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:

      AVIATION
      A1. Veolia Environmental Services North America (environmentally
           responsible disposal and recycling services as needed through
           12/31/22) $15,860.00
1. (Cont’d):

**FIRE**
B1. P&R Communications Service, Inc. (installation of Locution Station Alerting system) $48,846.46

**LAW**
C1. Crown Personnel Service, Inc. (temporary staffing services as needed through 12/31/22) 25,000.00

**PUBLIC WORKS**
D1. Garland/DBS, Inc. (roof restoration and related services)

-Depts. of Aviation, Fire, Law, and Public Works Total: $378,666.46

2. Counsilman-Hunsaker & Associates, Inc. – Service Agreement – for external auditing and consulting services of aquatic operations - Department of Recreation/Programs $47,100.00 (Thru 12/31/25)

E. Other – Contributions, Etc.:

3. Atlantic Emergency Solutions, Inc – Payment of Voucher – for payment of invoice dated December 20, 2021 – Department of Fire $41,200.00

IV. LEGISLATION:

Emergency Ordinance – First Reading

4. No. 31977-22 Amending Section 34.50 of the Revised Code of General Ordinances to Stay Community Appeals Board Hearings During Ongoing Litigation, and Declaring an Emergency.

Emergency Ordinances – Second Reading

5. No. 31975-22 Authorizing a Third Amendment to the Purchase and Sale Agreement for the Transfer of Real Estate Known as Deeds Point for a Public Purpose, and Declaring an Emergency.
6. **No. 31976-22** Authorizing the Grant of a Real Estate Easement, and Declaring an Emergency.

**Emergency Resolution – Second Reading**

7. **No. 6641-22** Approving the Submission of a Grant Application for the Fiscal Year 2023 Ohio Airport Grant Program to the Ohio Department of Transportation, Office of Aviation; Authorizing a Grant from the State of Ohio Department of Transportation, Office of Aviation in an Amount not to Exceed Five Hundred Thousand Dollars and Zero Cents ($500,000.00) on behalf of the City of Dayton; and Declaring an Emergency.

VI. **MISCELLANEOUS:**

**ORDINANCE NO. 31978-22**

**RESOLUTION NO. 6642-22**

**IMPROVEMENT RESOLUTION NO. 3599-22**

**INFORMAL RESOLUTION NO. 995-22**
AVIATION

(A1) P0220877 – VEOLIA ENVIRONMENTAL SERVICES NORTH AMERICA, WEST CARROLLTON, OH

- Environmentally responsible disposal and recycling services as needed through 12/31/2022.
- These services are required for oil water separator cleanouts and fluorescent bulb recycling.
- Rates are in accordance with the City of Dayton’s existing price agreement RFP 18043WTWE.
- The Department of Aviation 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>
</tr>
</thead>
<tbody>
<tr>
<td>2022</td>
<td>DIA Airport Operations</td>
<td>51000-3221-1172-43</td>
<td>$15,860.00</td>
</tr>
</tbody>
</table>

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 06/2016
FIRE

(B1) P0220884 – P&R COMMUNICATIONS SERVICE, INC., DAYTON, OH
- Installation of Locution Station Alerting system.
- This service is required to install the Locution Station Alerting System in all the City’s Fire Stations.
- P&R Communications Service, Inc. is recommended based upon their knowledge of installing the Locution system and their intimate knowledge of the City’s buildings and equipment infrastructure; therefore, this purchase was negotiated.
- P&R Communications Service, Inc. qualifies as a Dayton local entity.
- 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>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2022</td>
<td>2020ITS IMP-Fire State Alerting</td>
<td>49074-6340-1413-71</td>
<td>$48,846.46</td>
</tr>
</tbody>
</table>

LAW

(C1) P0220388 – CROWN PERSONNEL SERVICE, INC., DAYTON, OH
- Temporary staffing services as needed through 12/31/2022.
- These services are required to augment staff to maintain daily operations.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 18066JL with pricing through 12/31/2023.
- This amendment increases the previously authorized amount of $50,000.00 by $25,000.00 for a total not to exceed $75,000.00 and therefore requires City Commission approval.
- Crown Personnel Service, Inc. qualifies as a Dayton local entity.
- The Department of Law 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>
</tr>
</thead>
<tbody>
<tr>
<td>2022</td>
<td>General Fund</td>
<td>10000-5210-1159-74</td>
<td>$25,000.00</td>
</tr>
</tbody>
</table>

PUBLIC WORKS – PROPERTY MANAGEMENT

(D1) P0220883 – GARLAND/DBS, INC., CLEVELAND, OH
- Roof restoration and related services.
- These goods and services are required to restore roofing of the City’s Salt Dome.
- Rates are in accordance with the Master Intergovernmental Cooperative Purchasing Agreement (MICPA) Contract #PW1925.
- The Department of Public Works 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>
</tr>
</thead>
<tbody>
<tr>
<td>2022</td>
<td>Facility Improvements</td>
<td>40003-6480-1425-54</td>
<td>$288,960.00</td>
</tr>
</tbody>
</table>

The aforementioned departments recommend approval of this order.
VENDOR 134038062

Veolia Environmental Services North Ame
PO Box 453
4301 Infirmary Road
West Carrollton OH 45449

NOTE: SUBMIT INVOICE IN DUPLICATE TO:
CITY OF DAYTON, OHIO
ADDRESS: THE SAME AS SHIP TO AS SHOWN ABOVE
Include Purchase Order Number on ALL Documents
No state or federal taxes are to be included in prices billed.
Payment will be made upon receipt of an approved invoice or material, whichever is later.

Buyer Name: JASON SCHORTGEN  
Date Required: 12/31/22  
Payment Terms: Net 30  
F.O.B. Point: FOB Destination, Frt. Prepaid

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>COMMODITY DESCRIPTION</th>
<th>QTY</th>
<th>U/M</th>
<th>UNIT PRICE</th>
<th>EXTENDED</th>
</tr>
</thead>
</table>
| 1        | Solid or Liquid Waste Disposal (Including Management)  
REF. REQ. # AO20PO65 -- 51000-3221-1172-43  | 5.00 | EA | 2,172.0000 | 10,860.00 |

READ CAREFULLY all terms and conditions, including those on the last page of this order, as they are made a part of this agreement.

I hereby certify that the proper regulation has been made for the above order and that a certificate of the necessity of this expenditure has been placed on file in this office.

Purchasing Agent acting

Director of Finance 11/9/22

APPROVED BY
CITY COMMISSION

Clerk of Commission
## Purchase Order

**VENDOR 134038062**

Veolia Environmental Services North Ame  
PO Box 453  
4301 Infirmary Road  
West Carrollton OH 45449

**SHIP TO & INVOICE TO**  
Chris Pearson  
Terminal Maintenance/Terminal Bldg  
3600 Terminal Drive  
Vandalia OH 45377

**NOTE:** Submit Invoice in Duplicate to:  
City of Dayton, Ohio  
Address: The same as Ship To as shown above  
Include Purchase Order Number on all documents  
No state or federal taxes are to be included in prices billed.  
Payment will be made upon receipt of an approved invoice or materials, whichever is later.

<table>
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</thead>
<tbody>
<tr>
<td>JASON SCHORTGEN</td>
<td>12/31/22</td>
<td>Net 30</td>
<td>FOB Destination, Frt. Prepaid</td>
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</tr>
</thead>
<tbody>
<tr>
<td>96871</td>
<td>OIL WATER SEPARATOR CLEANOUT</td>
<td>1.00</td>
<td>LOT</td>
<td>5,000.0000</td>
<td>5,000.00</td>
</tr>
<tr>
<td>96871</td>
<td>Solid or Liquid Waste Disposal (Including Manageable RECYCLING OF FLUORESCENT BULBS, BATTERIES, ETC.)</td>
<td>1.00</td>
<td>LOT</td>
<td>5,000.0000</td>
<td>5,000.00</td>
</tr>
<tr>
<td></td>
<td>PER SPECIFICATIONS ON OUR RFP NO. 18043WH AND YOUR RESPONSE TO SAME</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>DELIVERY: AS NEEDED / SCHEDULED</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**DISCOUNT:** .00  
**ADDL CHARGES:** .00  
**TOTAL TAXES:** .00  
**TOTAL:** 15,860.00

READ CAREFULLY all terms and conditions, including those on the last page of this order, as they are made a part of this agreement.

I hereby certify that the proper requisition has been made for the above order and that a certificate of the necessity of this expenditure has been placed on file in this office.

Purchasing Agent  
4/19/22

I hereby certify that the amount of money required to meet the payments called for in the above order has been lawfully appropriated for such purposes 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 of any previous encumbrance.

Director of Finance  
4/19/22

APPROVED BY  
Clerk of Commission
**PURCHASE ORDER**

**VENDOR** 310685955

P & R Communications Service Inc  
700 E First St  
Dayton OH 45402

**SHIP TO & INVOICE TO**  
Kevin Kuntz  
Fire  
300 N Main St  
Dayton OH 45402

**NOTE:** SUBMIT INVOICE IN DUPLICATE TO:  
CITY OF DAYTON, OHIO  
ADDRESS: THE SAME AS SHIP TO AS SHOWN ABOVE  
Include Purchase Order Number on ALL Documents  
No state or federal taxes are to be included in prices billed.  
Payment will be made upon receipt of an approved invoice or material, whichever is later.

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<th>U/M</th>
<th>UNIT PRICE</th>
<th>EXTENDED</th>
</tr>
</thead>
</table>
| 1        | CITY OF DAYTON CONTACT:  
            LT. ROBERT LOTZ (937) 333-4511  
            96246 Installation Services (Not Otherwise Classified)  
            REF. REG. # FD02P072 — 49074-6340-1475-71  
            INSTALLATION FOR LOCATION ALERTING PROJECT  
            PER YOUR QUOTE # 42455-00EC  
            DELIVERY: AS SCHEDULED | 1.00 | LOT | 48,846.4600 | 48,846.46 |

**DISCOUNT:** .00  
**ADDL. CHARGES:** .00  
**TOTAL TAXES:** .00  
**TOTAL:** 48,846.46

I hereby certify that the proper regulation has been made for the above order and that a certificate of the necessity of this expenditure has been placed on file in this office.

Purchasing Agent  
**Acting**

Certificate  
I hereby certify that the amount of money required to meet the payments called for in the above order has been lawfully appropriated for such purposes 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 of any previous encumbrance.

**APPROVED BY**  
CITY COMMISSION

Director of Finance  
4/19/22
TERMS AND CONDITIONS

1. BILLING: All goods or services must be billed to THE CITY OF DAYTON, OHIO and at prices not exceeding those stated on the Purchase Order. If prices or terms do not agree with quotation, notify the City of Dayton, Division of Procurement, immediately.

2. INVOICE: All invoices must be in duplicate and must be forwarded to the City of Dayton at the address shown on the Purchase Order. Each Purchase Order must be invoiced separately. Invoices paid in a lump sum of the entire Purchase Order will not be accepted; final invoices must indicate completion of order.

3. CASH DISCOUNTS: All cash discount terms will be effective from date of actual receipt and acceptance of the items purchased, or from receipt of correct and acceptable invoice, whichever is later.

4. PAYMENTS: With the award of this contract, the successful vendor(s) will be required to receive their payment(s) electronically via a virtual credit card by the City contracted provider effective 01/30/2019. All fees associated with acceptance of the payment will be the responsibility of the vendor.

5. F.O.B.: (City of Dayton, Ohio) with delivery to the specified Department at the specified street address. NO COLLECT FREIGHT SHIPMENTS WILL BE ACCEPTED. All quotes are solicited on a delivered price basis. When, in the opinion of the City, a quoted price including freight is lower than the quoted price excluding freight, the City accepts a quotation not including all shipping charges, your claim for reimbursement must be remitted on the invoice and supported with a copy of the original freight bill.

6. TAXES: The City of Dayton is exempt from payment of Federal excise taxes and State retail sales taxes. The City of Dayton is exempt from taxes. The City of Dayton Federal Exemption Certificate No. TS-11-059K and Ohio Vendor License No. ST-120847. The Vendor is responsible for all Social Security taxes and Workers Compensation contributions for the Vendor or any of the Vendor's employees.

7. DELIVERIES: All deliveries on this order must be in full accordance with specifications, properly identified with the Purchase Order number, and must not exceed the quantities specified.

8. CANCELLATION: The City of Dayton reserves the right to cancel this order by written notice if the Vendor does not fulfill its contractual obligations with respect to timeliness and/or quality.

9. DEFAULT PROVISIONS: In case of default by the Vendor, the City of Dayton may procure the items from other sources, and the Vendor shall be responsible for any excess costs occasioned thereby.

10. NEGOTIABLE AGREEMENTS: The City of Dayton shall be bound only by the terms and conditions of this order and will not be responsible for verbal agreements made by any other employee or officer of the City of Dayton. The receipt of this purchase order does not indicate an authorization of fulfillment. Confirmation by City personnel must be received as indicated in the purchase order before any orders are placed.

11. PATENTS: It is hereby understood that by acceptance of this order, the Vendor agrees to defend, indemnify, and save harmless the City of Dayton, Ohio, its officers, agents and employees from any and all costs, loss or expense on account of any claim, suit or judgment as a result of, caused by, or incidental to any patent, copyright or trademark infringement and/or royalty, actual or claimed, because of the use or disposition by said City of any article enumerated on this order and sold to said City pursuant to this order.

12. APPLICATION OF LAW: The Vendor warrants that the items and their production or completion shall not violate any federal, state or local laws, regulations or orders.

13. INSPECTION: The City of Dayton may inspect the items ordered hereunder during their manufacture, construction and/or preparation at reasonable times and shall have the right to inspect such items at the time of their delivery and/or completion.

14. WARRANTIES: The Vendor warrants that all items delivered hereunder to be free from defects of material or workmanship, to be of good quality, and to conform strictly to any specifications, drawings or samples which may have been submitted by the City of Dayton, and the Vendor further warrants that the Vendor will have good title to the items free and clear of all liens and encumbrances and will transfer such title to the City of Dayton. Statements made of waivers or limitations of warranty and negates or limits any implied warranties of merchantability or fitness. This warranty shall survive any, or any acceptance or payment by the City of Dayton.

15. RISK OF LOSS: Title and risk of loss to and with respect to the items shall remain in the Vendor until the items in a completed state have been delivered to and accepted by the City of Dayton or to an agent or consignee duly designated by the City of Dayton at the location specified on the face hereof, items which are to be shipped to be shipped F.O.B. destination unless otherwise specified by the City of Dayton. A packing slip must accompany each such shipment if the shipment is to a consignee or an agent of the City of Dayton, a copy of the packing slip shall be forwarded contemporaneously to the City of Dayton. If no such packing slip is sent, the quantity or weight shall be considered to be shipped by the City of Dayton or its agent or consignee is agreed to be final and binding on the Vendor with respect to such shipment.

16. SAVE HARMLESS: To the fullest extent permitted by law, the Vendor shall protect, defend, indemnify and hold harmless the City of Dayton, its agents, consignees, employees, and representatives from and against all claims, damages, losses, claims of loss, cause of action, penalty, settlements, costs, liabilities and expenses of any kind, including but not limited to attorneys fees, arising out of any acts or omissions of the Vendor's officers and employees, including but not limited to temporary employees that the Vendor provides to the City of Dayton or to any person or entity controlled by the City of Dayton to any degree; consultants; agents; and, subcontractors of any tier used in any way to provide the goods or services for this purchase order.

17. FORCE MAJEURE: Neither the City nor Vendor shall be considered in default of these Purchase Order Terms and Conditions for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of these Terms and Conditions, 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 for any local, state, federal agency or any of the supplies, materials, access, or services required to be provided by the either the City of Dayton or the Vendor. Any other circumstances occurring that are within reasons for being prevented from performance, given written notice to the other party describing the circumstances preventing continued performance and the effects being made to resolve performance under this Purchase Order.

18. INSURANCE: If requested by the City of Dayton, the Vendor shall maintain policies of liability insurance of such type and such amounts and with such companies as may be designated by the City of Dayton, which policies shall be written so as to protect the City of Dayton and the Vendor from the risks enumerated in Section 15. Such policies of insurance shall not be cancelable except upon thirty [30] days written notice to the City of Dayton and proof of such insurance shall be furnished by the Vendor to the City of Dayton. In addition, such policies shall protect all subcontractors of the Vendor. The Vendor agrees to make prompt written report to the insurance company involved of all accidents, occurrences, injuries or losses which may occur and all claims made against the persons insured under said policies.

19. SPECIFICATIONS CONFIDENTIAL: Any specifications, drawings, notes, instructions, engineering notices or technical data referred to in this Purchase Order shall be deemed to be incorporated herein by reference the same as if fully set forth. The City of Dayton shall at all times retain title to all such documents and the Vendor shall not disclose such to any other party other than the City of Dayton or a party duly authorized by the City of Dayton. Upon the City of Dayton's request or upon completion and delivery of the items the Vendor shall promptly surrender to the City of Dayton or the part of the Vendor.

20. EXAMINATION OF PREMISES: If work is to be performed hereunder on the premises of the City of Dayton, the Vendor shall make examinations of the premises free from accumulation of waste material or rubbish. At the completion of the work the Vendor shall leave the premises and the items free of charge.

21. EQUAL EMPLOYMENT OPPORTUNITY: (R.C.G.O. Sec. 35.15.) (a) The Vendor agrees that it will 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, promotion or transfer, recruitment or employment advertising, lay-off, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. (b) It is expressly agreed and understood by Vendor that R.C.G.O. Sec. 35.15 Construes a material condition of this contract as fully as if specifically written herein and that failure to withdraw shall constitute a breach thereof entitling the City to terminate the contract at its option.

22. AGREEMENT TO BE EXCLUSIVE: This Purchase Order contains the entire agreement between the parties and supersedes all other agreements between them. The parties acknowledge and agree that neither of them has made any representation with respect to the subject matter of this agreement nor any representation inducing the execution and delivery of this Purchase Order except such representations as are specifically set forth herein, and each party acknowledges that it has relied on these representations in connection with its dealings with the other party.

23. GOVERNING LAW: This Purchase Order, the performance under it, and all suits and special proceedings under it shall be construed in accordance with the laws of the State of Ohio. In any action, suit or proceeding which may be brought arising out of, in connection with, or by reason of this Purchase Order, the laws of the State of Ohio shall be applicable and govern to the exclusion of the laws of any other forum, without regard to the jurisdiction in which the action or special proceeding may be heard.

24. ADDITIONAL RIGHTS: Any rights or remedies granted to the City of Dayton in any part of this Purchase Order shall not be exclusive of, but shall be in addition to, any other rights or remedies granted in another part of this Purchase Order or any other rights or remedies that the City of Dayton may have at law or in equity in any such instance.

25. PRODUCT MANUFACTURE LABOR STANDARDS: Products and services provided for in this Purchase Order cannot be produced under Sweatshop Conditions as defined in Informal Resolution No. 301-97 as adopted by the Commission of the City of Dayton. The City of Dayton encourages vendors, contractors, Enterprise Zone employers and other organization doing business with the City of Dayton to use their best efforts to pay a living wage to their employees in accordance with Informal Resolution No. 311-98 as adopted by the Commission of the City of Dayton.

