered authorized users that request support outside the scope of traditional technical support, at JobAps standard technical support rate of $250.00 per hour (“Technical Support Rate”). Technical support charged at Technical Support Rate will be billed in 15-minute increments with a minimum 60-minutes charge per incident. Hours of technical support 9:00 A.M. to 6:00 P.M. Eastern Time, Monday through Friday, holidays excluded. Requests for technical support will receive a response within 24 hours. These fees are subject to change at the time of renewal.
City Manager’s Report

From 5560 - CS/Information Technology
Supplier, Vendor, Company, Individual
Name Optica Consulting, Inc.
Address 2312 Far Hills Avenue - PMB #105
Dayton, Ohio 45419

Date April 14, 2021
Expense Type Service Agreement
Total Amount $630,864.00 (thru 3/31/22)

Fund Source(s)       Fund Code(s)       Fund Amount(s)
General Fund         10000-5560-1159-65  $630,864.00

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

Description

TECHNOLOGY CONSULTING SERVICES AGREEMENT

The Department of Information Technology is requesting authorization to enter into a Professional Service Agreement with Optica Consulting, Inc. to provide enterprise technical services. The Agreement shall commence upon execution through March 31, 2022, payable monthly for a total of $630,864.00.

Optica will provide the following services under this Agreement:

1. Progress database administration for Public Safety Management Information Systems (MIS)
2. Police and Fire MIS application development and support
3. Network configuration and support for public safety systems
4. Maintenance and development of SQL Reporting Services (SSRS) reports
5. Provide support as needed 24 x 7

Optica was selected based upon proven past performance and knowledge of the support requirements for the City’s critical systems.

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

A Certificate of Funds in the amount $473,148.00, for expenses through December 31, 2021, is attached.

Foster, Desi
Division Jon Rike
Department
City Manager
FORM NO. MS-16

Signatures/Approval
Approved by City Commission

Clerk
Date

Updated 10/2019
Digital Version Updated 04/2020
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>X</th>
<th>New Contract</th>
<th>_______</th>
<th>Renewal Contract</th>
<th>_______</th>
<th>Change Order: _______</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Contract Start Date</td>
<td>_______</td>
<td>Expiration Date</td>
<td>_______</td>
<td>Original Commission Approval</td>
</tr>
<tr>
<td></td>
<td>03/31/22</td>
<td>Upon Execution</td>
<td>_______</td>
<td>$ 630,864.00</td>
<td>_______</td>
</tr>
</tbody>
</table>

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: $473,148.00 |

| Fund Code | 10000 - 5560 - 1159 - 65 - 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: Optica Consulting Services, Inc.
Vendor Address: 2312 Far Hills Avenue - PMB #105, Dayton, Ohio 45419
Federal ID: 522436353
Commodity Code: 92045
Purpose: Professional Services Agreement (Public Safety System) upon execution through March 31, 2022, totaling $630,864.00. (Prior Contract #CT20-1132)

Contact Person: Desa Foster, I.T. Manager (x-6349)

Information Technology Department/Division 25-Mar-21

Originating Department Director’s Signature: Jon Ricks 3/29/2021

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.

Finance Director Signature: [Signature] 3/30/2021

CF Prepared by: [Signature] 3/30/2021

CT21-1132
March 26, 2021

TO: Shelley Dickstein, City Manager

FROM: Desa Foster, I.T. Manager
      Department of Information Technology

      SUBJECT: Professional Service Agreement for Optica Consulting, Inc.

Attached please find the professional service agreement between the City of Dayton and Optica Consulting, Inc. for professional services through March 31, 2022 to provide technical services for Public Safety.

If you have any questions, please feel free to call me at extension 6349.

APPROVED:

[Signature]

3/29/2021

Jon Rike, CIO/I.T. Director
Department of Information Technology

Attachments
TECHNOLOGY CONSULTING SERVICES AGREEMENT

This Technology Consulting Services Agreement ("Agreement") is made this ___ day of ___________, 2021 between Optica Consulting, Incorporated ("OCI"), an Ohio corporation, having a post office box at 2312 Far Hills Avenue, Dayton, OH 45419 and the City of Dayton, Ohio ("City"), a municipal corporation in and of the State of Ohio, having an office at 101 W. Third Street, Dayton, OH 45402.

WITNESSETH THAT:

WHEREAS, the City desires to obtain certain professional technology consulting services for, among other things, the City’s Police and Fire information systems and computerized networks; and,

WHEREAS, the services needed by the City include, but are not limited to, design, architecture and project scoping work, software development, data mining, database administration, systems and network troubleshooting and capacity planning, installation, deployment and maintenance assistance; and,

WHEREAS, OCI is willing to perform such services, as requested by the City, and represents that its staff is fully qualified to perform such services for the City.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and benefit to be derived by the parties from the execution of this Agreement, the City and OCI agree as follows:

1. Scope of Work

1.1. OCI shall provide, as needed and upon request by the City, any of the “Technical Consulting Services” described in Section 1 of Attachment A, which is attached hereto and incorporated herein, subject to Section 2 of Attachment A. Specifically, OCI shall assign three (3) or more of its technical consultants to provide the services requested by the City. During the term of the agreement, the technical consultants will provide a minimum of FIVE THOUSAND TWO HUNDRED EIGHTY (5,280) total service hours, (generally delivered during standard business hours Monday through Friday, or as mutually agreed between OCI and City). OCI agrees that its consultants will use all reasonable efforts to schedule vacations, training, and meeting days in such a manner as to minimize disruption of services to the City.

1.2. OCI represents that its consultants are adequately trained to perform the services requested under this Agreement. OCI shall not knowingly assign any personnel to act as a consultant, if such person has a record of any criminal conviction. OCI shall cause its consultants to know and abide by those business policies, procedures, and security requirements of City. In the event the consultants are not able to perform the services or do not perform the services to the reasonable satisfaction of the City, OCI agrees to replace said consultants with mutually agreeable replacements having similar capabilities, training and qualifications. In the event suitable and mutually agreeable replacements are not available, the City may, at its option, terminate this Agreement or proportionally reduce the amount of monthly compensation to be paid for services.

1.3. Upon mutual agreement of both parties, the OCI consultants may maintain a flexible work schedule, and/or work remotely in lieu of on-site performance of this contract. OCI agrees to coordinate and obtain approval of work location and schedule adjustments of its consultants with the City’s Director of Information Technology Services or his/her designee.
1.4. The City reserves the right to conduct, for security reasons, a lawful background investigation on OCI, its principals and personnel, including all consultants assigned to perform the services. OCI agrees to fully cooperate with the City in this endeavor and to provide any information, to the extent allowed by law, which is reasonably necessary to perform such background investigation. The City will, upon OCI’s written request and if allowable by law, provide a copy of such background investigations to OCI. Dependent upon the results of the background check, the City and OCI may by mutual written agreement immediately remove any consultant from performance of the services.

2. Term and Termination

2.1. This Agreement shall commence upon execution and shall remain in effect for an initial term expiring at 11:59 p.m. on March 31, 2022, unless terminated earlier as provided in Subsections 2.2 or 2.3. This Agreement shall be renewable for two (2) additional twelve (12) month terms. Each renewal must be executed in writing, approved by the Commission of the City of Dayton, and signed by a duly authorized representative for each party.

2.2. Either party may immediately terminate this Agreement if the other party defaults in the performance of any of the covenants and conditions required herein and the defaulting party fails to cure the default within thirty (30) days after receipt of written notice of said default.

2.3. This Agreement may be terminated by either party upon giving written notice of termination to the other party at least sixty (60) days prior to the effective date of such termination.

2.4. In the event this Agreement is terminated, the City shall be relieved of any obligation to pay for any work or services performed subsequent to the effective date of termination.

3. Payment

3.1. The total amount of remuneration in this Agreement shall not exceed the sum of SIX HUNDRED THIRTY THOUSAND EIGHT HUNDRED SIXTY FOUR DOLLARS AND ZERO CENTS ($630,864.00) over the initial 12 month term of this Agreement, and shall not exceed the sum of ONE MILLION THREE HUNDRED NINETEEN THOUSAND EIGHTY DOLLARS AND ZERO CENTS ($1,319,088.00) for the two (2) twelve (12) month renewal term(s).

3.2. Payment to OCI for the technical consulting services provided in accordance with this Agreement shall be made according to the following schedule.

<table>
<thead>
<tr>
<th>Initial Term Service Delivery Dates</th>
<th>Monthly Invoice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Begins upon execution in April, 2021 and goes through 3/31/2022</td>
<td>Not to exceed $52,572</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Renewal Terms Service Delivery Dates, if applicable.</th>
<th>Monthly Invoice</th>
</tr>
</thead>
<tbody>
<tr>
<td>12 Months Beginning 4/1/2022</td>
<td>Not to exceed $54,150</td>
</tr>
<tr>
<td>12 Months Beginning 4/1/2023</td>
<td>Not to exceed $55,774</td>
</tr>
</tbody>
</table>

OCI shall submit to the City an invoice for each monthly payment, which invoice shall state the invoice period, technical consulting services provided and the monthly payment amount. Unless disputed, the City agrees to remit payment within thirty (30) days from the City’s receipt of the monthly invoices.
3.3. Financial Standards. The Consultant agrees to require the use of Generally Accepted Accounting Principles (GAAP) in recording and documenting all costs and expenditures relating to this Agreement. All costs and expenditures for the services performed under this Agreement shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers or other accounting documents, which shall be clearly identified and readily accessible to the City. All costs and expenditures pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible to the City and its designee. At any time during normal business hours and as often as the City may deem necessary, the Consultant shall make available to the City all of its records with respect to all matters covered under this Agreement, and will permit the City or designee to audit, examine, and make excerpts or transcripts from such records and to have audits made of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data pertaining in whole or in part to matters covered by this Agreement.

3.4. Auditing. If Consultant performs an independent audit of business and/or financial records, the Consultant shall require the company and/or auditor(s) to comply with all applicable Generally Accepted Auditing Standards that have been developed by the American Institute of Certified Public Accountants. The City shall receive a summary of the audit findings and, if requested, the Consultant shall provide the City with a complete copy of such audit report.

4. City Responsibilities

4.1. The City will direct and prioritize the services that OCI consultants will provide under this Agreement so that the selected technical consulting services can be completed during the term hereof.

4.2. The City agrees to provide the OCI consultants with access to the City building(s) that are necessary to perform the services twenty four (24) hours a day, seven (7) days a week. Further, the City agrees to provide the consultants with access necessary to complete the services, including access to internal workstations and remote access to the City’s network and e-mail system for information exchange.

4.3. The City shall make arrangements for the ordering and set-up of any necessary hardware, software, network connections or other services needed by the consultants, which may affect the schedule and work efforts or technical consulting services to be performed by the consultants.

5. Confidential Information

5.1. Either party may provide the other party with information that it considers confidential or proprietary. Proprietary information shall be information, which, 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 shall be information which, under the laws of the State of Ohio, is classified as being “private” or “confidential”. Such information shall be marked “confidential” and/or “proprietary” by the party providing it within ten (10) days after disclosure.

5.2 To the extent permitted by law and recognizing that the City is a political subdivision of the State of Ohio and subject to the Ohio Public Records Act (Ohio Revised Code § 149.43 et seq.), the parties agree to not disclose each other’s confidential or proprietary information to any third party without the other party’s written consent. Each party agrees that it will only copy the confidential or proprietary information to the extent necessary to perform the services contracted for under this Agreement.

5.3 Nothing in this Section 5 shall prohibit or limit either party’s disclosure of confidential information: (i) previously known to it without agreement of confidentiality, (ii) independently developed by it, (iii) that is, or becomes publicly available through no breach of this Agreement,
(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 the City.

6. Deliverables and Ownership

6.1. General Deliverables: OCI will deliver to the City, based upon City’s selection of the technical
consulting services listed in Attachment A, all documentation, designs, scripts, databases,
descriptions, and technical diagrams resulting from performance of the technical consulting
services. These materials will be provided to the City in both “hard copy” and electronic (CD or
DVD) formats.

6.2. Specific Deliverables: Specific deliverables shall be determined and agreed upon between the
parties based upon the amount of detailed specifications provided by the City to OCI before
commencement of such services. However, the “Change Control” process outlined in Section 13
can be used to move a general deliverable, as described in Subsection 6.1, into a specific
deliverable, as described in this Subsection 6.2.

6.3. OCI assigns ownership of the copyrights to all general deliverables and specific deliverables (as
these terms are identified in Subsections 6.1 and 6.2 above, which shall be collectively referred to
as “Custom Deliverables”) to the City. However, such assignment does not include any portion
of a Custom Deliverable that OCI has created independently of the technical consulting services
or that OCI has licensed from a third party (hereinafter referred to as “Other Deliverables”), as
such portions shall only be licensed to the City as provided in Section 6.4. OCI will retain a
worldwide, nonexclusive, royalty-free license to copy, display, distribute, perform, modify,
translate, sublicense and use the Custom Deliverables, provided that in doing so it does not
disclose the City’s confidential and/or proprietary information, or incorporate its trademarks or
trade dress.

6.4. OCI grants the City a worldwide, nonexclusive, royalty-free license to copy, display, distribute,
perform, modify, translate and use the Other Deliverables for the City’s municipal and business
purposes. In the event the Other Deliverable is licensed from a third party, OCI shall provide the
City with a written description of the City’s obligations with respect to that licensed material.
Unless OCI expressly agrees in writing, the City may not disclose, distribute or license Other
Deliverables to any third party, except as otherwise required by law.

6.5. Except as otherwise provided in this Section 6, OCI shall retain ownership of all rights in and to
all other deliverables. Under no circumstances will these deliverables be considered a “work
made for hire”. All of the rights and licenses OCI grants the City under this Section 6, including
copyright ownership, are subject to the City’s payment in full of the charges for the technical
consulting services and particular deliverable.

6.6. The City acknowledges that OCI enhances its ability to provide the City with quality services and
Custom Deliverables through the expertise it gains working with many customers, and that the
City and all OCI’s customers benefit from such experience. The City agrees that, provided OCI
does not disclose the City’s confidential and/or proprietary information in doing so, OCI is
permitted, upon notification to the City, to create similar Custom Deliverables and perform
similar services for its other customers without restriction.

7. Defects, Acceptance and Warranty

7.1. All deliverables, whether a general deliverable, specific deliverable or Other Deliverable as these
terms are defined in Section 6, provided under this Agreement by OCI to the City shall, to the
fullest extent possible, be free from defects. For purposes of this Agreement, a “defect” shall mean
any failure of the particular deliverable or any component thereof to conform to the functionality
and other specifications identified by the City, including any problems with network connectivity. In the event the City identifies a defect, it shall provide written notice to OCI indicating, to the best of the City’s ability, the nature and type of defect. OCI agrees to promptly, and without additional cost to the City, repair and/or replace such defect(s) or, if such defect cannot be promptly corrected, shall provide to the City’s reasonable satisfaction, a detailed plan, including a date of completion, for correction of the defect(s) or replacement of the particular deliverable.

7.2. OCI shall have no obligation to correct defects resulting from: (i) any use of the particular deliverable not in accordance with, or for purposes not intended by, this Agreement; or (ii) the use or combination of the deliverable with other products, equipment, software, hardware, media or data not intended, authorized, or intended where the breach of warranty would not exist but for such use or combination. If any Other Deliverable is the subject of, or is likely to become the subject of, any claim, action, suit, or proceeding for infringement, then OCI may, at its option and expense: (a) acquire or procure for the City from the third party the right to continue to use the Other Deliverable or (b) modify or replace the Other Deliverable so as to be non-infringing.

7.3. OCI warrants that title to any and all deliverables provided to the City hereunder shall be free and clear of all claims, charges, security interests, liens and encumbrances. OCI shall insure that all third party warranties for Other Deliverables or other equipment or items procured under this Agreement shall be transferred to the City upon receipt of payment.

7.4. OCI warrants to the City that all materials, equipment and any type of deliverable, including any software, license or other intellectual property, furnished hereunder: (1) shall be new, unless otherwise agreed to by the City, (2) shall be free from defects, as this term is defined herein, (3) shall be free of known viruses, worms and Trojan horses, and any code designed to disable the intellectual property because of the passage of time, alleged failure to make payments due, or otherwise, except for documented security measures such as password expiration functions, (4) will perform in conformity with the functionality requirements and specifications identified by the City, and (5) is, in all material respects, complete and accurate, and will enable City employees and/or City contractors with ordinary skill and experience to use the deliverable for all purposes for which it is being provide to the City.

7.5. OCI warrants that its consultants and personnel shall perform the technical consulting services under this Agreement in a workmanlike manner and in accordance with the specifications provided by the City when selecting the services needed and all requirements set forth in this Agreement.

7.6. Unless the City notifies OCI of a defect as provided in this Section 7 or rejects a particular deliverable within sixty (60) days from implementation of a particular deliverable, the particular deliverable and all technical consulting services related thereto shall be deemed accepted by the City.

