CITY COMMISSION MEETING AGENDA

CITY COMMISSION    DAYTON, OHIO    MAY 11, 2022

8:30 A.M.

I. AGENDA SCHEDULE

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

II. CITY MANAGER RECOMMENDATIONS (Item #8 above)
The following recommendations are offered for City Commission approval.

A. Purchase Orders, Agreements and Contracts:
(All contracts are valid until delivery is complete or through December 31st of the current year).

1. Purchase Orders:

   FIRE
       program services as needed through 12/31/25) $70,000.00
1. (Cont’d):

**PLANNING, NEIGHBORHOODS AND DEVELOPMENT**

**B1. Friends Service Company, Inc. dba Friends Office** (office furniture including delivery and installation services as needed through 9/30/22) $20,658.75

**POLICE**

**C1. Aramco, Inc.** (twenty eight (28) personal protection equipment (PPE) kits) 25,686.64

**C2. Global Equipment Company, Inc. dba Global Industrial** (forty-one (41) record storage racks) 12,858.24

**PUBLIC WORKS**

**D1. Beau Townsend Ford, Inc. P0220889** (one new 2022 all electric pickup truck) 44,520.00

**D2. Belson Outdoors LLC.** (fifty (50) new waste receptacles) as needed through 12/31/22 10,049.55

**D3. Feldman Ford, LLC** (one new 2023 truck with platform body, snowplow, salt spreader system and uplifting services) 79,419.00

**D4. Beau Townsend Ford, Inc. P0220900** (two new 2022 all electric pickup trucks) 84,000.00

**WATER**

**E1. FCX Performance, Inc.** (sixteen (16) Limоторque brand electric actuators) 115,280.00

**E2. Mississippi Lime Company** (quick lime as needed through 12/31/22) 100,000.00

**E3. Process Controls Corporation** (twenty-five (25) pressure transmitters with diaphragm seals and attachments) 34,450.00


2. **FlashParking, Inc. dba Klever Logic, Inc. – Contract Modification** – first amendment to service agreement for Municipal and Oregon Parking Garage equipment - Department of Public Works/Property Management. 108,539.00 (Thru 12/31/26)
3. **LeadsOnline, LLC – Service Agreement** – for pawn shop database used for law enforcement investigations – Department of Police.  
   $67,710.00  
   (Thru 4/14/25)

B. **Construction Contracts:**

4. **Peterson Construction Company – Award of Contract** – for Phase 1 and Phase 2 Anaerobic Digester Project Preconstruction Construction Manager at Risk (CMAR) – Department of Water/Water Reclamation.  
   $146,500.00  
   (Thru 12/31/23)

C. **Revenue to City:**

5. **Institute for the Study of Conflict Transformation – Service Agreement** - to manage the operational support and programming services for the ISCT – Department of Planning, Neighborhoods and Development/Mediation Center.  
   $35,000.00  
   (Thru 12/31/23)

E. **Other – Contributions, Etc.:**

6. **The Ohio Municipal League – Other** – 2022 membership dues – Department of Procurement, Management & Budget/Management and Budget.  
   $11,090.00

7. **PowerDMS Inc. – Payment of Voucher** - for payment of an outstanding 2022 invoice – Department of Human Resources.  
   $7,116.39

IV. **LEGISLATION:**

**Emergency Resolution – Second Reading**

8. **No. 6642-22** Authorizing the Acceptance of a Grant Award for a Fair Housing Assistance Program from the United States Department of Housing and Urban Development on Behalf of the Human Relations Council of the City of Dayton in an Amount Not to Exceed Sixty-Six Thousand Eight Hundred Dollars and Zero Cents ($66,800.00), and Declaring an Emergency.
### Emergency Resolution – Second Reading

9. **No. 6644-22**  
Supporting an application by SP Rotunda LLC for the Ohio Department of Development Brownfield Remediation Program for Interior Demolition of the Dayton Arcade Property at 28 West Third Street, and Declaring an Emergency.

### Resolution – First Reading

10. **No. 6643-22**  
Declaring the Intention to Appropriate Real Property Interests in Parcels 74 T, 89 WD&T, and 92 T in Connection with the Salem Avenue Reconstruction Phase 3 Project.

### VI. MISCELLANEOUS:

- **ORDINANCE NO. 31978-22**
- **RESOLUTION NO. 6645-22**
- **IMPROVEMENT RESOLUTION NO. 3599-22**
- **INFORMAL RESOLUTION NO. 996-22**
City Manager’s Report

From 2730 – PMB/Procurement

Supplier, Vendor, Company, Individual

Name See Below

Address See Below

Date May 11, 2022

Expense Type Purchase Order

Total Amount $597,282.18

2022 Purchase Orders

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

Includes Revenue to the City □ Yes □ No

Affirmative Action Program □ Yes □ No □ N/A

Description

FIRE

(A1) P0220568 – STRATEGIC OHIO COUNCIL FOR HIGHER EDUCATION, BEAVERCREEK, OH

- College intern program services as needed through 12/31/2022.
- These services are required to assist the Department of Fire in providing quality programs and services by college students that are members of the Strategic Ohio Council for Higher Education (SOCHE).
- Strategic Ohio Council of Higher Education (SOCHE) is recommended on the basis of proven past performance; therefore, this purchase was negotiated.
- One hundred percent (100%) funding by State Region Medical Response System.
- This amendment increases the previously authorized amount of $10,000.00 by $10,000.00 for a total not to exceed $20,000.00 and therefore requires City Commission approval.
- The Department of Fire requests additional authority of $60,000.00 through 12/31/2025.
- 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>State – Reg Med Res Sys</td>
<td>22210-6340-1159-71</td>
<td>$10,000.00</td>
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<td>2023</td>
<td>State – Reg Med Res Sys</td>
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<td>State – Reg Med Res Sys</td>
<td>22210-6340-1159-71</td>
<td>$20,000.00</td>
</tr>
</tbody>
</table>

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 06/2016
PLANNING, NEIGHBORHOODS AND DEVELOPMENT

(B1)  P0220899 – FRIENDS SERVICE COMPANY, INC. dba FRIENDS OFFICE, MORAIN, OH
- Office furniture including delivery and installation services as needed through 9/30/2022.
- These goods and services are required to outfit various locations within the Division of Mediation.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 17047D with pricing through 9/30/2022.
- The Department of Planning, Neighborhoods & Development 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>
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<td>10000-2360-1411-33</td>
<td>$20,658.75</td>
</tr>
</tbody>
</table>

POLICE

(C1)  P0220896 – ARAMSCO, INC., THOROFARE, NJ
- Twenty-eight (28) personal protection equipment (PPE) kits.
- These goods are required for the 112th Dayton Police Recruit class.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB S18020 which has been extended through 12/31/2022.
- The Department of Police recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<tbody>
<tr>
<td>2022</td>
<td>General Fund</td>
<td>10000-6221-1301-71</td>
<td>$25,686.64</td>
</tr>
</tbody>
</table>

(C2)  P0220894 – GLOBAL EQUIPMENT COMPANY, INC. DBA GLOBAL INDUSTRIAL, CHICAGO, IL
- Forty-one (41) record storage racks.
- This equipment is required for storage in the Department’s Property Room.
- Three (3) possible bidders were solicited and four (4) responses was received.
- The Department of Police recommends acceptance of lowest and best response.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<tbody>
<tr>
<td>2022</td>
<td>General Fund</td>
<td>10000-6221-1301-71</td>
<td>$12,858.24</td>
</tr>
</tbody>
</table>
PUBLIC WORKS – PROPERTY MANAGEMENT

(D1) **P0220889 – BEAU TOWNSEND FORD, INC., VANDALIA, OH**
- One (1) new 2022 all electric pickup truck.
- This equipment is required for the daily operations of the Division and replaces unit #3065, which will be disposed of in the best interest of the City.
- Beau Townsend Ford, Inc. is recommended based upon the local single source offering of an all electric truck; therefore, this purchase was negotiated.
- 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>
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<tr>
<td>2022</td>
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<td>22126-6450-1412-54</td>
<td>$44,520.00</td>
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</tbody>
</table>

PUBLIC WORKS – STREET MAINTENANCE

(D2) **P0220895 – BELSON OUTDOORS LLC, NAPERVILLE, IL**
- Fifty (50) new waste receptacles.
- This equipment is required for waste receptacles in City Parks.
- Belson Outdoors LLC is recommended as authorized company for the grant.
- One hundred percent (100%) funding by the 2022 Montgomery County Solid Waste District Incentive Grant.
- 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>2022 Mont Co Litter Prevention Grnt</td>
<td>28347-6490-1301-56-PW2201</td>
<td>$10,409.55</td>
</tr>
</tbody>
</table>

(D3) **P0220891 – FELDMAN FORD, LLC, DETROIT, MI**
- One (1) new 2023 truck with platform body, snowplow, salt spreader system and upfitting services.
- This equipment is required for the daily operations of the Division and replaces unit #1675, which will be disposed of in the best interest of the City.
- Fifteen (15) possible bidders were solicited and two (2) bids were received.
- The Department of Public Works recommends acceptance of lowest and best bid.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<tr>
<td>2022</td>
<td>Issue 9 – General Fund</td>
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<tr>
<td>2022</td>
<td>Street Maintenance</td>
<td>21000-6430-1412-54</td>
<td>$32,459.00</td>
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</table>
PUBLIC WORKS – WASTE COLLECTION

(D4) P0220900 – BEAU TOWNSEND FORD, INC., VANDALIA, OH

- Two (2) new 2022 all electric pickup truck.
- This equipment is required for the daily operations of the Division and replaces units #1831 and #1833, which will be disposed of in the best interest of the City.
- Beau Townsend Ford, Inc. is recommended based upon the local single source offering of an all electric truck; therefore, this purchase was negotiated.
- The Department of Public Works recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
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<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<tbody>
<tr>
<td>2022</td>
<td>General Fund</td>
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<td>$84,000.00</td>
</tr>
</tbody>
</table>

WATER – WATER SUPPLY AND TREATMENT

(E1) P0220898 – FCX PERFORMANCE, INC., COLUMBUS, OH

- Sixteen (16) Limotorque brand electric actuators.
- These goods are required to electronically monitor valves and transmit information to the City's Supervisory Control and Data Acquisition (SCADA) system.
- FCX Performance, Inc. is recommended as the authorized regional distributor and service provider; therefore, this purchase was negotiated.
- The Department of Water recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<tr>
<td>2022</td>
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<td>$115,280.00</td>
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</tbody>
</table>

(E2) P0220212 – MISSISSIPPI LIME COMPANY, ALTON, IL

- Quick lime as needed through 12/31/2022.
- These goods are required for lime softening treatment in potable water.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 18015JL with pricing extended through 12/31/2022.
- This amendment increases the previously authorized amount of $100,000.00 by $100,000.00 for a total not to exceed $200,000.00 and therefore requires City Commission approval.
- The Department of Water recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<tr>
<td>2022</td>
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<td>53000-3430-1316-54</td>
<td>$100,000.00</td>
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</table>
(E3)   P0220897 – PROCESS CONTROLS CORPORATION, INDIANAPOLIS, IN

- Twenty-five (25) pressure transmitters with diaphragm seals and attachments.
- These goods are required to provide pressure sensors in the Miami and Mad River Well Fields.
- Process Controls Corporation is recommended as the authorized regional distributor; therefore, this purchase was negotiated.
- The Department of Water recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<tbody>
<tr>
<td>2022</td>
<td>Water Operating</td>
<td>53000-3430-1301-54</td>
<td>$34,450.00</td>
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The aforementioned departments recommend approval of this order.
City Manager's Report

From: 6480 - PW/Property Management  
Supplier, Vendor, Company, Individual:  
Name: FlashParking, Inc. dba Klever Logic, Inc.  
Address: 3081 S. Capital of Texas Highway  
          Suite 250  
          Austin, Texas 78704

Date: May 11, 2022  
Expense Type: Contract Modification  
Total Amount: $108,539.00 thru 12/31/2026

Fund Source(s) | Fund Code(s) | Fund Amount(s)
----------------|--------------|----------------
General Capital | 40003-6480-1425-54 | $100,289.00
General Fund    | 10000-6480-1158-54 | $8,250.00

Includes Revenue to the City: Yes  
Affirmative Action Program: Yes

Service Agreement for Municipal and Oregon Parking Garage Equipment First Amendment

The Department of Public Works request permission to amend the existing Agreement with FlashParking, Inc. dba Klever Logic, Inc. ("FlashParking") to add gate and ticketing equipment replacement at the surface parking lot located at the southeast corner of East Second Street and North Jefferson Street. The City recently entered into a parking space license agreement with CareSource Management Group, LLC for use of this parking lot through 2026. These improvements are needed to secure and manage the parking lot as the existing equipment is non-functional. FlashParking recently installed the same gate and ticketing equipment at the Municipal and Oregon Parking Garages and with approval of this Amendment, the Department of Public Works will be able to maintain continuity of services for the equipment.

The installation of the equipment for this First Amendment is $100,289.00 and being fully funded from the Facilities Improvements Fund. The existing annual software expenses will increase by $150.00 per month totaling $8,250.00 for the fifty-five months remaining on this Agreement and being fully funded from the General Fund.

The original Agreement was approved on December 22, 2021 in the amount of $531,120.00. This First Amendment will increase the contract to $639,659.00 and maintain the term of the contract through December 31, 2026.