26. CONTRACTOR: Contractor acknowledges its employees are not public employees for purposes for Ohio Public Employees Retirement System (OPERS) membership.
April 4, 2022

TO: Melissa Wilson  
Purchasing Agent  
Division of Procurement

FROM: Jeff Lykins  
Director and Chief  
Department of Fire

SUBJECT: FD2OP072 P & R Communications Services Inc

The Dayton Fire Department ("DFD") requests the acceptance of the attached requisition with P & R Communications as the installation vendor for the Dayton Fire Departments Locution Station Alerting ("Locution") Project.

Montgomery County Regional Dispatch recently installed the Locution system that will be interfacing with agencies throughout the region. P&R is a local expert in Locution, having assisted other municipalities, such as Huber Heights, Kettering, Englewood, Brookville and Washington Township with their build outs.

P&R, a Dayton local company, has maintained the DFD’s current Zetron station alerting system for over twenty years and have intimate knowledge of the buildings and equipment infrastructure. Their expertise will be essential in integrating the new technology within DFD’s fire stations.

DFD is recommending this vendor based on their overall experience with the Locution system within the region, as well as their knowledge of the current system and buildings.

If you have any questions, please contact Kevin Kuntz x4508 or at kevin.kuntz@daytonohio.gov.

JL/kk

Attachment: quote

C: Assistant Chief Hosford, Lt. Lotz, Mrs. Howard, Mr. Kuntz
Crown Personnel Service Inc  
1 East Stewart Street  
Dayton OH 45409

NOTE: SUBMIT INVOICE IN DUPLICATE TO:  
CITY OF DAYTON, OHIO  
ADDRESS: THE SAME AS SHIP TO AS SHOWN ABOVE  
No state or federal taxes are to be included in prices billed.  
Payment will be made upon receipt of an approved invoice or materials, whichever is later.

<table>
<thead>
<tr>
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<th>Date Required</th>
<th>Payment Terms</th>
<th>F.O.B. Point</th>
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<tbody>
<tr>
<td>JAVON LEWIS</td>
<td>12/31/22</td>
<td>Net 30</td>
<td>FOB Destination, Frt. Prepaid</td>
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<th>U/M</th>
<th>UNIT PRICE</th>
<th>EXTENDED</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>TO COVER REQUIREMENTS FOR GOODS AND/OR SERVICES DESCRIBED BELOW, ON AN AS NEEDED BASIS, THROUGH 12/31/22 AND WITH PRIOR APPROVAL AND AUTHORIZATION BY THE DEPARTMENT LISTED IN THE SHIP-TO ADDRESS SHOWN. THIS ORDER DOES NOT OBLIGATE THE CITY TO RELEASE GOODS FOR DELIVERY OR SERVICES FOR COMPLETION AGAINST THIS ORDER. THE SUM OF ACTUAL EXPENDITURES AGAINST THIS ORDER SHALL NOT EXCEED THE TOTAL DOLLAR AMOUNT AUTHORIZED.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
|          | CITY OF DAYTON OH CONTACT:  
CHRISTINA COX 937.555.4113  
ORIGINAL MR - 01-19-2022  
LIST OF HEADER CHANGES  
DATE REQUIRED CHANGE                                                                                                                                                                                                                                                                                                                                                                     |     |     |            |          |

READ CAREFULLY all terms and conditions, including those on the last page of this order, as they are made a part of this agreement...

I hereby certify that the proper requisition has been made for the above order and that a certificate of the necessity of this expenditure has been placed on file in this office.

Purchasing Agent  
acting

Certificate  
I hereby certify that the amount of money required to meet the payments called for in the above order has been lawfully appropriated for such purposes 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 of any previous encumbrance

Director of Finance  
4/19/22

APPROVED BY  
CITY COMMISSION

Clerk of Commission

TOTAL CONTINUED
CITY OF DAYTON, OHIO
Department of Central Services
Division of Purchasing
101 West Third Street, Room 514
Dayton, OH 45402

VENDOR 311432482
Crown Personnel Service Inc
1 East Stewart Street
Dayton OH 45409

CHANGE #1
PURCHASE ORDER

P.O.# 0220388 01/07/22

SHIP TO & INVOICE TO
Civil Law Division
101 W Third St, Rm. 300
Dayton OH 45402
ATTN: CHRISTINA COX

NOTE: SUBMIT INVOICE IN DUPLICATE TO:
CITY OF DAYTON, OHIO
ADDRESS: THE SAME AS SHIP TO AS SHOWN ABOVE
Include Purchase Order Number on ALL Documents
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<th>Buyer Name</th>
<th>Date Required</th>
<th>Payment Terms</th>
<th>F.O.B. Point</th>
</tr>
</thead>
<tbody>
<tr>
<td>JAVON LEWIS</td>
<td>12/31/22</td>
<td>Net 30</td>
<td>FOB Destination, Frt. Prepaid</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>COMMODITY DESCRIPTION</th>
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<tr>
<td>1</td>
<td>HEADER TEXT CHANGE</td>
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<tr>
<td></td>
<td>PREVIOUS ORDER</td>
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<td>96499</td>
<td>Misc. Personnel, Temporary (Employment Agency)</td>
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<td></td>
<td>REF. REQ. #LAW2X002 --- 10000-5200-1159-63</td>
</tr>
<tr>
<td></td>
<td>TEMPORARY EMPLOYMENT SERVICES</td>
</tr>
<tr>
<td></td>
<td>ASSISTANT ATTORNEY I</td>
</tr>
<tr>
<td></td>
<td>BILLABLE RATE OF $71.59 PER HR</td>
</tr>
<tr>
<td></td>
<td>BILLABLE RATE OF $64.94 PER HR - REFERRED BY CITY</td>
</tr>
<tr>
<td></td>
<td>LAW OFFICE ASSISTANT</td>
</tr>
<tr>
<td></td>
<td>BILLABLE RATE OF $20.76 PER HR</td>
</tr>
<tr>
<td></td>
<td>BILLABLE RATE OF $18.84 PER HR - REFERRED BY CITY</td>
</tr>
</tbody>
</table>

READ CAREFULLY all terms and conditions, including those on the last page of this order, as they are made a part of this agreement.

TOTAL

CONTINUED

I hereby certify that the proper requisition has been made for the above order and that a certificate of the necessity of this expenditure has been placed on file in this office.

Purchasing Agent
acting

Certificate
I hereby certify that the amount of money required to meet the payments called for in the above order has been lawfully appropriated for such purposes 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 of any previous encumbrance.

Director of Finance
4/19/22

APPROVED BY
CITY COMMISSION

Clerk of Commission
CITY OF DAYTON, OHIO  
Department of Central Services  
Division of Purchasing  
101 West Third Street, Room 514  
Dayton, OH 45402

VENDOR 311432482

Crown Personnel Service Inc  
1 East Stewart Street  
Dayton OH 45409

NOTE: SUBMIT INVOICE IN DUPLICATE TO:  
CITY OF DAYTON, OHIO  
ADDRESS: THE SAME AS SHIP TO AS SHOWN ABOVE  
Include Purchase Order Number on ALL Documents.  
No state or federal taxes are to be included in prices billed.  
Payment will be made upon receipt of an approved invoice or material, whichever is later.

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Commodity Description</th>
<th>QTY</th>
<th>U/M</th>
<th>Unit Price</th>
<th>Extended</th>
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<tbody>
<tr>
<td></td>
<td>PER SPECIFICATIONS ON OUR IFB NO. 18066JL AND YOUR</td>
<td></td>
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<td>25,000.00</td>
<td>25,000.00</td>
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<td></td>
<td>BID OF SAME</td>
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<td></td>
<td>THIS ORDER SHALL BE IN ACCORDANCE WITH THE</td>
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<td>ESTABLISHED PRICE AGREEMENT WITH FIRM PRICING</td>
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<td>THROUGH 12-31-2022 WITH ONE ADDITIONAL OPTION</td>
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<td>TO RENEW AT THE SOLE DISCRETION OF THE CITY OF DAYTON</td>
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<td>DELIVERY: AS SCHEDULED</td>
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<td>REVISED ORDER</td>
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Purchasing Agent

Certificate
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Director of Finance

APPROVED BY
CITY COMMISSION

Clerk of Commission
VENDOR 311432482
Crown Personnel Service Inc
1 East Stewart Street
Dayton OH 45409

NOTE: SUBMIT INVOICE IN DUPLICATE TO:
CITY OF DAYTON, OHIO
ADDRESS: THE SAME AS SHIP TO AS SHOWN ABOVE
Include Purchase Order Number on ALL Documents.
No state or federal taxes are to be included in prices billed.
Payment will be made upon receipt of an
approved invoice or material, whichever is later.

Buyer Name: JAVON LEWIS
Date Required: 12/31/22
Payment Terms: Net 30
F.O.B. Point: FOB Destination, Frt. Prepaid

<table>
<thead>
<tr>
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<td>1</td>
<td>Misc. Personnel, Temporary (Employment Agency) REF. REQ. #LAW2X002 -- 10000-5200-1159-63</td>
<td>1.00</td>
<td>LOT</td>
<td>75,000.0000</td>
<td>75,000.00</td>
</tr>
<tr>
<td></td>
<td>TEMPORARY EMPLOYMENT SERVICES ASSISTANT ATTORNEY I BILLABLE RATE OF $71.59 PER HR BILLABLE RATE OF $64.94 PER HR - REFERRED BY CITY LAW OFFICE ASSISTANT BILLABLE RATE OF $20.76 PER HR BILLABLE RATE OF $18.84 PER HR - REFERRED BY CITY PER SPECIFICATIONS ON OUR IFB NO. 18067JL AND YOUR BID OF SAME THIS ORDER SHALL BE IN ACCORDANCE WITH THE</td>
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Purchasing Agent acting

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Director of Finance 4/19/12

Clerk of Commission

APPROVED BY CITY COMMISSION
CITY OF DAYTON, OHIO  
Department of Central Services  
Division of Purchasing  
101 West Third Street, Room 514  
Dayton, OH 45402

VENDOR 311432482

Crown Personnel Service Inc  
1 East Stewart Street  
Dayton OH 45409

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CITY OF DAYTON, OHIO  
ADDRESS: THE SAME AS SHIP TO AS SHOWN ABOVE  
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Payment will be made upon receipt of an 
approved invoice or material, whichever is later.

**CHANGE #1**
P.O. #  
01/07/22  
5 of 6

**PURCHASE ORDER**

**SHIP TO & INVOICE TO**  
Civil Law Division  
101 W Third St, Rm. 300  
Dayton OH 45402  
ATTN: CHRISTINA COX

Buyer Name  
Date Required  
Payment Terms  
F.O.B. Point

| JAVON LEWIS | 12/31/22 | Net 30 | FOB Destination, Frt. Prepaid |

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<td>DELIVERY: AS SCHEDULED</td>
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<td>04-14-2022: AMEND TO INCREASE THE AMOUNT OF THIS PURCHASE ORDER FOR $25,000.00 (D)</td>
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<td>POSITION: LEGAL EXTERN</td>
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<td>BILLABLE RATE: $26.00 PER HOUR</td>
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<td>WITH FOAPL: 10000-521D-1159-74</td>
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TOTAL NET CHANGE 25,000.00

READ CAREFULLY all terms and conditions, including those on the last page of this order, as they are made a part of this agreement.

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Purchasing Agent

Certificate  
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Director of Finance

APPROVED BY

CITY COMMISSION

Clerk of Commission
TERMS AND CONDITIONS

1. BILLING: All goods and services must be billed to THE CITY OF DAYTON, OHIO and at prices not exceeding those stated on the Purchase Order. If prices or terms do not agree with quotation, notify the City of Dayton, Division of Procurement, immediately.

2. INVOICE: All invoices must be in duplicate and must be forwarded to the City of Dayton at the address shown on the Purchase Order. Each Purchase Order must be invoiced separately. Invoices that are accepted will be accepted; final invoice must indicate completion of order.

3. CASH DISCOUNTS: All cash discount terms will be effective from date of actual receipt and acceptance of the items purchased, or from receipt of correct and acceptable invoice, whichever is later.

4. PAYMENTS: With the award of this contract, the successful vendor(s) will be required to receive their payment electronically via a virtual credit card by the City contracted provider effective 01/01/2019. All fees associated with acceptance of the payment will be the responsibility of the vendor.

5. F.O.S.: Destination (City of Dayton, Ohio) with delivery to the specified Department at the specified street address. NO COLLECT FREIGHT SHIPMENTS WILL BE ACCEPTED. All quotations are solicited from a limited number of suppliers.

6. TAXES: The City of Dayton is exempt from payment of Federal excise taxes and State retail sales taxes. The City of Dayton has Federal Exemption Certificate No. 35-71- 3545K and Ohio Vendor Licenses No. 57-15987. The Vendor is responsible for all Social Security taxes and Workers Compensation contributions for the Vendor or any of the Vendor's employees.

7. DELIVERIES: All deliveries on this order must be in full accordance with specifications, properly identified with the Purchase Order number, and must not exceed the quantities specified.

8. CANCELLATION: The City of Dayton reserves the right to cancel this order by written notice if the Vendor does not fulfill its contractual obligations with respect to timeliness and/or quality.

9. DEFAULT PROVISIONS: In case of default by the Vendor, the City of Dayton may procure the items from other sources, and the Vendor shall be responsible for any excess costs occasioned thereby.

10. NO VERBAL AGREEMENTS: The City of Dayton will be bound only by the terms and conditions of this contract and will not be responsible for verbal agreements made by any other officer or employee of the City of Dayton. The receipt of this purchase order does not indicate an authorization of fulfillment. Confirmation by City personnel must be received as indicated in the purchase order before any orders are placed.

11. PATENT AND COPYRIGHT PROTECTIONS: It is hereby understood that by acceptance of this order, the Vendor agrees to defend, indemnify, and save harmless the City of Dayton, Ohio, its officers, agents and employees from any and all loss, costs or expenses on account of any claim, suit or judgment as a result of, caused by, or incident to any patent, copyright or trademark infringement and/or royalty, actual or claimed, because of the use or disposition by said City of any article enumerated on this order and said to aid City pursuant to this order.

12. APPLICABLE LAW: The law of the State of Ohio, and the City of Dayton, shall govern the interpretation and performance of the Order. This means that it is the law of the State of Ohio and the City of Dayton, that applies to the Order and the performance of the Order. The law of the State of Ohio and the City of Dayton shall govern the interpretation and performance of the Order.

13. INSPECTION: The City of Dayton may inspect the items ordered hereunder during their manufacture, fabrication and/or completion at reasonable times and shall have the right to inspect such items at the time of delivery and/or completion.

14. WARRANTIES: The Vendor shall issue all items delivered hereunder to be free from defects of material or workmanship, to be of good quality, and to conform strictly to any specifications, drawings or samples which may have been supplied or furnished by the City of Dayton and the Vendor warrants that the Vendor will have good title to the items free and clear of all liens and encumbrances and will transfer such title to the City of Dayton. Said warranties shall not negate or limit any implied warranties of merchantability or fitness. This warranty shall survive delivery, acceptance or payment by the City of Dayton.

15. RISK OF LOSS: Title and risk of loss to all items delivered hereunder shall remain in the Vendor until the items in a completed state have been delivered to and accepted by the City of Dayton or to an agent or consignee duly designated by the City of Dayton at the location specified on the face hereof, items which are to be shipped shall be shipped F.O.B. destination unless otherwise specified by the City of Dayton. A packing slip must accompany each such shipment and if a shipment is to a consignee or an agent of the City of Dayton, a copy of the packing slip shall be forwarded concurrently to the City of Dayton. If no such packing slip is sent, the cost or weight by the City of Dayton or its agent or consignee is agreed to be final and binding on the Vendor with respect to such shipment.

16. SAVE HARMLESS: To the fullest extent permitted by law, the Vendor shall protect, defend, indemnify and hold free and harmless the City of Dayton, its agents, consignees, employees, and representatives from any and all claims, damages, losses, claims of loss, causes of action, penalties, settlements, costs, liabilities and expenses of any kind, including but not limited to attorneys fees, arising out of any acts or omissions of the Vendor; its officers and employees, including but not limited to temporary employees that the Vendor provides to the City of Dayton or may be trained by or controlled by the City of Dayton to any degree; consultants; agents; and, subcontractors of any tier used in any way to provide the goods or services for this purchase order.

17. FORCE MAJEURE: Neither the City nor Vendor shall be considered in default of these Purchase Order Terms and Conditions for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of these Terms and Conditions, 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; sabotages; judicial restraint; and inability to procure permits, licenses, or authorization from any local, state, or federal agency for any of the supplies, materials, access, or services required to be provided by either the City of Dayton or Consultant under this Agreement. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance under this Purchase Order.

18. INSURANCE: If requested by the City of Dayton, the Vendor shall maintain policies of liability insurance of such types and such amounts and with such companies as may be designated by the City of Dayton, which policies shall be written so as to protect the City of Dayton and the Vendor from the risks enumerated in Section 15. Such policies of insurance shall not be cancellable except upon thirty (30) days written notice to the City of Dayton and proof of such insurance shall be furnished by the Vendor to the City of Dayton. In such policies, such policies shall protect all subcontractors of the Vendor. The Vendor agrees to make prompt written report to the insurance company involved of all accidents, occurrences, injuries or losses which may occur and of any and all claims made against the persons insured under said policies.

19. SPECIFICATIONS CONFIDENTIALITY: Any specifications, drawings, notes, instructions, engineering notices or technical data referred to in this Purchase Order shall be deemed to be incorporated herein by reference the same as if fully set forth. The City of Dayton shall at all times retain title to all such documents and the Vendor shall not disclose such to any party other than the City of Dayton or a party duly authorized by the City of Dayton. Upon the City of Dayton request or upon completion and delivery of the items the Vendor shall promptly remit to the City of Dayton all such documents.

20. EXAMINATION OF PREMISES: If work is to be performed hereunder on the premises of the City of Dayton, the Vendor represents that it has examined the premises and any specifications or other documents furnished in connection with the items and that it has satisfied itself as to the condition of the premises and site and agrees that no allowance shall be made in respect of any error as to same on the part of the Vendor.

21. CLEANING OF PREMISES: If work is to be performed hereunder on the premises of the City of Dayton, the Vendor shall at all times keep the premises free from accumulation of waste material or rubbish. At the completion of the items the Vendor shall leave the premises and the items broom-clean.

22. EQUAL OPPORTUNITY: R.C.G.O. Sec. 35.14: (a) The Vendor agrees that it will 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, promotion or transfer, recruitment or reassignment, lay-off, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. (b) It is expressly agreed and understood by Vendor that R.C.G.O. Sec. 35.14 constitutes a material condition of this contract as fully as if specifically rewritten herein and that failure to comply therewith shall constitute a breach thereof entitling the City to terminate the contract at its option.