8. Indemnification and Insurance

8.1. As an independent contractor, OCI 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 (including attorney fees) 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 infringement or alleged infringement of any patent, copyright, trademark, or other intellectual property right, privacy or similar right of any third party and/or the acts, omissions or conduct of OCI or its employees and agents; excepting such claims, losses, damages and expenses or liabilities that are solely caused by or arise out of the negligence or wrongful acts or omissions of the City, its officers, employees and agents.
8.2. During the performance of this Agreement, OCI shall maintain with an insurance company authorized to conduct business in the State of Ohio and having at least an “A” rating from A.M. Best, the following insurance:

8.2.1 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

8.2.2 Worker’s Compensation Insurance for all employees, in such amounts as required by law.

8.3. The policy or concurrent policies of insurance required herein, but excluding Worker’s Compensation Insurance, shall name the City, its elected officials, officers, agents, employees, and volunteers as additionally insured. Further, such policies of insurance, excluding Worker’s Compensation Insurance, shall contain the requirement that City be notified thirty (30) days in advance of any termination or diminution of coverage.

8.4. Within thirty (30) days of the execution of this Agreement, OCI shall furnish the City with copies of the policy of insurance, including declaration page(s), demonstrating compliance with the insurance requirements contained herein.

9. Limitations of Liability

9.1. To the fullest extent permitted by law, OCI will not be liable to the City for any indirect, incidental or consequential damages.

9.2. OCI’s liability, excluding liability for any personal injury and/or property damage caused by OCI or its employees, agents, servants, or representatives, will not exceed the total amount of remuneration specified in Section 3 of this Agreement and the limits of general comprehensive liability insurance.

10. Taxes

10.1. City will provide OCI with the appropriate tax exemption certificates for purchases made to benefit the City during the term of this Agreement, if applicable.

11. Disputes

11.1. “Dispute” means any controversy or claim between City and OCI. It includes controversies or claims that are related directly or indirectly to this Agreement, whether based on contract, statute, tort, fraud, fraudulent inducement, misrepresentation, or other legal or equitable theory, whenever brought, between City and OCI or any of City’s or OCI’s employees or agents.

11.2. The City and OCI agree to use good faith efforts to first negotiate a solution to the Dispute, including progressively escalating any controversy or claim through senior levels of management. If negotiation does not result in a resolution within fifteen (15) business days of when one party first notifies the other of the Dispute, the parties agree to submit the Dispute to non-binding mediation in accordance with Subsection 11.3.

11.3. If the City and OCI are unable to resolve a Dispute by negotiation, both parties agree to submit it to non-binding mediation conducted by the Dayton Mediation Center.

11.4. Except for Disputes resolved in accordance with this Section, the City and OCI 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. The parties waive the right to a jury trial
of any claim and consent to a bench trial in any court of appropriate jurisdiction in Montgomery County.

12. **General Provisions**

12.1. This Agreement, together with Attachment A, represents the entire and integrated agreement between the City and OCI. 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.

12.2. If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

12.3. A waiver by the 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 the City’s rights with respect to any other or further breach.

12.4. OCI shall meet with the City, and its designees at such times designated by the City to review and discuss performance of this Agreement and/or the services. OCI shall allow the City to conduct inspections or monitoring, and shall cooperate with the City and its contractors in all respects concerning the performance of the services and the review and monitoring of its performance under this Agreement.

12.5. OCI shall not assign any rights or duties under this Agreement without the prior written consent of the City. Unless otherwise stated in the City’s written consent to an assignment, no assignment will release or discharge OCI from any obligation under this Agreement. Nothing contained in this subsection shall prevent OCI from employing independent consultants, associates, and subcontractors to assist in the performance of the services required hereunder.

12.6. All promises, covenants, stipulations, and agreements set forth in this Agreement shall extend to and bind the legal representatives, successors and assigns of the respective parties hereto.

12.7. By executing this Agreement, OCI acknowledges and agrees that it will be providing services to the City as an “independent contractor.” As an independent contractor for the City, OCI shall be prohibited from representing or allowing others to construe the parties’ relationship in a manner inconsistent with this subsection. OCI 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.

OCI, its consultants, all employees and any other persons retained or hired by OCI to perform the services, 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. OCI is not a “public employee” for the purpose of Ohio Public Employees Retirement System membership. Further, OCI 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.

12.8. The City or OCI may request to amend or modify this Agreement, at any time, provided that upon mutual agreement, any such amendment or modification is executed in writing, makes specific reference to this Agreement, is signed by a duly authorized representative of City and OCI and, if required or applicable, is approved by the Commission of the City of Dayton, Ohio.

12.9. 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. By
execution hereof, OCI irrevocably consents to the jurisdiction of the state and federal courts located in Montgomery County, Ohio, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement.

12.10. OCI 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, Ohio, constitutes a material condition of this Agreement as if fully and specifically rewritten herein and that failure of OCI to comply therewith shall constitute a breach of this Agreement entitling the City, at its option, to terminate this Agreement immediately.

12.11. OCI shall retain all records pertinent to expenditures incurred under this Agreement for a period of three (3) years after the termination of all services funded under this Agreement. Records for non-expendable property acquired with funds under this Agreement shall be retained for three (3) years after final payment. Notwithstanding the above, if there are claims, litigation, audits, negotiations or other actions that involve any of the records pertaining to this Agreement, which commence prior to the expiration of the three-year period, then OCI shall retain records until completion of the actions and resolution of all issues, or the expiration of the three-year period, whichever occurs later.

12.12. OCI affirms and certifies that it is in compliance with Ohio Revised Code §3517.13 limiting political contributions.

12.13. The parties agree that they have actively negotiated and drafted the provisions of this Agreement. Notwithstanding any rule to the contrary, no provision of this Agreement shall be interpreted or construed against any party because such party or its legal counsel was the drafter of the provision.

13. Change Control Process

13.1. OCI agrees to follow the Change Management process established by the City of Dayton Department of Information Technology

13.2. The City of Dayton Department of Information Technology Change Request Form will be the vehicle for communicating any desired changes to the particular technical consulting services project.

13.3. Both OCI and the City will review the proposed Change Request Form and approve it or reject it. The City must sign the approval portion of the Change Request Form to authorize the implementation of the change(s) to the particular technical consulting services project.

13.4. The Department of Information Technology, or its designee, shall be authorized on behalf of the City to approve and execute any changes to the technical consulting services project(s) that are mutually agreed between the City and OCI.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

OPTICA CONSULTING, INC.
E-SIGNED by Thomas M. Lachey
By: ____________________________
on 2021-03-26 08:36:10 EST

Print name: Thomas M. Lachey
Title: President

CITY OF DAYTON, OHIO

City Manager

APPROVED AS TO FORM
AND CORRECTNESS:

E-SIGNED by John Musto
on 2021-03-28 15:40:10 EST
City Attorney

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

__________________________, 2021
Min. / Bk. _______ Pg. _______

Clerk of the Commission
ATTACHMENT A

1. TECHNICAL CONSULTING SERVICES:

OCI will provide any or all of the following technical consulting services from which the City can select and prioritize the work effort, given the timeframe of the engagement:

1.1. Design, Development, Architecture, & Project Scoping Work

1.1.1. Research and recommendation of “best practices” for technology deployment within the City’s public safety environment

1.1.1.1. Product vendor analysis and recommendations

1.1.2. Extend the use of wireless technology to public safety vehicles, allowing access to current and future City applications from Mobile Data Computers (MDC’s) including, but not limited to:

1.1.2.1. Regional Dispatch MobileCom application

1.1.2.2. Police Records Management System (RMS)

1.1.2.3. Fingerprinting

1.1.2.4. Mobile parking and traffic citation applications, including portable printers

1.1.2.5. Mug shot and/or Bureau of Motor Vehicle (BMV) photos

1.1.2.6. Digital video capture and/or video streaming to central command center

1.1.2.7. License Plate Reader systems

1.1.2.8. Real-time access to the Ohio Law Enforcement Gateway (OHLEG)

1.1.3. Provide consulting, analysis, software development, and documentation

1.1.3.1. Provide software enhancements to accommodate changes in Public Safety business practices

1.1.3.2. Continue to improve departmental efficiencies by eliminating paper-based record keeping and integrating the RMS and MIS with other City of Dayton business applications

1.1.4. Recommendations and design for reliable high capacity network communications (T1 or higher) to all public safety facilities.

1.1.5. Provide technical assistance with the design, configuration, and installation of servers, networks, firewalls, etc. to support regionalization efforts

1.2. Develop Procedures to Streamline the City’s Public Safety Business Processes

1.2.1. Research and recommend web based applications to publish crime statistics and/or commonly requested public safety information

1.2.2. Research and develop practical uses of bar-code technology to streamline data input and retrieval in the Police Property Room, and other areas where applicable

1.2.3. Make recommendations and assist with the deployment of the City’s Enterprise Imaging System

1.2.4. Research and deploy solutions using smart phone or similar mobile technologies to make critical data available to Police personnel in a more timely fashion

1.2.5. Research and deploy solutions for the Police “e-crash” crash reporting initiative, reducing paperwork and making traffic crash reports accessible to officers and the public in a more timely fashion

1.2.6. Deploy the Police e-citation system, providing a streamlined business process for traffic and misdemeanor citations. Assist with configuration of e-citations for the automatic transmission of citations to the State of Ohio and Dayton Municipal Courts, as appropriate.

1.2.7. Maintain the Police Department’s helpdesk ticketing system (OS-Ticket) to ensure accurate tracking of public record’s requests and internal technical issues.

1.2.8. Research and deploy solutions for the Police Data Prep business unit, including processes for efficient document imaging and retrieval

1.3. Installation, Deployment & Maintenance Assistance
1.3.1. Installation and configuration of Microsoft and Unix/Linux Based Servers, as required to deploy highly available public safety solutions
1.3.2. Coordination with the City’s Department of Information and Technology Services, and outside vendors as needed, for the deployment of network solutions supporting public safety systems.
1.3.3. Maintenance of public safety radio and mobile data computer infrastructure, coordination with vendors to acquire and expedite the deployment of system upgrades as needed

1.4. Troubleshooting and Maintenance of Public Safety Technology Solutions
1.4.1. Maintenance of the License Plate Reader (“LPR”) system to ensure that LPR’s are functioning properly, data is being captured and stored on internal servers, and vendor updates are applied to LPR devices in a timely fashion
1.4.2. Best efforts to support the Handheld Mobile Parking Citation application. Troubleshoot issues identified by Parking Aides, maintain software, hardware, and printers
1.4.3. Maintenance of the In-Car Digital Camera System and deployment of the Body-Worn Camera Systems. Provide technical assistance to the vendor and other City departments in troubleshooting and upkeep of the camera systems to ensure that digital video is being captured, maintained, and retrieved per Police Department policy.
1.4.4. Assist with upkeep of the LEADS interface for the Police Records Radio Information Unit. Provide technical assistance and interface with Ohio LEADS staff for troubleshooting and issue resolution.
1.4.5. Maintain existing Progress Fourth Generation Language (“4GL”) based applications
1.4.6. Best efforts to maintain and support the e-DIBRS incident reporting application
1.4.7. Technical support for the City of Dayton to provide records management services to external Police and Fire agencies. This support covers the City of Riverside Police, and The Miami Valley Communications Council (“MVCC”) and its member agencies.

1.5. Coordinate the submission of National Incident Based Reporting (“NIBRS”) data to the State of Ohio Office of Criminal Justice Services for all Police agencies using the Police Management Information System (“MIS”) incident reporting application.

1.6. Administration of graphical analysis and reporting software (“CorVu”)
1.6.1. Software installation and configuration
1.6.2. Version upgrades and conversions
1.6.3. Assist with development of City-wide standards for data analysis and reporting
1.6.4. Assist with development of the CorVu “Knowledge Library” for easier data recognition and retrieval
1.6.5. Coordinate and assist with training and knowledge transfer among various City departments

1.7. Progress database administration for Police and Fire Public Safety RMS and MIS applications.
1.7.1. Database monitoring and troubleshooting
1.7.2. Database reorganization and maintenance to facilitate continued data growth and acceptable application performance
1.7.3. Database version upgrades (software installation and configuration)

1.8. After-hours technical support
1.8.1. OCI will use all reasonable-efforts to provide after-hours technical support for mission-critical public safety systems. OCI will coordinate after-hours support with the Information and Technology Services (“ITS”) Help Desk Supervisor, or his/her designee.

2. Additional Terms and Conditions:

2.1. OCI will perform the technical consulting services as requested by the City.
2.2. E-mail is the preferred method of communications, particularly for transmitting documents and attached files. Drawings of graphic documents will be maintained in Visio Pro for Windows, version 5.0 or higher. Other documentation shall be provided in MS Office 2016 or higher per City needs and pursuant to Section 1 above.

2.3. OCI is not responsible for completion of any assigned work efforts or sub-projects outlined in Section 1 when there are circumstances outside of OCI’s control that cause OCI’s portion of the work or services to not start or not be completed within the engagement period. These circumstances include, but are not limited to:

   2.3.1 Delays in delivery of, or unavailability of, required equipment or software.

   2.3.2 Work efforts by City resources or other third party resources where their work efforts are delayed or become unavailable for completion in a timely manner.

   2.3.3 Inadequate lead times provided for the completion of the work effort prior to the expiration of the service delivery period. The timeframe for completion of any work effort will be provided to the City when requested, on a case by case basis, so that all required work could be completed during the term of this Statement of Work.
From 2360 - Planning & CD / Mediation Center
Supplier, Vendor, Company, Individual
Name STEM Study Tours
Address 133 Grant Street
Sneads Ferry, NC 28460

Date April 14, 2021
Expense Type Service Agreement
Total Amount $25,224.00 (thru 9/24/2021)

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<th>Fund Source(s)</th>
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Includes Revenue to the City  [ ] Yes  [x] No
Affirmative Action Program  [ ] Yes  [ ] No  [ ] N/A

Description

Tour Company Service Agreement

The Department of Planning and Community Development requests permission to enter into an Agreement with STEM Study Tours to provide tour services to Chicago, Illinois, as part of the Four Cities Young Leader Academy Program, as required by the U.S. Department of State’s Federal Assistance Award, which was approved by Commission on September 18, 2019, by Resolution No. 6437-19.

STEM Study Tours was contracted because of their extensive experience in planning and organizing student tours to Chicago, Illinois.

This Agreement shall commence upon execution and it shall terminate on September 24, 2021.

The specific dates of the tour covered by the contract will take place from September 21, 2021 through September 24, 2021.

This Agreement has been reviewed by the Law Department as to form and correctness.

A Certificate of Funds and the Agreement are attached.

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 10/2019
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

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<tr>
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Contract Start Date: Upon Execution
Expiration Date: 09/24/21
Original Commission Approval: $25,224.00
Initial Encumbrance: $25,224.00
Remaining Commission Approval: -

Original CT/CF
Increase Encumbrance
Decrease Encumbrance

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: $25,224.00
Fund Code: 28197 - 2360 1159 - 33 - XXX - XXXX

Amount: ____________
Fund Code: _______ - _______ - _______ - _______ - _______ - _______

Fund Code: ____________
Fund Code: _______ - _______ - _______ - _______ - _______ - _______

Attach additional pages for more FOAPALs
Vendor Name: STEM Study Tours
Vendor Address: 133 Grant St Sneads Ferry NC 28460-9671
Street City State Zipcode + 4
Federal ID: 85-1137635
Commodity Code: 55670
Purpose: This Service Agreement provides tour services to Chicago, Illinois, as part of the Four Cities Young Leader Academy Program, as required by the U.S. Department of State's Federal Assistance Award, which was approved September 18, 2019, by Resolution No. 6437-19.

Contact Person: Arch Grieve x2368
Planning & Community Development Department/Division 3/30/2021 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 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.

Finance Director Signature: 
Date: 04/01/2021

CF Prepared by: 
Date: 3/31/2021
CF/CT Number: C21-29160

Finance Department
October 18, 2011
PROFESSIONAL SERVICE AGREEMENT

THIS PROFESSIONAL SERVICE AGREEMENT (“Agreement”), dated this ____ day of __________, 2021 is between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio (“City”) and HAMMOCK EXPEDITIONS, LLC, DBA STEM STUDY TOURS, 133 GRANT STREET, SNEADS FERRY, NORTH CAROLINA 28460, (“Contractor”).

WITNESSETH THAT:

WHEREAS, The Contractor and City desire to enter into a Professional Services Agreement to arrange a tour to Chicago, IL for the Four Cities Young Leader Academy.

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

ARTICLE 1. SERVICES TO BE PERFORMED

Contractor shall perform professional tour services for the City of Dayton as described in Exhibit A, attached hereto and incorporated as if fully rewritten herein.

All Services to be performed under this Agreement shall be in compliance with all applicable federal, state and local laws, regulations and orders and professional standards governing the performance of Services to be provided hereunder.

ARTICLE 2. COMPENSATION

The City shall pay TWENTY-FIVE THOUSAND TWO HUNDRED AND TWENTY-FOUR DOLLARS AND ZERO CENTS ($25,224.00) for the Services actually provided in accordance with this Agreement. Contractor will receive a deposit of TWELVE THOUSAND SIX HUNDRED TWELVE DOLLARS AND FIFTY CENTS ($12,612.50) by May 15, 2021 and the remaining balance is due before July 21, 2021.

ARTICLE 3. TERM

This Agreement shall commence upon execution by City and shall terminate on September 24, 2021, unless extended to a later date by mutual written amendment to this agreement or terminated according to Article 6 of this Agreement.