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

Two Certificate of Funds for this First Amendment are attached. One in the amount of $100,289.00 for the General Capital Fund and one in the amount of $1,050.00 for the General Fund. The original Certificate of Funds and Agreement are also attached.

Signatures/Approval

Andrew T. Marks  
Division  
Frederick M. Stovall  
Department  
City Manager

Approved by City Commission  
Clerk  
Date  
Updated 1/2019
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th></th>
<th>New Contract</th>
<th>Renewal Contract</th>
<th>Change Order</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Start Date</td>
<td>Upon execution</td>
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</tr>
<tr>
<td>Expiration Date</td>
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<tr>
<td>Original Commission Approval</td>
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<td>Initial Encumbrance</td>
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<td>Remaining Commission Approval</td>
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<td>Original CT/CF</td>
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<tr>
<td>Increase Encumbrance</td>
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<tr>
<td>Decrease Encumbrance</td>
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</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$-</td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

**Required Documentation**
- Initial City Manager’s Report
- Initial Certificate of Funds
- Initial Agreement/Contract
- Copy of Original City Manager’s Report
- Copy of Original Certificate of Funds

| Amount: | $100,289.00 |
| Fund Code: 40003 - 6480 - 1425 - 54 - XXXX - XXXX |

| Amount: |              |
| Fund Code: XXXX - XXXX - XXXX - XX - XXXX - XXXX |

| Amount: |              |
| Fund Code: XXXX - XXXX - XXXX - XX - XXXX - XXXX |

Attach additional pages for more FOAPALs

**Vendor Name:** FlashParking, Inc. dba Klever Logic, Inc.

**Vendor Address:** 3081 S. Capital of Texas Highway Suite 250 Austin Texas 78704

**Federal ID:** 451867889

**Commodity Code:** 91875

**Purpose:** Installation of ticketing and gate equipment at E. Second and N. Jefferson Streets parking lot

**Contact Person:** Chatan Robinson

Public Works/Property Management 4/29/2022

Department/Division Date

**Originating Department Director’s Signature:** Frederick M. Stevall 5/2/2022

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:** 5/3/22

**CF Prepared by:**

**Date:** 5/3/22

**CF/CT Number:** CT21-3146

October 18, 2011
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>New Contract</th>
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<tr>
<td>Contract Start Date</td>
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<tr>
<td>Remaining Commission Approval</td>
<td>$ 68,880.00</td>
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</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Amount:</th>
<th>$ 1,050.00</th>
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<tbody>
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<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Fund Code</td>
<td>XXXX - XXXX - XXXX - XX - XXXX - XXXX</td>
</tr>
</tbody>
</table>

Attach additional pages for more FOAPALs

Vendor Name: FlashParking, Inc. dba Klever Logic, Inc.
Vendor Address: 3081 S. Capital of Texas Highway Suite 250 Austin Texas 78704
Street City State Zipcode + 4
Federal ID: 451867889
Commodity Code: 91875
Purpose: Annual software expenses for new ticketing and gate equipment at E. Second and N. Jefferson Streets parking lot.

Contact Person: Chatan Robinson
Public Works/Property Management 4/29/2022 Department/Division Date
Originating Department Director's Signature: Frederick M. Stevall 5-2-2022

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: 5/3/22
CF Prepared by: [Signature] SA 05/03/2022
Date: 5/3/22
CF/CT Number: CT22-3146

October 18, 2011
Finance Department
FIRST AMENDMENT TO
EQUIPMENT PURCHASE AND SERVICE AGREEMENT

This First Amendment to Equipment Purchase and Service Agreement ("First Amendment"), is entered into this ___ day of __________, 2022 between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio, (hereinafter referred to as “City”) and FlashParking, Inc., a Delaware corporation (hereinafter referred to as “Contractor”).

WITNESSETH THAT:

WHEREAS, The City and Contractor entered into a Equipment Purchase and Service Agreement ("Agreement") on December 21, 2021 for the Municipal and Oregon Parking Garage Gate and Ticketing Equipment; and,

WHEREAS, The City owns a parking lot at the southeast corner of East Second Street and North Jefferson Street with a nonfunctional ticketing and gate system on site; and,

WHEREAS, The City agrees that this First Amendment will be entered into as the First Amendment to the Agreement for new ticketing and gate system for the aforementioned parking lot at the southeast corner of East Second Street and North Jefferson Street; and,

WHEREAS, In an effort to maintain contuity of services for the new equipment to match the equipment installed pursuant to the original Agreement, the City desires additional services from Contractor, and,

WHEREAS, The City and Contractor agree that the extra work, or altered work, or both, require the Agreement to be amended; and,

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

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

Section 1. Under this First Amendment, the Contractor shall provide all services listed in the attached Exhibit A.

Section 2. In consideration of Contractor’s performance of the additional work described in Section 1 above, the City shall pay the Contractor an additional One Hundred Thousand Two Hundred Eighty-Nine Dollars and Zero Cents ($100,289.00).

Section 3. The City and Contractor agree to create a Project completion date of July 1, 2022.

Section 4. The terms and compensation provided by this First Amendment constitute full compensation and complete satisfaction for all direct and indirect costs, and interest related thereto, which has been or may be incurred in connection with this change in work, including, but not limited to, any delays, inefficiencies, disruption or suspension, extended overhead, profit, interest, acceleration, and cumulative impact of this and any previously issued amendments.

Section 5. Except as modified by this First Amendment, the Agreement remains unchanged and in full force and effect. Therefore, this First Amendment is bound by the terms and conditions listed in the Agreement.
IN WITNESS WHEREOF, the City and Contractor, each by a duly authorized representative, have executed this First Amendment as of the date first above written.

CITY OF DAYTON, OHIO

____________________________
City Manager

APPROVED AS TO FORM AND CORRECTNESS:

4/29/2022

X John Musto for
City Attorney

Signed by: Musto, John

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

____________________________, 20____
Min./Bk. _______ Pg. _______

____________________________
Clerk of the Commission
City Of Dayton Garage
Q-30078

Proposal for:
City of Dayton

Facility at:
123 W 3rd St
Dayton, OH, 45402-1814
United States

Created By:
Jonathan Evens
FlashParking, Inc.
(800) 213-3706
jonathan.evans@flashparking.com
+1 3175176366
## Quote Summary

<table>
<thead>
<tr>
<th>Product Type</th>
<th>Monthly Recurring Subtotal</th>
<th>One-time Subtotal</th>
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<tr>
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<tr>
<td>Software</td>
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</tr>
<tr>
<td>Installation</td>
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<tr>
<td>Implementation</td>
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<td>Consumables</td>
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<td><strong>Total</strong></td>
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## Hardware

<table>
<thead>
<tr>
<th>Product</th>
<th>Qty</th>
<th>Unit Price</th>
<th>Subtotal</th>
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<tbody>
<tr>
<td>Custom Vinyl Wrap - Smart Station</td>
<td>3.00</td>
<td>$850.00</td>
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<tr>
<td>Smart Station (RFID+Barcode+EMV)</td>
<td>3.00</td>
<td>$16,500.00</td>
<td>$49,500.00</td>
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<tr>
<td>Flash Care Kit for Touch Screen Kiosk-EMV</td>
<td>1.00</td>
<td>$8,250.00</td>
<td>$8,250.00</td>
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<tr>
<td>10' Straight Arm</td>
<td>3.00</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Straight Gate Arm Care Kit</td>
<td>1.00</td>
<td>$450.00</td>
<td>$450.00</td>
</tr>
<tr>
<td>Magnetic Gate Column</td>
<td>3.00</td>
<td>$3,750.00</td>
<td>$11,250.00</td>
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<tr>
<td>950 W Heater</td>
<td>3.00</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>3X6 ft Loop with 50 ft Lead in SC18-50</td>
<td>6.00</td>
<td>$0.00</td>
<td>$0.00</td>
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<tr>
<td>Network Kit</td>
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<td>$2,500.00</td>
<td>$2,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
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<td></td>
<td><strong>$74,500.00</strong></td>
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## Installation

<table>
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<th>Subtotal</th>
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<td>Smart Station Installation</td>
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<td>Gate Installation</td>
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### EMV Gateway Setup
- **Qty**: 2.00
- **Unit Price**: $3,000.00
- **Subtotal**: $6,000.00

### Shipping and Handling
- **Qty**: 6.00
- **Unit Price**: $250.00
- **Subtotal**: $1,500.00

**Total**: $17,400.00

### Warranty
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<tr>
<td>FlashPARCS Standard Warranty</td>
<td>3.00</td>
<td>$0.00</td>
<td>$0.00</td>
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**Total**: $0.00

### Implementation
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<tr>
<td>Travel &amp; Expenses</td>
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**Total**: $4,300.00

### Consumables
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<td>3MILLID RFID Card. Facility code : 184</td>
<td>300.00</td>
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**Total**: $525.00

### Software
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</thead>
<tbody>
<tr>
<td>FLASH Permit</td>
<td>1.00</td>
<td>Included</td>
</tr>
<tr>
<td>Real-time Reporting Suite</td>
<td>1.00</td>
<td>Included</td>
</tr>
<tr>
<td>FlashPARCS Software License</td>
<td>3.00</td>
<td>$3,564.00</td>
</tr>
<tr>
<td>24/7 Phone and Online Support</td>
<td>1.00</td>
<td>Included</td>
</tr>
<tr>
<td>Managed Network Services with 4G/LTE Back-up</td>
<td>1.00</td>
<td>Included</td>
</tr>
<tr>
<td>Mobile App Module (for managing parking operations)</td>
<td>1.00</td>
<td>Included</td>
</tr>
<tr>
<td>Ongoing PCI compliance + Software Updates and general software patches</td>
<td>1.00</td>
<td>Included</td>
</tr>
</tbody>
</table>

**Total**: $3,564.00
DISCLAIMERS

Travel & Expenses

Travel & Expenses to be billed post installation on final invoice including:

- Market rates for airfare and hotel
- Per diem rates for meals not to exceed $90 per day per person

Access Credentials Compatibility

Any proximity cards, AVI (minus toll tag) credential devices, and hotel room key cards that are existing and in use prior to installation of new FlashPARCS equipment must be submitted to FlashParking by mail for compatibility testing to ensure compatibility with Flash Systems. Unless expressly authorized and confirmed in writing following compatibility testing, FlashParking does not guarantee compatibility of Customer’s existing proximity cards, AVI (minus toll tag) credential devices, and hotel room key cards.

FlashPARCS Equipment

- Equipment orders are subject to a 50% deposit payment at time of signing to ensure timely delivery of project. FlashParking reserves the right to charge a cancellation fee of 20% of the total of the contract to be paid immediately at time of cancellation.
- The remaining 50% will be invoiced upon successful installation and commissioning of the FlashPARCS equipment, or within two months of equipment receipt by Customer if Customer delays the installation, whichever comes first.
- Orders for NON-FlashHaas (FSH) Equipment are subject to a 50% deposit payment at time of signing to ensure timely delivery of project. FlashParking reserves the right to charge a cancellation fee of 20% of the total of the contract to be paid immediately at time of cancellation. The remaining 50% will be invoiced upon successful installation and commissioning of the FlashPARCS equipment, or within two months of equipment receipt by Customer if Customer delays the installation, whichever comes first.

Delivery Lead Time

- Smart Stations and Magnetic Barrier Gates delivered and installed on average within 3-4 weeks for standard installations of 10 units or less - from time of contract signature (contingent upon credit approval and good standing of existing accounts receivable).

Excludes orders with LED Barriers, Custom Wrapping for Smart Stations, LPR Cameras, AVI Readers or any other third-party equipment as these may have longer lead times from manufacturer.

Cash Machine

- Cash Machine can be delivered and installed on average within 6-8 weeks for standard installations of ten (10) units or less - from time of contract signature, and after 50% deposit payment is received.
- Bill acceptor manufacturer provides a limited warranty on its equipment that covers all mechanical and electrical components, but excludes parts subject to wear and tear, for a period of two years for parts and RTF (return to factory or authorized service center) labor warranty.

Standard Installation

- Internet connectivity and electricity is required and is to be provided by venue or parking operator.
- Installation quote is based on the information provided by client. All other requirements not provided by the client before installation are subject to review, and additional fees may be assessed to cover the work.
• Assumes a concrete surface on each lane, that the concrete is in good enough condition to install the saw cut loop, it has no major cracks and is not post tension construction. If the location is post tension construction then please inform install team during the kickoff process to send a concrete contractor to perform a surface penetration scan to ensure it is safe to make the cut for the loop, additional fees will apply.
• All work installation services to be performed during normal business hours, Monday through Friday, excluding holidays, by non-union labor.
• Reusing or running one ethernet cable from the network demarcation point to the FlashPARCS Smart Station Kiosk using existing pathway or conduit **
• Mounting FlashPARCS network kit with back-up LTE in each lot or garage (will be pre-configured prior to shipping)
• Removing old entry (ticket/spitter) or exit (exit verifier) machine
• Removing old gate (when applicable)
• Cutting, installing & calibrating new arming and safety loops
• Connecting both loops to the gate
• Bolting down the Smart Station kiosk (they immediately get their configuration from the cloud infrastructure upon powering-up)
• Bolting down gate
• Running 3 pairs of cables from the Smart Station Kiosk to gate for (a) gate vend, (b) arming loop detection, and (c) closing loop detection
• Clean up: placing old machine and gate in a designated area within the facility (Old Equipment disposal not included)
• Testing all components: getting a ticket, and every entry or exit method including real credit card payment transaction, microphone & speakers (placing a support call), barcode scanner, proximity card reader, Bluetooth access, vending gate and loop detection
• Extending or re-routing existing electrical power lines to new SmartStation Kiosk and gate **

** Not to exceed 15 feet

*** Old Equipment disposal not included in price

EXCLUSIONS:

• All utility company charges, deposits and fees if any; Repairs for unforeseen underground utilities that may become damaged during installation of underground conduits; Performance and Payment Bonds. All other requirements if any are extra and are subject to review; (All Permit and Inspections are a Pass Through - plus Service Fees if applicable).