23. AGREEMENT TO BE EXCLUSIVE: This Purchase Order contains the entire agreement between the parties and supersedes all other agreements between them. The parties acknowledge and agree that neither of them has made any representation with respect to the subject matter of this Purchase Order or any representation inducing the execution and delivery of this Purchase Order except such representations as are specifically set forth herein, and each party acknowledges that it has relied on these representations in connection with its dealings with the other.

24. GOVERNING LAW: This Purchase Order, the performance under it, and all suits and special proceedings under it shall be construed in accordance with the laws of the State of Ohio, in any action, suit or proceeding, or other proceeding that may be brought arising out of, in connection with, or by reason of this Purchase Order, the laws of the State of Ohio shall be applicable and govern to the exclusion of the laws of any other forum, without regard to the jurisdiction in which the action or special proceeding may be heard.

25. ADDITIONAL RIGHTS: Any rights or remedies granted to the City of Dayton in any part of this Purchase Order shall not be exclusive of, but shall be in addition to, any other rights or remedies granted in another part of this Purchase Order and any other rights or remedies that the City of Dayton may have at law or in equity in any such instance.

26. PRODUCT MANUFACTURE STANDARDS: Products and services provided for in this Purchase Order cannot be produced under Sustantion Conditions as defined in Informal Resolution No. 291–97 as adopted by the Commission of the City of Dayton. The City of Dayton encourages vendors, contractors, Euerprise Zone employers and other organizations doing business with the City of Dayton to use their best efforts to pay a living wage to their employees in accordance with Informal Resolution No. 321–98 as adopted by the Commission of the City of Dayton.

27. CONTRACTOR: Contractor acknowledges its employees are not public employees for purposes of Ohio Public Employees Retirement System (OPERS) membership.

T&C Revision Date: 01 November 2018
April 14, 2022

TO:        Melissa Wilson
           Purchasing Agent

FROM:      Barbara J. Doseck
           Director of Law

SUBJECT:   Crown Personnel Purchase Order PO220388

The Department of Law requests that their Purchase Order with Crown Personnel be increased in the amount of $25,000.00. The $25,000.00 should be funded from fund code 10000-5210-1159-74. Our department is experiencing unprecedented staffing shortages and this Purchase Order is needed to have the staff levels necessary for continued operation.

We understand that this will require Commission action. Please contact Christina Cox at ext. 4113 if any additional information and or documentation is needed.

BJD:clc
VENDOR 800525452

Garland/DBS INC
3800 East 91st Street
Cleveland OH 44105

CITY OF DAYTON, OHIO
Department of Central Services
Division of Purchasing
101 West Third Street, Room 514
Dayton, OH 45402

PURCHASE ORDER

P.O.# 2585192  Date 04/14/22  Page 1 of 3

SHIP TO & INVOICE TO
Field Office
Property Management
325 N Paul Laurence Dunbar St
Dayton OH 45402

NOTE: SUBMIT INVOICE IN DUPLICATE TO:
CITY OF DAYTON, OHIO
ADDRESS: THE SAME AS SHIP TO AS SHOWN ABOVE
Include Purchase Order Number on ALL Documents
No state or federal taxes are to be included in prices billed.
Payment will be made upon receipt of an approved invoice or material, whichever is later.

Buyer Name  Date Required  Payment Terms  F.O.B. Point
DONITA GARNER  12/31/22  Net 30  FOB Destination, Frt. Prepaid

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<thead>
<tr>
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<th>EXTENDED</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 91066</td>
<td>Roofing, Gutters, and Downspouts REF. REQ. # PW92PM061 -- 40003-6480-1425-54</td>
<td>1.00</td>
<td>LOT</td>
<td>288,960.0000</td>
<td>288,960.00</td>
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CITY LOCATION: OTTAWA YARDS, SALT DOME, 1621 E. MONUMENT AVE., DAYTON OH 45402
PRICING PER MASTER INTERGOVERNMENTAL COOPERATIVE

READ CAREFULLY all terms and conditions, including those on the last page of this order, as they are made a part of this agreement.

TOTAL
CONTINUED

I hereby certify that the proper requisition has been made for the above order and that a certificate of the necessity of this expenditure has been placed on file in this office.

Purchasing Agent [Signature]
[Date]

Certificate
I hereby certify that the amount of money required to meet the payments called for in the above order has been lawfully appropriated for such purposes 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 of any previous encumbrance.

Director of Finance [Signature] [Date]

Clerk of Commission [Signature]
**CITY OF DAYTON, OHIO**  
Department of Central Services  
Division of Purchasing  
101 West Third Street, Room 514  
Dayton, OH 45402  

**PURCHASE ORDER**  

**VENDOR 800525452**  
Garland/DBS INC  
3800 East 91st Street  
Cleveland OH 44105  

**SHIP TO & INVOICE TO**  
Field Office  
Property Management  
325 N Paul Laurence Dunbar St  
Dayton OH 45402  

**NOTE:** SUBMIT INVOICE IN DUPLICATE TO:  
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<th>QTY</th>
<th>U/M</th>
<th>UNIT PRICE</th>
<th>EXTENDED</th>
</tr>
</thead>
</table>
| PURCHASING AGREEMENT (MICPA) # PU1925 AND PROPOSAL  
# 25-OH-220359 DATED 04-07-2022  
DELIVERY: AS SCHEDULED | | | | |  

**DISCOUNT:** .00  
**ADDL CHARGES:** .00  
**TOTAL TAXES:** .00  
**TOTAL:** 288,960.00  

---  

**READ CAREFULLY** all terms and conditions, including those on the last page of this order, as they are made a part of this agreement.  

---  

I hereby certify that the proper requisition has been made for the above order and that a certificate of the necessity of this expenditure has been placed on file in this office.  

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**APPROVED BY**  
CITY COMMISSION  

---  

Certificate.  
I hereby certify that the amount of money required to meet the payments called for in the above order has 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 of any previous  
encumbrance.  

---  

Purchasing Agent  
**ACTING**  

---  

Director of Finance  
**2/14/22**  

---  

Clark of Commission
TERMS AND CONDITIONS

1. BILLING: All goods and services must be billed to THE CITY OF DAYTON, OHIO and at prices not exceeding those stated on the Purchase Order. If prices or terms do not agree with quotation, notify the City of Dayton, Division of Procurement, immediately.

2. INVOICE: All invoices must be in duplicate and must be forwarded to the City of Dayton at the address shown on the Purchase Order. Each Purchase Order must be invoiced separately. Invoices for partial shipments will be accepted; final invoice must indicate completion of order.

3. CASH DISCOUNTS: All cash discount terms will be effective from date of actual receipt and acceptance of the items purchased, or from receipt of correct and acceptable invoices, whichever is later.

4. PAYMENTS: With the award of this contract, the successful vendor(s) will be required to receive their payment(s) electronically via a virtual credit card by the City contracted provider effective 01/31/2016. All fees associated with acceptance of the payment will be the responsibility of the vendor.

5. F.O.B.: Destination (City of Dayton, Ohio) with delivery to the specified Department at the specified street address. NO COLLECT FREIGHT SHIPMENTS WILL BE ACCEPTED. All quotations are solicited on a delivered price basis. When, in rare instances, the City accepts a quotation not including all shipping charges, your claim for reimbursement must be itemized on the invoice and supported with a copy of the original freight bill.

6. TAXES: The City of Dayton is exempt from payment of Federal excise taxes and State retail sales taxes. The City of Dayton Federal Exemption Certificate is No. 31-79- 0544K and Ohio Vendors Licenses No. 31-157M. The Vendors is responsible for all Social Security taxes and Workers Compensation contributions for the Vendors or any of the Vendors employees.

7. DELIVERIES: All deliveries on this order must be in full accordance with specifications, properly identified with the Purchase Order number, and must not exceed the quantities specified.

8. CANCELLATION: The City of Dayton reserves the right to refuse this order by written notice if the Vendor does not fulfill its contractual obligations with respect to timeliness and/or quality.

9. DEFAULT PROVISIONS: In case of default by the Vendor, the City of Dayton may procure the items from other sources, and the Vendor shall be responsible for any excess costs occasioned thereby.

10. NON-UNIFORM AGREEMENTS: The City of Dayton will be bound only by the terms and conditions of this order and will not be responsible for verbal agreements made by any other officer or employee of the City of Dayton. The receipt of this purchase order does not indicate an authorization of fulfillment. Confirmation by City personnel must be received as indicated in the purchase order before any orders are placed.

11. PATENT AND COPYRIGHT INFRINGEMENTS: It is hereby understood that by acceptance of this order, the Vendor agrees to defend, indemnify, and save harmless the City of Dayton, Ohio, its officers, agents and employees from any and all loss, costs or expenses on account of any claim, suit or judgment as a result of, caused by, or incidental to any patent, copyright or trademark infringement and/or royalty, actual or claimed, because of the use or disposition by said City of any article enumerated on this order and said to City prior to this order.

12. APPLICABLE LAWS: The Vendor warrants that its products or production or completion shall not violate any federal, state or local laws, regulations or orders.

13. INSPECTION: The City of Dayton may inspect the items ordered hereunder during their manufacture, construction and/or preparation at reasonable times and shall have the right to inspect such items at the time of their delivery and/or completion.

14. WARRANTY: The Vendor warrants all items delivered hereunder to be free from defects of material or workmanship, to be of good quality, and to conform strictly to all specifications, drawings or samples which may have been specified or furnished by the City of Dayton, and the Vendor understands that the City of Dayton shall have good title to the items free and clear of all liens and encumbrances and will transfer such title to the City of Dayton. Said warranties shall not negate or limit any implied warranties of merchantability or fitness. This warranty shall survive any inspection, delivery, acceptance or payment by the City of Dayton.

15. RISK OF LOSS: Title and risk of loss shall remain with the Vendor until the time that the items shall be delivered in accordance with the delivery date or to the destination specified by the City of Dayton at the location specified on the face hereof, items which are to be shipped shall be shipped F.O.B. destination unless otherwise specified by the City of Dayton. A packing slip must accompany such shipment and if a shipment is to a consignee or an agent of the City of Dayton, a copy of the packing slip shall be forwarded concurrently to the City of Dayton. If no such packing slip is sent, the cost or weight by the City of Dayton or its agent or consignee is agreed to be final and binding on the Vendor with respect to such shipment.

16. SAVE HARMLESS: To the fullest extent permitted by law, the Vendor shall protect, defend, indemnify and hold free and harmless the City of Dayton, its agents, consignees, employees, and representatives from any and all claims, damages, losses, claims of loss, causes of action, penalties, settlements, costs, liabilities and expenses of any kind, including but not limited to attorneys fees, arising out of any acts or omissions of the Vendor's officers, agents and employees, including, but not limited to temporary employees that the Vendor provides to the City of Dayton which may be trained or controlled by the City of Dayton to any degree; consultants; agents; and, subcontractors of any tier used in any way to provide the goods or services for this purchase order.

17. FORCE MAJEURE: Neither the City nor Vendor shall be considered in default of any of these Purchase Order Terms and Conditions for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of these Terms and Conditions, such circumstances include, but are not limited to: abnormal weather conditions; floods; earthquakes; fire; epidemics; wars, riots, and other civil disturbances; strikes, lockouts, work stoppages, 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, services, or services required to be provided by either the City or Consultant under this Agreement. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party and describe the circumstances preventing continued performance and the efforts being made to resume performance under this Purchase Order.

18. INSURANCE: If requested by the City of Dayton, the Vendor shall maintain policies of liability insurance of such types and such amounts and with such companies as may be designated by the City of Dayton, which policies shall be written so as to protect the City of Dayton and the Vendor from the risks enumerated in Section 15. Such policies of insurance shall not be cancelable except upon thirty (30) days written notice to the City of Dayton and proof of such insurance shall be furnished by the Vendor to the City of Dayton. In addition, such policies shall protect all subcontractors of the Vendor. The Vendor agrees to make prompt written report to the insurance company involved of all accidents, occurrences, injuries or losses which may occur and of any and all claims made against the persons insured under said policies.

19. SPECIFICATIONS CONFIDENTIALITY: Any specifications, drawings, notes, instructions, engineering notices or technical data referred to in this Purchase Order shall be deemed to be incorporated herein by reference the same as if fully set forth. The City of Dayton shall at all times retain title to all such documents and the Vendor shall not disclose such to any party other than the City of Dayton or a party duly authorized by the City of Dayton. Upon the City of Dayton's request or upon completion and delivery of the items the Vendor shall promptly return all such documents to the City of Dayton.

20. EXAMINATION OF PREMISES: If work is to be performed hereunder on the premises of the City of Dayton, the Vendor represents that it has examined the premises and any specifications or other documents furnished in connection with the items and that it has satisfied itself as to the condition of the premises and sits and agrees that no allowance shall be made in respect of any error or defect in either the premises or any part of the premises.

21. CLEANING OF PREMISES: If work is to be performed hereunder on the premises of the City of Dayton, the Vendor shall at all times keep the premises free from accumulation of waste material or rubbish. At the completion of the work hereunder the Vendors shall leave the premises and the premises broom-clean.

22. EQUAL OPPORTUNITY: R.C.G.O. Sec. 35.14: (a) The Vendor agrees that it will 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, promotion or transfer, recruitment or advertisement, lay-off, termination, rates of pay or other terms of compensation, and selection for training, including apprenticeship. (b) It is expressly agreed and understood by Vendor that R.C.G.O. Sec. 35.14 constitutes a material condition of this contract as fully as if specifically rewritten herein and that failure to comply therewith shall constitute a breach thereof entitling the City to terminate the contract at its option.

23. AGREEMENT TO BE EXCLUSIVE: This Purchase Order contains the entire agreement between the parties and supersedes all other agreements between them. The parties acknowledge and agree that neither of them has made any representation with respect to the subject matter of this Purchase Order, or any representation inducing the execution and delivery of this Purchase Order except such representations as are specifically set forth herein, and that each party has relied on these representations in connection with its dealings with the other.

24. GOVERNING LAW: This Purchase Order, the performance under it, and all suits and special proceedings under it shall be construed in accordance with the laws of the State of Ohio. In any action, special proceeding or other proceeding that may be brought arising out of, in connection with, or by reason of this Purchase Order, the laws of the State of Ohio shall be applicable and shall govern to the exclusion of the laws of any other forum, without regard to the jurisdiction in which the action or special proceeding may be heard.

25. ADDITIONAL RIGHTS: Any rights or remedies granted to the City of Dayton in any part of this Purchase Order shall not be exclusive of, but shall be in addition to, any other rights or remedies granted in another part of this Purchase Order and any other rights or remedies that the City of Dayton may have at law or in equity in any such instance.

26. PRODUCT MANUFACTURE LABOR STANDARDS: Products and services provided for in this Purchase Order cannot be produced under Sweatshop Conditions as defined in Infrctional Resolution No. 39-77 as adopted by the Commission of the City of Dayton. The City of Dayton encourages vendors, contractors, Enterprises Zona employers and other organization doing business with the City of Dayton to use their best efforts to pay a living wage to their employees in compliance with Infrctional Resolution No. 31-18 as adopted by the Commission of the City of Dayton.

27. CONTRACTOR: Contractor acknowledges its employees are not public employees for purposes of Ohio Public Employers Retirement System (OPERS) membership.

T&C Revision Date: 06 November 2018
City Manager’s Report

From 6530 - RYS/Programs
Supplier, Vendor, Company, Individual
Name Counselman-Hunsaker & Associates Inc.
Address 10733 Sunset Office Dr. Suite 400
St. Louis, MO 63127

Date April 27, 2022
Expense Type Service Agreement
Total Amount $47,100.00 (thru 12/31/2025)

Fund Source(s) Fund Code(s) Fund Amount(s)
General Fund 10000-6530-1159-56 $47,100.00

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

Description
Service Agreement - Counselman-Hunsaker & Associates Inc.

The Department of Recreation (REC) requests approval to enter into a 3-year Agreement with Counselman-Hunsaker & Associates Inc. for external auditing and consulting services for our aquatic operations. The total amount of the agreement is for $47,100.00, at an annual fee of $15,700.00. We identified Counselman-Hunsaker & Associates Inc. as a suitable match based upon the recommendation of the American Red Cross.

Counselman-Hunsaker & Associates Inc. will provide unannounced audits of our aquatic operations and our aquatic safety team, along with professional recommendations for improvements. Additionally, they will lead our aquatic safety team in two in-service trainings per year. These in-service trainings will consist of up-to-date American Red Cross standards for CPR, first aid, emergency prevention, and water rescue.

The funding Source for this Agreement is the General Fund (10000).

The Agreement shall commence upon execution, and shall expire upon expenditure of all funds, or on December 31, 2025.

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

A Certificate of Funds in the amount of $15,700.00 for 2022 is attached.

Signatures/Approval

Approved by City Commission

E-SIGNED by: Stephan Marcellus
on: 2022-04-20 16:30:48 GMT

Division

E-SIGNED by: Robin Williams
on: 2022-04-20 17:48:57 GMT

Department

City Manager

FORM NO. MS-16

Clerk

Date Updated 8/2016
### SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>Contract Start Date</th>
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<tr>
<td>Expiration Date</td>
<td>12/31/25</td>
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<tr>
<td>Remaining Commission Approval</td>
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<tr>
<td>Decrease Encumbrance</td>
<td>$</td>
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</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

<table>
<thead>
<tr>
<th>Amount: $15,700.00</th>
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</thead>
<tbody>
<tr>
<td>Fund Code 10000 - 6530 - 1159 - 56 - XXXX - XXXX</td>
</tr>
</tbody>
</table>

### Amount: $   |
| Fund Code XXXX - XXXX - XXXX |

#### Attach additional pages for FOAPALs

**Vendor Name:** Counsilman-Hunsaker & Associates Inc.

**Vendor Address:** 10733 Sunset Office Dr. Suite 400 St. Louis MO 63127

**Street**

**City**

**State**

**Zipcode + 4**

**Federal ID:** 43-0957615

**Commodity Code:** 98100

**Purpose:** Aquatics operations assessment and lifeguard safety evaluations. FY 2022-2024

**Contact Person:** Tay Rakestraw x1734

**Date:** 3/7/2022

**Department/Division:** Recreation/RYS

**Originating Department Director’s Signature:** For Robin Williams

### 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:** 3/11/22

**Date:** 3/11/22

**CF/CT Number:** C722-3257

**SA 03/18/2022**
March 7, 2022

To: Kena Brown, Division Manager - Accounting and Treasury
   Department of Finance

From: Robin Williams, Director
   Department of Recreation S.M. For Robin Williams

Subject: 2022 Counselman-Hunsaker CF

The Department of Recreation, RYS Division requests a Certificate of Funds with Counselman-Hunsaker for external safety auditing of our aquatics operations and staff.

We are unable to contract directly with American Red Cross as they are unable to meet the indemnification requirements set by the City of Dayton. Counselman-Hunsaker was recommended by American Red Cross and has thorough knowledge of the American Red Cross certification process and will uphold their trainings to meet the standards of the American Red Cross.

If you have any questions, or need additional information, please contact Tay Rakestraw, at ext. 1734

Thank you for your assistance.