ARTICLE 4. INDEMNIFICATION

Contractor agrees to defend, indemnify, and hold harmless City, its officers, elected officials, 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 Contractor negligent performance or non-performance of this Agreement and/or the acts, omissions or conduct of the Contractor or its employees, agents, and representatives.
ARTICLE 5. INSURANCE

During the performance of the Services under this Agreement, Contractor shall maintain at least the following insurance:

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

Contractor shall furnish to the city certificates and/or proof of each form of insurance required by this article. Upon request, the Contractor shall furnish complete copies of the policies of insurance.

Contractor shall provide 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 6. TERMINATION

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

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

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

ARTICLE 7. 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:

Hammock Expeditions, LLC
133 Grant Street
Sneads Ferry, North Carolina 28460

Michelle Zaremba
371 W. Second Street, 3rd Floor
Dayton, Ohio 45402
Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the City and Contractor.

ARTICLE 8. NON DISCRIMINATION

Contractor 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 City to terminate this Agreement at its option.

ARTICLE 9. 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 Section 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) acquired by it from a party that is not, to the other party’s knowledge, under an obligation not to disclose such information, (iv) that is or becomes publicly available through no breach of this Agreement by the other party, (v) when such disclosure is required by an order of a Court or under state or federal law, or (vi) when such disclosure is authorized in writing by a party to this Agreement.

ARTICLE 10. OWNERSHIP OF DOCUMENTS & INTELLECTUAL PROPERTY

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

ARTICLE 11. GENERAL PROVISIONS

A. Waiver

A waiver by either City or Contractor 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.

B. Delay

Neither City nor Contractor 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 City of Contractor 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

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

By executing this Agreement, Contractor acknowledges and agrees that it will be providing Services to the City as an “independent contractor.” As an independent contractor for the City, Contractor is prohibited from representing or allowing others to construe the parties’ relationship in a manner inconsistent with this Paragraph. Contractor 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.

Contractor, its employees and any person retained or hired by Contractor 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, Contractor 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. Contractor 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

Contractor shall not assign any rights or duties under this Agreement without the prior written consent of 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 Contractor from employing independent Contractors, 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 City and Contractor.

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 City and Contractor, approved by the City’s Director of Planning and Community Development, 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 Exhibit A, the terms and conditions of this Agreement shall control.
J. Entire Agreement/Integration

This Agreement together with Exhibit A represents the entire and integrated agreement between City and Contractor. 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

Contractor affirms and certifies that it complies with Ohio Revised Code §3517.13 limiting political contribution

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

CITY OF DAYTON, OHIO

________________________________________
City Manager

HAMMOCK EXPEDITIONS, LLC

By: [Corinne Simmons]

Title: VP Finance

APPROVED AS TO FORM AND CORRECTNESS:

☐ Recoverable Signature

☐ X John Musto for

City Attorney

Signed by: 85746c9c-1f84-40be-9648-a77b1e923a8b

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

________________________________________, 2021

Min. / Bk. _____ Pg. _____

_____________________________
Clerk of the Commission
U.S. Department of State
FEDERAL ASSISTANCE AWARD

1. Recipient Name
CITY OF DAYTON

2. Assistance Type:
- ☑ Cooperative Agreement
- ☐ Fixed Amount Award
- ☐ Grant
- ☐ Property Grant
- ☐ Voluntary Contribution

3. Address
101 W THIRD STREET PO BOX 22
DAYTON, OH 45401-0022
UNITED STATES

4. Recipient POC: Michelle Zarembo
Phone Number 9373332352
Email michelle.zarembo@daytonohio.gov

5. Type of Entity
U.S. Local Government

6. Unique Entity Identifier
00478194

7. EIN/ TIN
*********

8. CFDA Number
19.900

9. Statutory Authority for Assistance
Foreign Assistance Act

10. Award Number
SBK80019CA0137

11. Period of Performance
Start Date 20-Sep-2019
End Date 31-May-2022

12. Amendment Number
M001

13. Accounting and Appropriation Data
$0.00 USD

14. Funds Certified By
Aye Aye Maw

---

Funding Distribution

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16. Purpose of the Federal Award Activity
To extend grant's period until 05/31/2022.

17. Specific Award Conditions
☑ Attached

---

Agreement

The recipient agrees to execute the work in accordance with the Notice of Award, the approved application incorporated herein by reference or as attached, and 2 CFR Parts 200 and 600 including any subsequent revisions.

18a. Recipient Name
Shelley Dickstein

18b. Recipient Signature
Shelley Dickstein

18c. Title
City Manager

18d. Date (dd-mmm-yyyy)
3·29·21

19a. Grants Officer Name
Holly H Zardus

19b. Grants Officer Signature

19c. Bureau/Office/Post
AMERICAN EMBASSY
SARAJEVO

19d. Date (dd-mmm-yyyy)
28-Mar-2021

By signing this Federal award, the recipient acknowledges that it will comply with Federal regulations, the Terms and Conditions, and any Special Award Conditions associated with this award. Receipt of the recipient's signature and return of the Federal Award Coversheet is required within ten (10) business days of the Grants Officer’s signature. Please return to the Grants Officer address indicated here: ZardusHH@state.gov
During the period of performance, the Recipient must comply with:

- The Award Provisions below;
- The Department of State Standard Terms and Conditions for Federal Awards, which are incorporated by reference and made part of this Federal Award.
- Electronic copies containing the complete text are available at: https://www.state.gov/about-us-office-of-the-acquisition-executive/
- The applicable sections of 2 CFR §200 and 2 CFR §600; and
- All assurances and certifications made during the application process.

1) FEDERAL AWARD IDENTIFICATION NUMBER (FAIN):
   SBK80019CA0137-M001

2) FEDERAL SHARE OF AWARD:
   $120,000.00 USD

3) PURPOSE AND OBJECTIVES OF AWARD:
   
   a. Purpose:
      CITY OF DAYTON (hereinafter referred to as the Recipient), is hereby provided a federal award, the purpose of which is to:
      
      organize a three-week exchange program offering students and teachers from Bosnia and Herzegovina an opportunity to engage in a Project-Based Learning experience designed to provide an immersive introduction to American culture and democracy.
      
      The Recipient shall carry out the Agreement in accordance with its proposal dated: 31-Jul-2019, and any revisions to which both parties agree to in writing. The Recipient's proposal and any subsequent negotiated revisions are hereby incorporated by reference.

   b. Objectives and Expected Outcomes: The Recipient agrees to perform the program and meet the specific objectives below:

      The student participants will gain an understanding of the values underpinning American Democracy and why our government was structured according to the Federalist system, as well as how it has evolved over time at the Federal, State, and Local levels.
      
      The desired outcome for the exchange is to inspire them to go back to BiH to affect change, while also preparing them with a better sense of what it takes to affect those changes and an understanding of the many ways they can do this in their own country.
      
      For the teachers who are participating, the objective is slightly different in that we hope to provide them with an understanding of how they can use Project-Based Learning to unleash the potential of their students and help them grapple with complex issues that exist within society through education. Providing them with an understanding of Project-Based Learning and how to design curriculum around a Driving Question will be the ultimate objective, with the desired outcome in mind being that they will be able to take this back to their schools and begin utilizing this type of curriculum design.
4) CONTACT INFORMATION:

a. Grants Officer:
   Name: Holly H Zardus
   Post/Bureau: AMERICAN EMBASSY SARAJEVO
   Section: OPA
   Street Address: ROBERTA C. FRASUREA 1
                  ATTN: PAO
   Zip Code: 71000
   E-mail: ZardusHH@state.gov
   Telephone: +387 33 704 345

b. Grants Officer Representative:
   Name: Lejla Pasovic-Mustafic
   Post/Bureau: AMERICAN EMBASSY SARAJEVO
   Section: OPA
   Street Address: ROBERTA C. FRASUREA 1
                  ATTN: OPA
   Zip Code: 71000
   E-mail: PasovicL@state.gov
   Telephone:

5) AUTHORIZED BUDGET SUMMARY:

Unless otherwise stipulated, funds provided under this award may only be expended on authorized activities which take place during the period of performance.

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6) INDIRECT COSTS:
N/A

7) PRE-AWARD COSTS:
N/A

8) PROGRAM INCOME:

Deduction: Any program income earned by the Recipient as a result of this award and during the period of performance must be deducted from the total allowable costs in order to determine the net allowable costs for the award.
9) COST SHARING:

It is understood and agreed that the Recipient must provide the minimum amount of cost sharing as stipulated in the Recipient's approved budget. Cost sharing may be in the form of allowable direct or indirect costs. The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution. Such records are subject to audit. In the event the Recipient does not provide the minimum amount of cost sharing as stipulated in the Recipient's approved budget, the Department of State's contribution may be reduced in kind.

10) SUBRECIPIENTS:

Subawards not included in the Recipient's approved budget must be submitted to the Grants Officer prior to execution in order to determine cost allowability.

All subawards must comply with the requirements of 2 CFR §200.331—Requirements for pass-through entities. Upon issuing a subaward, the Recipient is required to submit an executed copy to the Grants Officer.

11) PAYMENTS:

The Recipient must request payment under this award by completing form SF-270—Request for Advance or Reimbursement and submitting the form to the Grants Officer. Unless otherwise stipulated, the Recipient may request payments on a reimbursement or advance basis.

Advance payments must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the Recipient in carrying out the purpose of this award. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the Recipient for direct program or project costs and the proportionate share of any allowable indirect costs.

Failure to comply with the terms and conditions of this award may result in payment delays.

12) REPORTING AND MONITORING:

The Recipient is required to submit Interim performance and Interim financial reports. All reports must be signed and certified by an authorized representative of the Recipient organization. All performance progress reports must indicate the Federal Award Identifying Number (FAIN), period of performance, reporting period end date, reporting frequency (quarterly, interim, semi-annual, annual, final) and include a detailed description of program progress.

Reports are due 30 days after the end of a reporting period and in accordance with the schedule below. A final program and financial report is due 90 calendar days after the period of performance end date. Failure to comply with these reporting requirements may jeopardize the Recipient's eligibility for future awards and/or delays in payments.

<table>
<thead>
<tr>
<th>Performance Progress Report Schedule</th>
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</thead>
<tbody>
<tr>
<td>Report</td>
</tr>
<tr>
<td>Report</td>
</tr>
<tr>
<td>Final</td>
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Financial Reports:
All financial reports must be submitted using form SF-425—Federal Financial Report. Financial reports shall be submitted directly to the Grants Officer and Grants Officer Representative.

The form and instructions are available at: https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html.

Performance Reports:
As appropriate, performance reports must contain:

- A comparison of actual accomplishments to the objectives of the federal award established for the period. This should include information on how costs are tied to accomplishments;
- The reasons why established goals were not met, and
- Additional pertinent information including an analysis and explanation of cost overruns or high unit costs.

Performance Reports must be submitted to the Grants Officer and Grants Officer Representative via email.

The Recipient acknowledges that the Department of State may make site visits as determined by the Grants Officer.

13) SUBSTANTIAL INVOLVEMENT:

The Department of State will be substantially involved in carrying out the following aspects of this cooperative agreement:

1) Selecting the in-country partner to manage the recruitment and selection of the participants.
2) Providing advice and assistance in the execution of all program components.
3) Facilitating interaction within the Department of State, to include ECA, the regional bureaus, and overseas post.
4) Arranging meetings with Department of State/Embassy officials if necessary.
5) Approving host family applications, publicity materials, and the calendar of exchange activities.
6) Monitoring and evaluating the program, through regular communication with the award recipient and possibly one or more site visits.
7) Performing an annual performance evaluation/review. Satisfactory performance and the availability of funds is a condition of continued administration of the program and execution of all option years.

14) WAIVER OF ACKNOWLEDGMENT OF DEPARTMENT OF STATE SUPPORT AND BRANDING AND MARKING REQUIREMENTS:

N/A

15) ADDITIONAL BUREAU/POST SPECIFIC REQUIREMENTS:

The award recipient’s responsibilities will be the following:
1) Preparation
a) In cooperation with OPA, contact participants before the program to provide them with program information, pre-departure materials, and to gather information about their specific interests.
b) Travel to Bosnia and Herzegovina to participate in a pre-departure session with program participants, in cooperation with the in-country partner and OPA.
c) Enroll participants in the Bureau's Accident and Sickness Program for Exchanges (ASPE) health benefits plan for the duration of the exchange, and assist with claims as necessary.
d) Hire and train staff, as needed, to accompany participants during the exchange period. Criminal background checks, including a search of the Department of Justice's National Sex Offender Public Registry, must be conducted for all program staff and for new staff prior to hiring.
e) Make housing arrangements. Carefully recruit, screen, and select diverse local host families to offer homestays (including lodging and meals) to the participants for the majority of the exchange period. Criminal background checks, including a search of the Department of Justice’s National Sex Offender Public Registry, must be conducted for all members of host families and others living in the home who are 18 years or older.
f) Monitor housing arrangements to ensure the health and safety of participants.
g) Orient participating organizations, staff, and host families to the goals of the program and to the cultures and sensitivities of the visitors.

2) Exchange Activities
a) Design, plan, and implement a three-to-four-week exchange program on the stated themes. Exchange activities must promote program goals. Activities will be school and community-based, as appropriate to the project, and will enable the exchange participants to engage with American teenagers.
b) Provide opportunities for the adult participants to work with their peers and other professionals, volunteers, and youth advocates with whom they can discuss the support of youth development.
c) Arrange appropriate community, cultural, social, and civic activities.
d) Engage participants in at least two community service activities during the exchange. The program should provide context for the participants -- identifying community needs, volunteerism, charitable giving, etc. -- and a debriefing so that the service activity is not an isolated event and helps participants see how to apply the experience at home.
e) Provide day-to-day monitoring of the participants' well-being, preventing and dealing with any misunderstandings or adjustment issues that may arise in a timely manner. Inform OPA about any significant health or safety issues affecting program participants.
f) Provide a closing session to summarize project activities, prepare participants to implement their follow-on activities, and for their return home.

3) Follow-on activities
a) In cooperation with OPA, provide guidance and instruction on how to design and implement follow-on projects that reinforce values and skills imparted during the exchange program and help them apply what they have learned to serve their schools and communities. Participants should design school- or community-based projects that will be implemented in groups.
b) Present creative and effective ways to address project themes, for both program participants and their peers, as a means to amplify program impact.
c) In addition to follow-on projects, support alumni in making presentations or preparing articles to share their experiences in other ways once they return home.
d) Travel to Bosnia and Herzegovina to monitor follow-up activities

4) Design and implement an evaluation plan that assesses the impact of the program

5) Work in consultation with OPA in the implementation of the program, provide timely
reporting of progress, and comply with financial and program reporting requirements.

6) Manage all financial aspects of the cooperative agreement, including stipend disbursements to the participants and management of sub-award relationships with partner organizations.

Payment will be effected in two installments through EFT. The first installment in the amount of USD 84,000 will be paid after signature of this grant and upon submission of the Recipient's request. The second installment in the amount of USD 36,000 will be paid to the Recipient after submission of the interim-progress program and financial reports about the completion of the first phase of the project.

16) SPECIFIC CONDITIONS:
N/A

17) SPECIAL PROVISION FOR PERFORMANCE IN A DESIGNATED COMBAT AREA:
N/A

18) STATE DEPARTMENT LEAHY AMENDMENT VETTING REQUIREMENTS:
N/A

19) PROTECTING LIFE IN GLOBAL HEALTH ASSISTANCE:
N/A

20) REPORTING TAXES ON FOREIGN ASSISTANCE FUNDS:

The Recipient is required to submit a report detailing foreign taxes assessed under this award during the prior U.S. Government fiscal year (10/01 - 09/30). The report must be submitted to the Grants Officer on an annual basis by February 15. The Recipient should submit an updated report if the foreign government reimburses the Recipient for any of the taxes reported in a previous report. The report must include the Recipient's name, contact information, award number, and the amount of foreign taxes assessed by a foreign government.

Taxes to be reported include value-added taxes and customs duties assessed by each foreign government receiving foreign assistance under this award (listed separately) on any purchase of goods or services of $500 or more or any other tax that is assessed in an amount of $100 or more on United States foreign assistance funds under this award. The Recipient is not required to report on individual income taxes assessed to local staff or any taxes assessed by a third-party foreign government, which is not a beneficiary of the foreign assistance funds used to finance this award.
PROJECT PROPOSAL

YOUTH LEADERSHIP AND TEACHER PROFESSIONAL DEVELOPMENT PROGRAM WITH BOSNIA AND HERZEGOVINA

1. APPLICANT'S CONTACT INFORMATION
   a. Implementing organization: Dayton Mediation Center (Planning Division, City of Dayton Government)
   b. Contact Person and Title: Michelle Zaremba, Coordinator
   c. Address/ Postal Code and City: 371 West Second Street, Third Floor, Dayton, OH 45402
   d. Phone number: 937-333-2368
   e. E-mail: michelle.zaremba@daytonohio.gov

2. BASIC INFORMATION ABOUT THE PROPOSAL
   A. Project title: The Four Cities Young Leader Academy (FCYLA)
   B. Amount requested (USD): $120,000.00 Amount of co-share if any (USD): $25,086 Total Cost (USD): $145,086

3. EXECUTIVE SUMMARY
   FCYLA is a three-week exchange program offering students and teachers from Bosnia and Herzegovina an opportunity to engage in a Project-Based Learning experience designed to provide an immersive introduction to American culture and democracy. This experience will be organized by the Dayton Mediation Center (DMC), which is a division of the City of Dayton’s Department of Planning and Community Development. BiH participants will arrive in Dayton on Saturday, October 3, 2020 and depart Saturday, October 24, 2020. During their experience, students will engage in a variety of activities, including workshops, training sessions, mock trial simulations, teambuilding exercises, volunteer service, leadership training, meetings, classroom visits, site visits, and social time among peers. These activities will be planned in conjunction with school and community activities to create educational opportunities for both the exchange participants and their hosts/peers. Cultural and recreational activities will balance the schedule. In the short-term, students and teachers will come away with practical and first-hand knowledge about how to effect political change in a democracy and (for teachers) how to use Project-Based Learning to unleash students’ hidden potential. In the long-term, students and teachers alike will go back to BiH with a mission to effect change within their communities. The funding level requested for organizing this exchange is $120,000.