Standard Installation EXCLUDES anything not specifically listed above.

Standard Installation EXCLUSION examples:

• Removing booths, structures, or similar
• Replacing or installing new bollards
• Disposing of old equipment in a remote site or dump site
• Establishing new electrical lines
• Re-routing electrical lines
• Performing any civil work such as, but not limited to, island construction
• Obtaining permit or licensure in any capacity or anything that requires a permit
• Installing or adjusting post tension cable requiring alternative vehicle detection mechanisms
• (Anything not specifically listed in "Standard Installation Includes:" section above.)

HaaS Warranty

LIFETIME RETURN TO FACTORY WARRANTY on Smart Station, Mini-Smart Station, and Pay-on-Foot Smart Stations for HaaS equipment and Magnetic Barrier Gates. This warranty excludes (EMV/Chip readers).
For avoidance of doubt, customer must pay Traditional Product prices for any equipment or services not listed in the “HaaS Product” section.

Customer must pay Traditional Product prices for items not specifically included in “HaaS Product” section; examples include:

- Cash Machines, cash boxes, and related cash machine parts
- Additional gate kits
- AVI/LPR equipment, set-up, and installation
- Any gate more than 12 feet in length
- Any LED gate
- Installation costs in excess of standard rip and replace (See above for what is included and excluded.)
- Valet subscription services
- Valet hardware
- Kiosk wrap
- Custom controllers
- Any “new” integrations (outside the current existing LAZGO API integration), but subject to Section 2.8
- Any additional modules, but subject to Section 2.8
- Any custom software modifications
- Bollards
- Pedestal (i.e. prox only)
- Commend intercoms
- EMV Chip Credit Card Reader
- Rate Display
- Prox cards

Transcore Reader

- Products are warranted by TransCore to Purchaser against defects in workmanship and material for one (1) year after the date of installation. Warranty service will be provided in the United States at a repair facility designated by TransCore. Transportation costs to and from the repair facility shall be paid by Purchaser.

LPR Cameras

- LPR (License Plate Recognition) Cameras can be delivered and installed on average within 8-10 weeks for standard installations of ten (10) units or less - from time of contract signature, and after 50% deposit payment is received.

Gates

- Gates manufacturer provides a limited warranty on its barriers that covers all mechanical and electrical components, but excludes parts subject to wear and tear, for a period of two (2) years from the date of first use provided that the operating instructions have been complied with, no unauthorized servicing of machine components has taken place, and that no mechanical damage to the machines is evident.
- LED lights for gates have a lead time of 2-3 weeks in addition to regular install schedule.

Tagmaster Reader

- TagMaster provides a two (2) year (24 month) warranty period on all own products starting at the date of delivery. (Exceptions: Hard drives and batteries are warranted for one (1) year, commodities are excluded from warranty). A warranty repair or replacement during the warranty period shall not have the effect of extending the warranty period for the products.

FlashValet

- FlashValet charges $0.49 per each mobile payment. Or $69/mo for unlimited mobile payments (when applicable).
• Order for FlashValet equipment, tickets, decals and texting number will be completed during kick-off call. These items will not be automatically ordered (when applicable). FlashValet equipment model and pricing is subject to change based on inventory availability.

• For the FlashValet solution the Agreement will commence on the Effective Date and will continue for a period of (1) one month (the “Term”). After the initial term unless otherwise specified in the schedule, the Agreement will be automatically renewed on an monthly basis unless one party notifies the other party in writing at least thirty (30) days prior to the end of the current Term of its desire not to renew.

BILLING BEGINS UPON LOCATION GO-LIVE DATE, AND NO LATER THAN 30 DAYS AFTER SIGNING OF AGREEMENT. UNLESS OTHERWISE SPECIFIED BY CLIENT.

* For EMV transactions Client requires to open an account with Windcave. FlashParking is not responsible for Merchant and Gateway fees associated with EMV transactions.

* FlashPARCS Mobile Payments ($0.35 per mobile payment transaction).

* Onsite support available upon request. Fees and response time varies by region.

* All prices are exclusive of taxes, shipping, installation, electrical, or civil work, and any other item not specified in this quote unless otherwise clearly stated in the proposal.

* Merchant services related to the processing of credit card transactions must be sourced and paid for directly by the owner/parking operator. In addition, the following policy related to credit card gateway services applies: Magnetic stripe readers (non-EMV): FlashParking uses USA ePay as the gateway for magnetic stripe reader applications. The FlashParking software subscription fee includes gateway related charges for the first 5,000 magnetic stripe card reader-based payment transactions, per location/per month. FlashParking will bill at a rate of $49 per location for each additional 5,000 credit card transactions for those months where the gateway transaction volume allowance is exceeded. Chip readers(EMV): FlashParking uses Windcave as the gateway for chip reader applications. Windcave requires a separate gateway agreement with the owner/parking operator. Payment gateway transaction fees apply and are payable directly to Windcave. https://www.windcave.com/

* FlashPARCS Mobile Payments ($0.35 per mobile payment transaction).

* Onsite support available upon request. Fees and response time varies by region.

* All prices are exclusive of taxes, shipping, installation, electrical or civil work, and any other item not specified in this quote unless otherwise clearly stated in the proposal.

Equipment Service Options:

A) Self-Served with 24/7 Remote Hands FlashParking Support Team: FlashParking designed its solutions with simplicity and efficiency as the driving tenet. We supply every customer with a FlashCare maintenance kit containing all the replacements components needed for every machine and gate supplied by FlashParking. Should any of them fail, the client can easily remove the failed part and insert the replacement part with assistance from our remote hands 24/7 support team.

B) Remote/Smart Hands Support: Should you chose not to use our Self-Served with 24/7 Remote Hands FlashParking Support option. FlashParking employs an extensive network of highly vetted, independent repair technicians under the following terms below:

<table>
<thead>
<tr>
<th>Regions</th>
<th>Mon-Fri (8-4PM)</th>
<th>Mon-Fri (all day Sat) 4-8PM</th>
<th>Sundays and Holidays</th>
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<tbody>
<tr>
<td>AK, CA, HI, NY, TX, WA &amp; Puerto Rico</td>
<td>$ 177.8</td>
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<tr>
<td>1 HR</td>
<td>$ 287.80</td>
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<tr>
<td>2HRS</td>
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<td>Sundays and Holidays</td>
</tr>
<tr>
<td>------------------</td>
<td>-----------------</td>
<td>-----------------------------</td>
<td>---------------------</td>
</tr>
<tr>
<td>AZ, CO, OR &amp; PA</td>
<td>$141.68</td>
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<td>1 HR</td>
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<td>4 HRS</td>
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<th>Mon-Fri (all day Sat) 4-8PM</th>
<th>Sundays and Holidays</th>
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</thead>
<tbody>
<tr>
<td>Everywhere else (US only)</td>
<td>$130.20</td>
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<tr>
<td>1 HR</td>
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<td>2HRS</td>
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<td>3 HRS</td>
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EQUIPMENT PURCHASE AND SERVICES AGREEMENT

This Equipment Purchase and Services Agreement (this “Agreement”) is entered into as of 4/28/2022 12:00:00 AM (the “Effective Date”), by and between FlashParking, Inc., a Delaware corporation, whose principal place of business is 3801 S. Capital of Texas Highway, Suite 250
Austin, TX 78704 (“FlashParking”) and City of Dayton, whose principal place of business is 123 W 3rd St, Dayton, OH 45402-1814 (“Customer”). This Agreement sets forth the terms and conditions governing Customer’s acquisition of parking management systems and services from FlashParking. Each of Customer and FlashParking may be referred to as a “Party”, and together as the “Parties.”

1. DEFINITIONS. Certain capitalized terms in the Agreement have the meanings set forth below. Other terms used in this Agreement but not defined in this Section are defined elsewhere within the Agreement.

(a) “Affiliate” means an entity that controls, is controlled by, or is under common control with a Party to this Agreement. “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and operating policies of an entity: (i) through ownership of fifty percent (50%) or more of the voting or equity securities of such entity; or (ii) pursuant to a contractual agreement with other shareholders or members. Customer’s rights in this Agreement related to an Affiliate shall continue only for so long as such Affiliation continues to exist.

(b) “Authorized Users” means those employees and contractors of Customer who are authorized to use the System by FlashParking, for whom Customer has paid the applicable fees, and who have agreed to the Terms of Use.

(c) “Confidential Information” means any non-public information disclosed by one Party to the other Party in connection with this Agreement (including the terms of this Agreement, and any business, technical, marketing, financial, supplier, and personnel information).

(d) “Equipment” means any gate equipment, ticket dispensers, scanners, RFID readers and other equipment and accessories to be delivered to Customer as specified in Schedule A to this Agreement and any additional Schedules entered into by the Parties from time to time.

(e) “Feedback” means collectively, suggestions, ideas, feedback, reports, error identifications or other information related to the System or Services or Customer’s use and evaluation thereof.

(f) “Improvements” means error corrections, enhancements, extensions, modifications, and new releases to the Software. Improvements constitute Software and are licensed under the terms of this Agreement.

(g) “Initial Order” means the initial purchase commitment of Equipment and Services made by Customer through the execution of this Agreement and further detailed in Schedule A.

(h) “Schedules” means written documents which contain details regarding a Customer order, a description of the Systems or Services to be provided by FlashParking, applicable pricing, and/or other terms, as applicable. Initial Schedules entered into by the Parties are attached hereto. Additional Schedules entered into hereafter must be signed by both Parties to be effective and shall amend this Agreement.

(i) “Services” means, collectively, the Installation Services, Commissioning Services, Professional Services, and Subscription Services. FlashParking may subcontract a Service, or any part of it, to subcontractors selected by FlashParking, who shall be required to comply with this Agreement and for whom FlashParking is responsible.

(i) “Installation Services” means those installation, electrical, cabling, and related services required to place the Systems in service at Customer’s sites in advance of Commissioning Services and are further described in Schedule A. Such services may be provided by FlashParking, the Customer, or a third party contractor to the Customer as set forth in such Schedule.

(ii) “Commissioning Services” means those final inspection, configuration, start-up,
testing and enrollment services required to bring the System into full operation including confirming appropriate interface/communications with the FlashParking data center(s) as further described in Schedule A.

(iii) "Professional Services" means the consulting, administrative, and technical services provided by FlashParking to Customer as described in Schedules entered into from time to time by the Parties. There are no Professional Services provided hereunder unless expressly specified in a Professional Services Schedule.

(iv) "Subscription Services" refers to the hosted subscription parking services provided by FlashParking in connection with the ongoing operation of the Services either through its Flash Valet portal, FlashParking.com website, through any mobile application offered by FlashParking, or through any other means by which FlashParking chooses to deliver the parking services in the future.

(j) "Software" means any software code contained within the Equipment or used by FlashParking in the delivery of any of the Services.

(k) "Specifications" means the functional, performance, operational, compatibility, and other parameters and characteristics of a System as described in any system manuals provided by FlashParking to Customer.

(l) "System" means any configuration of Equipment and Software ordered by Customer initially as specified in a Schedule hereeto and any changes to such configuration as specified in additional Schedules to this Agreement entered into thereafter by Customer and FlashParking.

(m) "Terms of Use" means those terms and conditions which apply to Customer’s use of the System and Services, as posted on www.FlashParking.com or linked through any mobile application used to access the Subscription Services, as such terms may be updated from time to time.

2. Provision of Systems and Services; Scope of Use.

2.1 Ordering Process. Customer’s Initial Order of Systems, Services, and scope of work is specified on Schedule A. During the Term, Customer may order additional Systems from FlashParking with terms consistent with those set forth in this Agreement. All orders are subject to acceptance by FlashParking in its sole discretion.

2.2 Scope of Use. Customer, including its Affiliates, shall use the Systems and Services solely in the operation of its business. Customer agrees that all such use shall be in the manner described in the System Specifications in order to ensure conformance with any applicable warranties, regulations, or health/safety codes. Use of Subscription Services is governed by the Terms of Use. Customer agrees to accept all mandatory Software Improvements. Charges may apply for Improvements other than mandatory Improvements.

3. Delivery; Installation

3.1 Delivery; Risk of Loss. FlashParking shall arrange, with Customer’s full cooperation as requested by FlashParking and at Customer’s cost, the delivery of Equipment to the Customer facility where it is to be installed. The method of shipment and carrier shall be selected by FlashParking unless Customer has specified in writing a method of shipment and carrier prior to shipment. If FlashParking selects the carrier, upon delivery at the Customer-designated facility, the title to and the risk of loss for the Equipment shall pass to Customer and, thereafter, the risk of loss for the Equipment shall be borne by Customer. If Customer elects to specify the carrier, title to and the risk of loss for the Equipment shall pass to Customer upon consignment to the carrier and, thereafter, the risk of loss for the Equipment shall be borne by Customer. It is recommended, since Customer bears the risk of loss or damage of the Equipment on-site, that Customer provide a secure, weather-controlled storage facility to store the Equipment prior to its installation.