RW/tlr
AQUATIC OPERATIONS AGREEMENT

THIS AQUATIC OPERATIONS AGREEMENT (this "Agreement") is made and entered on this _____ day of ____________, 20__ ("Effective Date"), by and between the City of Dayton, ("Owner") and COUNSILMAN-HUNSAKER, a Missouri limited liability company ("Consultant").

WHEREAS, Owner is the owner and/or operator of three aquatic centers located in Dayton, OH commonly known as “Greater Dayton Recreation Center, Lohre Recreation Center, Northwest Recreation Center” ("Facility");

WHEREAS, Consultant is in the business of providing aquatic facility operations planning and risk management services to facilities such as the Facility; and

WHEREAS, Owner desires to engage Consultant for the purpose of providing certain aquatic facility planning and operations management and consultation services at the Facility, and Consultant is willing to provide such services, according to the terms and conditions as further set forth herein.

NOW THEREFORE, in consideration of the promises and covenants herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, Owner and Consultant agree as follows:

I. Appointment. Subject to the terms and conditions contained in this Agreement, Owner hereby retains and engages Consultant and Consultant hereby accepts engagement from Owner to perform certain aquatic-specific management services for the Facility, as elected by Owner and indicated below. The services elected by Owner below shall be referred to herein collectively as the "Consulting Services". Consultant shall have no obligation to perform any services for Owner or the Facility other than the Consulting Services.

1. CHAMP Program (Four (4) two-day site visits)
   a. provide one (1) annual lifeguard operations assessment and report including an unannounced on-site evaluation for up to three (3) sites;
      i. annual lifeguard operations assessments shall include a review of:
         a) lifeguard equipment/attire
         b) certifications
         c) lifeguard zones of surveillance
         d) rescue equipment and supplies
         e) emergency action plans
         f) aquatic facility documentation
         g) training procedures and records
      ii. unannounced on-site evaluations shall include the following:
         a) up to four (4) evaluations of lifeguards performing individual and team rescue scenarios
         b) up to six (6) undercover evaluations and videos of lifeguards performing surveillance
b. Administer three (3) additional unannounced on-site evaluations to review the following activities:
   i. Unannounced on-site evaluations shall include the following:
      a) up to four (4) evaluations of lifeguards performing individual and team rescue scenarios
      b) up to six (6) undercover evaluations and videos of lifeguards performing surveillance
      c) facility “Quick Check” for up to three (3) facilities
   c. Provide two (2) one-hour in-services to be conducted in conjunction with unannounced on-site evaluations.
   d. develop and assist in implementation of plan to address the results of such visits;
   e. Provide litigation support in the event of a fatal or catastrophic incident resulting in legal proceedings with the Client. Consultant shall provide one (1) site visit to provide accident investigation and documentation. Consultant shall provide Client’s legal team with appropriate records and documentation of the training and certifications. The consultant shall be available as an expert witness in the event of course proceedings. Additional site visits will result in additional fees as outlined in Additional Services;
   f. Consultant consists of an operations team with decades of well-rounded, varying experience in all facility types and operations. As part of the Agreement, Owner will receive all of the above-described services in addition to access to Consultant’s resources and knowledge as appropriate.

II. Fees.

   A. Consulting Fees. In consideration of the Consulting Services provided by Consultant to Owner hereunder, Owner shall pay to Consultant the following fees:

   Annual Lifeguard Operations Assessment (1 visit) $4,500
   Unannounced Evals Per visit: $2,000 first facility, $800 each additional 
   Unannounced Evaluations Total (3 visits) $10,800
   In-services (2) 
   Litigation Support $400 Included at no extra cost
   Total Sum $15,700 includes related travel expenses

   B. Additional Services. In addition to all other amounts payable by Owner herein, in the event Owner requests additional services beyond the Consulting Services and Consultant agrees to perform such services in writing, Owner shall pay, in addition to all other amounts described herein, the following services rates for all such services performed by Consultant:

   Principal $220.00/hour
   Director $200.00/hour
   Project Manager $175.00/hour
   Project Engineer/Architect $150.00/hour
   Design Associate $125.00/hour
   Administrative $70.00/hour
C. **Travel Expenses.** Consultant may incur reasonable and necessary expenses for travel in providing the Consulting Services and the additional services, if applicable, to Owner. In addition to all other amounts payable by Owner herein, Owner shall reimburse Consultant for reasonable travel expenses incurred by Consultant's officers, agents and employees that are directly related to the provision of the Consulting Services. Travel expenses shall include but are not limited to the costs of airfare, rental cars, parking, lodging and meals related to the provision of the Consulting Services. Consultant shall provide an itemized account of such travel expenses, together with receipts, vouchers or other supporting materials.

D. **Reimbursement.** Consultant may incur reasonable and necessary business expenses in providing the Consulting Services and the additional services, if applicable, to Owner. In addition to all other amounts payable by Owner herein, Owner shall reimburse Consultant for reimbursable expenses incurred by Consultant, based upon the Consultant's schedule for such expenses in effect at the time of billing. Reimbursable expenses shall include travel expenses described in subparagraph C above, postage, express mailings, printing and copying charges, and any artwork desired by Owner, such as renderings, and cad imaging including fly-through segments for community publicity purposes, subject to the terms of this Agreement. Telephone email and fax services are included in the Consulting Fees and shall not be subject to reimbursement hereunder. Consultant shall provide an itemized account of such reimbursable business expenses, together with receipts, vouchers or other supporting materials.

F. **Payment.** Unless otherwise agreed in writing or otherwise set forth herein, Owner will make all payments under this Agreement in U.S. dollars within thirty (30) calendar days after the date of Consultant's invoice for same. In addition to any other remedy available to Consultant for late payments, Owner agrees to pay and shall pay to Consultant interest on any overdue amount at the rate of one and one half percent (1.5%) per month or the maximum rate allowed under law, whichever is less, for each month, or partial month, calculated from the date such payment was due until the date paid. Owner will reimburse Consultant for all costs incurred by Consultant (including reasonable attorneys' fees, collection fees, and court costs, if any) in connection with any collection efforts related to or arising out of this Agreement.

G. **Taxes.** Neither the Consulting Fees, nor any other fees charged by Consultant hereunder for which Owner is liable for payment, include any excise, sales, use, value added or other taxes, tariffs or duties that may be applicable to the Consulting Services or additional services ("Taxes"). All such Taxes shall be Owner's responsibility. Owner shall provide, upon demand, Consultant with receipts issued by the appropriate taxing authority or such other evidence as is reasonably requested by Consultant to establish that such taxes have been paid. If Consultant is, in Consultant's reasonable discretion and judgment, legally obligated to collect such Taxes, the amount of such Taxes will be invoiced to Owner, and Owner will pay such amount unless Owner provides Consultant with a valid tax exemption certificate authorized by the appropriate taxing authority.

H. **Withholding Taxes.** All payments by Owner for the Consulting Services and any additional services will be made free and clear of, and without reduction for, any federal or state income taxes or any other payroll taxes from any amounts payable to Consultant hereunder.
I. **Responsibility After Termination.** Termination of this Agreement will not relieve Owner of its obligation to pay for any amounts which are Owner’s responsibility hereunder.

III. **Term and Termination.**

A. **Term.** This Agreement shall become effective on the Effective Date and, unless sooner terminated pursuant to the terms hereof, shall continue in effect until (and including) the third (3rd) anniversary of the Effective Date.

B. **Termination For Convenience.** Either party may terminate this Agreement at any time by providing the other party with sixty (60) days’ written notice to the other party.

C. **Termination for Cause.** Consultant may terminate this Agreement immediately upon Owner’s breach of any term of this Agreement and failure to cure within thirty (30) days after receiving written notice of same from Consultant or immediately upon the bankruptcy, insolvency or assignment for the benefit of creditors by Owner.

Owner may terminate this Agreement immediately upon Consultant’s breach of any term of this Agreement and failure to cure within thirty (30) days after receiving written notice of same from Owner or immediately upon the bankruptcy, insolvency or assignment for the benefit of creditors by Consultant.

D. **Effect Upon Termination.** Notwithstanding the termination of this Agreement, the parties shall be required to carry out any and all provisions hereof that contemplate performance by the parties subsequent to such termination, and such termination shall not affect any liability or obligation which shall have accrued prior to such termination, including but not limited to any liability for loss or damage on account of failure to perform pursuant to the terms of this Agreement. Upon termination of this Agreement, neither party shall have any further obligation to the other under this Agreement except for (i) obligations accruing prior to the effective date of termination of the Agreement; and (ii) obligations, promises or covenants in this Agreement which are intended to extend beyond the term of this Agreement including, without limitation, maintaining confidentiality of Confidential Information. Termination of this Agreement shall be in addition to and cumulative with any other remedy at law or equity, and Consultant shall, following termination of this Agreement, be entitled to recover its damages and its costs, including its attorneys’ fees, resulting from the breach of this Agreement by Owner.

E. **Suspension of Services.** Notwithstanding any other provision of this Agreement, Consultant may, in its sole discretion, and in addition to and not in lieu of any rights or remedies available to it hereunder, suspend provision of the Consulting Services and any additional services, if applicable, if: (a) Owner materially breaches any of its obligations under this Agreement including, without limitation, failure by Owner to pay any amount under this Agreement within thirty (30) days after the date of Consultant’s invoice therefor; or (b) Consultant determines that Owner may be unable to make any scheduled or expected payment. Any such suspension by Consultant: (i) will not constitute termination of this Agreement unless and until Consultant gives written notice to Owner expressly terminating this Agreement; (ii) will entitle Consultant to reimbursement by Owner for any and all costs and expenses incurred by Consultant in connection with any such suspension; and (iii) may be cancelled or revoked in Consultant’s sole discretion.

F. **Return of Materials.** Upon any expiration or termination of this Agreement, each party will return promptly or, at the other party’s request, destroy all documents and other tangible objects containing or representing Confidential Information of the other party or deliverables provided by Consultant, except to the extent that such documents must be retained to satisfy
auditing or regulatory requirements. If requested by the other party, each party will provide the other party with written certification of compliance with the foregoing obligations.

IV. **Restrictive Covenants.**

A. **Confidential Information.** Owner recognizes and acknowledges Consultant's proprietary rights in and to all information related to Consultant's business including, but not limited to, all tangible, intangible, visual, electronic, present or future information such as (a) trade secrets; (b) financial information, including pricing; (c) technical information, including research, development, procedures, algorithms, data designs, and know-how; (d) business information, including operations, planning, marketing interests, and products and services; and (e) the terms of this Agreement (all collectively referred to as "Confidential Information"), and Owner shall not disclose, furnish or make accessible to anyone, any of the Confidential Information, directly or indirectly, nor use it in any way, except as required in the provision of the Consulting Services. Any use or disclosure of any Confidential Information shall be in conformance with any rules or regulations adopted by Consultant with respect to such materials. All such Confidential Information, regardless of source or creation, and all works or materials derived therefrom, shall remain the exclusive property of Consultant. Upon termination of Consultant's engagement or at any time on the request of Consultant, Owner shall deliver promptly to Consultant, without retaining any copies or excerpts therefrom, all Confidential Information and all memoranda, diaries, notes, records, and any other documents relating to the Confidential Information, whether compiled by, developed by, made available to, or otherwise obtained by Owner. Owner does not have an obligation to protect Confidential Information that is; (a) in the public domain through no action of Owner; (b) within the legitimate possession of Owner, with no confidentiality obligations to a third party; (c) lawfully received from a third party having rights in the information without restriction, and without notice of any restriction against its further disclosure; (d) independently developed by Owner without breaching this Agreement; or (e) disclosed with the prior written consent of Consultant. If Confidential Information is required to be produced by law, court order or government authority, Owner must immediately notify Consultant of that obligation. Owner will not produce or disclose Confidential Information in response to that obligation until Consultant has requested protection from the court or other legal or governmental authority issuing the process and the request has been denied, or consented in writing to the production or disclosure of the Confidential Information in response to the process, or taken no action to protect its interests in the Confidential Information within fourteen (14) business days after the receipt of notice by Consultant of the obligation to produce or disclose. Owner will use the Confidential Information only to further the relationship between the parties. Confidential Information may not be disclosed to any third party without the written consent of Consultant or used by Owner in any manner which may be competitive to Consultant.

C. **Consultant Materials.** Owner acknowledges that in developing or furnishing the Consulting Services, a Deliverable (as defined below), or any other work product, Consultant may utilize pre-existing proprietary methodologies, tools, models, software, procedures, documentation, know-how and processes owned by and proprietary to Consultant ("Consultant Materials"). Owner further acknowledges that Consultant may modify or improve Consultant Materials during the course of the provision of the Consulting Services. Client agrees that all such modifications or improvements shall be included within the meaning of "Consultant Materials", unless otherwise specifically agreed by the parties.
D. Deliverables. Consultant may prepare documents or deliverables in the course of performing this Agreement, including without limitation, manuals, plans, budgets, reports, concept drawings and specifications ("Deliverables"). Owner agrees that Consultant will be the exclusive and sole owner of any and all rights, title and interest (including, without limitation, any copyright, patent right, trade secret or other intellectual property right) in and to any Deliverables, Consultant Materials and any other findings, discovery, reports, invention, machine, output, method, process, technique, creations, work, concept, composition, program, application, code (whether in source or compiled form), formula, equation or configuration of any kind, as well as any improvement, derivative, registration or application for registration thereto or thereof, whether or not patentable or copyrightable, that Consultant, either alone, or with others, makes, devises, conceives, discovers, reduces to practice or otherwise possesses during the term of this Agreement or thereafter. Owner shall not itself, or through any affiliate, agent, or third party: (a) sell, lease, license, sublicense, distribute or otherwise provide to any third party or any other person the Deliverables or Consultant Materials, in whole or in part; (c) modify or create derivative works of the Deliverables or Consultant Materials; (d) use or reproduce the Deliverables or Consultant Materials, except as specifically permitted under this Agreement; or (e) use the Deliverables or Consultant Materials to provide processing services to any third party. Owner shall not remove, alter, cover or obfuscate any patent, copyright, trademark or other proprietary notices, labels or marks of Consultant on or in the Deliverables or Consultant Materials. Owner shall promptly notify Consultant of any unauthorized use, disclosure, reproduction, or distribution of the Deliverables, which comes to Owner’s attention, or which Owner reasonably suspects.

E. Independent Covenants. All of the covenants by Owner contained in this Article IV will be construed as agreements independent of any other provision of this Agreement, and the existence of any claim or cause of action against Consultant, whether predicated on this Agreement or otherwise, will not constitute a defense to the enforcement by Consultant of these covenants.

F. Equitable Remedies. It is agreed that any breach or default of any of the terms of this Article IV of this Agreement by Owner will result in immediate and irreparable injury to Consultant and will authorize recourse to injunction and/or specific performance as well as to all other legal or equitable remedies to which Owner may be entitled.

G. Protection of Interest. It is the intention of the parties to restrict the activities of Owner under this Agreement only to the extent necessary for the protection of legitimate business interests of Consultant, and the parties covenant and agree that should any of the provisions set forth herein, under any set of circumstances, be held by a court of competent jurisdiction to be illegal, invalid or unenforceable under present or future laws during the term of this Agreement, then and in that event, the court so holding may reduce the business or territory to which it pertains and/or the period of time during which it operates, or effect any other change to the extent necessary to render such restriction enforceable by said court.

H. Exclusions. The Consultant excludes the extensive and likely invasive examinations listed below. Extensive analysis of these areas of concern shall be authorized by the Client as an additional service and completed by other Consultants specializing in these disciplines.

A. Structural analysis of pool shell(s).
B. Determining causes of identified water loss.
C. Geotechnical testing and analysis at the site.
D. Determining water table elevations at the site.
E. Locating aquifers at the site.
F. Locating electrical currents and their sources at and around the pool(s).
G. Equipotential bonding and grounding of the pool(s).
H. Natatorium building envelope.
I. CFD analysis of natatorium indoor air distribution.

V. **Owner Covenants.**

A. **Owner Responsibilities.** Owner will make available in a timely manner for Consultant's use, at no charge to Consultant, all technical data, computer facilities, programs, files, documentation, test data, sample output, or other information, resources, and personnel required by Consultant for the performance of the Consulting Services pursuant to the terms of this Agreement. Owner will be responsible for, and assumes the risk of any issues or damages resulting from the content, accuracy, completeness, competence, or consistency of all computer facilities, programs, files, documentation, test data, sample output, or other information, resources, and personnel supplied by Owner. Owner will provide, at no charge to Consultant, reasonable office space and equipment at the Facility (such as copiers, fax machines and modems) as Consultant requires in performing the Consulting Services. Owner assumes all responsibility for financial and other risks associated with the planning, development, operations and management of the Owner's Facility. Consultant assumes no such liability and Owner hereby fully releases Consultant from all such liability. Owner agrees to seek independent accounting and legal services that Owner deems necessary for the operation of Owner's Facility.

B. **Duties.**

1. Owner shall comply with all federal and state law, rules and regulations in connection with the ownership and operation of the Facility.

2. Owner shall obtain and maintain at all times during the term of this Agreement commercial general liability insurance covering operations and premises liability insuring against claims for injuries to persons and damages to property arising from or out of the ownership and operation of the Facility. Owner, on behalf of itself and its insurer, with respect to any claim covered by any insurance policy maintained by Owner, expressly waives all subrogation rights against Consultant and, in the event of a subrogation action brought by Owner's insurer, Owner agrees to indemnify, defend and hold Consultant harmless from such claim.

3. Owner shall comply with the American Red Cross Lifeguard standards, American Red Cross Lifeguard Instructor standards, and consultant recommendations.

C. **Access.** Owner shall provide, and Consultant shall have, access to the Facility to the extent necessary for Consultant to perform the Consulting Services.

D. **Staffing.** Consultant shall have the right to determine which of Consultant's employees, agents, representatives or subcontractors shall be assigned to perform the Consulting Services, or any part of them, under this Agreement. Consultant shall use reasonable efforts to fulfill Owner's request for specific individuals, subject to scheduling and staffing considerations.

E. **Publicity.** Owner shall not publish or use any advertising, sales promotion or publicity matters wherein Consultant's name, tradename, trademarks and/or logo(s) are used nor
use language pursuant to which the connection of such name, tradename, trademarks and/or logo(s) may, in Consultant’s judgment, be inferred or implied, without the prior written approval of Consultant.

F. **Control of Operations.** Nothing contained herein shall be construed to impose any obligation on Consultant for implementation of policies and operation procedures, scheduling, oversight or discipline of employees, facility, equipment, or supply purchase, construction, or maintenance; or supervision or direction of daily operations. Owner shall retain discretion with respect to each of the foregoing.