4. DESCRIPTION OF PROJECT ACTIVITIES
FCYLA is a three-week exchange program offering students and teachers from Bosnia and Herzegovina an opportunity to engage in a Project-Based Learning experience organized around the Driving Question: “How do you effect change in a democracy?” Participants will answer this question themselves by learning about American culture and democracy through the following three themes:

- **“Values and Ideals”** – in this portion students will spend their time understanding their own personal value system and what matters to them as individuals, including what components of their identities are driven by their culture, history, and government. This will be achieved by examining the history, culture, and government of the United States of America, specifically by looking at its Constitution, governmental structure, and meeting people and organizations within the country that are working to fulfill those American ideals and drawing parallels to their own country. The Driving Questions include the following:
  
  o What are my personal values and ideals? (Understanding *yourself*)
  o How the system in which I operate supposed to work? (Understanding the *system*)

- **“Challenges and Solutions”** – through this theme, students will focus on understanding the challenges that exist and roadblocks that stand in the way of fulfilling those ideals by being exposed to individuals and organizations within the community who have identified challenges and are working to effect change to address those issues. The Driving Questions for this theme are as follows:
  
  o What are the issues that matter to me? (Understanding *yourself*)
  o What are possible solutions to the challenges that I see within my own city/canton/country? (Understanding the *system*)

- **“Equipping Ourselves to Enact Change”** – In this theme, students will learn what tools exist, and how to use those tools to encourage others to join them in effecting political change, including public speaking, digital media production, and more. The culmination of this project will include a presentation to members of the Dayton community about what issue they want to change within their own city/canton/country and describes their vision of change and attracts others to their idea. The Driving Questions for this theme include:
  
  o What are the tools I need to learn in order to enact change? (Equipping *yourself*)
  o How do I use those tools to influence others? (Changing the *system*)

* A complete draft itinerary can be found in Appendix A. *

### 5. PROJECT OBJECTIVES AND DESIRED OUTCOMES

Over the course of this exchange, the student participants will gain an understanding of the values underpinning American Democracy and why our government was structured according to the Federalist system, as well as how it has evolved over time at the Federal, State, and Local levels. The objectives we have in designing the program in this way are to help them understand that this system is far from perfect, that challenges still exist, and that those challenges are being actively addressed by citizens who are using the tools available to them in order to effect real political change. The desired outcome for the exchange is to inspire them to go back to BiH to affect change, while also preparing them with a better sense of what it takes to effect those changes and an understanding of the many ways they can do this in their own country. The ideal outcome would be that students would go back and spark a campaign around an issue that they are passionate about and create organizations that will enable them to affect the changes they want to see.
For the teachers who are participating, the objective is slightly different in that we hope to provide them with an understanding of how they can use Project-Based Learning to unleash the potential of their students and help them grapple with complex issues that exist within society through education. Providing them with an understanding of Project-Based Learning and how to design curriculum around a Driving Question will be the ultimate objective, with the desired outcome in mind being that they will be able to take this back to their schools and begin utilizing this type of curriculum design.

6. TRAVEL HOUSING, AND OTHER LOGISTICS

Homestay arrangements will be made for all students and teachers participating in the exchange. The DMC will partner with the Dayton Sister City Committee and Dayton Council on World Affairs to advertise the need for homestay families and set up an application form through the Sister City Committee’s website. Members of the committee will help by spreading the word digitally (through email and social media) and by making visits to local organizations whose members may be willing to host students to explain the program. Select advertising through radio and TV will also be utilized to help spread the word. For screening, all individuals who are hosting students will be required to do a BCI and FBI background check through the City of Dayton Department of Recreation and Youth Services after visiting the DMC for a face-to-face interview, if they pass the survey portion of the screening process. DMC staff will also do a check on the individuals at that time through the Department of Justice’s National Sex Offender Public Registry.

7. PARTICIPATING ORGANIZATIONS

The DMC will work with a variety of local organizations to help develop programming and ensure that the goals, program requirements and responsibilities of the grant are fulfilled. Two of the organizations that will be crucial in the fulfillment of this exchange are the Dayton Sister City Committee and INTERA Technology park, both of which are enthusiastic about the program and eager to provide support.

The Dayton Sister City Committee was created by the Dayton City Commission in 1964. Committee members are appointed by the Dayton City Commission. All Activities undertaken on behalf of the Dayton Sister City Committee are done on a volunteer basis. The Dayton Sister City Committee is a member of Sister Cities International. Its mission is to "Promote peace through mutual respect, understanding, and cooperation - one individual, one community at a time." Dayton has had an active Sister City relationship with Sarajevo since 1999 and helped facilitate an agreement between the mayors of Dayton, Sarajevo, Banja Luka, and Mostar to work more closely between the four municipalities.

INTERA technology Park is an NGO established with the aim of encouraging and supporting the development of economic processes in the region of Herzegovina. The initiative for the establishment of the Foundation came from the business community of the city of Mostar. It was created as a result of the need for technological development and innovative projects and quality and educated workforce that will be competitive in the domestic and foreign markets. Activities to promote entrepreneurship, support and incubation of start-up companies, providing education, networking companies and academia - all expressed in two words is Technology Park. INTERA has been instrumental in making possible an existing exchange between Dayton and BiH since 2016.

*The Dayton Sister City Committee will be instrumental in helping advertise the need for homestay families*
and serving as a connecting organization between the Dayton Mediation Center and local organizations. The Committee also will engage its members to help serve as chaperones and/or organizers for portions of the exchange. INTERA will be instrumental in the orientation and follow-up portions of the exchange (as described in Appendix A).

The DMC will also seek to collaborate with the part organizations identified in Appendix B. Letter of support from Dayton Sister City Committee can be found in Appendix C and from INTERA in Appendix D.

8. PROGRAM MONITORING AND EVALUATION

During the exchange itself one DMC staff member will be working on this program full-time for the duration of the exchange to ensure that students and participants are getting where they need to go in a timely manner. This member will check in with students and chaperones each day about homestay arrangements and address any challenges/concerns as they arise during all hours of the day. Keeping track of activities will be achieved by posting pictures and copy about major activities throughout the experience to the Dayton Sister City Committee’s Facebook page so that the community and EPA/OPA can see in real time what the students are doing each day and publicize the efforts of the OPA. After the program is over, students will be given a survey to rate the experience and describe what they learned. A Facebook group will also be created to help connect students with one another and with people they met in the United States during their visit, and INTERA Technology Park will be contracted to provide follow-up activities related to the exchange program (including a conference for program alumni) and help publicize the efforts of the participants once they return home.

9. DIVERSITY

Diversity will be a central focus of this program, and the organizations that have been identified have been selected, in part, because of either their commitment to promoting diversity and/or their unique geographic, racial, ethnic, socioeconomic, or religious diversity. The goal in selecting many of these organizations is to introduce participants to a wide array of people working across these cultural boundaries to effect political change, and the goal of demonstrating that people can and do work together effectively is at the forefront of our minds in the programmatic design process.

10. INSTITUTIONAL CAPACITY AND PROJECT MANAGEMENT

The City of Dayton established the Dayton Mediation Center in 1987 in an effort to ease the impact of community conflicts on public resources. The Dayton Mediation Center (DMC) operates as a division of the Planning and Community Development department within the City of Dayton’s organizational structure. The Center has become a trusted resource as one of the oldest and most robust conflict intervention resources in the country for those wishing to engage conflict constructively. The DMC intervenes in more than 1,000 conflict situations annually. The Center’s services have been utilized by residents, neighborhood organizations, businesses, employers and employees, schools, law enforcement agencies and court systems. The DMC has a full-time staff of four people and contracts with an additional five Mediation Specialist Contractors to manage its programming. In addition to paid staff, the Center has 70+ active volunteers who help the Center carry out its mediations for the majority of its cases. Co-located at the DMC is the Institute for the Study of Conflict Transformation, a think tank that was founded by leading scholars and practitioners utilizing the Transformative Approach to Conflict (as described in The
The DMC is headed by Coordinator Michelle Zaremba and has a highly-skilled staff with a wide array of programming that includes case management, trainings, volunteer recruitment, continuing education, and more. The DMC is uniquely positioned to run such a program owing to its unique connection with the country of Bosnia and Herzegovina, (both as an organization as well as through the City of Dayton’s Sister City relationship with Sarajevo), its connection to the rich variety of resources and organizations within the community, and the unique skill sets of its staff members. The DMC’s connection to BiH began in 2016 when staff members traveled to BiH as part of the City of Dayton’s visit to Sarajevo, Banja Luka, and Mostar. The visit was arranged as part of an agreement that was signed in 2015 between the Mayors of the four cities at the 20th Anniversary Commemoration of the signing of the Dayton Peace Accords here in Dayton. Additionally, as an organization that is a part of the City of Dayton’s organizational structure, the DMC is uniquely positioned to be able to maximize the efforts of the City’s various departments and enable it to apply for this grant opportunity while having the flexibility to partner with a wide array of community stakeholders.

Finally, the DMC staff is well equipped to handle such a program. Three of the four full-time staff members are former educators. The staff member in particular who has been identified as the contact person for the program (and program manager) has 8 years of experience in high school education as a social studies teacher, enabling him to identify and design an experience that achieves the program’s desired outcomes at an age-appropriate level while also supporting the teachers who are participating. This staff member also manages another exchange program between Dayton/Bosnia-Herzegovina and has visited all three cities in BiH, and is experienced in handling large project management involving student exchanges. He also has an M.A. in International and Comparative Politics, making him familiar with the political environments of both the US and BiH. Finally, the staff member also serves on the Dayton Sister City Committee and Dayton Council on World Affairs, which allows him to easily serve as a liaison between all partnering organizations. You can find his resume in Appendix E.

11. WORK PLAN/SCHEDULE

September – December 2019: This period of time will be spent working with local partners to solidify plans for the exchange, including contracting with local organizations and stipulating the services that will be provided in exchange for the contracted amounts. The time will also be used to lay the groundwork and infrastructure for the marketing campaign to attract homestay participants, including creating online forms and arranging marketing opportunities to publicize the need for volunteers.

January – March 2020: During this time period we will begin actively recruiting homestay families/volunteers and advertising the partnerships to local volunteer-based organizations in the Dayton area. A final schedule of activities will be prepared and submitted to EPA/OPA with any necessary revisions and ultimate approval. Any remaining contracts with local organizations will be finalized during this time period.

March – April 2020: These months will primarily consist of applicant screening according to the process outlined above under Section 6. Given the flexibility of parts of the teacher exchange schedule, this time period will also involve communication with the selected teacher recipients to identify what day(s) they want to stay with students vs. what days they want to pursue the programming that they will be doing in
order to help give them a voice and choice in their schedule. Purchasing tickets and making payments on contracts for the provision of services will be completed by this period of time as well.

May – June 2020: This time period will be focused on connecting homestay families with their future student/teacher guests by having them send letters introducing themselves to one another. A cultural orientation and program overview for homestay families will be provided as well so they understand what is expected of them and are familiar with the schedule and expectations of drop-off/pick-up times, providing food, preparing spaces in their homes, etc. Teacher programming will be solidified during this time as well.

July – August 2020: During this time DMC staff will be making final preparations for the exchange, finalizing exact times for local participants, ensuring any last-minute scheduling challenges are addressed, and preparing local participants (especially students) for interacting with students from BiH and following up with all participating organizations to ensure proper preparations are being made.

September 2020: DMC staff members will travel to Sarajevo in August to lead the orientation for student and teacher participants during this time.

October 2020: The programming outlined above will be carried out during this time.

November – December 2020: DMC staff will send out the survey to BiH participants and local organizational partners, gather feedback, and send a follow-up report to the EPA/OPA about the program.

January – March 2021: INTERA Technology Park will carry out follow-up programming with local participants.

# 12. PREVIOUS U.S. GOVERNMENT FUNDING

The Dayton Mediation Center is part of the City of Dayton’s Department of Planning and Community Development. This department administers approximately $8 million in annual federal grants from the U.S. Department of Housing and Urban Development: Community Development Block Grant, HOME Investment Partnerships Program, Emergency Solutions Grant, and Continuum of Care Grant.

# 13. DETAILED BUDGET (itemize any amount larger than $200):

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<td>Participant/Staff travel bus costs - DC Trip</td>
<td>24</td>
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<td>Lodging when not in home stay - DC Trip</td>
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<td>Lodging for teachers when not in home stay - OCSS Conference</td>
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<td>Office Supplies</td>
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<tr>
<td>E.</td>
<td>Contractual</td>
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<td>------------------</td>
<td>------------------------------------</td>
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<td>Food (group meals)</td>
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<td>Books and educational materials</td>
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<td>Dayton Story Slam 101 Workshop-LORE</td>
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<td>WPAFB Movie</td>
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<td>COSI Admission</td>
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<td>NABJ Journalism Boot Camp</td>
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<td>Dayton Art Institute/Dayton Visual Arts Center Admission</td>
<td>21</td>
<td>$ 8</td>
<td>$ -</td>
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<td>Kings Island Trip - BiH Participants</td>
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<td>Kings Island Trip - local Participants</td>
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### F. Other Direct Costs

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<tr>
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<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
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<td>Phone, Fax, Internet</td>
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<td>Office Rent</td>
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<td>-</td>
<td>$2,000</td>
<td></td>
<td></td>
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</tr>
<tr>
<td><strong>SUBTOTAL F</strong></td>
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<tr>
<td><strong>GRAND TOTAL (A+B+C+D+E+F)</strong></td>
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### 14. BUDGET NARRATIVE

Please see Appendix F for a detailed budget narrative.

**THIS SPACE FOR INTERNAL U.S. EMBASSY USE ONLY**
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<th>Page</th>
</tr>
</thead>
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<td>II. ORDER OF PRECEDENCE</td>
<td>2</td>
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<td>III. CONTROLLING LANGUAGE</td>
<td>2</td>
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<td>IV. DEPARTMENT OF STATE (DOS) RESPONSIBILITIES</td>
<td>2</td>
</tr>
<tr>
<td>V.  FEDERAL Awardee PERFORMANCE AND INTEGRITY INFORMATION SYSTEM (FAPIS)</td>
<td>3</td>
</tr>
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<td>VI. NON-FEDERAL ENTITY RESPONSIBILITIES AND COMPLIANCE WITH FEDERAL REQUIREMENTS</td>
<td>3</td>
</tr>
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<td>VII. MANDATORY DISCLOSURE</td>
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</tr>
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<td>VIII. CONFIDENTIALITY INFORMATION</td>
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<tr>
<td>IX.  CONFLICT OF INTEREST AND FEDERAL ASSISTANCE AWARDS</td>
<td>6</td>
</tr>
<tr>
<td>X.   LIABILITY</td>
<td>6</td>
</tr>
<tr>
<td>XI. FINANCIAL MANAGEMENT SYSTEM (FMS) REQUIREMENTS</td>
<td>7</td>
</tr>
<tr>
<td>XII. PAYMENTS</td>
<td>7</td>
</tr>
<tr>
<td>XIII. PRIOR APPROVAL REQUIREMENTS</td>
<td>8</td>
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<tr>
<td>XIV. PERIOD OF AVAILABILITY OF FUND</td>
<td>8</td>
</tr>
<tr>
<td>XV. INDIRECT COSTS</td>
<td>9</td>
</tr>
<tr>
<td>XVI. PUBLICATION FOR PROFESSIONAL AUDIENCES</td>
<td>9</td>
</tr>
<tr>
<td>XVII. BRANDING AND MARKING STRATEGY</td>
<td>9</td>
</tr>
<tr>
<td>XVIII. TRAVEL</td>
<td>10</td>
</tr>
<tr>
<td>XIX. PROHIBITION AGAINST ASSIGNMENT</td>
<td>11</td>
</tr>
<tr>
<td>XX.  MONITORING AND REPORTING REQUIREMENTS</td>
<td>11</td>
</tr>
<tr>
<td>XXI. POST-AWARD REQUIREMENTS FOR CLOSEOUT</td>
<td>14</td>
</tr>
<tr>
<td>XXII. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS</td>
<td>15</td>
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<tr>
<td>XXIII. AUDITS</td>
<td>15</td>
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<tr>
<td>XXIV. DEBARMENT AND SUSPENSION</td>
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</tr>
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<td>XXV. TERMINATION</td>
<td>17</td>
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<tr>
<td>XXVI. CERTIFICATION REGARDING LOBBYING</td>
<td>18</td>
</tr>
<tr>
<td>XXVII. SECTION 504 REHABILITATION ACT</td>
<td>19</td>
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<tr>
<td>XXVIII. AWARDS TO FAITH-BASED &amp; COMMUNITY ORGANIZATIONS</td>
<td>19</td>
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<td>XXIX. RELIGIOUS PERSECUTION</td>
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<td>XXX. MINORITY BUSINESS PARTICIPATION, EXECUTIVE ORDER 12432</td>
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<tr>
<td>XXXI. TRAFFICKING IN ERSONS</td>
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<td>XXXII. BLOCKING PROPERTY AND PROHIBITING TRANSACTIONS WHO COMMIT,</td>
<td>22</td>
</tr>
<tr>
<td>THREATEN TO COMMIT OR SUPPORT TERRORISM, EXECUTIVE ORDER 13224</td>
<td></td>
</tr>
</tbody>
</table>
I. Introduction
The non-Federal entity and any sub-non-Federal entity must, in addition to the assurances and certifications made as part of the award, comply with all applicable terms and conditions during the project period.