3.2 Installation. The Parties shall cooperate to provide Installation Services of each System in a timely manner. In most cases, FlashParking shall provide the Installation Services as specified on Schedule A. If the Customer, or a third-party contractor to the Customer, provides the Installation Services: (a) FlashParking shall have no obligation respecting and shall bear no risk associated with, the Installation Services and (b) Customer warrants that the Installation Services will be and are consistent with FlashParking Specifications and all documentation, requirements, and procedures made available to
Customer. In all cases, regardless of who provides the Installation Services, the cost of obtaining all required local electrical/site/construction licenses, permissions, and permits, necessary to allow the installation to lawfully proceed shall be passed along to the Customer.

3.3 Commissioning. After the completion of the Installation Services, FlashParking will provide Commissioning Services in accordance with its standard procedures to confirm the System operates in substantial conformance with the Specifications. Commissioning failures caused by FlashParking’s installation or Equipment shall be rectified at FlashParking’s cost. Failures caused by or substantially contributed to by Customer’s installation (or by its selected contractor’s installation) shall be rectified by FlashParking, at Customer’s sole expense, billed to Customer at FlashParking’s then-standard commercial time and materials rates for all such services, including travel and per diem expenses (“T&M Rate”), and shall be payable to FlashParking within fifteen (15) days of invoice.

3.4 Spare Equipment Parts; Discontinuance. FlashParking will use commercially reasonable efforts to stock spare Equipment parts and make them available for Customer’s purchase. FlashParking will provide Customer with current pricing information upon request. FlashParking may, from time to time, withdraw Equipment from availability.

4. Subscription Services.

4.1 Use of Subscription Services. During such period as Customer is compliant with this Agreement, FlashParking will provide the Subscription Services for all (but not less than all) of the Systems installed in Customer facilities on a 24/7 basis via FlashParking’s Subscription data system. Use of Subscription Services is governed by the Terms of Use. In the event that Customer elects to stop receiving Subscription Services for a period of time, FlashParking has no obligation to provide such Services for future periods, and if such Services are provided, they may be on different terms.

4.2 Service Level Commitment; Force Majeure Events.

(a) Customer acknowledges and agrees that the Subscription Services may be unavailable from time to time for a number of reasons, including: (i) scheduled periodic maintenance procedures or repairs which FlashParking may undertake from time to time (“Scheduled Maintenance”), or (ii) causes beyond FlashParking’s reasonable control or which are not reasonably foreseeable by FlashParking (“Force Majeure Events”), including natural disasters and adverse weather events, acts of God, interruption or failure of telecommunication or digital transmission links, vandalism of Equipment, hostile network attacks, network congestion, third party acts, accidents which impair any Equipment, acts of terrorism, war (declared or undeclared), non-performance by vendors, or other failures outside of FlashParking’s reasonable control.

(b) Subject to the terms and conditions of this Agreement, FlashParking shall use commercially reasonable efforts to provide the Services on an uninterrupted basis, 24 hours a day, seven days a week, with 99.5% availability, excluding downtime due to Scheduled Maintenance and Force Majeure Events. Unavailability of the Services shall be measured over a calendar month and based upon the total downtime of the Services hereunder, excluding unavailability of the Services due to Scheduled Maintenance and Force Majeure Events (collectively, “Downtime”). Downtime shall exist when Customer is unable to use the Services as set forth in this Agreement or an applicable statement of work and such failure is recorded in FlashParking’s trouble ticket system or FlashParking is notified by Customer of such failure. Downtime shall be measured beginning when it is recorded in FlashParking’s trouble ticket system or FlashParking is notified by Customer, whichever is earlier, until the time FlashParking confirms that the affected Services are operational. Upon Customer’s request and reasonable notice, FlashParking shall provide measurements of Downtime to Customer. If FlashParking fails to meet the service level commitment set forth in this Section and Customer provides FlashParking with a written request within five (5) business days of the last day of the calendar month in which such Downtime occurred, FlashParking shall provide a fee credit to Customer’s account equal to 5% of Customer’s monthly fees for the affected Services (i.e., prorated if only a portion of the System was unavailable) for each cumulative full hour of Downtime during the applicable month, up to the maximum of the total monthly Subscription Service fees charged by FlashParking to Customer for the affected Services during the applicable month. This Section sets forth Customer’s sole and exclusive remedy for Equipment and/or Software failures and/or interruption of the Services of any kind whatsoever.

(c) Notwithstanding anything herein to the contrary, FlashParking shall take commercially reasonable measures, including failover, backup, and security measures that meet or exceed industry standards, to reduce, protect against, and mitigate the effects of Downtime, and FlashParking shall use commercially reasonable efforts not to perform Scheduled Maintenance during (a) Customer’s normal business hours (for entities which have
business hours up to 9 hours daily) or (b) Customer’s peak business hours (for entities which have 24/7 operating hours or hours more extensive than those set forth above as standard hours), to the extent such hours or peak times have been communicated in advance in writing to FlashParking. Peak times stipulated by Customer may include peak weekend or holiday periods.

(d) **Force Majeure.** Neither Party shall be liable for non-performance or delay, other than the payment of fees due hereunder, due in whole or in part to any Force Majeure Event. In the event a Party is hindered or prevented from performing hereunder due to a Force Majeure Event, such Party shall notify the other Party of the Force Majeure Event and the extent of its suspension as soon as reasonably practicable. Failure to give notice as timely as practicable under the circumstances shall result in the forfeiture of a Party’s right to suspend its obligations hereunder. If a Force Majeure Event prevents, hinders, or delays performance of a Party’s obligations hereunder for more than 30 days, the Party not prevented from performing may, at its sole option, terminate this Agreement upon notice to the other Party.

5. **Installation, Commissioning and Professional Services.** FlashParking makes available Services to Customer as follows:

5.1 **Professional Services.** Customer may request Professional Services; FlashParking will provide Customer with a statement of work describing the Services to be supplied. Each statement of work may also set forth, as applicable, objectives to be accomplished; assumptions upon which the statement of work is based; the responsibilities of the Parties; a description of any works of authorship (other than the Software) to be delivered to Customer (“Work Product”); a description of the completion criteria, if any (“Completion Criteria”); the technical and management resources required to complete the Services; an estimated schedule (including commencement date and duration of Services); pricing and payment terms to provide the Services; and other applicable information. If an estimated timeframe is included, each Party agrees to make reasonable efforts to carry out its responsibilities according to that timeframe. For purposes of clarity, in the absence of a statement of work expressly dealing with Professional Services, no Services provided by FlashParking shall be deemed Professional Services and to the extent that any Work Product is created or deemed to be created, such Work Product belongs solely and exclusively and for all purposes to FlashParking.

5.2 **Acceptance of the Professional, Installation Services and Commissioning Services.** If the statement of work contains Completion Criteria, Customer agrees to accept the Services performed under such statement of work if they meet the applicable Completion Criteria. Acceptance shall be deemed to occur unless Customer notifies FlashParking in writing of any material non-conformities of the Services with the applicable Completion Criteria (if applicable, or with this Agreement otherwise) within ten (10) business days after FlashParking has provided such Services (or if there are separate discrete sub-components/deliverables of such Services, and FlashParking requests approval of such deliverables, within ten (10) business days after providing each such deliverable/subcomponent) to Customer (“Acceptance Period”). In such event, Customer must have a reasonable basis for its objection, and shall provide sufficient documentation to enable FlashParking to understand the reason such Services are non-conforming, including pertinent details. FlashParking shall use commercially reasonable efforts to correct such non-conformities and make such correction available to Customer for acceptance as provided above. Notwithstanding the foregoing, acceptance shall also be deemed to occur if the Services are put to productive use on behalf of or by Customer. For all other statements of work, acceptance shall be deemed to occur upon completion of the Services described in such statements of work.

5.3 **Modifications to the Professional, Installation and Commissioning Services.** Either Party may request changes to the Professional and Installation Services to be provided under a statement of work (a “Change Order”). Any such change may affect the charges, estimated timeframe, or other terms. Once the Parties agree in principle to a Change Order, FlashParking will prepare a written description of the agreed-upon change which must be signed by both Parties before it is binding on the Parties; executed change orders will amend this Agreement. While the Parties are discussing a Change Order request, FlashParking shall continue to work in accordance with the existing statements of work.

5.4 **Training.** FlashParking shall provide initial training on the proper use of the System and Services to the Designated Representative (defined below) and to such other Customer representatives as may be agreed to by the Parties from time to time (additional training may incur a fee). FlashParking shall provide Customer with training materials and updates thereto for the System and the Services as FlashParking reasonably deems necessary and appropriate from time to time. Training may be provided at FlashParking’s location, on-site, electronically, telephonically, or through other mechanisms, as determined in its sole discretion by FlashParking.

6. **Additional Customer Responsibilities.**
6.1 Designated Representative. Customer shall provide FlashParking with the name and contact information of the individual whom Customer assigns to manage the Services and interface with FlashParking regarding FlashParking’s provision of Subscription Services (“Designated Representative”). Customer shall notify FlashParking promptly with any changes to such Designated Representative. Each Designated Representative shall be knowledgeable regarding the Subscription Services and empowered to make decisions related thereto.

6.2 Additional Responsibilities of Customer. Customer agrees to provide FlashParking (including its agents and contractors) with all reasonable access to Customer facilities that is required for the efficient and timely installation of the Systems and provision of the Services, and with cooperation in all reasonable ways in respect to installation, commissioning, and the ongoing provision of Services. In addition, Customer agrees: (a) to arrange connectivity to the Systems and to complete the implementation and set-up process as specified by FlashParking at Customer’s sole expense; (b) to obtain access to the Internet at Customer’s sole expense; (c) that it is entirely responsible for maintaining the confidentiality of any passwords and account information required for access to the Subscription Services, and for all acts that occur in connection with Customer’s account; (d) to immediately notify FlashParking of any unauthorized use of Customer’s account, breach of security, or loss or theft of user names or passwords; (e) that access to and use of the Subscription Services is limited to use by Authorized Users who have agreed to be bound by the Terms of Use and for which applicable fees have been paid; and (f) that such use does not include the right to resell or sublicense such Services. Customer further agrees to abide by all applicable laws and regulations, and not to use Subscription Services for any purpose that is unlawful, or that is not contemplated by or that is prohibited by this Agreement. Without limitation, Customer agrees that all of the following are prohibited: altering or modifying Services, and disassembling, decompiling, or reverse engineering (except to the extent it is unlawful in any jurisdiction to prohibit same) any Software provided or available in connection with the Subscription Services.

6.3 Access by Employees and Contractors. Customer acknowledges that online access to the Systems and use of the Subscription Services by Customer, and Customer employees and contractors, is governed by the Terms of Use and that only Authorized Users shall be eligible and entitled to access or use the Systems or Services.

7. Prices and Payment Terms

7.1 Prices. Customer agrees to pay FlashParking as follows:

(a) Initial Order. The pricing for Customer’s initial Systems and Services order is set forth in Schedule A to this Agreement.

(b) Subsequent Orders. For orders placed after the initial order, including for new Equipment, spare Equipment parts, other Services (including Professional Services), and Improvements, Customer shall pay FlashParking as set forth in the applicable Schedule, Agreement addenda, invoice, or statement of work.

7.2 Travel and Expenses. Unless Travel and Expenses are itemized in Schedule A, Customer agrees to reimburse FlashParking for all miscellaneous out-of-pocket expenses incurred by FlashParking in performing the Services as well as for reasonable travel expenses, provided such expenses have been pre-approved by Customer (which approval shall not be unreasonably withheld, conditioned, or delayed).

7.3 Payments. Customer shall pay FlashParking the fees and other amounts set forth on the applicable Schedule. All fees are due and payable in U.S. dollars. FlashParking shall issue an invoice to Customer in accordance with the applicable Schedule or statement of work, or if not addressed therein, on a monthly basis for monthly Services. Customer shall pay each correct and undisputed invoice within 15 days of the invoice date. Invoices shall be deemed correct and acceptable to Customer unless Customer notifies FlashParking of disputed items within ten (10) days of Customer’s receipt of such invoices. In order to withhold disputed amounts, all of the following conditions must be met: (a) the dispute must have a reasonable basis; (b) the reason for the dispute must be set forth in writing to FlashParking within the aforesaid time frame with sufficient specificity to allow FlashParking to understand and attempt to remedy the issue; and (c) the undisputed portion of the invoice must be timely paid. The failure of FlashParking to provide an invoice does not relieve the Customer of its responsibility to pay for the Services provided. Once the dispute is resolved, if resolved in favor of FlashParking, the unpaid amount must be paid within fifteen (15) days and interest shall accrue from the time the invoice was originally due. Customer may pay invoices via wire transfer, check or ACH transfer. Monthly Subscription Services may also be paid by credit card. Notwithstanding the foregoing, FlashParking expressly reserves the right, in its sole discretion, to require a specific method of payment in the event Customer is delinquent in its payments due hereunder. If Customer’s account becomes past due, in addition to other remedies available to FlashParking, FlashParking may refuse to provide any Systems not yet provided, may suspend (without losing the right to terminate) any Services until Customer’s account is current, may terminate this Agreement...
if the default is not timely cured, and/or may change the method and timing of payments (including accelerating all future amounts due from Customer under the applicable order). In addition, interest shall accrue at the rate of one and one-half percent (1.5%) per month or the highest rate permitted by law, whichever is lower, from the original due date until paid. If Customer's account becomes more than 30 days past due, FlashParking may in addition to its other rights hereunder, file a mechanic’s lien upon the Equipment or take collection/legal actions. Customer is liable for all attorney’s fees, collection costs, and other costs associated with FlashParking’s attempts to receive payment to which it is due.