VI. **Insurance: Liability.**

A. **Insurance.** Consultant shall obtain and maintain throughout the term of this Agreement insurance with coverage and limits as follows:

1. Workers’ Compensation Insurance at statutory limits as provided by the state in which the Consulting Services are to be performed, and Employer’s Liability Insurance at a limit of not less than Five Hundred Thousand Dollars ($500,000) for all damages arising from each accident;

2. Comprehensive General Liability Insurance Covering Operations and Premises Liability insuring against claims for injuries to persons or damage to property arising from or out of the Consulting Services performed hereunder by Consultant, its agents, employees or subcontractors. The limits of such liability insurance shall be no less than Five Hundred Thousand Dollars ($500,000) combined single limit of liability for each occurrence; and

3. Professional Errors and Omissions Coverage insuring against claims arising from or out of the Consulting Services performed hereunder by Consultant, its agents, employees or subcontractors, with a minimum limit of One Million Dollars ($1,000,000) per occurrence.

B. **Policy Conditions.** All such insurance shall be carried with companies licensed to do business in the jurisdiction where the Consulting Services are to be performed, and such policies shall name Owner as an additional insured.

C. **Limitation of liability.** Notwithstanding anything contained herein to the contrary, in no event will Consultant be liable for any indirect, special, incidental, consequential, exemplary or punitive damages or costs of procurement of substitute goods or services arising out of or related to this Agreement, including but not limited to damages for lost data, revenue or profits, however caused and arising under any theory of liability, including but not limited to contract or tort (including products liability, strict liability and negligence), and whether or not such party was or should have been aware or advised of the possibility of such damage. In no event shall Consultant’s aggregate liability arising out of or related to this Agreement exceed the net amount Consultant has actually received from Owner pursuant to this Agreement.

D. **No Warranty.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, CONSULTANT MAKES NO REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER ORAL OR WRITTEN, WHETHER EXPRESS, IMPLIED, OR ARISING BY STATUTE, CUSTOM, COURSE OF DEALING OR TRADE USAGE, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT OR IN CONNECTION WITH THIS AGREEMENT.
CONSULTANT SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

E. Legal Compliance. To the extent the Consulting Services, Consultant Materials and Deliverables to be provided by Consultant are subject to legal requirements, Consultant makes no representation or warranty regarding compliance with any applicable laws or regulations. Owner will consult with and rely on its legal counsel for determination of compliance with all laws and regulations. Owner understands and agrees that Consultant is an aquatic operations consulting firm, and is not licensed to sell securities, is not a licensed accounting practice and is not licensed to practice law.

VII. Miscellaneous.

A. Entire Agreement. This Agreement, including any specified attachments, constitutes the entire agreement between Owner and Consultant with respect to the Consulting Services for the Facility and supersedes and replaces any and all previous agreements entered into or/and negotiated between Owner and Consultant relating to the Facility. No amendment to this Agreement shall be valid unless made by supplemental written agreement executed and approved by Owner and Consultant. Except as otherwise provided herein, any and all amendments, additions, or deletions to this Agreement shall be null and void unless approved by Owner and Consultant in writing. Each party to this Agreement hereby acknowledges and agrees that the other party has made no warranties, representations, covenants, or agreements, express or implied, to such party, other than those expressly set forth herein, and that each party, in entering into and executing this Agreement, has relied upon no warranties, representations, covenants, or agreements, express or implied, to such party, other than those expressly set forth herein.

B. Rights Cumulative; No Waiver. No right or remedy herein conferred upon or reserved to either of the parties to this Agreement is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given under this Agreement or now or hereafter legally existing upon the occurrence of an event of default under this Agreement. The failure of either party to this Agreement to insist at any time upon the strict observance or performance of any of the provisions of this Agreement, or to exercise any right or remedy or be construed as a waiver or relinquishment of such right or remedy with respect to subsequent defaults. Every right and remedy given by this Agreement to the parties may be exercised from “time to time” and as often as may be deemed expedient by those parties.

C. Applicable Law. The execution, interpretation, and performance of this Agreement shall in all respects be controlled and governed by the laws of the State of Ohio. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought in the courts of record of Montgomery County, Ohio. Each party consents to the sole and proper jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court.

D. Acknowledgement. The parties hereto acknowledge that they have been provided with a copy of this Agreement for review prior to signing it, that they have been given the opportunity to review it prior to signing it, that they have been given the opportunity to have
this Agreement reviewed by their attorney prior to signing it, and that they understand the purposes and effect of this Agreement.

E. **Severability.** If any provision or portion thereof, of this Agreement is found to be invalid, unlawful or unenforceable to any extent, such provision of this Agreement will be enforced to the maximum extent permissible by applicable law so as to affect the intent of the parties, and the remainder of this Agreement will continue in full force and effect. The parties will negotiate in good faith an enforceable substitute provision for any invalid or unenforceable provision that most nearly achieves the intent and economic effect of such provision.

F. **No Third Party Beneficiary.** The terms of this agreement are enforceable by the parties, but are not enforceable by any third party. Nothing contained herein shall, or shall be construed, to create any rights in any third party.

G. **Independent Contractors.** The relationship of the parties under this Agreement is that of an independent contractor. Neither party will be deemed to be an employee, agent, partner, franchisor, franchisee nor legal representative of the other for any purpose and neither will have any right, power or authority to create any obligation or responsibility on behalf of the other.

H. **Force Majeure.** Neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the reasonable control and without negligence of the parties. Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, failures of the Internet, earthquakes, fire and explosions, but the inability to meet financial obligations is expressly excluded.

I. **Notices.** Any notice or other communication required or permitted hereunder shall be in writing and shall be delivered personally or sent by certified, registered or express mail, postage prepaid. Any such notice shall be deemed given on the date delivered personally, or if mailed, three (3) days after the date of deposit in the United States mail, addressed to Owner or Consultant, as applicable, at the address set forth below such party’s signature.

J. **Execution.** This Agreement may be executed and delivered by facsimile and the parties agree that such facsimile execution and delivery will have the same force and effect as delivery of an original document with original signatures, and that each party may use such facsimile signatures as evidence of the execution and delivery of this Agreement by all parties to the same extent that an original signature could be used.

K. **Survival.** All provisions of this Agreement that, judging by their terms and context, are intended to survive, shall survive the termination of this Agreement.

---

The remainder of this page is intentionally left blank
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

CONSULTANT:

COUNSILMAN-HUNSAKER, a Missouri limited liability company

By: ____________________________

Name: Miklos Valdez

Title: Studio Director

Address: 10733 Sunset Office Drive
         Suite 400
         St. Louis, Missouri 63127-1018

OWNER:

City of Dayton

By: ____________________________

Name: __________________________

Title: __________________________

Address: ________________________

APPROVED BY THE COMMISSION
OF THE CITY OF DAYTON, OHIO

20 Min. Book Page

CLERK OF THE COMMISSION

APPROVED AS TO FORM AND CORRECTNESS

CITY ATTORNEY

December 8, 2021
Page 11
Dayton, OH – CHAMP 2021
City Manager’s Report

From 6310 - Fire Director

Supplier, Vendor, Company, Individual

Name Atlantic Emergency Solutions, Inc.

Address 12351 Randolph Ridge Lane
Manassas, VA 20109

Date April 27, 2022
Expense Type Payment of Voucher
Total Amount $41,200.00

Fund Source(s) Fund Code(s) Fund Amount(s)
General Fund/Fire 10000-6340-1301-71 $41,200.00

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

Description

Payment of Voucher

The Department of Fire ("DFD") requests approval for a Payment of Voucher to pay an Atlantic Emergency Solutions, Inc. invoice dated December 20, 2021, in the amount of $41,200.00. DFD had a Purchase Order, with a separate funding sequence, in place to pay for this invoice. However, when the other sequence was processed and closed, the entire Purchase Order was closed. As a result, DFD no longer has an open encumbrance to pay for this invoice.

DFD has implemented new monitoring processes for Purchase Orders and invoices to ensure that encumbrances are not closed until all invoices are processed and paid.

A Certificate of Funds in the amount of $41,200.00 is attached.

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

X New Contract
___ Renewal Contract
___ Change Order

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Original CT/CF
Increase Encumbrance
Decrease Encumbrance
Remaining Commission Approval

Amount: $ 41,200.00

Fund Code 10000 - 6340 - 1301

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Amount: ______________________

Fund Code XXXX - XXXX - XXXX

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Attach additional pages for more FOAPALS

Vendor Name: Atlantic Emergency Solutions, Inc.
Vendor Address: 12351 Randolph Ridge Lane Manassas, VA 20109
Street _______________________ City ______ State ______ Zipcode + 4
Federal ID: 27-3187193
Commodity Code: 93878
Purpose: For the Payment of invoice # 1463SW

Contact Person: Kevin Kuntz
Fire Department
Department/Division _______________________ Date 4/13/2022

Originating Department Director’s Signature: Lykins, Jeff

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 4/19/22

CF Prepared by _______________________ Date 4/18/22

CF/CT Number _______________________ Date 4/14/22

Finance Department

October 18, 2011
### Specialty Equipment Sales
5255 N. State Route 60 NW · McConnelsville, OH 43756
(740) 962-4328
www.atlanticemergency.com

#### Disclaimer of Warranties
The factory warranty constitutes all of the warranties with respect to the sale of this item/items. The seller hereby expressly disclaims all warranties either express or implied, including any implied warranty of merchantability or fitness for a particular purpose. Seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this item/items. All goods returned must be accompanied by this invoice. No Returns on Non Stock Parts/Equip.

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**PLEASE TAKE A MOMENT FOR A SURVEY:**
WWW.ATLANTICEMERGENCY.COM/SURVEY

**PAYMENT TO:** 12351 RANDOLPH RIDGE LANE
MANASSAS, VA 20109

**CUSTOMER SIGNATURE:**
X

Restocking Fee of 25% and related shipping charges. An 18% (1.5% Monthly) APR Late Fee applies to past due balances.

**CUSTOMER COPY**
AN ORDINANCE

Amending Section 34.50 of the Revised Code
of General Ordinances to Stay Community
Appeals Board Hearings During Ongoing
Litigation, and Declaring an Emergency.

WHEREAS, On June 18, 2020, Dayton City Commission announced a police
reform working structure to drive positive changes for the police department in
Dayton; and

WHEREAS, Five reform groups were formed, comprised of community
members and Dayton police representatives along with city staff to develop these
changes; and

WHEREAS, On December 22, 2021, the Commission passed City of Dayton
Ordinance 31954-21 amending Sections 34.40-34.53 of the Revised Code of
General Ordinances that created the Community Appeals Board; and

WHEREAS, The efficacy of the Community Appeals Board requires a stay
of Community Appeals Board hearings while court or administrative proceedings are
pending; and

WHEREAS, For the immediate preservation of the public peace, property,
health, and safety, it is necessary that this Ordinance take effect immediately; now,
therefore,

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

Section 1. That Section 34.50 of the R.C.G.O. be, and hereby is, amended to read
as follows:

Sec. 34.50. - Review appeal process.

(A) Appeals shall be made in writing on forms provided by the Community Appeals
Board. The forms will be available at, but not limited to, the Human Relations
Council, the Professional Standards Bureau, the Safety Building, the City of Dayton
website, and the City Manager's office. The Human Relations Council shall provide
appeal forms and intake training to community organizations. An appeal form will
also be mailed with the letter which informs the complainants of the findings of the
investigation of the original complaint. The Complainant shall submit the form
within 30 days of the date on the Dayton Police Department's letter of findings,
although reasonable exceptions may be granted by the Board.

(B) The appeals forms will be reviewed for sufficiency and completeness. Complainants
filing insufficient appeals will be notified by the Board's chair within ten days after
the next regular meeting of the Board. The complainant shall be permitted to amend the appeal form within ten days after being notified that the appeal is insufficient.

(C) Hearings shall be scheduled during the Board’s regular monthly meetings, or at another time agreed upon by the Board or as directed by the Commission. The complainant will be notified within 10 days of the Board’s meeting time when the appeal is scheduled and may elect to furnish testimony to the Board. Prior to furnishing testimony to the Board, the complainant will be offered the opportunity to work with a staff person at the Dayton Mediation Center to prepare for the hearing. The staff person shall not represent the complainant before the Board or advocate for the complainant. Testimony shall be given under oath. Board hearings shall be tape-recorded or video-recorded and tapes shall be maintained at the Human Relations Council.

(D) The employees of the Department of Police against whom the complaint is made will be invited to give voluntary testimony to the Board during the appeal hearing. If the Dayton Police Department employee decides to not provide voluntary testimony, which is within his or her rights and permitted by law, that employee’s report of the alleged incident may be read into the record upon the Board’s request. A representative from the Professional Standards Bureau shall be made available upon request for questions related to investigations and policies. The Board is hereby empowered to, and may at its sole discretion, issue subpoenas for non-Dayton Police Department witnesses to the incident.

(E) After an appeal is filed, the Dayton Police Department and Professional Standards Bureau shall turn over a copy of the investigative file to the Board, the Human Relations Council, and the Legal Advisor. Such documents to be shared include, but are not limited to: the complaint, reports from the investigation, interview notes and recordings, pictures, videos, cruiser footage, body-worn cameras, the policies applicable to the situation, the letter of findings, and any other evidence used to make a determination. The complainant may request a copy of the investigative file by notifying the Human Relations Council of such request.

(F) In making its determinations, the Board may or may not concur with the findings of the Dayton Police Department. If the Board does not concur, it may do so with a finding that the complaint should have been sustained, not sustained, exonerated, or unfounded.

(G) A complaint is sustained when the investigation discloses evidence indicating the accused employee has committed all or part of the alleged act(s), and that the alleged acts were not justified, lawful, or proper. A complaint is not sustained when the investigation discloses insufficient evidence to clearly prove or disprove the allegations made. A complaint is exonerated when the investigation indicates that the act described in the complaint did occur, however, the investigation revealed the act was lawful and in accordance with established department policy and procedure. A complaint is unfounded when the investigation establishes that the alleged act did not occur; or the accused officer did not commit the act; or there is no credible evidence to support the complaint.

(H) No action of the Board may affect discipline given as a result of the Dayton Police Department findings in the original complaint. However, while reviewing any appeal before the formal hearing, the Board may make recommendations and request
additional information or investigation by the Dayton Police Department and Independent Accountability Auditor.

(I) When a Community Appeals Board complaint relates to a criminal, civil, or administrative proceeding where the City of Dayton or its officers, employees, or agents are a party, the Community Appeals Board shall immediately stay this appeal process while any suit or proceeding is pending. The prosecution of a criminal case by the City of Dayton does not invoke a stay of this appeal process.

Section 2. The existing Section 34.50 of the Revised Code of General Ordinances of the City of Dayton is hereby repealed.

Section 3. For reasons outlined 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.............................................., 2022

SIGNED BY THE MAYOR...................................................., 2022


Mayor of the City of Dayton, Ohio

Attest:

Clerk of the Commission

Approved as to form:

City Attorney
AN ORDINANCE

Authorizing a Third Amendment to the Purchase and Sale Agreement for the Transfer of Real Estate Known as Deeds Point, for a Public Purpose, and Declaring an Emergency

WHEREAS, Ordinance 31890-21 authorized the Sale of Deeds Point (the "Property") to GDS Property Holdings, LLC ("GDS"); and

WHEREAS, On June 15, 2021 Purchaser and The City of Dayton ("City") entered into a Purchase and Sale Agreement ("Agreement") to transfer Seller’s interest in real property; and

WHEREAS, The Agreement specified an Inspection Period during which Purchaser was to conduct certain due diligence activities; and

WHEREAS, On November 11, 2021 GDS and City entered into a First Amendment to the Agreement to extend the duration of the Inspection Period to February 15, 2022; and

WHEREAS, On February 15, 2022 GDS and City entered into a Second Amendment to the Agreement to extend the duration of the Inspection Period to September 15, 2022; and

WHEREAS, GDS and City have agreed to modify the terms of the sale; and

WHEREAS, GDS has offered to make an additional financial contribution and the City is willing to accept said contribution; and

WHEREAS, It is necessary for the immediate preservation of the public peace, property, health and safety that this Ordinance take effect at an early date; now, therefore,

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

Section 1. That the City Manager is hereby authorized to execute the Third Amendment to the Purchase and Sale Agreement attached as Exhibit A.

Section 2. That the total consideration received from the Sale of the Property, less closing costs, shall be deposited into the following account:

TRIANGLE PARK DOG PARK FUND
42302-6450-21211-54
NOT TO EXCEED THREE HUNDRED THOUSAND DOLLARS
($300,000.00)
Section 3. For the reasons stated in the preamble hereof, this Ordinance is declared to be an emergency measure and shall take effect immediately upon its passage.

PASSED BY THE COMMISSION............................................., 2022

SIGNED BY THE MAYOR.................................................., 2022

Mayor of the City of Dayton, Ohio

ATTEST:

Clerk of the Commission

APPROVED AS TO FORM:

City Attorney
April 14, 2022

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

FROM: Todd M. Kinskey, Director  
Department of Planning, Neighborhoods & Development

SUBJECT: Two Ordinances in Support of the Sale of Deeds Point

On May 26, 2021, the City Commission passed Ordinance #31890-21 that authorized the sale of the City-owned real property known as Deeds Point to GDS Holdings, LLC for the construction of the new Greater Dayton School. The Department of Planning, Neighborhoods & Development (PND) now requests approval of two additional ordinances that fulfill the City’s obligations for closing the sale of the real estate.

One ordinance authorizes a Third Amendment to the Purchase and Sale Agreement with GDS Holdings, LLC (GDS). The original Purchase and Sale Agreement authorized GDS to purchase the property for $250,000.00. The First and Second Amendments allowed for additional time for GDS to complete their due diligence on the property and did not require City Commission approval. This Third Amendment allows for the City to receive an additional $50,000 from GDS as a financial contribution towards the construction of a new dog park at Triangle Park. The Purchase and Sale Agreement authorizes up to $300,000.00 that will be paid into the Triangle Park Dog Park Project Fund (42302-6450-21211-54).

The other ordinance related to the Deeds Point project authorizes the granting of an easement to the Miami Conservancy District (MCD) on a portion of Kettering Fields. Deeds Point is subject to a Deed Restriction due to a 1917 Agreement between the City and MCD. As a condition of closing, MCD requested an easement on City-owned land at Kettering Fields for occasional temporary storage of materials and equipment as needed to maintain river levees or address local emergencies.

In order for the Greater Dayton School to open in August 2023, construction must begin next month, May 2022. While site work is already underway, the closing and transfer of the real estate must take place before the building foundations can be installed. The City also desires to receive the proceeds of the sale as soon as possible. Both the amendment and the easement are necessary to complete the closing and transfer. Accordingly, we respectfully request that each ordinance be read as an emergency with a first reading on April 20, 2022, and a second reading on April 27, 2022. Non-emergency approval would delay the closing by an additional 30 days and risk delaying the opening of the school next year. If you have any questions, please contact me at extension 4209 or Chris Lipson at extension 3820.

Attachments

C: Ms. Lofton; Mr. Parlette; Mr. Lipson; Mr. Weinel; Ms. Browning; Ms. Morris; Mr. Klein, file
THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS THIRD AMENDMENT, ("Third Amendment") is made and entered into between GDS Property Holdings, LLC, a not-for-profit limited liability company ("Purchaser") and the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio ("Seller").