II. Order of Precedence
In the event of any inconsistency between provisions of the award, the inconsistency will be resolved by giving precedence in the following order:

A. Applicable laws and statutes of the United States, including any specific legislative provisions mandated in the statutory authority for the award.
B. Code of Federal Regulations (CFR)
C. Award Specifics
D. Standard Terms and Conditions
E. Other documents and attachments

III. Controlling Language
In accordance with 2 CFR 200.111, it is the Department of State’s policy that all award documents must be in the English language and in terms of U.S. dollars, including correspondence and supporting documents. If an award or any supporting documents are provided in both English and a foreign language, it must be stated in each version that the English language version is the controlling version.

IV. Department of State (DOS) Responsibilities
DOS has overall responsibility for Department-funded awards, including providing oversight for technical, programmatic, financial and administrative performance.

Agency Award Administrator - Grants Officer (GO)
The GO is responsible for all actions on behalf of the DOS, including entering into, changing, or terminating an award. The GO is authorized by a warrant issued by the Procurement Executive in the Office of the Procurement Executive. In addition, the GO is responsible for administrative coordination and liaison with the non-Federal entity.

The GO is the only person authorized to approve changes in any of the requirements in the award. In the event the non-Federal entity effects any change at the direction of any person other than the GO, the change(s) will be considered to have been made without authority and no adjustment will be made in the amount of the award to cover any increase in costs incurred as a result thereof.

Agency Program Contact - Grants Officer Representative (GOR)
In accordance with DOS standard policy, the GO is responsible for all aspects of the award, but may designate technically qualified personnel to join in the administration of grants. The GOR is delegated by the GO and responsible for the programmatic,
technical, and/or scientific aspects of the award. Non-Federal entities should direct any correspondence related to programmatic and budgetary issues to both the GO and GOR.

V. Federal Awardee Performance and Integrity Information System (FAPIIS)
If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then you as the non-Federal entity recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313).

VI. Non-Federal Entity Responsibilities and Compliance with Federal Requirements
The non-Federal entity is responsible for notifying DOS of any significant problems relating to the administrative, programmatic or financial aspects of the award.

The non-Federal entity has full responsibility for the management of the project or activity supported under the award and for adherence to Federal regulations and the award terms and conditions. Although the non-Federal entity is encouraged to seek the advice and opinion of the GO and/or the GOR on special problems that may arise, such advice does not diminish the non-Federal entity’s responsibility for making prudent and sound administrative judgments under the circumstances prevailing at the time the decision was made and should not imply that the responsibility for operating decisions has shifted to DOS.

Non-Federal entity Key Personnel:
Within thirty (30) days after the date of execution of the award, the non-Federal entity must furnish names, titles, and brief biographical sketches (if these have not been previously furnished), including information on the education and experience of key personnel in charge of the award project and other key professional and supervisory personnel; i.e., the members of the professional staff in a program supervisory position engaged for or assigned to duties under the award to the Grants Officer. The non-Federal entity must also provide similar information for Executive officer personnel that may subsequently be assigned by the non-Federal entity to perform duties in connection with the award. Any changes, prolonged absences, or significant adjustments of total time devoted to the award project of any listed personnel should be brought to the attention of the GO and requires prior written approval.
Sub-Non-Federal entity Flow Down Requirement:
In accordance with 2 CFR 330, terms and conditions flow down to all non-Federal entity subrecipients and contractors, and must be appropriately addressed in the performing organization’s sub-award instrument. All cost reimbursement sub-awards (sub-grants, subcontracts, etc.) are subject to those Federal cost principles applicable to the particular organization concerned.

Administrative and Allowable Cost Requirements:
All non-Federal entities shall comply with the following terms and conditions unless otherwise specified in the award.

Certain applicable Federal administrative standards are incorporated by reference. Appropriate officials are made aware that electronic copies containing the complete text of the circulars are available on the Government Printing office www.ecfr.gov website and specifically at: http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl

In addition, all 2 CFR references are available on the Department of State’s website at: https://statebuy.state.gov.

The principal investigator(s) or project director(s) shall receive a copy of the terms and conditions, including the award-specific requirements, and any subsequent changes in the terms and conditions.

The appropriate non-Federal entity officials shall be made aware of the terms and conditions made available by DOS in electronic form at https://www.statebuy.state.gov/fa/Pages/TermsandConditions.aspx. These terms and conditions may be duplicated, copied or otherwise reproduced as appropriate.

This provision does not alter the non-Federal entity’s full responsibility for conduct of the project and compliance with all terms and conditions.

VII. Mandatory Disclosure
Consistent with 2 CFR 200.113, the non-Federal entity must disclose, in a timely manner, in writing to the Office of the Inspector General (OIG) for the Department of State, with a copy to the cognizant Grants Office, all violations of Federal criminal law involving fraud, bribery, or illegal gratuities potentially affecting the Federal award.

Subrecipients must disclose, in a timely manner, in writing to the OIG and to the prime recipient (pass-through entity) all violations of Federal criminal law involving fraud, bribery, or illegal gratuities potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.338 “Remedies for Noncompliance”, including suspension or debarment.
Forward disclosures to:

U.S. Department of State  
Office of Inspector General  
P.O. Box 9778  
Arlington, VA 22219

VIII. Confidentiality of Information
Confidential information, as used in this Provision, means:

- Information or data of a personal nature about an individual that, if released, would constitute a clearly unwarranted invasion of personal privacy.

In addition to the types of confidential information described above, information which might require special consideration with regard to the timing of its disclosure may derive from studies or research, during which public disclosure of preliminary invalidated findings could create erroneous conclusions, which might threaten public health or safety if acted upon.

The Grants Officer and the non-Federal entity may, by mutual consent, identify elsewhere in this award specific information and/or categories of information which the Government will furnish to the non-Federal entity or that the non-Federal entity is expected to generate which is confidential. Similarly, the Grants Officer and the non-Federal entity may, by mutual consent, identify such confidential information from time to time during the performance of the agreement.

If it is established that information to be utilized under this award is subject to the Privacy Act, the non-Federal entity will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, and implementing regulations and policies, with respect to systems of records determined to be subject to the Privacy Act.

Written advance notice of at least 45 calendar days will be provided to the Grants Officer of the non-Federal entity’s intent to release findings of studies or research, which have the possibility of adverse effects on the public or the Federal agency, as described above. If the Grants Officer does not pose any objections in writing within the 45-calendar day period, the non-Federal entity may proceed with disclosure.

Whenever the non-Federal entity is uncertain with regard to the proper handling of material under the Federal award, or if the material in question is subject to the Privacy Act or is confidential information subject to this Provision, the non-Federal entity shall obtain a written determination from the Grants Officer prior to any release, disclosure, dissemination, or publication.
IX. Conflict of Interest and Federal Assistance Awards
The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of sub-awards and sub-contracts. No employee, officer, or agent may participate in the selection, award, or administration of a sub-award or subcontract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from another non-federal entity considered for a sub-award or subcontract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from sub non-Federal entities, subcontractors, or parties to sub-awards and subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest are those where, because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting an award or procurement action involving a related organization.

The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity. If the effects of the potential or actual conflict of interest cannot be avoided, neutralized, or mitigated before award, the employee, officer or agent must recuse themselves from participating in the award. Where there is an organizational conflict, the prospective non-Federal entity is not eligible for the award.

If a potential or actual conflict of interest is identified after award and the effects cannot be avoided, neutralized or mitigated, the Federal awarding agency will terminate the award unless continued performance is determined to be in the best interest of the Federal government.

X. Liability
The non-Federal entity shall hold and save the Government, its officers, agents and employees harmless from all liability of any nature or kind, including costs and expenses, for or on account of any or all suits for damage sustained by any person or persons or property by virtue of performance of this award.

Notification of Award for Similar Program
The non-Federal entity must immediately provide written notification to the Grants Officer Representative and the Grants Officer in the event that, subsequent to an award, other Federal financial assistance is received relative to that particular project award.
Protocol and Decorum
During the term of an award, the non-Federal entity will be associated with the Government in such a manner that the non-Federal entity's actions will reflect upon the Government and the United States. Therefore, the non-Federal entity will be held accountable for appropriate protocol and decorum during the award period of performance.

XI. Financial Management System (FMS) Requirements
Non-Federal entities must adhere to the Code of Federal Regulations (2 CFR 200 Subpart D) standards for financial management systems and methods for making payments, and rules for satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of costs, and establishing funds availability.

XII. Payments
Payment methods shall minimize the time elapsing between the transfer of funds from the U.S. Treasury and the issuance or redemption of checks, warrants, or payment by other means by the non-Federal entities. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State Cash Management Improvement Act (CMIA) agreements or default procedures codified at 31 CFR Part 205. Approval of payment requests will be based on the Recipient's progress towards achieving the award objectives, the amount of unexpended cash on-hand as reported in the SF-425 and SF-270, and the Recipient's adherence to the terms and conditions of the award, particularly in terms of timely submission of required financial, program and other reports. Delinquency in submitting reports may result in payment delays.

Advances.
Non-Federal entities may be paid in advance, provided they maintain or demonstrate the willingness to maintain:

1. Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and
2. Financial management systems that meet the standards for fund control and accountability as established in 2 CFR Parts 200 and 600

Requirements and Procedures.
Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the Department of State to the non-Federal entity.

In order of preference, advance payment mechanisms include:
1. Electronic funds transfer (EFT) via the Department of Health & Human Services (HHS) Payment Management System (PMS);
2. Department of State-issued electronic funds transfers (EFT); and
3. Treasury check.
The Department must authorize payment by a means other than through PMS.

**Forms.**

Unless otherwise specified in these Terms and Conditions, only the following forms shall be authorized for the non-Federal entities in requesting advances and reimbursements.
The Department shall not require more than an original and two copies.

1. **SF-270. Request for Advance or Reimbursement.** Requests for Treasury check advance payment shall be submitted on **SF-270.** — Request for Advance or Reimbursement, or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the non-Federal entity automatically through the use of a predetermined payment schedule or if precluded by special Department of State instructions for electronic funds transfer.

2. Payments under the award will be made through the U.S. Department of Health and Human Services Payment Management System (PMS-SMARTLINK). PMS-SMARTLINK can also be accessed at the following address:

If the non-Federal entity needs further assistance, they are to contact the GO identified on form **DS-1909.** Non-Federal entities should request funds based on immediate disbursement requirements and disburse funds as soon as possible to minimize the Federal cash on hand in accordance with the policies established by the U.S. Treasury Department and mandated by OMB.

**XIII. Prior Approval Requirements**

For non-construction Federal awards, non-Federal entities must request prior approvals from Federal awarding agencies for one or more of the following program or budget-related reasons:

(a) The disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator. (b) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval. (c) The transfer of funds budgeted for participant support costs as defined in §200.75 “Participant support costs” to other categories of expense. (d) Unless described in the application and funded in the approved Federal awards, the sub-awarding, transferring or contracting out of any work under a Federal award. This provision does not apply to the acquisition of supplies, material, equipment or general support services. (e) Changes in the approved cost-sharing or matching provided by the non-Federal entity. No other prior approval requirements for specific items may be imposed unless an exception has been approved by OMB. (f) Rebudgeting more than 10% of the total approved award between direct cost categories.

**XIV. Period of Availability of Funds**

The project period of the award is indicated on the award cover sheet (**Form DS-1909**). The non-Federal entity may charge to the award only allowable costs resulting from obligations incurred during the project period. However, the funds shall be available—barring cancellation of the relevant appropriation— for closeout activities that occur after
the project period, and the non-Federal entity shall liquidate all obligations incurred
under the award no later than 90 days after the project period.

XV. Indirect Costs
Indirect costs will not be allowable charges against this award unless specifically included as a
line item in the approved budget for this award.

Indirect cost recovery for any actual indirect costs incurred by the non-Federal entity which are
greater than the indirect cost line item in the approved award budget is limited up to the award
amount.

A non-profit organization which has not previously established an indirect cost rate with a
Federal agency, that believes the DOS should be its cognizant agency, shall submit its initial
indirect cost proposal immediately after the organization is advised that an award will be made
and, in no event, later than three months after the effective date of the award. For all NICRA and
indirect rate inquiries please contact AQM-NICRA@state.gov.

If a dispute arises in a negotiation of an indirect cost rate between DOS and the non-
Federal entity, the dispute shall be resolved in accordance with the appeals procedures of
the Department of State, Office of Acquisition Management (A/LM/AQM).

XVI. Publication for Professional Audiences
Any publications or articles resulting from the award must acknowledge the support of
the Department of State and include a disclaimer of official endorsement as follows:
“This [article] was funded [in part] by a grant from the United States Department of
State. The opinions, findings and conclusions stated herein are those of the author[s] and
do not necessarily reflect those of the United States Department of State”. The non-
Federal entity must ensure that this disclaimer be included on all brochures, flyers,
posters, billboards, or other graphic artwork that are produced under the terms of the
award.

XVII. Branding and Marking Strategy
The Recipient shall recognize the United States Government’s funding for activities
specified under this award at the project site with a graphic of the U.S. flag accompanied
by one of the following two phrases based on the level of funding for the award:

1) Fully funded by the award: ‘Gift of the United States Government’
2) Partially funded by the award: ‘Funding provided by the United States Government’

Exemptions from this requirement may be allowable but must be agreed to in writing by
the Grants Officer.

All programs, projects, assistance, activities, and public communications to foreign
audiences, partially or fully funded by the Department, should be marked appropriately
overseas with the standard U.S. flag in a size and prominence equal to (or greater than) any other logo or identity. The requirement does not apply to the Recipient’s own corporate communications or in the United States.

The Recipient should ensure that all publicity and promotional materials underscore the sponsorship by or partnership with the U.S. Government or the U.S. Embassy. The Recipient may continue to use existing logos or program materials; however, a standard rectangular U.S. flag must be used in conjunction with such logos.

The U.S. flag may replace or be used in conjunction with the Department of State seal, the U.S. embassy seal, or other DOS program logos.

Sub non-Federal entities and subsequent tier sub-award agreements are subject to the marking requirements and the non-Federal entity shall include a provision in the sub non-Federal entity agreement indicating that the standard, rectangular U.S. flag is a requirement.

In the event the non-Federal entity does not comply with the marking requirements as established in the approved assistance agreement, the Grants Officer Representative and the Grants Officer must initiate corrective action with the Non-Federal entity.

XVIII. Travel

All Federal Government-financed international air transportation must be accomplished by U.S. Flag air carriers or U.S. code sharing to the extent that service by those carriers is available. These circumstances are outlined below:

1. The United States – European Open Skies Air Transport Agreement (U.S.–E.U. Open Skies Agreement) is a bilateral/multilateral agreement that allows federal funded transportation services to use foreign air carriers under specific circumstances. Due to recent modifications to the U.S. – E.U. Open Skies Agreement, the Department’s travel policy has been amended.

2. The modified agreement allows travelers to:

a. Use EU carriers if the travelers are not eligible to use City Pair Fares. Examples would be non-Federal entities and sub non-Federal entities of Federal Awards traveling between points not reflected in the approved Federal Award budget.

b. Use EU carriers between points in the United States and points OUTSIDE of the EU when there is no City Pair Fare on the route or the traveler is not eligible to use the fare. In essence, this allows travelers to compare costs and select between an EU and U.S. flag carrier when the flight originates, arrives in, or stops in any of the EU countries.

c. For additional information regarding these issues, we invite the non-federal entity to review the frequently asked questions posted on our A/LM website at http://almopsttm.a.state.gov/EU_OPEN_SKIES_AMENDMENT_FAQ.asp or contact TransportationQuery@state.gov.
For information on other "open skies" agreements into which the United States has entered, please refer to GSA's website at http://www.gsa.gov/portal/content/103191.


XIX. Prohibition Against Assignment
Notwithstanding any other provision of an award, the non-Federal entity must not transfer, pledge, mortgage, or otherwise assign the award, or any interest therein, or any claim arising thereunder, to any party or parties, bank trust companies, or other financing or financial institutions.

XX. Monitoring and Reporting Requirements
Monitoring
The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. Per Section 2 CFR 200.328 http://www.ecfr.gov/cgi-bin/text-idx?node=2:1.1.2.2.1#se2.1.200_1328.

Annual Reconciliation of Continuing Assistance Awards. DOS must reconcile multi-year awards at least annually and evaluate program performance and financial reports. Items to be reviewed include a comparison of the non-Federal entity's work performance to its progress reports and project expenditures. See Section 7 of the U.S. Department of State Award Specific Provisions for details regarding reporting and monitoring.