7.4 Taxes. Amounts quoted by FlashParking do not include any applicable taxes or similar fees now in force or enacted in the future resulting from any transaction under the Agreement unless otherwise expressly stated. Where practicable, applicable taxes and fees shall be added to the invoice and Customer is responsible for all such amounts and shall pay them in full. Although FlashParking will endeavor to list applicable taxes and fees on the invoice, its failure to do so does not affect Customer’s obligation to pay such taxes. If Customer is entitled to an exemption from any applicable taxes, Customer shall provide FlashParking with a valid exemption certificate. FlashParking will honor any valid exemption certificate provided in accordance with the foregoing sentence to the extent it applies on a going-forward basis starting fifteen (15) days after FlashParking’s receipt of such valid exemption certificate.

8. Warranty; Warranty Limitations

8.1 Warranty.

(a) Equipment. FlashParking agrees to provide a basic two-year warranty (the “Warranty Period”) on all Equipment and Equipment components for each System, running from the date of installation unless otherwise specified in Schedule A. Subject to the limitations set forth in Section 8.2 hereof, if the Equipment fails to perform as warranted, and Customer reports such failure to FlashParking in writing promptly following the appearance of such failure, FlashParking will provide replacement Equipment (or relevant component thereof) as soon as practicable at no additional cost to Customer during the Warranty Period and will assist the Customer remotely in replacing the defective Equipment (or component). Customer agrees to use commercially reasonable efforts to assist FlashParking in troubleshooting such failure remotely. If FlashParking is unsuccessful in resolving the issue remotely, FlashParking will dispatch a technician to remedy such failure at no cost to Customer. Any such repair and/or replacement parts will carry a warranty equal to the greater of (a) the remaining balance of the initial Warranty Period on the defective item or (b) ninety (90) days.

(b) Other Services. FlashParking warrants that it shall perform Installation and Professional Services in a workmanlike manner consistent with local industry standards. If FlashParking fails to so, and Customer reports such failure to FlashParking within ten (10) days after the performance of such Services, FlashParking shall re-perform the non-conforming portion of the Services to meet such warranty.

(c) Payment Card Industry (“PCI”) Compliance. FlashParking is PCI DSS compliant as a Level 1 Service Provider. FlashParking will continue to provide all Software updates needed to maintain PCI compliance throughout the term of the Agreement. If PCI regulations change and new Equipment is required to maintain PCI compliance, FlashParking will inform Customer in writing and provide, at Customer’s expense, new PCI compliant Equipment. If FlashParking is no longer able to maintain PCI compliance, FlashParking will notify Customer in writing within ten (10) business days. Customer may request an attestation of compliance (“AOC”) and responsibility matrix from FlashParking to verify and document FlashParking’s PCI compliance as a Level 1 Service Provider.

8.2 Limitation. The warranties set forth above do not apply to: (a) Equipment which is not defective or which does not fail to perform; (b) failure of any Equipment that occurs outside of the Warranty Period; (c) any third party equipment or product that is not installed by FlashParking; (d) any malfunction/damage resulting from the use of the Systems in conjunction with accessories or other products or ancillary or peripheral equipment not provided or expressly authorized in writing by FlashParking; (e) any Equipment which is provided as a trial or demo or at no cost to Customer; (f) Equipment that has been subject to: (i) any modifications, tampering, alterations, repair, or servicing by any party other than FlashParking or FlashParking’s authorized representatives; (ii) handling, storage, installation, testing, maintenance, or use not in accordance with the applicable Documentation; (iii) abuse, negligence, neglect, accidents, or misuse; (iv) cosmetic damage only; (v) normal wear and tear; (vi) any breakdowns, fluctuations, or interruptions in electric power or the telecommunications/internet provider network; or (vii) any acts of nature, including fire, flood, tornado, earthquake, hurricane, excessive snow, lightning, riot, insurrection, act of war or other disaster; (h) Equipment that has not had normal maintenance as would be expected of such equipment, including but not limited to cleaning of components and keeping electrical connections debris free; (i) damage caused by vandalism, civil or military authority, civil disturbance, terrorist acts, war or strikes; (j) Equipment that has had its identification labels removed or altered; or (k) issues associated with the failure to timely implement solutions, error
corrections, and updates supplied by FlashParking to a System. To the extent FlashParking provides warranty or support services for troubleshooting or repairing any issue caused by any of the foregoing, FlashParking may impose charges at its T&M Rate for all such services. FlashParking will notify Customer as soon as the billable status of the warranty request is determined.

8.3 Disclaimers. EXCEPT FOR THE LIMITED WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION, AND TO THE EXTENT ALLOWED BY APPLICABLE LAW, FLASHPARKING MAKES NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIMS ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AS WELL AS ANY WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, USAGE OR TRADE PRACTICE. The remedies set forth in this Section 8 represent FlashParking’s sole liability for any non-conforming Services and defects in the System, and Customer’s sole remedy for such defects.

9. INTELLECTUAL PROPERTY RIGHTS; OWNERSHIP; USE OF INFORMATION.

9.1 Intellectual Property Rights. Use of the Systems and Services includes limited use rights to the Software only while this Agreement is in effect. FlashParking owns all right, title, and interest in the Services, Software, and any Work Product, and all related technology, information, and documents, including all intellectual property and proprietary rights in connection therewith. FlashParking also retains ownership of all FlashParking’s copyrights and trademarks. Except as expressly set forth in this Agreement, no rights or implied licenses in such intellectual property are granted to Customer by this Agreement, and FlashParking reserves all rights not explicitly granted to Customer under this Agreement. Any attempt to disassemble, decompile, create derivative works of, reverse engineer, modify, sublicense, or distribute the Software or to use it for purposes other than in connection with the Systems and Services as specified herein, is strictly prohibited (except in the case of reverse engineering, where and to the extent that, such restriction is contrary to applicable law). If you provide FlashParking with any Feedback, you provide such Feedback voluntarily and of your own choosing (i.e., you are not required to provide Feedback), and FlashParking has the right to use, modify, sell, transfer, assign, distribute, and create derivative works from, such Feedback, for any and all purposes without compensation or attribution to Customer, in perpetuity and without any restrictions.

9.2 LPR Data.

(a) Customer’s Use of LPR Data. Customer acknowledges and agrees that Customer shall be responsible for compliance with all laws regarding the collection, storage, use, management and deletion of all license plate recognition and other data or information (“LPR Data”) collected through the use of the System and Services and Equipment.

(b) Customer’s Obligations with Respect to LPR Data. Customer acknowledges that, as between FlashParking and Customer, Customer shall be deemed the end user and/or operator of the Equipment and the entity responsible for the collection, storage, use, management and deletion of all LPR Data. Accordingly, if and to the extent required by applicable law, Customer shall:

(i) Maintain reasonable security procedures and practices, including operational, administrative, technical, and physical safeguards, to protect LPR Data from unauthorized access, destruction, use, modification, or disclosure; and

(ii) Implement a usage and privacy policy in order to ensure that the access, use, sharing, and dissemination of LPR Data is consistent with respect for individuals’ privacy and civil liberties, including (A) the authorized purposes for accessing and using LPR Data; (B) a description of the job title or other designation of the employees and independent contractors who are authorized to access and use LPR Data, including the training requirements necessary for those authorized employees and independent contractors; (C) a description of how the LPR Data will be monitored to ensure the security of the information accessed or used, and compliance with all applicable privacy laws and a process for periodic system audits; (D) the purposes of, process for, and restrictions on, the sale, sharing, or transfer of LPR Data to third parties; (E) the title of the official custodian, or owner, of the LPR Data responsible for implementing this section; (F) description of the reasonable measures that will be used to ensure the accuracy of LPR Data and correct data errors; and (G) the length of time LPR Data will be retained, and the process Customer will utilize to determine if and when to destroy retained LPR Data.

(c) Providing Access to LPR Data. When accessing, or providing access to, LPR Data, Customer agrees
to: (i) maintain a record of that access, including (A) the date and time LPR Data is accessed; (B) the license plate number or other data elements used in the query; (C) the username of the person who accesses the LPR Data, and, as applicable, the organization or entity with whom the person is affiliated; and (D) the purpose for accessing the LPR Data; and (ii) require that LPR Data only be used for the authorized purposes described in Section 9.2(b)(ii).

(d) FlashParking’s License to LPR Data. Customer hereby grants FlashParking a nonexclusive license to use the LPR Data to perform its obligations under this Agreement. In addition, Customer acknowledges that FlashParking has the right to access, use, modify, store, manipulate, distribute and publish such information in a de-identified format for any legally permissible purpose, including without limitation to improve and enhance FlashParking’s products and services.

10. INDEMNIFICATION.

10.1 By FlashParking.

(a) General. FlashParking will defend Customer and its Affiliates, and its and their directors, officers, employees, and agents, from and against all third party claims, suits or actions against Customer for bodily injury (including death) and damage to tangible property to the extent directly resulting from FlashParking’s grossly negligent or intentional acts or omissions in providing the Equipment or Services.

(b) Infringement. FlashParking will defend Customer and its Affiliates, and its and their directors, officers, employees, and agents, from and against any third party claim, suit or action to the extent arising out of or based on such third party’s claim that use of the Systems or Services as intended under this Agreement and the Documentation infringes that party’s United States trademark or copyright or to FlashParking’s knowledge any valid and existing United States patent. FlashParking will pay the amount of any final judgment awarded (including reasonable attorney’s fees and costs) or final settlement made by FlashParking with respect to such claim. In addition to, and not in lieu of FlashParking’s defense and indemnity obligations set forth above, if the Systems or Services, or any part thereof, becomes, or in FlashParking’s opinion is likely to become, the subject of a claim of infringement, FlashParking has the right to either (a) correct it; (b) obtain the necessary rights for Customer to continue to use the Systems or Services; (c) replace the potentially infringing component with a replacement that has similar functionality; or (d) if FlashParking concludes that none of these options is commercially practicable, FlashParking has the right and option to terminate provision of the Systems or Services to Customer and reimburse Customer for any pre-paid amounts for the remaining term on a pro rata basis. This is FlashParking’s entire obligation to Customer for these claims.

10.2 By Customer. Subject to Section 10.1(a) (FlashParking’s General Indemnity), Customer will defend FlashParking and its Affiliates, and its and their directors, officers, employees, and agents, from and against all third party claims, suits or actions against FlashParking for bodily injury (including death) or tangible personal property damage to the extent arising out of, resulting from or based on Customer’s (or Customer’s employees, agents, contractors or invitees) (i) failure to comply with its obligations under this Agreement, including without limitation its obligations with respect to LPR Data, and (ii) negligent or intentional acts or omissions.

10.3 Indemnification Procedure. The Party wishing to be indemnified hereunder (the “Indemnified Party”), in order to be eligible for indemnity shall (a) promptly notify the other Party (the “Indemnifying Party”) in writing of the existence of any action for which the Indemnified Party is seeking indemnification; (b) grant the Indemnifying Party sole authority and control for the defense and/or settlement of such action; and (c) provide the Indemnifying Party (at Indemnifying Party’s cost) with all reasonable assistance for the defense or settlement of such action. The Indemnified Party, at its own expense, may participate in the defense of any such action with counsel of its own choosing. Notwithstanding the foregoing, the Indemnifying Party shall not obligate the Indemnified Party to pay any amount in a settlement agreement, admit liability or culpability of the Indemnified Party in any settlement agreement, or require Indemnified Party to take any material action (other than mere administrative actions) in a settlement agreement, without the Indemnified Party’s prior written permission (not to be unreasonably withheld, conditioned, or delayed).

11. LIMITATION OF LIABILITY. Except with respect to FlashParking’s indemnification obligations hereunder, in no event will FlashParking (including its suppliers) be liable (a) under any claim arising out of this Agreement in excess of the amount of any actual direct damages or loss, up to the total payment (in respect of recurring payments for Subscription Services, only the preceding six (6) months of charges apply) made by Customer to FlashParking for the System or Service which was the subject of the claim; or (b) for lost profits or goodwill or for special, indirect, incidental, exemplary, punitive, or
consequential damages, under any theory of liability, even if FlashParking is advised of the possibility of such damages. Under no circumstances will FlashParking be liable for third party claims against Customer for losses or damages except with respect to FlashParking's express indemnification obligations hereunder.

12. TERM.

12.1 Term. The term of this Agreement shall commence upon successful installation and shall continue for the longer of: (i) a period of one (1) year, or (ii) 24 months, as specified in the Schedules hereto (the “Initial Term”). After the Initial Term, this Agreement shall automatically renew for successive 12 month terms (each, a “Renewal Term” and, together with the Initial Term, referred to as the “Term”) until terminated by either Party upon ninety (90) days’ prior written notice. Any termination or cancellation by Customer prior to the start or end of the Initial Term shall be considered and “Early Termination” and will be subject to a cancellation fee equal to twenty five percent (25%) of the contract value as set out in Schedule A. Customer will pay such cancellation fee on the Early Termination effective date.

12.2 Termination. If either Party breaches a material provision of this Agreement and does not cure such breach within thirty (30) days after written notice from the other Party, such non-breaching Party shall have the right at its option to: (i) suspend performance or payment until such breach is cured; (ii) terminate this Agreement; or (iii) seek a combination of (i) and (ii), and those remedies available at law or equity to the extent not limited by the terms of this Agreement. The election of any of such options shall not excuse the breaching Party from any obligations arising prior to the date of such election.