WHEREAS, On June 15, 2021 Purchaser and Seller entered into a Purchase and Sale Agreement ("Agreement") to transfer Seller’s interest in real property; and

WHEREAS, The Agreement specified an Inspection Period during which Purchase was to conduct certain due diligence activities; and

WHEREAS, On November 11, 2021 Purchaser and Seller entered into a First Amendment to the Agreement to extend the duration of the Inspection Period to February 15, 2022; and

WHEREAS, On February 15, 2022 Purchaser and Seller entered into a Second Amendment to the Agreement to extend the duration of the Inspection Period to September 15, 2022; and

WHEREAS, Purchaser and Seller have agreed to modify the terms of the sale; and

WHEREAS, Purchaser has offered to make an additional financial contribution and the Seller is willing to accept said contribution;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, both parties have agreed to amend the Agreement as follows:

1. Article 3.4 is added to Section 3 as follows: Purchaser agrees to contribute an additional $50,000.00 towards the relocation of the existing amenities on the property. Funds will be delivered as part of the closing on the Purchase and Sale of the Property.

2. Except as amended herein, all other provisions of the Agreement, as now amended, remain in full force and effect and remain unchanged.
IN WITNESS WHEREOF, the parties have caused this Third Amendment to be executed, each by a duly authorized representative, on the day and date set forth below.

GDS Property Holdings, LLC

By: 

Its: Vice-President

CITY OF DAYTON, OHIO

City Manager

Date

APPROVED AS TO FORM AND CORRECTNESS:

E-SIGNED by Suzanne Beck for City Attorney on 2022-04-12 14:13:37 GMT

City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO

__, 2022

Min./Bk. Pg.

Clerk of the Commission
SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS SECOND AMENDMENT, ("Amendment") is made and entered into between GDS Holdings, LLC, a not-for-profit limited liability company ("Purchaser") and the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio ("Seller").

WHEREAS, On June 15, 2021 Purchaser and Seller entered into a Purchase and Sale Agreement ("Agreement") to transfer Seller's interest in real property; and

WHEREAS, The Agreement specified an Inspection Period during which Purchase was to conduct certain due diligence activities; and

WHEREAS, On November 11, 2021 Purchaser and Seller entered into a First Amendment to the Agreement to extend the duration of the Inspection Period to February 15, 2022; and

WHEREAS, Additional time is needed for the completion of the due diligence activities; and

WHEREAS, The parties now desire to extend the duration of the Inspection Period;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, both parties have agreed to amend the Agreement as follows:

1. Article 4.1 is amended to replace "February 15, 2022" with "September 15, 2022".

2. Except as amended herein, all other provisions of the Agreement, as now amended, remain in full force and effect and remain unchanged.

IN WITNESS WHEREOF, the parties have caused this Second Amendment to be executed, each by a duly authorized representative, on the day and date set forth below.

GDS Holdings, LLC
By: Director

CITY OF DAYTON, OHIO
City Manager
Date

APPROVED AS TO FORM
AND CORRECTNESS:

Attorney

*No Commission Action Required
FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT, ("First Amendment") is made and entered into between GDS Holdings, LLC, a not-for-profit limited liability company ("Purchaser"), and the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio, ("Seller").

WITNESSETH THAT:

WHEREAS, On June 15, 2021 Purchaser and Seller entered into a Purchase and Sale Agreement ("Agreement") to transfer Seller's interest in real property; and,

WHEREAS, The Agreement specified an Inspection Period during which Purchaser was to conduct certain due diligence activities; and

WHEREAS, Additional time is needed for the completion of due diligence activities; and

WHEREAS, The parties now desire to extend the duration of the Inspection Period.

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

1. Article 4.1 is amended to replace “November 15, 2021” with “February 15, 2022”.

2. Except as amended herein, all other provisions of the Agreement, as now amended, remain in full force and effect and remain unchanged.

IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed, each by a duly authorized representative, on the day and date set forth below.

GDS HOLDINGS, LLC                                                                 CITY OF DAYTON, OHIO

By:  

Title: President

CITY OF DAYTON, OHIO

City Manager

Date: November 11, 2021

APPROVED AS TO FORM AND CORRECTNESS:

City Attorney

**NO COMMISSION ACTION REQUIRED**
PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this "Agreement") is effective as of May 15, 2021, by GDS PROPERTY HOLDINGS, LLC, a non-profit limited liability company, or its successors and assigns (the "Purchaser") and THE CITY OF DAYTON, OHIO, an Ohio municipal corporation (the "Seller").

In consideration of the mutual promises and conditions contained in this Agreement, the parties agree as follows:

1. **Definitions.** Unless otherwise stated in this Agreement, all of the capitalized words in this Agreement have the meanings set forth in the Exhibit A hereto, or in other provision of this Agreement.

2. **Property Description.** On the Closing Date and subject to the performance of all conditions precedent contained in this Agreement, Purchaser agrees to purchase from Seller, and Seller agrees to sell and deliver possession to Purchaser, all of Seller's right, title, and interest in and to the Property, of which the exact size and location is yet to be determined. The Property is generally depicted in Exhibit B, attached. The lines, as drawn on Exhibit B, are an estimation and subject to change in accordance with a property survey and utility operation needs.

3. **Purchase Price; Deposit; Prorations.**

   3.1. **Purchase Price.** The purchase price for all of Seller's right, title, and interest in and to the Property (the "Purchase Price") is Two Hundred Fifty Thousand Dollars ($250,000.00).

   3.2. **Deposit.** Within ten (10) days after the date of this Agreement, Purchaser shall deliver to Chicago Title Insurance Company, One S. Main Street, Ste. 250, Dayton, OH 45402, which shall act as the escrow agent for the Closing (the "Title Company"), an earnest money deposit, in the amount of Fifty Thousand Dollars ($50,000.00) to be held in an account and in accordance with the terms of this Agreement (the "Deposit"). Interest earned on the Deposit shall be considered part of the Deposit, if any. If Purchaser purchases the Property, such Deposit shall be applied by Seller as a credit towards the Purchase Price. In the event Purchaser terminates this Agreement in accordance with Section 4.1.9, the Deposit shall be refunded to Purchaser. If Purchaser fails to perform its obligations, or otherwise terminates this Agreement in violation of this Agreement, Seller shall be entitled to retain the Deposit and any accrued Extension Fees as its sole and exclusive damages under this Agreement.

   3.3. **Prorations.** The balance of the Purchase Price, after application of any credits or prorations set forth in this Agreement and the application of the Deposit, shall be delivered by Purchaser in accordance with Section 6.3 of this Agreement, by certified or official bank check or wire transfer to the order of the Title Company, subject to the prior delivery in escrow of all instruments of transfer and conveyance in accordance with this Agreement.
4. **Inspection Period: Seller’s Deliverables.**

4.1. **Inspection Period.** Purchaser, at Purchaser’s sole cost and expense, shall have until 6 p.m. Eastern Time on November 15, 2021, or such other date as mutually agreed upon by Seller and Purchaser (the "Inspection Period"), in which to conduct its due diligence review of the Property, testing, investigations and inspections of the physical aspects of the Property, and otherwise to determine the desirability and utility of the Property for Purchaser’s intended use, as determined by Purchaser, in Purchaser’s sole and absolute discretion, including but not limited to the following:

4.1.1. **Zoning, Engineering and Permits.** Purchaser understands from Seller that the Property is not currently zoned to permit the construction and operation of a private school and associated uses (the "Purchaser’s Intended Use") and Purchaser agrees to pursue a Planned Development for its Intended Use. Purchaser agrees to satisfy all Planned Development requirements set forth by Seller’s Zoning Code. Purchaser will remove the Property from the Public Commons Master Plan and revise the design guidelines that were approved by Dayton City Commission in 2007 for the Property. Seller agrees to cooperate with Purchaser in the rezoning process. Purchaser agrees that a replat of the Property and/or an updated legal description may be necessary in order to properly identify and transfer the Property. Purchaser will submit any necessary replat application to Seller in accordance with Seller’s process and requirements and Purchaser agrees to assume the full cost of the replat and any incidental costs thereof including, but not limited to, obtaining surveys. Purchaser, at its cost and expense, shall have obtained, upon terms and conditions satisfactory to Purchaser, all necessary permits, licenses, variances and approvals (collectively, the "Permits") pertaining to the building, occupancy, signs, utilities, curb cuts, driveways (including ingress and egress to and from public thoroughfares), zoning, use, environmental controls, and any other permits which are necessary for Purchaser’s Intended Use. Purchaser agrees to comply with Seller’s engineering standards as well as the following specific civil engineering requirements and acknowledges that other engineering requirements may be necessary as the site is developed. The minimum civil engineering requirements agreed to by Purchase are: Deeds Park Drive shall be dedicated with a 50’ ROW and 60’ ROW at Webster Street; Deeds Park Drive shall be reconstructed to include 36’ wide pavement, barrier curb, 3’ tree lawn, 5’ walk and asphalt pavement shall be a minimum of 6 inches on 10 inches of gravel. Roadway shall also include street lighting designed to City of Dayton Standards. Construction plans for the public improvement shall be submitted to the City of Dayton Division of Civil Engineering for review and approval. Deeds Park Drive from Webster Street to the access point of the City of Dayton pump station shall be dedicated and include any necessary turnarounds as determined appropriate by City of Dayton engineering. Additional ROW approved by the City of Dayton and Five Rivers Metroparks will be dedicated for parking at Deeds Point Metropark. Purchaser shall prepare all applications contemplated herein and Seller agrees to not unreasonably withhold consent to countersign such applications or other documents as owner. Seller also agrees to make such other appearances as reasonably requested by Purchaser in order to obtain the Permits.

4.1.2. **Utilities.** Purchaser shall have confirmed that all utilities, including telephone, storm sewer, sanitary sewer, water, gas and electric (collectively, the "Utilities") have been adequately extended within satisfactory easements or rights-of-way to a location on the perimeter of the Property at which Purchaser can tap into and receive service without the imposition of tap-in charges to Purchaser other than tap-in charges which are customarily and
normally charged in the locality in which the Property is located. Such existing Utilities shall be available and verified by Purchaser in a size, pressure, and condition appropriate for Purchaser’s Intended Use. Seller agrees to reasonably cooperate with Purchaser in obtaining any such utility easements. Purchaser shall provide adequate access, in a manner and form acceptable to the Seller, to existing and proposed public water, sanitary sewer, and storm sewer utilities.

4.1.3. **Easements.** Purchaser shall have obtained at or prior to Closing all other necessary easements or licenses. Seller agrees to reasonably cooperate with Purchaser in obtaining any such easements or licenses. Purchaser agrees to grant to Seller any necessary easements as determined by Seller related to water mains, sanitary sewers and storm sewers.

4.1.4. **Sanitary and Storm Sewer; Stormwater Management.** Purchaser agrees that sanitary sewer connections are to be made at an existing 24 inch sanitary line east of the Property near Webster Street and connecting at the existing lines along the rivers would not be permitted. Purchaser agrees to implement green infrastructure for stormwater management purposes.

4.1.5. **Soil Tests.** Purchaser shall have obtained, at Purchaser’s cost and expense, borings, percolation tests, toxic or hazardous substance tests and other tests (collectively, the “Soil Tests”) showing that the Property is satisfactory, in Purchaser’s sole judgment, for building foundations and the construction, operation and financing of the improvements which Purchaser may wish to make.

4.1.6. **Title Insurance.** Purchaser shall have obtained a satisfactory Title Commitment in accordance with Section 5.1 of this Agreement.

4.1.7. **Environmental Phase I and Related Testing.** Purchaser, at Purchaser’s cost and expense, shall have obtained a current satisfactory all appropriate Inquiries Phase I Environmental Audit of the Property and any other environmental testing which Purchaser deems reasonably necessary to evaluate potential environmental risks related to the Property.

4.1.8. **Financial Feasibility.** Purchaser must have determined, in its sole and absolute discretion, that the purchase and development of the Property for Purchaser’s Intended Use is financially feasible.

4.1.9. **Financing.** Purchaser shall have obtained a binding commitment for financing in amounts and on terms satisfactory to Purchaser in its sole and absolute discretion to use the Property in accordance with Purchaser’s Intended Use.

4.1.10. **Termination.** If Purchaser determines in its sole and absolute discretion that the Property is not acceptable, Purchaser shall have the right for any reason or no reason either to: (a) terminate this Agreement by written notice to Seller on or before expiration of the Inspection Period, or any extensions thereof as mutually agreed upon by Seller and Purchaser and the Title Company shall immediately return the Deposit and any Extension Fee paid prior to termination to Purchaser and neither party shall have any further rights or obligations to the other under this Agreement, subject to the conditions set forth in Section 3.2 and Section 4.2:
or (b) waive the requirements and/or contingencies regarding such due diligence review and proceed with this Agreement.

4.2. **Extension of Inspection Period.** Purchaser shall have the option to extend the Inspection Period for two (2) periods of ninety (90) days each provided Purchaser delivers to Seller a written notice of its exercise of the extension of the Inspection Period prior to the expiration of the Inspection Period, as extended, and deposits with the Title Insurance Company an extension fee in the amount of two Thousand Five Hundred Dollars ($2,500.00) for each extension (each, an "Extension Fee"), which Extension Fee(s) shall become non-refundable but credited against the Purchase Price at Closing except in the event of a Seller default in which event the Extension Fee(s) shall be refunded to Purchaser, or as provided in Section 4.2 and Section 12, in which event the Extension Fee(s) shall be refunded to Purchaser.

4.3. As a material inducement to Purchaser's execution hereof, Purchaser and Seller agree that it would be impracticable and extremely difficult to fix actual damages in case of Purchaser's default. Seller agrees that the amount of the Deposit and any Extension Fee paid prior to default or Purchaser's notice to Seller of its intent to default is a reasonable estimate of such damages, and that Seller shall retain the Deposit and any paid Extension Fee as liquidated damages, and its sole remedy against Purchaser. Furthermore, Seller agrees that the amount of the Deposit and any paid Extension Fee is a sufficient remedy for such Purchaser default, Seller shall not longer have any cause of action or claim against Purchaser in law or in equity, including specific performance, and Purchaser shall be fully released from any action of Seller arising out of Purchaser's alleged breach of this Agreement. The parties further agree that the Deposit and any paid Extension Fee is a reasonable sum considering all of the circumstances of the transactions contemplated by this Agreement.

4.4. **Seller's Deliverables.** Within seven (7) days after the date of this Agreement, Seller agrees to provide Purchaser with copies of any and all environmental reports, wetlands permits, geotechnical reports, concurrency documents, plans and specifications, plans, bids, covenants, construction contracts, aerial photographs, development agreements, warranties, leases and rent roll, topos, correspondence, utility locations and capacity documents, traffic studies, surveys, title work commitments or policies, surveys, soil tests or other inspection reports regarding the Property which are in Seller's possession and any and all reports or information in Seller's possession affecting the Property. In addition, and upon request by Purchaser, Seller shall deliver to Purchaser copies of any and all other due diligence items requested by Purchaser.

5. **Title Commitment; Survey.**

5.1. **Title Commitment.** Prior to thirty (30) days before the expiration of the Inspection Period as same may be extended, Purchaser may cause to be furnished to Purchaser, at Purchaser's costs and expense, a title insurance report and commitment for an ALTA Owner's Title Insurance Policy in a coverage amount equal to the amount of the Purchase Price, from the Title Company (the "Title Commitment"), in which the Title Company commits that upon delivery and recordation of the Deed and other documents provided for in this Agreement, the Title Company will issue, at its usual rate, an ALTA Owner's Title Insurance Policy, insuring access to the Property and such other endorsements as Purchaser may request (the "Title Policy"). Title to the Property shall be good and marketable in fee simple in the name of Seller, as determined in accordance with the standards of the state bar association where the Property is located and free and clear of all Encumbrances other than Permitted Encumbrances. If the Title Commitment or the exceptions show that title is unmarketable,
then Purchaser shall notify Seller of Purchaser’s objections prior to the expiration of the Inspection Period. Seller shall undertake, with due diligence, to have the defects identified by Purchaser eliminated. If Seller is unable or unwilling to eliminate defects identified by Purchaser within fifteen (15) days, Seller shall notify Purchaser in writing, and Purchaser shall have the option, within fifteen (15) days of the written notice by Seller, to be exercised in Purchaser’s sole discretion, to: (i) proceed with Closing of this transaction subject to such title defects; or (ii) terminate this Agreement, in which event the Title Company shall return to Purchaser the Deposit and any Extension Fee(s). Notwithstanding the foregoing, Purchaser shall have the right to object to any new title exceptions which are identified between the date of the Title Commitment and the Closing Date.

6. Closing Date; Closing Deliveries; Costs and Expenses.

6.1. Closing Date. Subject to the satisfaction of all terms and conditions of this Agreement, the closing under this Agreement shall take place as an escrow closing through the offices of the Title Company on a date that is within thirty (30) days after the expiration of the Inspection Period, as extended pursuant to this Agreement, as determined by Purchaser in its reasonable discretion, by providing notice to Seller.

6.2. Seller’s Deliveries to Title Company. Subject to the conditions and obligations of this Agreement, Seller shall make the following deliveries to the Title Company or Purchaser, and perform the following acts, at least two (2) days prior to the Closing Date:

6.2.1. A duly executed quitclaim deed, (the "Deed"), with the Seller warranting the property free from encumbrances, except zoning ordinances, building restrictions, taxes and assessment that appear on the tax duplicate for the year of closing, and all restrictions and easements of record.

6.2.2. Closing statement (the "Closing Statement"), prepared by the Title Company, executed by Seller, conforming to the proration and other relevant provisions of this Agreement.

6.2.3. A certificate of the Seller certifying copies of all requisite resolutions or actions of Seller approving the execution and delivery of this Agreement and the consummation of the transactions contemplated herein.

6.2.4. An executed MCD Staging Easement in a form approved by Seller and MCD.

6.2.5. An affidavit with respect to mechanics’ liens, certifying that there are no unpaid bills for services rendered or material furnished to the Property.

6.2.6. Any and all other documents and instruments incidental to the transactions contemplated by this Agreement and reasonably requested by Purchaser, any Governmental Authority, or Title Company, including but not limited to: (a) the standard affidavit required by the Title Company for the removal of the standard preprinted exceptions from the title insurance policies; and (b) a Certificate of Non-Foreign Status or other evidence satisfactory to Purchaser and the Title Company confirming that Purchaser is not required to withhold or pay to the Internal Revenue Service any part of the "amount realized" as such term.
is defined in the Internal Revenue Code of 1986, as amended, and the regulations promulgated pursuant thereto.

6.3. **Purchaser’s Deliveries to Title Company.** Subject to the conditions and obligations of this Agreement, Purchaser shall make the following deliveries to the Title Company or Seller, and perform the following acts, at least two (2) days prior to the Closing Date, unless otherwise noted:

6.3.1. Closing Statement, executed by Purchaser.

6.3.2. Purchaser shall deliver the Purchase Price, as adjusted by this Agreement, to the Title Company, on or before the Closing Date.