Federal Funding Accountability and Transparency Act (FFATA) Reporting Procedures
Awards that are deemed 'sensitive' and therefore do not require FFATA reporting will be designated by a provision in Section 7 of the U.S. Department of State Award Specific provisions stating that this award is not subject to the Federal Funding Accountability and Transparency Act (FFATA) sub-award reporting requirements as outlined in the Office of Management and Budgets (OMB) guidance issued August 27, 2010.

Reporting of first-tier sub awards.
1. Applicability. Unless the non-Federal entity is exempt as provided under exemptions of this award term, the non-Federal entity must report each action that obligates $25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a sub award to an entity (see definitions of this award term).

2. Where and when to report.
   i. You must report each obligating action described in paragraph a.1. of this award term to http://www.fsrs.gov.
ii. For sub award information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. The non-Federal entity must report the information about each obligating action that the submission instructions posted at http://www.fsrs.gov specify.

**Reporting Total Compensation of Non-Federal entity Executives.**

1. Applicability and what to report. The non-Federal entity must report total compensation for each of the five most highly compensated executives for the preceding completed fiscal year, if -
   i. the total Federal funding authorized to date under this award is $25,000 or more;
   ii. in the preceding fiscal year, the non-Federal entity received—
      (A) 80 percent or more of the annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and sub awards); and
      (B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and sub awards); and
      (C) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. The non-Federal entity must report executive total compensation described in paragraph 1. of this award term:
   i. As part of your registration profile at http://www.sam.gov.
   ii. By the end of the month following the month in which this award is made, and annually thereafter.

**Reporting of Total Compensation of Sub non-Federal entity Executives.**

1. Applicability and what to report. Unless the non-Federal entity is exempt as provided in exemptions of this award term, for each first-tier sub non-Federal entity under this award, the non-Federal entity shall report the names and total compensation of each of the sub non-Federal entity’s five most highly compensated executives for the sub non-Federal entity’s preceding completed fiscal year, if—
   i. in the sub non-Federal entity’s preceding fiscal year, the sub non-Federal entity received—
      A. 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and sub awards); and
B. $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and sub awards); and
C. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. The non-Federal entity must report sub non-Federal entity executive total compensation described in paragraph 1. of this award term:
   i. To the non-Federal entity.
   ii. By the end of the month following the month during which the sub award is made. For example, if a sub award is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), the non-Federal entity must report any required compensation information of the sub non-Federal entity by November 30 of that year.

Exemptions
If, in the previous tax year, gross income, from all sources, was under $300,000, the non-Federal entity are exempt from the requirements to report: Sub awards; and the total compensation of the five most highly compensated executives of any sub non-Federal entity.

Definitions.
For purposes of this award term:
1. Entity means all of the following, as defined in 2 CFR part 25:
   i. A Governmental organization, which is a State, local government, or Indian tribe;
   ii. A foreign public entity;
   iii. A domestic or foreign nonprofit organization;
   iv. A domestic or foreign for-profit organization;
   v. A Federal agency, but only as a sub non-Federal entity under an award or sub award to a non-Federal entity.
2. Executive means officers, managing partners, or any other employees in management positions.
3. Sub award:
   i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the non-Federal entity award to an eligible sub non-Federal entity.
   ii. The term does not include your procurement of property and services needed to carry out the project or program.
   iii. A sub award may be provided through any legal agreement, including an agreement that you or a sub non-Federal entity considers a contract.
4. Sub non-Federal entity means an entity that:
   i. Receives a sub-award from you (the non-Federal entity) under this award; and
   ii. Is accountable to you for the use of the Federal funds provided by the sub award.
5. Total compensation means the cash and noncash dollar value earned by the executive during the non-Federal entity's or sub non-Federal entity’s preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
   i. Salary and bonus.
   ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
   iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
   iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
   v. Above-market earnings on deferred compensation which is not tax-qualified.
   vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

XXI. Post-Award Requirements for Closeout

Closeout procedures require:
1. submission by the grant non-Federal entity of final financial and program reports within ninety (90) calendar days after the project period end date;
2. reconciliation of all cost or expenditure discrepancies;
3. prompt payment of allowable costs;
4. immediate collection of any unexpended funds or disallowed costs;
5. de-obligation of excess funds; and
6. disposition of property and/or equipment acquired under the award.

The non-Federal entity must make every effort to obtain its Final Indirect Rate from its cognizant agency. The settlement for any upward or downward adjustment to the Federal share of costs for provisional NICRA rates are based on the non-Federal entity’s submission of its Final SF-425 and, for rate increases, the availability of funds remaining in the obligation. Unrecovered indirect costs may be considered cost share or matching with prior approval of the Grants Officer. Note that the non-Federal entity must be able to substantiate any cost share.

If the non-Federal entity organization does not have its Final Indirect Rate within 12 months after the end of the project period end date, the Grants Officer shall proceed with close-out after which all funds remaining in the obligation shall be de-obligated.
XXII. Retention and Access Requirements for Records
The non-Federal entity must maintain financial records, supporting documents, statistical records, and all other records pertinent to an award for a period of three years from the date of submission of the final expenditure report. Exceptions to the three-year rule are referenced in 2 CFR 200.333. For awards that are renewed quarterly or annually, the retention period is from the date of the submission of the quarterly or annual financial report as authorized by the Department. The Department must request transfer of certain records to its custody from non-Federal entities when it determines that the records possess long-term retention value. However, in order to avoid duplicate recordkeeping, DOS may arrange for non-Federal entities to retain any records that are continuously needed for joint use.

Timely and Unrestricted Access. DOS authorized officials, the Inspector General, Comptroller General, or any of their duly authorized representatives have the right of timely and unrestricted access to any books, documents, papers, or other records of non-Federal entities that are pertinent to the award, in order to make audits, examinations, excerpts, transcripts, and copies of such documents. This right also includes timely and reasonable access to a non-Federal entity’s personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but must last as long as records are retained.

XXIII. Audits
For all DOS awards to a U.S. based non-federal entity, regardless of business type, the non-Federal entities are subject to the audit requirements found in 2 CFR Part 200 Subpart F. In addition, the non-Federal entities are subject to the audit requirements found in the Single Audit Act of 1984, 31 U.S.C. 7501-7507.

Non-Federal entities that expend $750,000 or more in a year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the revised circular.

The Inspector General or any of his or her duly authorized representatives shall have access to any pertinent books, documents, papers and records of the non-Federal entity. Information accessible to the Inspector General includes written, printed, recorded, produced, or reproduced by any mechanical, magnetic, or other process or medium. DOS reserves the right to make audits, inspections, excerpts, transcriptions or other examinations as authorized by law of the non-Federal entities’ documents and facilities.

The data collection form and the reporting package shall be submitted electronically to the Federal Audit Clearinghouse (https://harvester.census.gov/sac).

DOS and its authorized representatives have the legally enforceable right to examine, audit, and copy, at any reasonable time, all records in DOS possession pertaining to the award.
Audits of Foreign Non-Federal entity Organizations
All Foreign organizations that expend $750,000 or more in a fiscal year in Federal awards must perform an independent, non-Federal entity-contracted Single Audit or Program Specific Audit.

Program-specific Audit – means an audit of one Federal award program. Single Audit – means an audit which includes both the entity’s financial statements and the Federal Awards to be conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS).

The audits must be independently and professionally executed in accordance with GAGAS either prescribed by a government’s Supreme Audit Institution with auditing standards approved by the Comptroller General of the United States, or in accordance with the host country’s laws or adopted by the host country’s public accountants or associations of public accountants, together with generally accepted international auditing standards. However, foreign entity audits consistent with International Standards for Auditing or other auditing standards are acceptable with the Grants Officer’s approval.

For sub-non-Federal entities expending $750,000 or more in Department of State award funding during their fiscal year, Department of State standard audit provisions require that Prime non-Federal entities certify that audits of sub-non-Federal entities are performed annually and according to the standards described above.

The cost of audits may be charged either as an allowable direct cost to the award, or included in the organizations established indirect costs in the award’s detailed budget.

XXIV. Debarment and Suspension
Debarment and suspension are discretionary actions that, taken in accordance with this subpart, are appropriate means to effectuate this policy.

1. The serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for the Government’s protection and not for purposes of punishment. Agencies shall impose debarment or suspension to protect the Government’s interest and only for the causes and in accordance with the procedures set forth in 2 CFR Part 180 subparts A Through J and 2 CFR Part 601.

2. When more than one agency has an interest in the debarment or suspension of a non-Federal entity, the Interagency Committee on Debarment and Suspension, established under Executive Order 12549, and authorized by Section 873 of the National Defense Authorization Act, 2009 (P. L. 110-417), shall resolve the lead agency issue and coordinate such resolution among all interested agencies prior to the initiation of any suspension, debarment, or related administrative action by any agency.

The non-Federal entity certifies to the best of its knowledge and belief that it and its principals:
1. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

2. Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated; and

4. Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this award.

XXV. Termination
Awards may be terminated in whole or in part if any of the circumstances stated below apply:

National Security or Foreign Policy Interests
By DOS, if at any time DOS determines that continuation of all or part of the funding for a program should be suspended or terminated because such assistance is not consistent with the national security or foreign policy interests of the United States, or would be in violation of an applicable law. In such cases, DOS may, following notice to the non-Federal entity, suspend or terminate the award in whole or in part and prohibit the non-Federal entity from incurring additional obligations chargeable to the award other than those costs specified in the notice of suspension.

By Mutual Agreement
When DOS wishes to terminate a project, the GO will issue, in writing, a termination notice to the non-Federal entity's authorized representative with a copy to the project manager and the GOR. The non-Federal entities may terminate their performance of a project in whole or in part. When both parties agree that continuation of the project would not produce results commensurate with further expenditure of funds or for any other reason, the award may be terminated by mutual consent. The non-Federal entities may terminate the project after the authorized representative advises the GO in writing; and concurrently sends a copy to the GOR. Within 30 days after receipt of a request by either party for termination by mutual agreement, the other party will provide an
appropriate written response. The two parties must agree upon the termination conditions, including the effective date, and, in the case of partial termination, the portion to be terminated. The non-Federal entity must not incur new obligations for the terminated portion after the effective date and must cancel as many outstanding obligations as possible. DOS will allow full credit to the non-Federal entities for the Federal Share of the obligations that cannot be cancelled properly incurred by the non-Federal entities prior to termination.

For Cause
DOS reserves the right to terminate the award in whole or in part at any time before the project period end date, whenever it is determined that the non-Federal entities have failed to comply with the conditions of the award. However, if DOS determines in the case of partial termination that the reduced or modified portion of the award will not accomplish the purposes for which the award was made, it may terminate the award in its entirety.

DOS must promptly notify the non-Federal entities in writing of the determination and reasons for the termination, together with the effective date. Payments made to non-Federal entities or recoveries by DOS awards terminated for cause must be in accordance with the legal rights and liabilities of the parties.

XXVI. Certification Regarding Lobbying
As required by Section 1352, Title 31 of the U.S. Code, and implemented at 2 CFR Part 418, for persons entering into a grant or cooperative agreement over $100,000, the applicant certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 contract, the making of any Federal Cooperative Agreement, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.

2. 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 contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-L.L.L., "Disclosure of Lobbying Activities," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all non-Federal entities shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this
certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

XXVII. Section 504 of the Rehabilitation Act

Section 504 of the Rehabilitation Act provides that no otherwise qualified individual with a disability in the United States, shall, solely by reason of his/her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal assistance. A non-Federal entity of federal financial assistance must provide programs and services in a manner that does not discriminate based on disability and ensures equal access and opportunity for people with disabilities.

For the purpose of Section 504, the term individual with a disability means any person who (a) has a physical or mental impairment which substantially limits one or more of such person’s major life activities, (b) has a record of such impairment, or (c) is regarded as having such impairment.

XXVIII. Awards to Faith-Based and Community Organizations

The non-Federal entity may not discriminate against any beneficiary or prospective beneficiary under this award on the basis of religion or belief:

Accordingly, in providing services supported in whole or in part by this agreement or in its outreach activities related to such services, the non-Federal entity may not discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Unless specifically authorized by the Department of State, non-Federal entities that engages in explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, and proselytization, must perform such activities and offer such services at a different time or location from any programs or services directly funded by this award, and participation by beneficiaries in any such explicitly religious activities must be voluntary.

If the non-Federal entity makes sub-awards under this agreement, faith-based organizations should be eligible to participate on the same basis as other organizations, and should not be discriminated against on the basis of their religious character or affiliation.

XXIX. Religious Persecution

The non-Federal entity must ensure that its personnel take into account in their work the considerations reflected in the International Religious Freedom Act concerning country-specific conditions, the right to freedom of religion, methods of religious persecution practiced in foreign
countries, and applicable distinctions within a country between the nature of and treatment of various religious practices and believers.

XXX. Minority Business Participation, Executive Order 12432
In accordance with Executive Order 12432, Minority Business Enterprise Development, DOS encourages the non-Federal entities to utilize minority business enterprises in the performance of the award. When contracting for any supplies, services, research, or construction under the award, the non-Federal entities must make their best efforts to solicit bids, proposals, or quotations from minority business enterprises.

A minority business enterprise is defined as a business that is at least 51 percent owned by one or more minority individuals, or in the case of any publicly owned business, at least 51 percent of the voting stock is owned by one or more minority individuals. The daily business operations are likewise managed by a minority owner. A minority individual is defined as a U.S. citizen who has been subjected to racial or ethnic prejudice or cultural bias because of his or her identity as a member of this group without regard to his or her individual qualities. Such groups include, but are not limited to: Black [African] Americans, Hispanic Americans, Native Americans, and Asian-Pacific Americans.

XXXI. Trafficking in Persons
1. Provisions applicable to any recipient.
   1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
   2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
      i. Implies section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
     Is in addition to all other remedies for noncompliance that are available to us under this award.

2. You must include the requirements of this award term in any subaward you make to a private entity.

3. Provisions applicable to a recipient that is a private entity.
   1. You as the recipient, your employees, subrecipients under this award, and subrecipients’ employees may not:
      i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
     ii. Procure a commercial sex act during the period of time that the award is in effect; or
     iii. Use forced labor in the performance of the award or subawards under the award.

2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity—
ii. Is determined to have violated a prohibition in paragraph a.1 of this award term; or

iii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
   1. Associated with performance under this award; or
   2. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement),” as implemented by our agency at 2 CFR part 376.

4. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
   1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
   2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
      ii. Associated with performance under this award; or
   3. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement),” as implemented by our agency at 2 CFR part 376.

5. Definitions. For purposes of this award term:
   1. “Employee” means either:
      . An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
      i. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
   2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
   3. “Private entity”:
      . Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
      i. Includes:
         1. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
         2. A for-profit organization.
4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102)

XXXII. Blocking Property and Prohibiting Transactions Who Commit, Threaten To Commit, or Support Terrorism, Executive Order 13224

Executive Order 13224 designated certain individuals and entities that commit or pose a significant risk of committing terrorist acts and authorized the Secretary of State to designate additional individuals and entities.

The Order also authorized the Secretary of the Treasury to designate additional individuals and entities that provide support or services to, are owned or controlled by, act for or on behalf of, or are “otherwise associated with,” an individual or entity who has been designated in or under the order. All property and interests in property of the individual or entity in the United States or in the possession or control of United States persons are blocked. The order prohibits all transactions and dealings in blocked property or interests in the United States or by United States persons, and also prohibits transactions with, and provision of support for, individuals or entities listed in or subject to the Order.

Non-Federal entities should be aware of Executive Order 13224 and the names of the individuals and entities designated thereunder. A list of these names can be found in the exclusions section of the SAM.gov. The web site is: http://www.sam.gov.

Non-Federal entities are reminded that U.S. Executive Order and U.S. laws prohibit transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the non-Federal entity/contractor to ensure compliance with these Executive Orders and laws.
City Manager's Report

From 2600 - Economic Development
Supplier, Vendor, Company, Individual
Name Anthony James Painting and Contracting
Address 33 S. Saint Clair Street
Dayton, Ohio 45402

Date April 14, 2021
Expense Type Development Agreement
Total Amount $100,000.00 thru 12-31-2022

Fund Source(s) Fund Code(s) Fund Amount(s)
West Dayton Development 22502-2600-1224-41 $100,000.00

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

Description

West Dayton Development Trust Fund Agreement

The Department of Economic Development requests approval to enter into a Development Agreement to provide $100,000.00 to Anthony James Painting and Contracting ("AJPC") for the relocation and expansion of their business to Southwest Dayton. AJPC will invest approximately $436,000.00 for the acquisition and redevelopment of 11,000 square feet of commercial space at 1436 Cincinnati Street.

Funding through the West Dayton Development Trust Fund (WDDTF) will help AJPC acquire the property, complete necessary building improvements, and purchase and install machinery, equipment, furniture and fixtures. This Agreement allows the City to provide gap financing there by enabling the company to preserve working capital to support future operations. This project will help AJPC retain eight (8) existing full-time jobs with an average salary of $29,000.00 and help them create four (4) full-time jobs within the next two years.

AJPC is a family and minority-owned business founded in 1984. The Dayton based company specializes in contract painting for commercial and residential properties.

The Agreement will commence upon execution and expire December 31, 2022.

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

A Certificate of Funds for $100,000 and a map are attached.