12.3 Survival. The terms of any Sections that by their nature are intended to extend beyond termination shall survive termination of this Agreement for any reason, including Section 1 (Definitions); 7.4 (Taxes); 8.2 (Limitation); 8.3 (Limitation of Liability); and 13 (General).

13. GENERAL.

13.1 Choice of Law; Binding Arbitration; Choice of Forum.

Except for any claims for temporary or permanent injunctive relief or actions enforcing the results of arbitration, any and all disputes, controversies or claims arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“Rules”) in effect at the time of the claim by a single arbitrator appointed in accordance with said Rules. The appointing authority shall be the American Arbitration Association. The place of arbitration shall be Austin, Texas, U.S.A. The arbitration shall be conducted in the English language. The determination of the arbitrator shall be final and binding upon the Parties to the arbitration. Discovery shall be permitted, but only to the extent that the documents are directly relevant to and needed for fair resolution of one or more of the issues of importance and can be located and produced at a cost that is reasonable in the context of all surrounding facts and circumstances. When the cost and burden of discovery are disproportionate to the likely importance of the requested materials, the arbitrator may deny the requests or require that the requesting Party advance the reasonable cost of production to the other side. The arbitrator may not award non-monetary or equitable relief of any sort, nor award damages inconsistent with this Agreement. All aspects of the arbitration shall be treated as confidential. Judgment upon any award rendered by the arbitrator may be entered in any court of competent jurisdiction. THE PARTIES SURRENDER AND WAIVE THE RIGHT TO SUBMIT ANY DISPUTE TO A COURT OR JURY, OR TO APPEAL TO A HIGHER COURT. THE PARTIES AGREE TO ARBITRATION ON AN INDIVIDUAL BASIS. If any provision of this arbitration agreement is found unenforceable, the unenforceable provision shall be severed, and the remaining arbitration terms shall be enforced (but in no case shall there be a class arbitration). Notwithstanding the foregoing, nothing in this Agreement shall prohibit either Party from seeking and obtaining from a court of competent jurisdiction (without necessity of posting bond) injunctive relief in order to preserve the status quo and/or avoid irreparable harm for which monetary damage would be insufficient. The proceedings shall be governed by the United States Federal Arbitration Act to the exclusion of any inconsistent state laws and the arbitrator shall otherwise follow the law and judicial precedents that a United States District Judge sitting in the Western District of Texas would apply to the dispute.

13.2 No Waiver; Severability; Section Headings. No failure of either Party to exercise or enforce any of its rights under this Agreement shall act as a waiver of such rights. If any provision of this Agreement is determined in any proceeding binding upon the Parties to be invalid or unenforceable, that provision will be deemed severed from the remainder of the Agreement, and the remaining provisions shall continue in full force and effect; provided however, that if a court by limiting such provision determines that the provision would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited so long as the result is consistent with the Parties’ expressed intentions.
herein. The section headings in this Agreement are solely for the convenience of the Parties and have no legal or contractual effect. The term “including” and variations thereof shall be interpreted to mean “including but not limited to.” This Agreement is entered into by sophisticated entities with access to counsel and shall not be construed against either Party as the “drafting” party.

13.3 Relationship between the Parties. FlashParking and Customer acknowledge and agree that this Agreement is not and shall not be construed as an agreement of joint venture, partnership, agency, franchise, or employment between the Parties or their respective employees. For all purposes under this Agreement, each Party shall be and act as an independent contractor to the other and shall not be authorized to, and shall not, bind or attempt to bind the other to any contract or agreement.

13.4 Notices. All notices required to be given under this Agreement shall be given in writing, and sent to the recipient Party’s address in the preamble of this Agreement, unless otherwise updated in writing. All notices shall be given by certified or registered mail, overnight carrier, or personal delivery. Such notices shall be deemed given on the date of receipt of delivery of (or refusal to accept) said notice. Notwithstanding the foregoing, any day-to-day operational correspondence may be made by phone, email, text or other mutually agreeable mechanism.

13.5 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The Parties agree that electronic signatures, whether digital or encrypted, of the Parties have the same force and effect as manual signatures. Delivery of a copy of this Agreement or any other document contemplated hereby bearing an original or electronic signature by facsimile transmission, by electronic mail in portable document format (.pdf) form, or by any other electronic means intended to preserve the original textual, graphic and pictorial appearance of a document, have the same effect as physical delivery of the paper document bearing an original or electronic signature.

13.6 Assignment. Neither Party may sell, assign, or transfer this Agreement without the prior written consent of the other Party; provided, however, that either Party may (with notice but without the prior consent of the other Party) assign this Agreement: by operation of law, pursuant to a merger or acquisition of all or substantially all of its stock or assets, or to its Affiliate. Any other purported attempt to assign this Agreement is voidable by the non-assigning Party. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

13.7 Confidentiality. Each Party agrees to maintain in strict confidence any and all Confidential Information of the other Party. A Party shall be liable to the other Party for any breach of this Section by its employees, agents, and subcontractors and agrees to take, at its sole cost and expense, reasonable measures to restrain its employees, agents, and subcontractors from unauthorized use or disclosure of any Confidential Information of the other Party. Notwithstanding the foregoing, in the event of compelled disclosure, the compelled Party (“Recipient”) shall provide the Party which disclosed the information (“Discloser”) with prompt prior notice of the disclosure requirement if permitted to do so, shall cooperate with Discloser (at Discloser’s expense and request) to limit or quash such disclosure, and shall in all cases disclose only the minimum amount of information necessary to comply with the Compelled Disclosure. “Compelled Disclosure” means disclosure that is required by applicable law or by the demand (e.g., a warrant or subpoena) of a government body having jurisdiction in the matter.

13.8 No Promises or Representations other than those set forth herein. Each Party stipulates on its own behalf that it has not relied on any promises or statements made by the other Party (whether orally or in writing prior to the Effective Date) in entering into this Agreement, and furthermore that all promises and understandings between the Parties are solely those which are expressly set forth and encompassed within this Agreement itself.

13.9 Entire Agreement. This Agreement, including its Schedules and Statements of Work, constitutes the entire Agreement between the Parties pertaining to the subject matter hereof, and supersedes in their entirety any and all written or oral agreements previously existing between the Parties with respect to such subject matter. No supplement, modification, addendum or amendment of this Agreement shall be binding unless executed in writing by both Parties. Any provisions that purport to add, delete, or modify any provisions of this Agreement in any Customer form of purchase order, quotation, acknowledgment, or other forms or purchase documents supplied by Customer shall be ineffective and void ab initio. In the event of any conflict between any terms of this Agreement and any terms of any Schedule, the terms of this Agreement shall supersede, govern and control to the extent of the inconsistency, unless the Schedule expressly states that it is intended to take precedence.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives.

By: FLASHPARKING, INC  
By: City of Dayton

Name:
Name:

Title:
Title:

Date:
Date:

Signature:
Signature:
"Signed First Amendment to Flash Parking Agreement-ljb edits 4-27-22_atm edits 4-28-22 (1)" History

- Document created by Miles Gueno (miles.gueno@flashparking.com)
  2022-04-29 - 3:48:28 PM GMT

- Document emailed to Sam Goodner (sam.goodner@flashparking.com) for signature
  2022-04-29 - 3:50:15 PM GMT

- Email viewed by Sam Goodner (sam.goodner@flashparking.com)
  2022-04-29 - 3:54:56 PM GMT

- Document e-signed by Sam Goodner (sam.goodner@flashparking.com)
  Signature Date: 2022-04-29 - 3:55:23 PM GMT - Time Source: server

- Agreement completed.
  2022-04-29 - 3:55:23 PM GMT
City Manager's Report

From 6210 - Police Director
Supplier, Vendor, Company, Individual
Name LeadsOnline, LLC
Address 6900 Dallas Parkway, Suite 825
          Plano, TX 75024

Date May 11, 2022
Expense Type Service Agreement
Total Amount $67,710.00 thru 4/14/2025

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other Grant Funds</td>
<td>28150-6210-1159-71</td>
<td>$67,710.00</td>
</tr>
</tbody>
</table>

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

Description
Service Agreement
Pawn Shop Database for Law Enforcement Investigations

The City of Dayton, Department of Police, requests approval for the attached Agency Agreement with LeadsOnline, LLC.

This vendor offers access to the nation’s largest online nationwide investigation database for the primary purpose of identifying stolen merchandise and/or persons involved in various criminal activities. Law Enforcement agencies across the county and nationwide have been using this system to help track and identify stolen merchandise and property that frequently ends up in pawn shops.

The Agreement will commence upon execution and will expire on April 14, 2025.

The Agreement has been approved as to form and correctness by the Law Department.

A Certificate of Funds is attached in the amount of $22,570.00 from the Federal Law Enforcement Trust Fund for the first year of service.

Signatures/Approval
Approved by City Commission

Clerk

Date

Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>x</th>
<th>New Contract</th>
<th>Renewal Contract</th>
<th>Change Orders</th>
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<tbody>
<tr>
<td>Contract Start Date</td>
<td>Upon Execution</td>
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</tr>
<tr>
<td>Expiration Date</td>
<td>4/14/2025</td>
<td></td>
<td></td>
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<tr>
<td>Original Commission Approval</td>
<td>$67,710.00</td>
<td></td>
<td>Initial City Manager’s Report</td>
</tr>
<tr>
<td>Initial Encumbrance</td>
<td>$22,570.00</td>
<td></td>
<td>Initial Certificate of Funds</td>
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<tr>
<td>Remaining Commission Approval</td>
<td>$45,140.00</td>
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<td>Initial Agreement/Contract</td>
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<tr>
<td>Original CT/CF</td>
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<td></td>
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<tr>
<td>Increase Encumbrance</td>
<td></td>
<td></td>
<td>Copy of City Manager’s Report</td>
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<tr>
<td>Decrease Encumbrance</td>
<td></td>
<td></td>
<td>Copy of Original Certificate of Funds</td>
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<tr>
<td>Remaining Commission Approval</td>
<td></td>
<td></td>
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</table>

Required Documentation

<table>
<thead>
<tr>
<th>Amount:</th>
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<tbody>
<tr>
<td>Fund Code</td>
<td>28150 - 6210 - 1159 - 71 - XXXX - XXXX</td>
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<tr>
<td>Fund</td>
<td>Org</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Amount:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund Code</td>
<td>XXXX - XXXX - XXXX - XX - XXXX - XXXX</td>
</tr>
<tr>
<td>Fund</td>
<td>Org</td>
</tr>
</tbody>
</table>

Attach additional pages for more FOAPALS

Vendor Name: LeadsOnline, LLC
Vendor Address: 6900 Dallas Parkway, Suite 825 Plano TX 75024
Federal ID: 421720332
Commodity Code: 91503
Purpose: LeadsOnline provides access to a nationwide electronic database for the primary purpose of identifying stolen merchandise and/or persons involved in various criminal activities.

Contact Person: Meredith Weber x1099
Chief's Office Department/Division
4/26/2022 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

CF Prepared by

Date

October 18, 2011
AGENCY AGREEMENT

This LeadsOnline LLC AGENCY AGREEMENT ("Agreement"), dated ________________, 2022, ("Effective Date") is made between City of Dayton ("Agency") and LeadsOnline LLC ("Leads").

SCOPE OF AGREEMENT

Leads operates and maintains an electronic reporting and criminal investigation system for receiving Transaction Data for the use of Law Enforcement Officials in their official duties. Leads acts in the capacity of an agent for such Law Enforcement Agencies for the purpose of collecting, maintaining and providing access to Transaction Data and other records.

Agency desires to utilize Leads' System to support its investigations.

Subject to the terms of this Agreement and in consideration of the mutual covenants stated below, the parties agree as follows:

1. Definitions

1.1 "Transaction Data" means all information provided by Reporting Businesses and Law Enforcement Agencies about transactions, including (but not limited to) the transaction number, make, model, property description, serial number, name, address, identification number, telephone number, date of birth and any images recorded during the course of a transaction according to official request, statutory requirement or otherwise.


1.3 "Law Enforcement Agency" means any agency duly authorized by Municipal, State, County or Federal government to enforce laws or investigate crimes.

1.4 "Law Enforcement Official" means a person employed and authorized by a Law Enforcement Agency to, in his/her official duties, access Transaction Data and/or submit Transaction Data for official use by Law Enforcement Agencies.

1.5 "Leads' System" is Leads' electronic reporting and criminal investigations system for receiving Transaction Data for access by Law Enforcement Officials.

1.6 "Reporting Business" shall mean any entity that records Transaction Data regarding (a) the receipt or sale of products regulated by law and (b) the receipt or other disposition of merchandise or materials, and reports such Transaction Data for access by Law Enforcement Officials according to official request, statutory requirement or otherwise.

1.7 "Agency Files" means case information electronically transferred by Agency to Leads' System for automated comparison to Transaction Data and Agency Files submitted by other Law Enforcement Agencies.
2. Responsibilities of Agency

2.1 Agency agrees that the protection of usernames and passwords used to access Leads services and any Transaction Data accessed via Leads by its Law Enforcement Official is the responsibility of Agency. Agency agrees to maintain such information in a secure manner and to not provide login credentials to any other person.

2.2 Agency is responsible for the accuracy of information submitted by Agency’s Law Enforcement Officials in registration for Law Enforcement Agency’s accounts.