6.3.3. A certificate of the members of Purchaser certifying copies of: (i) the formation documents of Purchaser; (ii) all requisite resolutions or actions of Purchaser approving the execution and delivery of this Agreement and the consummation of the transactions contemplated herein; and (iii) the signature of each authorized representative of Purchaser.

6.3.4. All other documents and instruments incidental to the transactions contemplated by this Agreement and reasonably requested by Seller or Title Company.

6.4. **MCD Release.** As a condition to Closing, the MCD Release shall have been executed and delivered by MCD to the Title Company.

6.5 **Costs and Expenses.** Seller shall pay for the following expenses relative to this transaction: (i) its own attorneys’ fees; (ii) one half of the Title Company’s closing and escrow fees; Purchaser shall pay for the following expenses relative to this transaction: (i) one half of the Title Company’s closing and escrow fee; (ii) all costs and expenses of transferring and recording the deed of conveyance, including, but not limited to; transfer fees, transfer taxes, documentary stamp and/or conveyance taxes of transferring the Property, (iii) its own financing expenses, if any; (iv) its own attorneys’ fees; (v) all of the premium cost of an owner’s policy of title insurance and endorsements; and (vi) costs and expense of the Survey.

6.6 **Prorations.** The Purchaser shall pay, at closing, all taxes, assessments, interest and penalties that are then due and payable. It is understood that the taxes and assessments for the tax year 2021 will not be prorated. It is further understood and agreed that in the event the sale is not closed in 2021, then the taxes and assessments shall not be prorated for the year in which the closing is held. Upon closing, Purchaser shall be responsible for all future taxes and assessments.

7. **Representations and Covenants by Seller.** As of the date of this Agreement and as of the Closing Date:

7.1. **Title to Property.** Seller represents that Seller has good, marketable and indefeasible fee simple title to the Property.

7.2. **Authority and Organization.** Seller represents that it is a municipal corporation, duly organized, validly existing, and in good standing under the laws of the State of Ohio, and has all requisite power and authority to carry on its business as it is presently being conducted. Seller
represents that Seller has obtained or will obtain all necessary approvals to authorize the transaction and consummate the transfer of the Property as herein contemplated.

7.3. **Enforceability.** Seller represents that this Agreement has been duly authorized and approved by Seller, has been duly and validly executed and delivered by Seller and is a valid and legally binding agreement of Seller, enforceable against Seller in accordance with its terms, except to the extent that such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws relative to or affecting the rights and remedies of creditors generally and by general principles of equity (regardless of whether in equity or at law). The execution and delivery of this Agreement have been duly authorized and validly executed and delivered by Seller, and will not: (i) constitute or result in the breach of or default under any oral or written agreement to which Seller is a party or which affects the Property; (ii) constitute or result in a violation of any order, decree or injunction with respect to which Seller and/or the Property is bound; (iii) cause or entitle any party to have a right to accelerate or declare a default under any oral or written agreement to which Seller is a party or which affects the Property; and (iv) violate any provision of any municipal, state or federal law, statutory or otherwise, to which Seller or the Property may be subject.

7.4. **Transfer of Property: Compliance with Laws.** Seller represents that on the Closing Date, Seller will transfer the Property and possession of the Property to Purchaser. Seller represents that the Property is in good standing and in compliance with all applicable covenants, conditions, restrictions, easements, laws, regulations, rules affecting the Property and for which the Property is subject.

7.5. **Property Rights & MCD Approval.** Seller represents and covenants:

7.5.1. The Property is subject to deed restrictions set forth in an agreement between the City of Dayton and the Miami Conservancy District ("MCD") dated August 9, 1917 and recorded in Deed Book 391, Page 296 of the Deed Records of Montgomery County (the "Deed Restrictions"). Those Deed Restrictions limit the Property to use for park and playground purposes. Purchaser made a "Formal Request of Board of Miami Conservancy District" which was approved by the MCD board on April 27, 2021 (as the same may be amended or modified, the "MCD Approval"). The MCD Approval sets forth the requirements for MCD to execute a release of the Property from the Deed Restrictions (the "MCD Release"). Seller agrees it will work in conjunction with Purchaser to satisfy the covenants contained in the MCD Approval, including, but not limited to:

(a) Seller will grant an easement to MCD on the Kettering Field/N. Bend property depicted in Exhibit C (the "MCD Staging Easement"). The MCD Staging Easement will include a covenant that such property shall remain free from structures or immovable obstructions. The MCD Staging Easement may be used for the staging and storage of materials if and when necessary for flood control system maintenance, repair and emergency response. The MCD Staging Easement will terminate under such circumstances described in the MCD Approval.

(b) The MCD Approval requires Purchaser to cause the dedication of the current road or roads bordering the Property. Provided Purchaser satisfies the engineering requirements set forth in Section 4.1.1, Seller agrees to accept the dedication of Deeds Point Drive. The Seller will provide Purchaser with such
temporary construction easements or licenses as are necessary to enter Seller’s property to complete roadway improvements. Seller agrees to dedicate any undedicated portions of Deeds Point Drive and N. Bend Road that are located on other property owned by Seller that is adjacent to the Property.

7.5.2 Other than this Agreement and the Miami Conservancy District deed restrictions, there are no outstanding options, contracts, commitments, warranties, pledges, agreements or other rights of any character entitling any Person to acquire any or all of the Property. Further, all service and maintenance contracts with respect to the Property will, unless Purchaser notifies Seller in writing during the Inspection Period that Purchaser intends to assume the same, be terminated by Seller, at Seller’s cost, at Closing.

7.6. Litigation. There is no pending or threatened litigation, arbitration, administrative action or examination, claim, or demand whatsoever relating to the Property. No attachments, execution proceedings, liens, assignments or insolvency proceedings are pending or threatened against Seller or the Property or contemplated by Seller. Seller is not contemplating the institution of insolvency proceedings.

7.7. Eminent Domain. Seller has no knowledge of any pending or contemplated eminent domain, condemnation, or other governmental or quasi-governmental taking of any part or all of the Property, including, but not limited to, any action that would compromise access to the Property due to changes in public roads or impact the availability of utilities to the Property. Seller has no knowledge of any pending moratorium or other action which would impact construction on the Property.

7.8. Assessments/Tax Appeals. Seller has not been notified of any possible future improvements by any public authority, any part of the cost of which might be assessed against any part of the Property. Seller has not appealed the current tax valuation of the Property and has no knowledge of any existing or potential changes in the tax value of the Property.

7.9. Environmental. To the best of Seller’s knowledge, Seller: (i) has not used the Property for the storage, treatment, generation, production or disposal of any toxic or hazardous waste, material or substance nor does Seller have knowledge of such use by others; (ii) has not caused or permitted and has no knowledge of the release of any toxic or hazardous waste, material or substance on or off site of the Property; (iii) has not received any notice from any governmental authority or other agency concerning the removal of any toxic or hazardous waste, material or substance from the Property; and (iv) has disclosed to Purchaser the location of all underground storage tanks on the Property, if any. No event has occurred with respect to the Property which would constitute a violation of any applicable environmental law, ordinance or regulation.

8. Representations by Purchaser. As of the date of this Agreement and as of the Closing Date:

8.1. Authority and Organization. Purchaser represents that it is an Ohio non-profit corporation, duly organized, validly existing, and in good standing under the laws of the State of Ohio, and has all requisite power and authority to carry out the transactions contemplated by this Agreement and has obtained all necessary approvals to authorize the transaction and consummate the transfer of the Property as herein contemplated.
8.2. **Enforceability.** This Agreement has been duly authorized and approved by Purchaser, has been duly and validly executed and delivered by Purchaser and is a valid and legally binding agreement of Purchaser, enforceable against Purchaser in accordance with its terms, except to the extent that such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws relative to or affecting the rights and remedies of creditors generally and by general principles of equity (regardless of whether in equity or at law).

8.3. **No Conflict.** The execution, delivery and performance of this Agreement by Purchaser will not breach any statute or regulation of any Governmental Authority, and will not conflict with or result in a breach of or default under any of the terms, conditions or provisions of any order, writ, injunction, decree, agreement or instrument to which Purchaser is a party.

9. **Covenants of Seller.** Prior to the termination of this Agreement or the Closing Date, Seller covenants and agrees that it:

9.1. Shall not enter into any contract or agreement for the sale, lease, transfer, mortgage, easement, lien, encumbrance, hypothecate, pledge, encumber or assign any of the Property or Seller’s interest in the Property or the interest in Seller.

9.2. Shall promptly notify Purchaser of any event, condition or circumstance occurring from the date hereof to the Closing Date that would constitute a violation or breach of this Agreement by Seller.

9.3. Not enter into any contracts or other commitments regarding the Property, either with any Governmental Authority (including, but not limited to, zoning changes, site plan approvals, density shifts, or platting or replatting) or with any private person or party, without having first obtained the prior written consent of Purchaser thereto in each instance.

10. **Covenants of Purchaser.**

10.1 Purchaser covenants and agrees that it shall not allow more than forty percent (40%) of the student enrollment of the school to be built on the Property to be students who are direct transfers from a Dayton Public School. A “direct transfer” is a student who was enrolled in a Dayton Public School in the school year immediately preceding the then-current school year. Purchaser agrees to this limitation being included as a deed restriction on the Property to also be enforced against any subsequent or future operator of the school.

10.2 Purchaser also agrees to a deed restriction on the Property which limits approximately 2.5 acres of the Property to be used for park and playground purposes, which Purchaser will develop and maintain in the manner and for the time period as specified in the MCD Approval.

11. **Indemnification.** Purchaser shall indemnify and hold harmless Seller and its respective officers, members, agents, and employees, for, any loss, liability, claim, damage, expense (including but not limited to, costs of investigation and defense and attorneys’ fees), whether or not involving a third party claim, arising from or in connection with: (a) any material inaccuracy in any of the representations and warranties in this Agreement; or (b) any failure to perform or comply with any Agreement to be performed or complied with by it in this Agreement.
12. Remedies.

12.1. If Seller should fail to perform in accordance with this Agreement, or otherwise breach any of the terms, covenants, agreements, representations or warranties contained in this Agreement, then: (i) Purchaser may terminate this Agreement and upon such termination, the parties hereto shall be released from any and all obligations arising hereunder or as a result of their course of dealings and the Deposit and any Extension Fee(s) shall be immediately delivered to Purchaser;

12.2. If Purchaser should fail to perform in accordance with this Agreement, or otherwise breach any of the terms, covenants or agreements contained in this Agreement, then Seller may terminate this Agreement and upon such termination, the parties hereto shall be released from any and all obligations arising hereunder or as a result of their course of dealings and the Deposit and any Extension Fee paid prior to breach shall be immediately delivered to Seller, such sum being agreed upon as the sole damages for the failure of Purchaser to perform the duties, liabilities and obligations imposed on it by the terms and provisions of this Agreement. Seller agrees to accept and take the Deposit and paid Extension Fee as its total damages and relief as Seller’s sole remedy hereunder.

13. Condemnation; Destruction. If, prior to the Closing Date, all or any significant portion of the Property is taken by eminent domain (or is the subject of a pending or contemplated taking which has not been consummated) or if a material part of the Property, including any means of ingress thereto or egress therefrom is damaged or destroyed by fire or other casualty prior to the Closing Date, Seller shall notify Purchaser of that fact, and Purchaser shall have the option to terminate this Agreement upon notice to Seller and not later than ten (10) days after receipt of Seller’s notice; in which case, all obligations of Seller and Purchaser hereunder will be extinguished and the Deposit and any Extension Fee(s) shall be immediately delivered to Purchaser.

14. Assignment. Purchaser may not assign its interest or rights or obligations in this Agreement without the written consent of Seller. Notwithstanding the foregoing, Purchaser may assign this Agreement to an entity owned by or under common control with the Purchaser.

15. Notices. Either party may change its address by notice to the other party. Any notice provided or permitted to be given under this Agreement must be in writing and may be served: (i) by depositing the same in the United States mail or with a reputable nationwide delivery service, addressed to the party to be notified, postage prepaid, and overnight, registered or certified with return receipt requested; or (ii) by delivering by a national courier service. Notice given in accordance with (i) above shall be effective three (3) days after mailed. Notice given in accordance with (ii) above shall be effective upon delivery by the national courier at the address of the addressee. Notwithstanding the foregoing, notice pursuant to Section 4.1.9 may be provided to Seller and its representative via email. For purposes of notice, the addresses of the parties shall be as follows:

Seller: Todd Kinskey
Planning and Community Development
City of Dayton
P.O. Box 22, 101 West Third Street
Dayton, Ohio 45401
Telephone: (937) 333-4209
16. **Entire Agreement and Amendments.** This Agreement, together with the schedules and exhibits hereto, each of which is deemed to be a part hereof, contains the entire understanding between the parties hereto concerning the subject matter hereof and it is understood and agreed that all negotiations and agreements heretofore had between the parties are merged herein.

17. **Amendment Waiver.** This Agreement may be amended, modified or supplemented only by an agreement in writing signed by all parties hereto. The parties agree that there are no oral agreements, understandings, representations or warranties that are not expressly set forth herein. Neither the failure nor any delay on the part of any party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, or of any other right, power or remedy; nor shall any single or partial exercise of any right, power or remedy preclude any further or other exercise thereof, or the exercise of any right, power or remedy. Except as expressly provided herein, no waiver of any of the provisions of this Agreement shall be valid unless it is in writing and signed by the party against whom it is sought to be enforced.

18. **Successors and Assigns.** The agreements and representations herein shall inure to the benefit of and shall be binding upon the heirs, executors, administrators, successors, and assigns of the respective parties.

19. **Time of Essence.** Time is of the essence of all provisions of this Agreement.

20. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State where the Property is located, without regard to conflicts of laws principles of that state. In the event of the bringing of any action or suit by either party against the other arising out of this Agreement, the party in whose favor final judgment shall be entered shall be entitled to recover from the other party all costs and expenses of suit, including reasonable attorney’s fees.

21. **Counterparts Facsimile.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered, shall constitute an original, but all of which together shall constitute but one instrument. Signatures transmitted by facsimile shall have the same effect as original signatures.

22. **Severability.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to
any extent, be invalid or unenforceable, but the extent of such invalidity or unenforceability does not
destroy the basis of the bargain among the parties as expressed herein, the remainder of this Agreement
and the application of such provision to other persons or circumstances shall not be affected thereby,
but rather shall be enforced to the greatest extent permitted by law.

23. **Captions and Headings.** The captions and headings of this Agreement are for
convenience of reference only and shall not define or limit any of the terms or provisions hereof.

24. **Multiple Sellers.** If two or more persons constitute this Agreement each as a seller,
the word "Seller" shall be construed as if it reads "Sellers" throughout this Agreement.

25. **Acceptance.** In the event this Agreement is not signed simultaneously by Purchaser
and Seller, it shall be considered to be an offer made by the party first executing it.

26. **Interpretation, No Presumption; Survival.** This Agreement has undergone drafts
with the negotiated suggestions of all parties and therefore no presumption shall arise favoring any
party by virtue of the authorship of this Agreement or any of its provisions. The parties hereto have
been advised by their respective legal counsel regarding the form and substance of the provisions
contained herein. The use of the word "including" in this Agreement means including, without
limitation, the items following. All of the representations, warranties and covenants made in this
Agreement shall survive the Closing.

27. **Date of Performance.** If the date for performance of any act under this Agreement
falls on a Saturday, Sunday or federal holiday, the date for such performance shall automatically be
extended to the first succeeding business day that is not a Saturday, Sunday or federal holiday.

28. **Brokers.** The parties acknowledge that no real estate agent, broker or company has
been used in this transaction by either party and no party has taken any actions which would give rise
to a claim for any commission.

[Signatures on the Next Page.]
Purchase and Sale Agreement

Signature Page

IN WITNESS WHEREOF, Seller and Purchaser have executed this Purchase and Sale Agreement as of the date listed above.

Seller:
The City of Dayton, Ohio

By: __________________________
Print Name: Shelley Dickstein
Title: City Manager

Purchaser:

CWS Property Holdings, LLC,
an Ohio for-profit limited liability company

By: __________________________
Print Name: Lawrence E. Corwin
Title: President

Approved as to form and correctness

CITY ATTORNEY

Approved by the Commission of the City of Dayton, Ohio

May 24, 2021

Clerk of the Commission

Page 13 of 17
Purchase and Sale Agreement

Exhibit A

Definitions

For the purposes of this Agreement, the following terms shall have the following meanings:

"Appurtenances" mean all rights, privileges, easements, hereditaments, tenements and rights-of-way appurtenants to, or used in connection with, the beneficial use and enjoyment of the Property, including, without limitation, all right, title and interest, if any, of Seller in and to all water rights, open or proposed highways, streets, roads, roadways, avenues, alleys, sidewalks, easements, strips, gores or rights-of-way, ingress and egress, in, on, across, under, in front of, contiguous to, adjacent to, abutting, adjoining or otherwise benefiting the Property, both public and private.

"Property" means that certain parcel or parcels of real property, commonly known as a portion of Deeds Point, located in Dayton, Montgomery County, Ohio consisting of unimproved land, and as depicted in Exhibit B, together with all appurtenances thereto.

"Encumbrance" means any lien, pledge, mortgage, charge, deed of trust, security interest, claim, lease, charge, option, right of first refusal, easement, servitude, encroachment or other survey defect, transfer restriction, easements and restrictions related to wetlands and waterways, or other encumbrance of any nature whatsoever.

"Governmental Authority" or "Governmental Authorities" mean any government or political subdivision thereof, whether federal, state, local or foreign, or any agency or instrumentality of any such government or political subdivision, or any court or arbitration body, having authority over the Property.

"Improvements" mean all improvements, buildings, structures and fixtures currently located on the Property or to be located on the Property as of the Closing Date, excluding any fixtures owned by tenants, including, without limitation, all heating and air conditioning systems, parking facilities and services, refrigeration, ventilation or other utilities, facilities or services located on the Property or owned by Seller and used in connection with the Property.

"Leases" mean each and every lease of space at the Property and any amendments thereto (a) in full force and effect as of the Effective Date and/or (b) executed by Seller after the Effective Date in compliance with the terms and provisions of this Agreement.

"Licenses" mean all of the following owned by Seller, any and all licenses, permits, certificates, consents, registrations, certifications, approvals, operating rights, service contracts, intellectual property, waivers and other authorizations, whether issued or granted by any Governmental Authority or by any other Person, with respect to the Property.
"Person" means any individual, corporation, partnership, limited liability company, firm, joint venture, association, joint-stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any Governmental Authority.

"Records" mean any and all books, lists, leases, documents, manuals, marketing information, databases, and specifications, architectural renderings, warranties, blue prints, floor plans, mylars, forms and records used in connection with the Property and/or any Improvements on the Property.
AN ORDINANCE

Authorizing the Sale of Real Estate Known as Deeds Point, for a Public Purpose, and Declaring an Emergency.