Signatures/Approval

Approved by City Commission

Division

Department

City Manager

FORM NO. MS-16

Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

X New Contract

Renewal Contract

NO DRAFT DOCUMENTS PERMITTED

X Change Order

Contract Start Date
Expiration Date
Original Commission Approval
Initial Encumbrance
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: $100,000.00

Fund Code 22502 - 2600 - 1224 - 41 -
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: Anthony James Painting and Contracting

Vendor Address: 33 S. St. Clair Street Dayton Ohio 45402

Street City State Zipcode + 4

Federal ID: 31-1145608

Commodity Code: 91849

Purpose: Agreement to assist with acquisition and rehabilitation of a building located at 1436 Cincinnati Street.

Contact Person: Jill Bramini

Economic Development Department/Division 3/30/2021 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.

Finance Director Signature

Date 04/01/2021

CF Prepared by [Signature]

Date 03/31/2021

CF/CT Number CT21-2959

October 18, 2011
March 30, 2021

TO: Shelley Dickstein, City Manager
    City Manager’s Office

    LaShea Lofton, Acting Director
    Finance Department

FROM: Ford P. Weber, Director
      Department of Economic Development

SUBJECT: Request for Certificate of Funds – Development Agreement with Anthony James Painting and Contracting

Attached please find a Certificate of Funds and a Development Agreement with Anthony James Painting and Contracting for review and approval by the Dayton City Commission. The Agreement provides funding to support the acquisition and rehabilitation of a building located at 1436 Cincinnati Street, Dayton, Ohio. The company has been approved to receive this funding from the West Dayton Development Trust Fund and the Department of Economic Development is recommending approval of the Agreement at this time.

If you have any questions, please contact me at extension 3621 or Cynthia Long of my staff by email.

FPW/cml
WEST DAYTON DEVELOPMENT TRUST FUND AGREEMENT

THIS WEST DAYTON DEVELOPMENT TRUST FUND AGREEMENT ("Agreement") is made and entered into between Anthony James Painting and Contracting, a for-profit corporation organized and existing under the laws of the State of Ohio, currently located at 33 S. Saint Clair Street, Dayton, Ohio 45402 ("Company"), and the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio ("City").

WITNESSETH THAT:

WHEREAS, The purpose of the West Dayton Development Trust Fund ("WDDTF") is to fund projects that primarily benefit and enhance the growth and development of the West Dayton area, which is defined as the West Land Use District; and,

WHEREAS, City desires to stimulate, promote and increase economic and community development activities that provide meaningful, long-term benefits and improvements to West Dayton residents; and,

WHEREAS, Company plans to acquire and rehabilitate a building that will become the new location for their business operations; and,

WHEREAS, City finds that the project as defined herein will benefit the community and further the purpose of the WDDTF and wishes to support the Company in carrying out the project under the terms and conditions set forth herein; and,

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

ARTICLE 1. DEFINITIONS.

For the purposes of this Agreement, the following words and phrases shall have the following meanings ascribed to them respectively, regardless of whether or not the words and phrases are capitalized:

West Dayton Development Trust Fund Grant. A grant provided hereunder by the City of Dayton to assist Company in leveraging private investment and partnership opportunities in the West Land Use District and enhancing the quality of life therein.

Facility. The real property located at 1436 Cincinnati Street, Dayton, Ohio. The Facility is in the Stoney Ridge neighborhood.

Project. Improving and equipping the Facility for the Company’s headquarters, without limitation, interior and exterior building improvements: electrical, plumbing, and HVAC system upgrades; machinery and equipment; furniture and fixtures; masonry; flooring; drywall; doors; paint; signage; lighting, etc.

Project Costs. The total costs Company incurs and pays in completing the Project, including those which may be prior to the term of this Agreement. Expenses for professional services and other "soft costs" are excluded from this definition.
**Eligible Project Costs.** Those Project Costs actually incurred and paid for by Company during the term of this Agreement.

**ARTICLE 2. PROJECT TIMELINE.**

Company shall commence the Project within one hundred eighty (180) days of Agreement execution and complete the Project on or before December 31, 2022, unless such time for commencement and/or completion is extended upon mutual written agreement between the parties to this Agreement. As further delineated herein, all construction activities and other work required to complete the Project shall be performed and completed in accordance with all applicable federal, state, and local laws, rules, regulations, and orders, including all applicable building, zoning, well field, and fire code requirements.

**ARTICLE 3. FUNDING.**

City will provide Company a West Dayton Development Trust Fund Grant to reimburse Company for Eligible Project Costs in an amount not to exceed the lesser of (i) One Hundred Thousand Dollars and Zero Cents ($100,000.00) or (ii) the Grant Cap as defined herein. The parties contemplate that the Project Costs will be approximately Four Hundred Thirty-Six Thousand Dollars and Zero Cents ($436,000.00). Rounding the decimal point up in favor of the Company, One Hundred Thousand Dollars and Zero Cents ($100,000.00) is approximately twenty-two and nine-tenths percent (22.9%) ("Reimbursement Percentage") of the Project Costs. Therefore, the Grant Cap shall be twenty-two and nine-tenths percent (22.9%) of the Project Costs ("Grant Cap"). (As an example, if the Project Costs are $200,000, the grant cap would be 22.9% of that amount ($45,800)).

Company shall only use the West Dayton Development Trust Fund Grant for reimbursement of Eligible Project Costs. All properly evidenced Project Costs may be included as Project Costs and factored into calculating the Grant Cap; however, only Eligible Project Costs are reimbursable. Company is solely responsible for all Project Costs in excess of the funding provided by City hereunder.

Company shall submit a Request for Reimbursement of the Project Grant periodically (no more than monthly) utilizing a cover form substantially similar to that attached hereto and incorporated herein as Exhibit A ("Request for Reimbursement"). Each Request for Reimbursement shall state the applicable time frame covered and the total amount requested; detail the work and/or services performed; and contain such records, information, and/or documentation to substantiate the Eligible Project Costs for which reimbursement is sought. Company shall also provide cancelled checks as evidence of payment of such costs. Expenses incurred as part of the Project Costs for purposes of calculating the Reimbursement Percentage and Grant Cap must be documented in substantially the same manner as Eligible Project Costs. Appropriate City inspection personnel will verify all Project Costs. Unless disputed, City will disburse payment within forty-five (45) days from receipt of the Request for Reimbursement.

**ARTICLE 4. SPECIFIC CONDITIONS.**

A. Company shall comply with all applicable federal, state, and local laws, including applicable rules, regulations, and orders governing receipt and use of municipal and other public funds for the Project. All construction activities and other work required to complete the Project shall be performed and completed in accordance with all applicable federal, state, and local laws, rules, regulations, and orders, including all building, zoning, and fire code requirements. Company 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. Developer agrees that the City’s Procurement Enhancement Plan (“PEP”) participation goals for certified Small Business Enterprises (“SBEs”), Minority Business Enterprises (“MBEs”), Women’s Business Enterprises (“WBEs”), and Dayton Local Small Businesses (“DLSBs”) apply to the Project. The Developer and any Developer Affiliates have the obligation to require individual company compliance with the PEP. The PEP participation goals are:

<table>
<thead>
<tr>
<th>Total PEP Participation:</th>
<th>20%</th>
</tr>
</thead>
<tbody>
<tr>
<td>MBE:</td>
<td>15%</td>
</tr>
<tr>
<td>WBE:</td>
<td>5%</td>
</tr>
</tbody>
</table>

C. Counting Toward Goals.

(i) To count toward the Project’s PEP Participation Goals, a company contracting on the Project must be certified with the City’s Human Relations Council (“HRC”) and must be certified to perform the proposed work. The City encourages Company and Company’s construction contractors to review the list of PEP-certified companies at https://citybots.com/Home/Links (click on the “PEP Certification List” button) and to obtain a copy of each PEP-certified firm’s Certificate.

(ii) If a company is not currently PEP-certified, it may apply for PEP certification at any time; however, once a company is certified, only the portion of work performed on or after the company’s PEP certification date shall count toward the Project’s PEP Participation Goals. If a company’s PEP certification expires, only the portion of work performed while the company’s PEP certification was active shall count toward the Project’s PEP Participation Goals.

(iii) For each PEP-certified firm, Company or Company’s construction contractor shall submit to the HRC an executed PEP Participation Form describing the work to be performed, the dollar amount of the PEP firm’s contract or subcontract, and the dollar amount to be counted toward the Project’s PEP Participation Goals. The HRC shall acknowledge receipt of each PEP Participation Form within two (2) business days, and shall attempt to verify the PEP firm’s participation within five (5) business days. A verified PEP firm’s participation can be counted in any category (i.e., SBE, MBE, WBE, and/or DLSB) in which the firm is certified.

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

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

F. Reimbursement to Company will be made proportionally to the percentage of Project funding provided hereunder by City and identified above.

ARTICLE 5. TERM AND TERMINATION.

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

1. A receiver for Company’s assets is appointed by a court of competent jurisdiction.

2. Company is divested of its rights, powers, and privileges under this Agreement by operation of law.
3. Company’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 Company to remedy such failure within thirty (30) days from the date of written notice from City.

4. Company’s violation of any applicable federal, state, or local law applicable to the Project and construction thereof.

5. If, prior to the receipt of any funding from City hereunder and upon giving thirty (30) days prior written notice, Company desires to terminate this Agreement.

In the event of termination prior to Project completion and if City provided any funds to Company hereunder, Company shall repay to City within forty-five (45) business days from the effective date of termination all funds provided hereunder and, upon such repayment, Company shall be released from its obligations hereunder. This obligation to remit repayment of funding shall survive termination of this Agreement until such funds are received by City. If no funds were provided, the parties shall be immediately relieved of their obligations hereunder.

ARTICLE 6. INDEMNIFICATION.

Company 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 Company, and its agents, employees, contractors, sub-contractors, and representatives in undertaking and completing the Project, and/or Company’s failure to comply with federal, state, and local laws, including (as applicable).

ARTICLE 7. EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION.

Company 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 8. POLITICAL CONTRIBUTIONS.

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

ARTICLE 9. RECORDS AND RETENTION.

Company shall use Generally Accepted Accounting Principles ("GAAP") or the Income Tax Accounting Method 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 Company 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 reasonably request,
Company 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. Company 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 Company 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 (3) year period, Company shall retain
such Records until completion of the actions and resolution of all issues or the expiration of the three (3)
year period, whichever occurs later.

ARTICLE 10. TAX REPRESENTATION.

Company 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 Company is liable under Chapter 5733, 5735,
5739, 5741, 5743, 5747, or 5753 of the Ohio Revised Code or, if such delinquent taxes are owed,
Company currently is paying such delinquent taxes pursuant to an undertaking enforceable by the State of
Ohio or an agent or instrumentality thereof, or Company filed a petition in bankruptcy under 11 U.S.C.
Section 101 et seq., or such a petition has been filed against Company. 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 11. GENERAL PROVISIONS.

A. Conflict of Interest. Company represents that to the best of its knowledge it has no interest that
would undermine the impartiality of either party because of the conflict between the party’s self-
interest and this Agreement or public interest in any manner or degree. Company further
and covenants that it will not acquire any such interest, directly or indirectly during the term of this
Agreement.

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 Company.

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: Veronica Morris  
Department of Economic Development  
City of Dayton  
P.O. Box 22, 101 W. Third Street  
Dayton, OH 45401

For Company: Anthony James, Sr. - Owner  
Anthony James Painting and Contracting  
33 S. Saint Clair Street  
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 Company, each by a duly authorized representative, have executed this Agreement as of the date set forth below.

* [Remainder of this page intentionally left blank]
ANTHONY JAMES PAINTING AND CONTRACTING

By: ____________________________  
Print name: ____________________________  
Its: ____________________________  

CITY OF DAYTON, OHIO

City Manager

Date

APPROVED AS TO FORM
AND CORRECTNESS:

3/26/2021

 Amelia N. Blankenship for
City Attorney  
Signed by: Blankenship, Amelia

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

__________________________, 2021

Min. / Bk. _______  Pg. _______

__________________________

Clerk of the Commission
Exhibit A

DATE ___________  VENDOR/ORGANIZATION ____________________________

AMOUNT REQUESTED ______________

The above-named vendor/organization hereby submits this request for reimbursement. We have reviewed our agreement with the City of Dayton and believe our request meets the eligibility requirements for reimbursement as detailed below.

_____ The expenses for which reimbursement is sought or which, if applicable, comprise project costs that are the basis of calculating the Reimbursement Percentage, were actually incurred as established by the attached documentation. (In the case of improvements to real property, this would most likely be invoices and proof of payment (i.e. copy of cancelled check) for construction and/or equipment/materials. For professional services agreements, this would most likely be a list of activities performed and the hours and wages that correlate thereto.)

_____ The expenses were incurred and/or services were performed during the eligible time frame set forth in the agreement.

_____ The expenses were incurred for eligible activities as set forth in the agreement.

_____ Activity reports have been duly submitted to the Department of Economic Development if required. (This generally pertains to professional services agreements.)

_____ The project is “completed” if required. Evidence of completion of the project (photos, Certificate of Use and Occupancy, etc.) is attached hereto.

_____ Organization has met all job creation and retention requirements if applicable or is on track to meet such requirements. (Detail job creation and retention requirements and status thereof below if appropriate.)

ADDITIONAL INFORMATION:


[Over]
For more information, please feel free to contact me unless another person is identified below.

Submitted by:

Signature: __________________________

Title: __________________________

Phone: __________________________

Email: __________________________

Alternative contact for further information if applicable:

__________________________  ________________
Name                         Title

__________________________  ________________
Email                       Phone
Aerial and Street Map
Anthony James Painting Expansion Project – 1428 Cincinnati St.
## West Dayton Development Trust Fund Agreement

The Department of Economic Development requests approval to enter into a Development Agreement with Invictus Development Group, Inc. ("IDC"). IDC is a nonprofit affiliate of Greater Dayton Premier Management (GDPM) created for the development of community development projects. IDC plans to invest approximately $334,000.00 in the acquisition and redevelopment of 6,000 square feet of vacant, commercial space at 2118 Germantown Street. This commercial space will be redeveloped as a community asset focused on providing educational and workforce development opportunities and mental health services for residents in the Miami Chapel neighborhood, in furtherance of the HUD Choice Neighborhood community plan.

The Agreement will provide $100,000.00 to IDC in the form of a grant to assist with funding interior and exterior building improvements; electrical, plumbing, and HVAC system upgrades; machinery and equipment; furniture and fixtures; and new signage and lighting activities for the property.

The Agreement will commence upon execution and expire on December 31, 2023.

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

A map and a Certificate of Funds is attached.

### Signatures/Approval

<table>
<thead>
<tr>
<th>Division</th>
<th>Approved by City Commission</th>
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<tbody>
<tr>
<td></td>
<td>Clerk</td>
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<td>Date</td>
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<td></td>
<td>Updated 8/2016</td>
</tr>
</tbody>
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**From**  
2600 - Economic Development  
Supplier, Vendor, Company, Individual  
Invictus Development Group, Inc.  
400 Wayne Avenue  
Dayton, Ohio 45410

**Date** April 14, 2021  
**Expense Type** Development Agreement  
**Total Amount** $100,000.00 thru 12-31-2023

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<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Dayton Development</td>
<td>22502-2600-1224-41</td>
<td>$100,000.00</td>
</tr>
</tbody>
</table>

**Includes Revenue to the City**  
☑ Yes  
☐ No  

**Affirmative Action Program**  
☑ Yes  
☐ No  
☐ N/A

**Description**

West Dayton Development Trust Fund Agreement
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>x</th>
<th>New Contract</th>
<th>Renewal Contract</th>
<th>Change Order</th>
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<tbody>
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<td>Expiration Date</td>
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<td>Original Commission Approval</td>
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<td>Decrease Encumbrance</td>
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<tr>
<td>Remaining Commission Approval</td>
<td>$</td>
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</tbody>
</table>

Required Documentation

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

Amount: $ 100,000.00

Fund Code

| 22502 | - | 2600 | - | 1224 | - | 41 | - | 00 |
| Fund | Org | Acct | Prog | Act | Loc |

Amount: 

Fund Code

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

Attach additional pages for more FOAPALs

Vendor Name: Invictus Development Group, Inc.
Vendor Address: 400 Wayne Avenue Dayton OH 45410
Federal ID: 81-5075704
Commodity Code: 91849
Purpose: Development agreement to fund interior and exterior building improvements; electrical, plumbing, and HVAC system upgrades; machinery and equipment; furniture and fixtures; and new signage and lighting activities for property at 2118 Germantown Street, Dayton, Ohio.
Contact Person: Jill Bramini
Economic Development Department/Division 3/31/2021
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 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.

Finance Director Signature: 

Date: 04/01/2021

CF Prepared by:

Date: 3/31/2021
CF/CT Number: CT21-2958

Finance Department
October 18, 2011
March 31, 2021

TO: Shelley Dickstein, City Manager
    City Manager’s Office

    LaShea Lofton, Acting Director
    Finance Department

FROM: Ford P. Weber, Director
    Department of Economic Development

SUBJECT: Request for Approval – Development Agreement with Invictus
         Development Group, Inc.

Attached for City Commission approval is a Development Agreement with Invictus
Development Group, Inc. (Company) in the amount of $100,000.00. The Company will
undertake the acquisition and redevelopment of a currently vacant, commercial space, located at
2118 Germantown Avenue.