2.3 Agency agrees to not share its access to Leads’ System with other Law Enforcement Agencies and to not share information retrieved from Leads’ System with the exception of disclosure necessary for the purpose of prosecution of crimes within Agency’s jurisdiction investigated by Agency.

2.4 Agency agrees that accounts will be (a) registered only to individual Law Enforcement Officials employed exclusively by Agency and (b) will be used only by the specific Law Enforcement Official to whom the account is registered and (c) will not be used to access or otherwise provide information from Leads System to other Law Enforcement Agencies.

2.5 Agency represents and warrants that it shall only submit, access, use and disclose Transaction Data for use in Agency’s official Law Enforcement Agency duties. Agency maintains sole responsibility for activity taking place under its user accounts and is responsible for any use, misuse or disclosure of Transaction Data accessed by its users.

2.6 Agency is responsible for securing Transaction Data accessed from Leads’ System, and agrees to comply with all applicable statutes, laws and regulations for use and disclosure of non-public personal information, including federal and state Transaction Data security breach laws and the GLBA.

2.7 Agency understands and acknowledges that Transaction Data and other records accessible by Law Enforcement Officials via Leads’ System contains non-public personally identifiable information that is unrelated to any Agency case. This includes Transaction Data submitted by businesses and Law Enforcement Agencies outside of Agency’s jurisdiction and outside of Agency’s state. Such Transaction Data and other information may not be eligible for disclosure in response to a public record request according to applicable law. Leads does not grant Agency access to Leads’ System for the purpose of searching records to respond to a public records request when Agency did not have the record at the time the public records request was made. If Agency searches Leads’ System in response to a request for Public Records, Agency is acting of its own accord.

2.8 Agency is responsible for using devices and browsers capable of connecting via an encrypted internet connection.

2.9 Agency is responsible for promptly notifying Leads when a user is no longer employed by Agency or is otherwise no longer authorized to access Leads’ System.

2.10 Agency agrees to promptly notify Leads of any conditions that Agency believes may represent or result from a security incident or vulnerability, including the possible compromise of a user’s password. Please send any notifications to privacy@leadsonline.com.
2.11 Agency will pay subscription fees according to the schedule set forth in Attachment ‘A’ which by this reference is incorporated herein.

3. **Responsibilities of Leads**

3.1 Leads agrees to operate and maintain the Leads System for the purpose of receiving Transaction Data for access only by Law Enforcement Officials.

3.2 Leads agrees to secure Transaction Data using administrative, technical and physical safeguards as set forth in applicable law, including the GLBA.

3.3 Leads agrees to limit access to Agency Files to authorized Law Enforcement Officials, and shall apply safeguards to protect Agency Files according to standards applicable to the information in Agency Files. Leads agrees to purge all Agency Files according to CJIS standards upon Agency’s written request.

3.4 Leads agrees to provide use of Leads’ System with the capabilities specified in Attachment ‘A’.

4. **Conditions for use of Leads’ System**

4.1 Leads’ System and website, including but not limited to written materials, text, graphics, logos, software, functionality, icons and images are the exclusive proprietary property of Leads and are protected under the United States Copyright Act (17 United States Code), as well as by all applicable state and international copyright laws, and by the Lanham Act (15 U.S.C. §§1051-1141n). Agency agrees to abide by any additional copyright notices, trademarks, information, or restrictions contained in any content on Leads’ System and website. Leads’ System and website may be used solely for the purposes expressly provided for herein, and no aspect of the Leads’ System or website may be used for any other purpose whatsoever. Any other use is unauthorized and will constitute an infringement upon the proprietary rights of Leads. No authority to use any content on Leads’ System, website, or any other intellectual or other property of Leads not expressly granted by this Agreement shall be implied.

4.2 Agency agrees to not decompile or otherwise copy or use content on the Leads’ System or website or other proprietary information of Leads for purposes of reverse-engineering or reconstruction, and to not remove, overprint or deface any notice of copyright, trademark, logo, legend, or other notices from any materials Agency obtains from Leads’ System or website.

4.3 Agency represents it is a Law Enforcement Agency.

4.4 Leads may modify or upgrade any aspect of Leads’ System at any time without notice. Leads agrees to make commercially reasonable efforts to perform such modifications in a manner that is not disruptive to Agency.

4.5 Subject to the terms of this Agreement, Agency hereby appoints Leads as its agent for the sole purpose of collecting, maintaining and providing access to Transaction Data from Reporting Businesses. This agency appointment is effective as of the registration date of Agency’s initial user. Agency acknowledges that Leads does not enforce laws and only represents Agency in the capacity of receiving Transaction Data from Reporting Businesses and Law Enforcement Agencies and making information available to Law Enforcement Officials via Leads’ System.
4.6 Leads uses a number of checks to identify inaccurate or incomplete Transaction Data, but cannot and does not represent or endorse the accuracy or reliability of Transaction Data or other information submitted by Reporting Business and Law Enforcement Agencies. Transaction Data is provided by Reporting Businesses and Law Enforcement Agencies according to the laws and practices enforced in Reporting Businesses’ jurisdiction using their proprietary operational software.

4.7 Leads is not responsible for ensuring the compliance of Reporting Businesses with their Transaction Data reporting obligations.

4.8 Agency will not discourage Reporting Businesses from submitting Transaction Data via Leads.

4.9 Transaction Data submitted by Reporting Businesses and Transaction Data and limited information from Agency Files submitted by Agency is accessible by Law Enforcement Officials with other Law Enforcement Agencies.

5. Term

5.1 This Agreement will become effective as of the Effective Date and remain in effect through April 14, 2025 (the “Initial Term”) and any renewal term, or until termination by Leads or Agency as described below.

5.2 Neither party is obligated to renew this Agreement. Upon expiration of the Initial Term or any renewal term, the parties may renew this Agreement for an additional one-year term. Mutual agreement to renew will be evidenced by Leads’ submission of a valid invoice for the renewal year at then-current pricing and Agency’s payment of such invoice within thirty (30) days of renewal.

5.3 Following written notice and a cure period of not less than ten (10) days, either party may without further notice, terminate this Agreement if the other party (a) fails to perform any material obligation required under this Agreement or (b) violates any laws, rules or regulations related to this Agreement.

5.4 The parties agree that any continuation of this Agreement from one fiscal year to the next is contingent upon annual fiscal appropriation and lawful approval by Agency’s governing entity. Agency may terminate this Agreement by providing sixty (60) days’ written notice to Leads prior to the next contract year if funding to make the next scheduled payment is not duly appropriated and authorized.

6. Disclaimer and Indemnification

6.1 EXCEPT FOR THE REPRESENTATIONS SET FORTH IN SECTION 3 OF THIS AGREEMENT, LEADS SPECIFICALLY DISCLAIMS ALL REPRESENTATIONS, CONDITIONS, AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARISING BY STATUTE, OPERATION OF LAW, USAGE OF TRADE, CUSTOM, COURSE OF DEALING, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY, MERCHANTABLE QUALITY, SATISFACTORY QUALITY, THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND/OR ANY AND ALL OTHER IMPLIED WARRANTIES AND EXPRESS WARRANTIES (OTHER THAN THOSE SET FORTH HEREIN, IF ANY) WITH RESPECT TO LEADS’ SYSTEM. LEADS’ SYSTEM, INCLUDING ALL TRANSACTION DATA, CONTENT, SOFTWARE, FUNCTIONS, MATERIALS AND INFORMATION MADE AVAILABLE ON OR ACCESSSED THROUGH LEADS’ WEBSITE IS PROVIDED, AND ACCEPTED AND/OR USED, “AS IS” WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND.
6.2 LEADS IS NOT LIABLE FOR ANY DAMAGES SUFFERED BY AGENCY OR ALLEGED BY ANY THIRD PARTY ARISING FROM AGENCY’S USE OF LEADS’ SYSTEM UNLESS THERE IS A SHOWING OF GROSS NEGLIGENCE OR WILFUL MISCONDUCT BY LEADS.

6.3 IN NO EVENT SHALL LEADS BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, DOWNTIME COSTS, LABOR COST, OVERHEAD COSTS OR CLAIMS OF A REPORTING BUSINESS, ITS AFFILIATES OR ANY OTHER THIRD PARTY, EVEN IF LEADS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6.4 AT AN ABSOLUTE MAXIMUM, LEADS LIABILITY SHALL BE LIMITED TO THE AMOUNT OF MONEY IT IS PAID BY AGENCY TO LEADS.

6.5 Leads shall indemnify, hold harmless, protect and defend Agency and its officials, officers, employees, agents and authorized volunteers (the “Indemnified Parties”) from and against all losses, liabilities, judgments, costs, expenses, damages (including damages to the Leads’ System), attorney’s fees, and other costs, including all costs of defense, arising from all suits of law or actions of every nature for or on account of the infringement of any patents, trademarks, or copyrights of any other party by reason of the use or integration of any proprietary software, equipment, devices or processes, originally incorporated, or provided and used, by Leads in the performance of the services provided under this Agreement. Notwithstanding the foregoing, this paragraph shall not apply if the foregoing described losses, liabilities, judgments, costs, expenses, damages and the like arise from the misuse of Leads’ System or Transaction Data or any other breach of this Agreement by Agency.

6.6 Agency shall ensure that any local law, instructions or directive given by Agency or Agency’s Law Enforcement Officials related to Reporting Businesses (“Agency Directives”) do not conflict with applicable laws. LEADS SHALL NOT, UNDER ANY CIRCUMSTANCE, BE RESPONSIBLE OR LIABLE FOR ANY THIRD-PARTY CLAIM ARISING OUT OF OR IN ANY WAY CHALLENGING THE ENFORCEABILITY OR VALIDITY OF SUCH AGENCY DIRECTIVES OR APPLICABLE LAWS.

6.7 The parties expressly agree that the execution of the Agreement does not create any personal liability on the part of any officer, director, employee, or agent of either party.

6.8 The parties agree that no provision of this Agreement extends either party’s liability beyond the liability provided in applicable law, and no provision of this Agreement shall be considered a waiver by either party of any right, defense, or immunity available according to applicable law.

7. Miscellaneous

7.1 Neither party will be liable for any failure or delay in performing an obligation under this Agreement that is due to causes beyond its reasonable control, including any act that would be considered force majeure.

7.2 If any provision of this Agreement is held to be unenforceable, in whole or in part, such holding will not affect the validity of the other provisions of this Agreement, unless either party deems the unenforceable provision to be essential to this Agreement, in which case either party may terminate this Agreement, effective immediately upon notice to the other party.

7.3 The parties reserve the right to disclose any information in response to a duly authorized subpoena.
7.4 Any waiver by either party of a breach of any provision of this Agreement by the other party or delay in enforcing any rights shall not operate or be construed as a waiver of any other or subsequent breach by such party.

7.5 The parties acknowledge that all services provided under this Agreement are performed from Leads’ facilities, and Leads does not physically come to Agency for purposes of providing any services related to this Agreement.

7.6 This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements and understandings, written or oral, between the parties relating to the subject matter hereof. This Agreement may not be modified, changed or discharged, in whole or in part, except by an agreement in writing signed by both parties. The mere acceptance of any work order, purchase order or other document containing provisions purported to modify or enlarge the obligations or liabilities of either party shall not be construed as acceptance of such provisions.

7.7 Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties hereto, any benefits, rights, or remedies under or by reason of this Agreement. There are no third-party beneficiaries to this Agreement. The only persons who may enforce or benefit from this Agreement and any rights under this Agreement are Agency and Leads.

7.8 This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without regard to conflicts of laws provisions. Sole and exclusive jurisdiction and venue for any action or proceeding arising out of or related to this Agreement shall be an appropriate state or federal court located in Montgomery County, Ohio.
7.9 Neither party will assign its rights or duties under this Agreement without first providing written notice to the other party with at least 30 days to object to such assignment and in doing so, immediately terminate the Agreement without penalty.