WHEREAS, On October 10, 2018, the Commission of the City of Dayton concurred in the adoption of the Dayton Riverfront Plan (the “Plan”), supporting the conceptual vision for the river corridors and recognizing the Plan as a visioning document to guide development along the river corridors; and,

WHEREAS, The Connor Group has created a 501(c)(3) entity known as GDS Property Holdings, LLC and seeks to purchase the real estate known as Deeds Point (the “Property”), which area is more particularly described in Exhibit A attached hereto; and,

WHEREAS, The disposition of the Property has been recommended by the Director of Planning and Community Development, the officer of the City of Dayton having the supervision and management of such land; and,

WHEREAS, The City Commission finds this sale to be consistent with the vision of the Dayton Riverfront Plan and in the public interest in order to foster job creation and improve the quality of life within the City of Dayton; and,

WHEREAS, It is necessary that this Ordinance take effect immediately upon its adoption in order to complete the transfer in a timely manner and for the immediate preservation of the public peace, property, health and safety; now, therefore

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

Section 1. That the offer to purchase the Property is hereby accepted by the City Commission in accordance with Section 36.44 of the Revised Code of General Ordinances of the City of Dayton, Ohio.

Section 2. That the City Manager is authorized to proceed with the sale of the Property to GDS Property Holdings, LLC or a related entity and to execute any and all documents necessary to facilitate the transfer including the Purchase and Sale Agreement attached hereto as Exhibit A.

Section 3. That the City Manager is authorized to execute a quit claim deed, on behalf of the City.

Section 4. That the real estate described in Exhibit A shall be sold for the purposes set forth in the various preambles of this ordinance and for the consideration to of Two Hundred Fifty Thousand Dollars ($250,000.00).
Section 5. That for the reasons stated in the preamble hereof, this Ordinance is declared to be an emergency measure and shall take effect immediately upon passage.

PASSED BY THE COMMISSION, May 26, 2021

SIGNED BY THE MAYOR, May 26, 2021

[Signature]
Mayor of the City of Dayton, Ohio

Attest:
[Signature]
Clerk of the Commission

Approved as to form:
[Signature]
City Attorney
AN ORDINANCE

Authorizing the Grant of a Real Estate Easement, and Declaring an Emergency.

WHEREAS, Miami Conservancy District requested an easement on City-owned land located at Kettering Fields for occasional temporary storage of materials and equipment as may be needed to maintain river levees or address local emergencies; and

WHEREAS, The City desires to grant MCD the easement; and

WHEREAS, It is necessary for the immediate preservation of the public peace, property, health and safety that this Ordinance take effect at an early date; now, therefore,

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

Section 1. That the City Manager is hereby authorized to execute the Easement attached as Exhibit A, or a document substantially similar thereto, and any other documents necessary to grant an easement to the Miami Conservancy District.

Section 2. For the reasons stated in the preamble hereof, this Ordinance is declared to be an emergency measure and shall take effect immediately upon its passage.

PASSED BY THE COMMISSION..........................................., 2022

SIGNED BY THE MAYOR..................................................., 2022

Mayor of the City of Dayton, Ohio

ATTEST:

Clerk of the Commission

APPROVED AS TO FORM:

City Attorney
April 14, 2022

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

FROM: Todd M. Kinskey, Director
Department of Planning, Neighborhoods & Development

SUBJECT: Two Ordinances in Support of the Sale of Deeds Point

On May 26, 2021, the City Commission passed Ordinance #31890-21 that authorized the sale of the City-owned real property known as Deeds Point to GDS Holdings, LLC for the construction of the new Greater Dayton School. The Department of Planning, Neighborhoods & Development (PND) now requests approval of two additional ordinances that fulfill the City’s obligations for closing the sale of the real estate.

One ordinance authorizes a Third Amendment to the Purchase and Sale Agreement with GDS Holdings, LLC (GDS). The original Purchase and Sale Agreement authorized GDS to purchase the property for $250,000.00. The First and Second Amendments allowed for additional time for GDS to complete their due diligence on the property and did not require City Commission approval. This Third Amendment allows for the City to receive an additional $50,000 from GDS as a financial contribution towards the construction of a new dog park at Triangle Park. The Purchase and Sale Agreement authorizes up to $300,000.00 that will be paid into the Triangle Park Dog Park Project Fund (42302-6450-21211-54).

The other ordinance related to the Deeds Point project authorizes the granting of an easement to the Miami Conservancy District (MCD) on a portion of Kettering Fields. Deeds Point is subject to a Deed Restriction due to a 1917 Agreement between the City and MCD. As a condition of closing, MCD requested an easement on City-owned land at Kettering Fields for occasional temporary storage of materials and equipment as needed to maintain river levees or address local emergencies.

In order for the Greater Dayton School to open in August 2023, construction must begin next month, May 2022. While site work is already underway, the closing and transfer of the real estate must take place before the building foundations can be installed. The City also desires to receive the proceeds of the sale as soon as possible. Both the amendment and the easement are necessary to complete the closing and transfer. Accordingly, we respectfully request that each ordinance be read as an emergency with a first reading on April 20, 2022, and a second reading on April 27, 2022. Non-emergency approval would delay the closing by an additional 30 days and risk delaying the opening of the school next year. If you have any questions, please contact me at extension 4209 or Chris Lipson at extension 3820.

Attachments

C: Ms. Lofton; Mr. Parlette; Mr. Lipson; Mr. Weinel; Ms. Browning; Ms. Morris; Mr. Klein, file
EASEMENT FOR USE, INGRESS, AND EGRESS

THE CITY OF DAYTON, OHIO ("Grantor"), for good, sufficient, and valuable consideration received, hereby grants to THE MIAMI CONSERVANCY DISTRICT ("Grantee"), as well as its successors and assigns forever, the following easement described below.

1. Grantor grants a permanent easement to Grantee regarding the real property in Kettering Field ("the Property") more fully described below.

   Address: North Bend Boulevard, Dayton, Montgomery County, Ohio

   Parcel(s): R72 05807 0001; R72 05808 0001; R72 05809 0001; R72 05810 0001; R72 05811 0001; R72 05811 0002; R72 05811 0003; R72 05811 0004; R72 05811 0005; R72 05811 0006; and R72 05811 0007.


2. The real property subject to such easement is upon approximately 5.9704 acres of land in the Property ("the Area") more fully described as follows:

SEE ATTACHED LEGAL DESCRIPTION AND MAP ATTACHED AS EXHIBIT A

3. Such easement shall include the unrestricted right to use and access the Area, as well as vehicular and pedestrian ingress and egress on the same, for and in furtherance of the purposes of staging and storage of materials and equipment if and when necessary for maintenance, repair, and emergency response related to the flood control system or recreation trail. Grantor will not construct or install, or permit the construction or installation of, any walls, fences, structures, or barriers of any kind or any other impairment of access in the Area that would prevent or impair the use of the Area for ingress, egress, staging or storage purposes as described above.

4. Grantee and its successors or assigns will not use the Area for any purpose inconsistent with any local, state, or federal laws or regulations or for purposes other than those set forth in this Easement.

5. This Easement will be construed in accordance with the laws of the State of Ohio. If any
term or provision of this Easement becomes or is held to be invalid or unenforceable, the remaining terms and provisions will be unaffected and will be valid and enforceable in accordance with their terms. No waiver or breach of a covenant or provision in this Easement will be deemed a waiver of any other covenant or provision in this Easement, and no waiver will be valid unless in writing and executed by the waiving party. No amendment to this Easement will be valid or enforceable until a written amendment has been executed by the parties hereto and recorded with the Montgomery County, Ohio Recorder’s Office.

6. The conditions and covenants contained in this Easement will run with the land and inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Executed this __________ day of ____________________, 2022.

GRANTOR:

THE CITY OF DAYTON, OHIO

Name:________________________________________
Title:________________________________________

STATE OF OHIO )
COUNTY OF ____________________________ ):

The foregoing instrument was executed and acknowledged before me this ___ day of __________, 2022, by __________________________________, on behalf of THE CITY OF DAYTON, OHIO in their capacity as its ___________________________. No oath or affirmation was administered to the foregoing signer of this instrument in connection with this acknowledgment.

NOTARY PUBLIC

This instrument prepared by:
Thomas M. Green
GREEN & GREEN, LAWYERS
109 North Main Street
800 Performance Place
Dayton, Ohio 45402
4867-6807-8320, v. 1
SITUATE IN SECTION 5, TOWN 1, RANGE 7 M.RS., CITY OF DAYTON, COUNTY OF MONTGOMERY, STATE OF OHIO AND BEING AN EASEMENT OVER PARCELS CONVEYED TO THE CITY OF DAYTON BY DEED BOOK 839, PAGE 560 AND DEED BOOK 883, PAGE 98, MORE PARTICULARLY DESCRIBED AS FOLLOWS: (ALL REFERENCES TO DEED BOOKS, OFFICIAL RECORDS, MICROFICHE NUMBERS, INSTRUMENT NUMBERS, SURVEY RECORDS AND/OR PLATS REFER TO THE MONTGOMERY COUNTY RECORDER'S OFFICE, MONTGOMERY COUNTY, OHIO)


THENCE WITH THE PROPOSED EASEMENT THE FOLLOWING FOURTEEN COURSES:

1) North 34°35'57" West a distance of 325.73 feet;

2) North 55°24'03" East a distance of 248.30 feet;

3) North 12°00'54" West a distance of 398.31 feet;

4) North 85°54'03" East a distance of 178.70 feet;

5) South 12°00'54" East a distance of 300.08 feet;

6) South 34°35'57" East a distance of 75.46 feet;

7) North 55°24'03" West a distance of 286.00 feet;

8) South 34°35'57" East a distance of 177.05 feet to the west line of said utility corridor;

9) along the west line of said utility corridor, South 11°22'25" West a distance of 12.88 feet;

10) South 55°24'03" West a distance of 276.74 feet;

11) South 34°35'57" East a distance of 70.12 feet to the west line of said utility corridor;
12) Along the west line of said utility corridor along a curve to the right a distance of 82.63 feet (Radius: 1242.74 feet, Delta: 03°48'36", Chord Bearing: South 54°37'32" West, Chord Length: 82.62 feet);

13) Continuing along said utility corridor, South 56°32'46" West a distance of 301.26 feet;

14) Continuing along the west line of said utility corridor, South 56°22'02" West a distance of 56.20 feet to the place of beginning.

Containing 5.9704 acres, more or less.

Subject to all legal highways, easements, and restrictions of record.

Haley-Dusa Engineering & Surveying Group, LLC

[Signature]

Thomas E. Dusa
Registered Surveyor
Ohio License Number S-7143

November 1, 2021
Job # S4855
A RESOLUTION

Approving the Submission of a Grant Application for the Fiscal Year 2023 Ohio Airport Grant Program to the Ohio Department of Transportation, Office of Aviation; Authorizing the Acceptance of a Grant from the State of Ohio Department of Transportation, Office of Aviation in an Amount Not to Exceed Five Hundred Thousand Dollars and Zero Cents ($500,000.00) on behalf of the City of Dayton; and Declaring an Emergency.

WHEREAS, The Ohio Department of Transportation, Office of Aviation, Ohio Airport Grant Program provides financial assistance to publicly owned public use airports in the State that do not receive Federal Aviation Administration (“FAA”) Air Carrier Enplanement Funds or Air Cargo Entitlements; and

WHEREAS, The City of Dayton owns, operates and maintains the Dayton-Wright Brothers Airport, a general aviation airport that does not receive FAA Air Carrier Enplanement Funds or Air Cargo Entitlements; and

WHEREAS, The local Airport Improvement Program at the Dayton-Wright Brothers Airport includes undertaking certain projects such as pavement rehabilitation and related improvements, obstruction removal, runway and taxiway marking, lighting rehabilitation, and other aviation-related projects; and

WHEREAS, These projects will be funded by the Ohio Department of Transportation through the Ohio Airport Grant Program in an aggregate amount not to exceed Five Hundred Thousand Dollars and Zero Cents ($500,000.00) with an aggregate local cash match not to exceed Twenty-Six Thousand Three Hundred Sixteen Dollars and Zero Cents ($26,316.00) to be provided by City of Dayton Department of Aviation funds; and

WHEREAS, Section 36.10 of the Revised Code of General Ordinances of the City of Dayton authorizes the City Manager to submit grant applications on behalf of the City of Dayton; and

WHEREAS, In order to adhere to the grant application submission date it is necessary for the immediate preservation of the public peace, property, health and safety that this resolution take effect at an early date; now, therefore,

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

Section 1. That this Commission authorizes the City Manager, or her designee, to submit a grant application and supporting documents to the Ohio Department of Transportation, Office of Aviation for participation in the Fiscal Year 2023 Ohio Airport
Grant Program for eligible projects defined as airport pavement resurfacing and 
reconstruction, airport obstruction removal and marking, runway and taxiway marking, 
lighting rehabilitation, and other aviation-related projects at the Dayton Wright-Brothers 
Airport.

Section 2. That the City Manager, or her designee, is authorized to execute any 
and all documents and agreements on behalf of the City of Dayton which are necessary to 
accept the grant awards in an amount not to exceed Five Hundred Thousand Dollars and Zero 
Cents ($500,000.00) with an aggregate local cash match not to exceed Twenty-Six Thousand 
Three Hundred Sixteen Dollars and Zero Cents ($26,316.00) from the Ohio Department of 
Transportation, Office of Aviation under the Fiscal Year 2023 Ohio Airport Grant Program.

Section 3. That for the reasons stated in the preamble hereof, the Commission 
declares this resolution to be an emergency measure that shall take effect immediately upon 
its adoption.

ADOPTED BY THE COMMISSION......................, 2022

SIGNED BY THE MAYOR .............................., 2022

Mayor of the City of Dayton, Ohio

ATTEST:

______________________________
Clerk of Commission

APPROVED AS TO FORM:

______________________________
City Attorney
April 5, 2022

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

FROM: Gilbert Turner, Director of Aviation
    Department of Aviation

SUBJECT: A Resolution – for the FY 2023 Ohio Airport Grant Program

The Department of Aviation submits the attached Resolution for Commission approval. This Resolution authorizes the City Manager or her designee to apply and accept a grant from the Ohio Department of Transportation (ODOT), Office of Aviation for eligible projects at Dayton Wright Brothers Airport.

This grant consists of one project at Dayton Wright Brothers Airport, "Rehabilitate TW "A" North Section-Phase 1". This grant requires a 5% local cash match. The eligible project total is $526,316.00, of which $500,000.00 is being requested from the Ohio Airport Grant Program and $26,316.00 cash match will come from the Department of Aviation. The match will be funded from (51228) the Aviation Capital Fund.

ODOT requires a copy of the Resolution to go along with the application, as the turnaround-time from the date the application process is opened (March 1st) and the submission deadline (April 29th), it is necessary to declare an emergency so that the Resolution becomes effective after the second reading and an executed Resolution can be submitted with the application.

Attached is an executable copy of the resolution approved by the Law Department, a copy of the M&B Grant Application Approval Form, the original CF and the FY23 Ohio Grant Application letter. If there are any questions regarding the resolution, please contact me at (937) 454-8212.

GT/ems

Encl.

cc: C. Loritts
GRANT APPLICATION APPROVAL FORM

Date: March 7, 2022

Department/Division

Submitting Application: Department of Aviation/Administration

Project Title: FY2023 Ohio Airport Grant Program

CFDA Title and Number: N/A

Brief Description of Project:

Rehabilitate Taxiway “A” North Section Phase 1 at the Dayton Wright Brothers Airport. The eligible costs of the project will be $526,316.00. If awarded, the Ohio Airport Grant would fund 95% and the City match would be 5%, $26,316.00.

Name and telephone number of staff person to be called when signed application is ready: Elizabeth Spreng 454-6529

Name of staff person responsible for this grant: Mike Cross

Deadline for submission to funding agency: April 29, 2022

When will grant award decision be made: July 2022

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(Note: City of Dayton funds committed to a grant must be accompanied by a Certificate of Funds)

I have reviewed this material and believe it to be correctly completed and believe the project proposed is appropriate for the City of Dayton.

Director’s Signature: ___________________________ 3/7/22

Review and Approval

We have reviewed this material and believe it to be correctly completed and believe the project proposed is appropriate for the City of Dayton.

Director, Office of Procurement, Management and Budget: ___________________________ 3.16.22

Director of Finance (IF CASH MATCH IS REQUIRED): ___________________________ 3/31/22

City Manager’s Office: ___________________________ 3/31/22
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

X New Contract

Renewal Contract

Change Order

Contract Start Date: upon execution
Expiration Date: 3/31/2023
Original Commission Approval: $26,316.00
Initial Encumbrance: $26,316.00
Remaining Commission Approval: $-
Original CT/CF: $-
Increase Encumbrance: $-
Decrease Encumbrance: $-
Remaining Commission Approval: $-

Required Documentation

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

Amount: $26,316.00

Fund Code:

51228 Fund
3210 Org
1221 Acct
43 Prog

Amount: 

Fund Code:

XXXXX Fund
XXX Org
XXX Acct
XXXX Prog

Vendor Name: City of Dayton
Vendor Address: 101 W. Third Street Dayton OH 45402
Street City State Zipcode + 4
Federal ID: 316000175
Commodity Code: 96811
Purpose: The City of Dayton Department of Aviation cash match for FY2023 Ohio Airport Grant Program Application for Dayton Wright Brothers Airport.

Contact Person: Mike Cross
Aviation/Planning & Engineering
Department/Division 3/7/2022 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: [Signature]
Date: 3/6/22

CF Prepared by: [Signature]
Date: 3/18/22
CF/CT Number: CF22-0129

October 18, 2011
Finance Department
April 4, 2022

Mr. James Bryant, Administrator
Office of Aviation
Ohio Department of Transportation
2829 W. Dublin-Granville Rd.
Columbus, OH 43235-2786

RE: Application for Funding from the Ohio Airport Grant Program FY23

Dear Mr. Bryant,

The City of Dayton, Department of Aviation, hereby requests $500,000.00 in state funds under the Ohio Airport Grant Program for a project to **Rehabilitate TW "A" – North Section-Phase 1** at the **Dayton Wright Brothers Airport (MGY)**. This amount represents 95% of the total eligible construction and engineering costs.

The Taxiway rehabilitation scope includes the mill and overlay of approximately 1,650 linear feet of Taxiway A (North end of airport) and the restoration of the west Run-Up Pad.

The following documents have been uploaded to the Grant web portal:

- Detailed description of need for the requested grant funds
- Detailed project description and project cost estimate
- Standard Assurance
- Resolution authorizing the Application
- Project Schedule
- Project Plan detailing area on the airport where the project work is to be completed
- Current Pavement Maintenance Plan & Pavement Work History
- A current GA Airport Security Plan consistent with the most recent security guidelines published by the Transportation Security Administration

Should you have any questions or need additional information please contact Elizabeth Spreng, Dayton International Airport, 3600 Terminal Drive, Suite 300, Vandalia, Ohio 45377, [espreng@flydayton.com](mailto:espreng@flydayton.com), (937) 454-6529.

Sincerely,

[Signature]
Gilbert Turner
Director of Aviation