This project is critical to the removal of a significantly blighted structure and restore a
community asset. The restoration of this community asset will focus on increasing educational
and workforce development opportunities and mental health services to residents in the Miami
Chapel neighborhood, as part of the HUD Choice Neighborhood community plan.

If you have any questions, please contact me at extension 3621 or Veronica Morris of my staff
by email.

FPW/vlm
WEST DAYTON DEVELOPMENT TRUST FUND AGREEMENT

THIS WEST DAYTON DEVELOPMENT TRUST FUND AGREEMENT (“Agreement”) is made and entered into between Invictus Development Group, a not-for-profit corporation organized and existing under the laws of the State of Ohio, currently located at 400 Wayne Avenue, Dayton, Ohio 45415 (“Company”), and the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio (“City”).

WITNESSETH THAT:

WHEREAS, The purpose of the West Dayton Development Trust Fund (“WDDTF”) is to fund projects that primarily benefit and enhance the growth and development of the West Dayton area, which is defined as the West Land Use District; and,

WHEREAS, City desires to stimulate, promote and increase economic and community development activities that provide meaningful, long-term benefits and improvements to West Dayton residents; and,

WHEREAS, Company plans to redevelop current vacant commercial space along the Germantown Street Business District Corridor as a facility focused on increasing educational and workforce development opportunities and mental health services to residents in the Miami Chapel neighborhood in furtherance of the HUD Choice Neighborhood community plan; and,

WHEREAS, City finds that the project as defined herein will benefit the community and further the purpose of the WDDTF and wishes to support the Company in carrying out the project under the terms and conditions set forth herein.

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

ARTICLE 1. DEFINITIONS.

For the purposes this Agreement, the words and phrases set forth below shall have the following meanings ascribed to them respectively, regardless of whether or not the words and phrases are capitalized:

West Dayton Development Trust Fund Grant. A grant provided hereunder by the City of Dayton to assist Company in leveraging private investment and partnership opportunities in the West Land Use District and enhancing the quality of life therein.

Facility. The real property located at 2118 Germantown Street, Dayton, Ohio.

Project. Improving and equipping the Facility for use as an educational, workforce development, and mental health services provider including, without limitation, interior and exterior building improvements; electrical, plumbing, and HVAC system upgrades; machinery and equipment; furniture and fixtures; and new signage and lighting.

Project Costs. The costs company incurs and pays in completing the Project, including those costs which may be incurred prior to the term of this Agreement. Expenses for professional services and other “soft costs” are excluded from this definition.
**Eligible Project Costs.** Those Project Costs actually incurred and paid for by Company during the term of this Agreement.

**ARTICLE 2. PROJECT TIMELINE.**

Company shall commence the Project within one hundred twenty (120) days of Agreement execution and complete the Project on or before December 31, 2023, unless such time for commencement and/or completion is extended upon mutual written agreement. As further delineated herein, all construction activities and other work required to complete the Project shall be performed and completed in accordance with all applicable federal, state, and local laws, rules, regulations, and orders, including all applicable building, zoning, well field, and fire code requirements.

**ARTICLE 3. FUNDING.**

City will provide Company a West Dayton Development Trust Fund Grant (“Project Grant”) to reimburse Company for Eligible Project Costs in an amount not to exceed the lesser of (i) One Hundred Thousand Dollars ($100,000) or (ii) the Grant Cap as defined herein. The parties contemplate that the Project Costs (“Contemplated Project Costs”) will be approximately Three Hundred Thirty Four Thousand Dollars ($334,000). Rounding the decimal point up in favor of the Company, One Hundred Thousand Dollars is approximately twenty-nine and nine-tenths percent (29.9%) (the “Reimbursement Percentage”) of the Contemplated Project Costs. Therefore, the Grant Cap shall be twenty-nine and nine-tenths percent (29.9%) of the Project Costs. (As an example, if the Project Costs are $200,000, the grant cap would be 29.9% of that amount ($59,800).

Company shall use the Project Grant for reimbursement of Eligible Project Costs. All properly evidenced Project Costs may be included in calculating the Grant Cap; however, only Eligible Project Costs are reimbursable. Company is solely responsible for all Project Costs in excess of the funding provided by City hereunder.

Company shall submit a Request for Reimbursement of the Project Grant periodically (no more frequently than monthly) utilizing a cover form substantially similar to that attached hereto and incorporated herein as Exhibit A. Each Request for Reimbursement shall state the applicable time frame covered and the total amount requested; detail the work and/or services performed; and contain such records, information, and/or documentation to substantiate the Eligible Project Costs for which reimbursement is sought. Company shall also provide cancelled checks, or other proof of payment City may deem acceptable in its sole discretion, as evidence of payment of such costs. Expenses incurred as part of the Project Costs for purposes of calculating the Reimbursement Percentage and Grant Cap must be documented in substantially the same manner as Eligible Project Costs. Appropriate City inspection personnel will verify all Project Costs. Unless disputed, City will disburse payment within forty-five (45) days from receipt of the Request for Reimbursement.

**ARTICLE 4. SPECIFIC CONDITIONS.**

A. Company shall comply with all applicable federal, state, and local laws, including applicable rules, regulations, and orders governing receipt and use of municipal and other public funds for the Project. All construction activities and other work required to complete the Project shall be performed and completed in accordance with all applicable federal, state, and local laws, rules, regulations, and orders, including all building, zoning and fire code requirements. Company 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. Developer agrees that the City’s Procurement Enhancement Plan (“PEP”) participation goals for certified Small Business Enterprises (“SBEs”), Minority Business Enterprises (“MBEs”), Women’s Business Enterprises (“WBEs”), and Dayton Local Small Businesses (“DLSBs”) apply to the Project. The Developer and any Developer Affiliates have the obligation to require individual company compliance with the PEP. The PEP participation goals are:

- Total PEP Participation: 20%
- MBE: 15%
- WBE: 5%

C. Counting Toward Goals.

(i) To count toward the Project’s PEP Participation Goals, a company contracting on the Project must be certified with the City’s Human Relations Council (“HRC”) and must be certified to perform the proposed work. The City encourages Developer and Developer’s construction contractors to review the list of PEP-certified companies at https://citybotts.com/Home/Links (click on the “PEP Certification List” button) and to obtain a copy of each PEP-certified firm’s Certificate.

(ii) If a company is not currently PEP-certified, it may apply for PEP certification at any time; however, once a company is certified, only the portion of work performed on or after the company’s PEP certification date shall count toward the Project’s PEP Participation Goals. If a company’s PEP certification expires, only the portion of work performed while the company’s PEP certification was active shall count toward the Project’s PEP Participation Goals.

(iii) For each PEP-certified firm, Developer or Developer’s construction contractor shall submit to the HRC an executed PEP Participation Form describing the work to be performed, the dollar amount of the PEP firm’s contract or subcontract, and the dollar amount to be counted toward the Project’s PEP Participation Goals. The HRC shall acknowledge receipt of each PEP Participation Form within two (2) business days, and shall attempt to verify the PEP firm’s participation within five (5) business days. A verified PEP firm’s participation can be counted in any category (i.e., SBE, MBE, WBE, and/or DLSB) in which the firm is certified.

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

E. Company agrees to supply additional information upon reasonable request by the City of Dayton and to cooperate in any audit or review of the funding provided hereunder.

F. Reimbursement to Company will be made proportionally to the percentage of Project funding provided hereunder by City and identified above.

ARTICLE 5. TERM AND TERMINATION.

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

1. A receiver for Company’s assets is appointed by a court of competent jurisdiction.
2. Company is divested of its rights, powers, and privileges under this Agreement by operation of law.
3. Company’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 Company to remedy such failure within thirty (30) days from the date of written notice from City.

4. Company’s violation of any applicable federal, state, or local law applicable to the Project and construction thereof.

5. If, prior to the receipt of any funding from City hereunder and upon giving thirty (30) days prior written notice, Company desires to terminate this Agreement.

In the event of termination prior to Project completion and if City provided any funds to Company hereunder, Company shall repay to City within forty-five (45) business days from the effective date of termination all funds provided hereunder and, upon such repayment, Company 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 6. INDEMNIFICATION.

Company 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 Company, and its agents, employees, contractors, sub-contractors, and representatives in undertaking and completing the Project, and/or Company’s failure to comply with federal, state, and local laws, including (as applicable).

ARTICLE 7. EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION.

Company 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 8. POLITICAL CONTRIBUTIONS.

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

ARTICLE 9. RECORDS AND RETENTION.

Company shall use Generally Accepted Accounting Principles (“GAAP”) or the Income Tax Accounting Method 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 Company 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 reasonably request,
Company 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. Company 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 Company 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, Company 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 10. TAX REPRESENTATION.

Company 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 Company is liable under Chapter 5733, 5735, 5739, 5741, 5743, 5747, or 5753 of the Ohio Revised Code or, if such delinquent taxes are owed, Company currently is paying such delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, or Company filed a petition in bankruptcy under 11 U.S.C. Section 101. et seq., or such a petition has been filed against Company. 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 11. GENERAL PROVISIONS.

A. Conflict of Interest. Company represents that to the best of its knowledge it has no interest that would undermine the impartiality of either party because of the conflict between the party’s self-interest and this agreement or public interest in any manner or degree. Company further covenants that it will not acquire any such interest, directly or indirectly during the term of this Agreement.

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 Company.

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:             Veronica Morris  
                       Department of Economic Development  
                       City of Dayton  
                       P.O. Box 22, 101 W. Third Street  
                       Dayton, OH 45401

   For Company:         Kiya Patrick  
                       Invictus Development Group  
                       400 Wayne Avenue  
                       Dayton, OH 45415

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 Company, each by a duly authorized representative, have executed this Agreement as of the date set forth below.

[Remainder of this page intentionally left blank]
INVICTUS DEVELOPMENT GROUP

By: *Kiya Patrick*

Print name: *Kiya Patrick*

Its: *President*

CITY OF DAYTON, OHIO

City Manager

Date

APPROVED AS TO FORM
AND CORRECTNESS:

3/29/2021

* Amelia N. Blankenship for

City Attorney
Signed by: Blankenship, Amelia

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

_________________________, 2021

Min. / Bk. _______   Pg. _______

__________________________
Clerk of the Commission
Exhibit A

DATE ____________  VENDOR/ORGANIZATION __________________________

AMOUNT REQUESTED ________________________

The above-named vendor/organization hereby submits this request for reimbursement. We have reviewed our agreement with the City of Dayton and believe our request meets the eligibility requirements for reimbursement as detailed below.

_____ The expenses for which reimbursement is sought or which, if applicable, comprise project costs that are the basis of calculating the Reimbursement Percentage, were actually incurred as established by the attached documentation. (In the case of improvements to real property, this would most likely be invoices and proof of payment (i.e. copy of cancelled check) for construction and/or equipment/materials. For professional services agreements, this would most likely be a list of activities performed and the hours and wages that correlate thereto.)

_____ The expenses were incurred and/or services were performed during the eligible time frame set forth in the agreement.

_____ The expenses were incurred for eligible activities as set forth in the agreement.

_____ Activity reports have been duly submitted to the Department of Economic Development if required. (This generally pertains to professional services agreements.)

_____ The project is “completed” if required. Evidence of completion of the project (photos, Certificate of Use and Occupancy, etc.) is attached hereto.

_____ Organization has met all job creation and retention requirements if applicable or is on track to meet such requirements. (Detail job creation and retention requirements and status thereof below if appropriate.)

ADDITIONAL INFORMATION:

________________________________________

________________________________________

________________________________________

[Over]
For more information, please feel free to contact me unless another person is identified below.

Submitted by:

Signature: 

Title: 

Phone: 

Email: 

Alternative contact for further information if applicable:

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Aerial and Street View
Invictus Development Group Project – 2118 Germantown Avenue
AN ORDINANCE

Authorizing the City Manager to Establish a Policy Prohibiting Goods or Services from Being Procured by the City Of Dayton that were Produced or Procured Under Certain Inhumane Conditions, and Declaring an Emergency.

WHEREAS, The Commission of the City of Dayton adopted Informal Resolution No. 301-97 on August 27, 1997 which set forth the prohibition on working with vendors and suppliers who produce goods in “sweat shop” conditions; and,

WHEREAS, The Commission believes that the restrictions outlined in Informal Resolution 301-97 should be expanded upon to capture anti-genocide measures for factories and producers working with the City of Dayton, Ohio; and,

WHEREAS, The new language will be implemented in the City’s procurement process in the form of a vendor compliance questionnaire; and,

WHEREAS, The Commission wishes to replace Informal Resolution 301-97 with this Ordinance; and,

WHEREAS, To provide for the timely implementation of the new policies and for the immediate preservation of the public property, health and safety it is necessary that this Ordinance take effect immediately; now, therefore,

BE IT ORDEIGNED BY THE COMMISSION OF THE CITY OF DAYTON:

Section 1. That the City Manager, or her designee, establish a policy of not purchasing, leasing, or renting goods for use and/or for resale at city-owned or operated enterprises which were produced under certain inhumane conditions as defined herein.

Section 2. For purposes of this Ordinance, goods shall be deemed as not being produced or procured under inhumane conditions if:

A. Child Labor. The factory or producer does not employ anybody younger than the legal age as established by the jurisdiction in which such factory or producer is located for children to work or participate in the production.

B. Forced Labor. The factory or producer does not use forced labor of any kind – prison labor, indentured labor or bonded labor. However, goods produced by
prisoners and/or patients as part of a formal rehabilitation or treatment program shall not be considered "forced labor" under the terms of this section.

C. **Wages and Benefits.** The factory or producer pays and/or provides at least the minimum wage and/or benefits as required by law in the jurisdiction in which the factory or producer is located.

D. **Hours of Work.** Employees are not required to work more hours than the maximum allowed by law for the jurisdiction in which the factory or producer is located.

E. **Worker Rights.** The factory or producer makes available to its employees such rights and procedures as required by law for the jurisdiction in which the factory or producer is located.

F. **Health and Safety.** The factory or producer provides at least the minimum safe and healthy working environment as required by law for the jurisdiction in which the factory or producer is located.

G. **Notice to Employees.** The factory or producer provides any and all applicable notices to its workers as required by law for the jurisdiction in which the factory or producer is located.

H. **Anti-Genocide.** The factory or producer does not purchase goods or services from countries or suppliers that have any involvement in the act or acts of genocide.

**Section 3.** That the City Manager, or her designee, shall update the current vendor compliance questionnaire to capture the new conditions identified in Section 2 of this Ordinance.

**Section 4.** That in the absence of such certification by a vendor or supplier that the goods to be provided are produced in compliance with the conditions identified in Section 2, the City shall not engage in the procurement of such goods, unless the procurement of such goods is critical to the operation of City services are not readily available through other means.

**Section 5.** That Informal Resolution 301-97 is hereby replaced with this Ordinance.

**Section 6.** That in the event a potential vendor or supplier can only certify a portion or part of the goods to be provided, to the extent that such vendor or supplier would otherwise qualify for a contract or purchase order, and to the extent the entire bid or quote is reasonably divisible, the City may elect to purchase or contract for those goods which are certified and reject those which are not.
Section 7. For the reason set forth in the preamble hereof, the Commission declares this Ordinance to be an emergency measure which shall take effect immediately upon its passage.

PASSED BY THE COMMISSION................., 2021

SIGNED BY THE MAYOR.......................,, 2021

______________________________
Mayor of the City of Dayton, Ohio

Attest:

______________________________
Clerk of the Commission

Approved as to form:

______________________________
City Attorney
A RESOLUTION

Honorably Naming East Monument Avenue Between North Main Street and North Patterson Boulevard as “Det. Jorge Del Rio Way.”

WHEREAS, An application has been made by Lt. Stephen Clark on behalf of Kathy Del Rio to honorarily designate East Monument Avenue Between North Main Street and Patterson Boulevard as “Det. Jorge Del Rio Way” for a two year period due to his legacy of service and sacrifice to the community; and

WHEREAS, Det. Del Rio was a thirty (30) year veteran of the Dayton Police Department and was a Drug Enforcement Administration Task Force Officer for nineteen (19) years; and

WHEREAS, Det. Del Rio was particularly noted for his honor, dedication, courage, and commitment in service; and

WHEREAS, Det. Del Rio, while serving a search warrant on November 4, 2019, sustained fatal injuries, representing the ultimate sacrifice to the community he served; and

WHEREAS, The portion of East Monument Avenue to be given the honorary designation is adjacent to a building where Det. Del Rio maintained an office; and

WHEREAS, The City Commission adopted Resolution 5014-99 on July 28, 1999, which established the rules and procedures for the naming of public facilities and rights-of-way, and this proposal is consistent with the policy outlined in said resolution; and

WHEREAS, The City Plan Board, on March 9, 2021 reviewed the proposal, Case PLN2021-00034, and recommended approval of the two-year designation; now, therefore,

BE IT RESOLVED BY THE COMMISSION OF THE CITY OF DAYTON:

Section 1. East Monument Avenue between North Main Street and North Patterson Boulevard is honorarily designated as Det. Jorge Del Rio Way for a two-year period commencing thirty days after the passage of this resolution.

Section 2. The official name of East Monument Avenue is unchanged.
Section 3. The City Manager is directed to implement this resolution in a timely manner.

Adopted by the Commission........................................, 2021

Signed by the Mayor......................................................, 2021

Mayor of the City of Dayton, Ohio

Attest:

______________________________
Clerk of the Commission

Approved as to form:

______________________________
City Attorney