LEADS
LeadsOnline LLC

Signature: [Signature]

Print Name: Alexander Finley

Title: Chief Executive Officer

Date: 4/20/2022

Address: 6900 Dallas Parkway, Suite 825
Plano, TX 75024-4200

AGENCY
City of Dayton, Ohio

Signature: [Signature]

Print Name: [Signature]

Title: [Signature]

Date: [Signature]

Address: 335 West Third Street
Dayton, OH 45402

APPROVED AS TO FORM AND CORRECTNESS:

E-SIGNED by Andrew Sexton
on 2022-04-22 09:11:28 EDT

City Attorney

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

____________________________, 2022

Min./Bk. __________________Page ______

____________________________
Clerk of the Commission
<table>
<thead>
<tr>
<th>LeadsOnline System Capability</th>
<th>PowerPlus</th>
</tr>
</thead>
<tbody>
<tr>
<td>Online reporting system for all pawn/secondhand stores and scrap metal recyclers</td>
<td>✓</td>
</tr>
<tr>
<td>Unlimited accounts/searches for your personnel working your cases</td>
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</tr>
<tr>
<td>Images of property, sellers, vehicles, thumbprints, etc., as reported</td>
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<tr>
<td>Legacy data import (from existing in-house database)</td>
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<tr>
<td>Updates, training and support for agency personnel and businesses</td>
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<td>Transaction Monitor – Audit system for reporting compliance</td>
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<td>Reportit citizen property inventory system</td>
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<td>Automated NCIC/stolen property hits</td>
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<td>Message Inbox (alerts and communication to and from businesses)</td>
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<tr>
<td>Daily Stats (hits and statistics for each investigator)</td>
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<td>Property Hold Management System</td>
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<tr>
<td>Nationwide search access</td>
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<tr>
<td>Saved (continuous) searches/Email hit alerts</td>
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<td>eBay First Responder Service</td>
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<tr>
<td>OfferUp Search Listings</td>
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<tr>
<td>Public Classified Ads – Craigslist</td>
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<td>Persons of Interest inter-agency suspect information system</td>
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<td>Suspect variations and associations reports</td>
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<tr>
<td>Statement Analyzer</td>
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<tr>
<td>Submit lists of known suspects and/or property (file upload)</td>
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<td>Phone Forensics Search</td>
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<tr>
<td>CompStat Mapping System</td>
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Annual subscription fee due on April 15, 2022 and on or before each anniversary thereof during the Initial Term. Increases will be limited to 3% annually during the Initial Term. Subscription fee after the Initial Term will be invoiced according to then-current pricing and is due within 30 days of renewal. $22,570
City Manager’s Report

From 3460 - Water/Water Reclamation
Supplier, Vendor, Company, Individual
Name Peterson Construction Company
Address 18817 S.R. 501 North
Wapakoneta, Ohio 45895

Date May 11, 2022
Expense Type Award of Contract
Total Amount $146,500.00 (thru 12/31/2023)

Fund Source(s) Fund Code(s) Fund Amount(s)
Water Pollution Control Loan fund (WPCLF) Loan from Ohio EPA Direct payment from Ohio EPA to Contractor $146,500.00

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

Description PHASE I and PHASE 2 ANAEROBIC DIGESTER PROJECT PRECONSTRUCTION CONSTRUCTION MANAGER AT RISK (CMAR)

The Department of Water requests permission to enter into an Agreement with Peterson Construction Company in the amount of $146,500.00 for the preconstruction phase services of the Anaerobic Digester Phase 1 and Phase 2 Project. This project expands the treatment facility’s capacity to anaerobically treat sludges generated in the treatment process to meet the Federal 40 CFR Part 503 Sludge Regulations for Class B Biosolids Treatment. The project design and the preconstruction phase services for Phase I are expected to be completed by September 2022 at which time, Peterson Construction Company will provide a Guaranteed Maximum Price for the Phase I Construction. The preconstruction phase services for Phase 2 are expected to be completed by February 2023 while construction for Phase 2 will occur at a future date.

A Request for Qualifications (RFQ) was advertised. Three firms submitted proposals and Peterson Construction Company was selected by a review Committee consisting of Water, Public Works, with oversight from Procurement, Management and Budget. Therefore, the Department of Water requests permission to enter into an Agreement with Peterson Construction Company for the Phase I Anaerobic Digester Project. The Preconstruction Fees for the Phase 1 project are to be $124,500.00 and the Preconstruction Fees for the Phase 2 project are to be $22,000.00 for a Total Fee of $146,500.00.

This Project is being funded using a Supplemental Loan from the Ohio EPA Division of Environmental and Financial Assistance (DEFA), approved to accept by Resolution No. 6629-22. During design, after the City reviews and approves contractor invoices/pay requests, DEFA will issue payment directly to Peterson Construction Company. The City will not require Sanitary Capital Funds for this Contract. This Supplemental Loan, and the current Design Loan with Hazen & Sawyer, will be incorporated into the DEFA Construction Loan once construction is complete for final debt service payments.

The Agreement has been reviewed by the Law Department as to form and correctness. A copy of the Resolution is attached.

Signatures/Approval

Approved by City Commission

Clerk
Date

FORM NO. MS-16

Updated 8/2016
May 5, 2022

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

FROM: Michael Powell, Director
      Department of Water

SUBJECT: Peterson Construction
         Phase 1 and Phase 2 Anerobic Digester Project
         Construction Manager at Risk

Please accept this memo as a follow-up to the previous memo submitted on May 3, 2022 regarding the recommended award to Peterson Construction for the Pre-Construction portion of the project — Phase 1 and Phase 2. The Request for Qualifications (RFQ) attracted three firms interested in the work. Peterson Construction, Shook, and Ulliman Schutte Construction. A selection committee consisting of personnel from Water Reclamation, Water Engineering, and Civil Engineering scored each of the submittals with oversight from Purchasing. After scoring was complete, Peterson and Shook were interviewed for a second time. After the interview, the selection committee agreed that Peterson scored the highest and should be awarded the project.

After the committee selected Peterson, the Department of Water and the Human Relations Council (HRC) reviewed the scope of work for the pre-construction phase of the project. It was determined that PEP goals could not be set on this portion of the project at this time. However, the preconstruction phase of the project includes quality engineering, finalizes the plans, specifications and final pay items for construction activities and a guaranteed maximum price (GMP) from Peterson will be provided. PEP goals will be set for construction once the items listed above are completed and more detailed division of work has been identified. The Department of Water and HRC have been in contact throughout the RFQ process and will continue to coordinate during the construction phase, as well.

Cc: LaShea Lofton, Deputy City Manager
    Joe Parlette, Deputy City Manager
    Erica Fields, HRC
May 3, 2022

TO: Shelley Dickstein  
   City Manager

FROM: Michael Powell, Director  
       Department of Water

SUBJECT: Phase 1 and Phase 2 Anaerobic Digester Project, Preconstruction  
         CMAR: Project Award and WPCLF Loan

The City of Dayton completed the Master Plan for the Water Reclamation Facility in 2018. The first prioritized major project identified was the Phase I Anaerobic Digester Project. Hazen & Sawyer (H&S) was selected as the design firm and the Professional Service Agreement with H&S for the design and construction was approved by City Commission on May 22, 2020. To better position the Department of Water for the Federal Infrastructure Bill, a Service Agreement Amendment was issued to include Phase 2 design and construction with H&S which was approved on September 3, 2021. When design of Phase I was 30% complete, a Request for Qualifications (RFQ) was sent out to numerous interested Contractors and the Construction Manager at Risk (CMAR) was selected based on the State of Ohio’s guidelines for Qualification Based Selection (QBS) Process. Three firms submitted proposals and Peterson Construction Company was selected by the Selection Committee.

The Department of water requests permission to enter into an Agreement with Peterson Construction Company for the Phase I and Phase 2 Anaerobic Digester Project Preconstruction Services. The Preconstruction Fees for the Phase 1 project, scheduled to be completed by September 2022, are to be $124,500.00 and the Preconstruction Fees for the Phase 2 project, scheduled to be completed by February 2023, are to be $22,000.00 for a Total Fee of $146,500.00.

This Project is being funded using a Supplemental Loan from the Ohio EPA Division of Environmental and Financial Assistance (DEFA), approved to accept by Resolution No. 6629-22. During design, after the City reviews and approves Peterson Construction Company invoices/pay requests, DEFA will issue payment directly to Peterson Construction Company. The City will not require Sanitary Capital Funds for this Contract. This Supplemental Loan, and the current Design Loan with Hazen & Sawyer, will be rolled into the DEFA Construction Loan once construction is complete for final debt service payments.

c: J. Parlette, A. Zonin, N. Dailey
Owner-Construction Manager at Risk Agreement

where the basis of payment is the Cost of the Work Plus a Fee
with a Guaranteed Maximum Price

Date of the Agreement: This ___ day of ______ 2022. (If a date is not inserted, the Date of the Agreement shall be the date that the City of Dayton executes this Agreement.)

This Agreement is made between:

Owner:
City of Dayton
Department of Water
101 W. Third Street
Dayton, Ohio 45402

Owner's Representative: Larry Kremer, P.E., Plant Engineer

And Construction Manager (also referred to as “Contractor,” “CM” or “Construction Manager at-Risk”):

Peterson Construction Company
18817 S. R. 501 North
Wapakoneta, OH 45895

Construction Manager's Representative: Mike Fritchie, Senior Project Manager

For the following Project:

City of Dayton – Phase I Anaerobic Digester Improvements – Construction Manager

Located at:
Dayton Water Reclamation Facility
2800 Guthrie Road
Dayton, Ohio 45417

The Engineer for the Project is:

Hazen and Sawyer
7870 East Kemper Road, Suite 300
Cincinnati, Ohio 45249

The Owner and Construction Manager agree as follows.
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ARTICLE 1  GENERAL PROVISIONS
§ 1.1 The Contract Documents
The Contract Documents consist of the following:

§ 1.1.1 This Agreement (also referred to as the “Contract”);

§ 1.1.2 Exhibits to this Agreement:

<table>
<thead>
<tr>
<th>Exhibit</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhibit 1</td>
<td>GMP Proposal Form + GMP Amendment Form</td>
</tr>
<tr>
<td>Exhibit 2</td>
<td>EJCDC C-700, Standard General Conditions of the Construction Contract 2013, as modified (the “General Conditions”)</td>
</tr>
<tr>
<td>Exhibit 3</td>
<td>Construction Manager’s Completed Personal Property Tax Affidavit</td>
</tr>
<tr>
<td>Exhibit 4</td>
<td>City of Dayton Product Manufacturer Labor Standards: Vendor Compliance Form</td>
</tr>
<tr>
<td>Exhibit 5</td>
<td>City of Dayton Business Income Tax Questionnaire</td>
</tr>
<tr>
<td>Exhibit 6</td>
<td>City of Dayton Procurement Enhancement Plan Commitment and/or Waiver Request Form (for Construction Phase only)</td>
</tr>
<tr>
<td>Exhibit 7</td>
<td>Payment and Performance Bonds</td>
</tr>
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<td>Exhibit 8</td>
<td>Statement of Claim Form</td>
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<tr>
<td>Exhibit 9</td>
<td>Davis-Bacon Wage Rates</td>
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<tr>
<td>Exhibit 10</td>
<td>Construction Manager’s Itemized General Conditions and Preconstruction Services Rate Schedule</td>
</tr>
<tr>
<td>Exhibit 11</td>
<td>CMR Affidavit with List of Subcontractors and Suppliers with Amounts Withheld</td>
</tr>
<tr>
<td>Exhibit 12</td>
<td>CMR Progress Payment Waiver and Release Affidavit</td>
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<tr>
<td>Exhibit 13</td>
<td>Subcontractors and Suppliers Progress Payment Waiver and Release Affidavit</td>
</tr>
<tr>
<td>Exhibit 14</td>
<td>Final Lien Waiver and Release Affidavit</td>
</tr>
<tr>
<td>Exhibit 15</td>
<td>Subcontractor Final Lien Waiver and Release Affidavit</td>
</tr>
<tr>
<td>Exhibit 16</td>
<td>American Iron and Steel Requirements</td>
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<tr>
<td>Exhibit 17</td>
<td>American Iron and Steel Acknowledgment</td>
</tr>
<tr>
<td>Exhibit 18</td>
<td>Certification Regarding Debarment, Suspension, and Other Responsibility Matters</td>
</tr>
</tbody>
</table>

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§ 1.1.3 The Contract Documents also include Addenda issued prior to the execution of this Agreement, other documents so identified in this Agreement, and Modifications/Amendments agreed to after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner’s acceptance of any of the Construction Manager’s Guaranteed Maximum Price (GMP) Proposals, the Contract Documents will also include the documents identified in the Guaranteed Maximum Price Amendment. The Contract Documents represent the entire and integrated agreement between the parties hereto and supersede any prior negotiations, representations or agreements, either written or oral.

§ 1.1.4 Procurement Documents. To the extent they are not inconsistent with the Agreement, including the exhibits to the Agreement, the Contract Documents shall include by reference the Request for Qualifications dated December 15, 2021 and the Request for Proposals dated February 4, 2022 issued by the City for the Project.

§ 1.1.5 Non-Contract Documents. The following are the reports and tests of conditions at or contiguous to the Site, if any, that the Engineer has used in preparing the Contract Documents. These are not Contract Documents. The General Conditions, as modified, contain additional terms related to these reports.

- Existing Digester facility Drawings
- Asset Condition Assessment Reports
- Recent survey information
- Basis of Design Report
- 30% Drawing and Specifications
- Three years of Digester Operating Data
- O&M Manuals and Control Narratives for the East Digesters
- Geotechnical Information

§ 1.2 Relationship of the Parties. The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Engineer and exercise the Construction Manager’s skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner’s interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions. For the Preconstruction Phase, the EJCDC C-700, Standard General Conditions of the Construction Contract 2013, as modified, (hereafter, "C-700" or "General Conditions") (Exhibit 2) shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be the General Conditions, which document is incorporated herein by reference. The term “Contractor” as used in the General Conditions shall mean the Construction Manager.

§ 1.4 Nothing contained in the Contract Documents shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Construction Manager. However, it is understood that the Owner is an intended third-party beneficiary of Construction
Manager's agreements with the Consultants, and Subcontractors, and Consultants' and Subcontractors' agreements with their Sub-Consultants, and Sub-Subcontractors. The Construction Manager shall incorporate the obligations of the Contract Documents into its respective agreements and subcontracts.

§ 1.5 The Project is expected to consist of two phases, referred to as Phase 1 and Phase 2. The Construction Manager will provide Preliminary Services for both phases under this Agreement, but will only provide Construction Services for Phase 1. Both phases are defined in the Contract Documents.

§ 1.6 The Construction Budget (including, but not limited to, Preconstruction Fees for Phase 1 and Phase 2, and the Construction Fee, Contingency, General Conditions, Cost of the Work, and Furniture, Fixtures and Equipment costs for Phase 1) is $65,000,000.00. Construction Manager will make its best efforts to ensure that the sum of all GMPs plus Preconstruction Fee is less than the Construction Budget, and will timely notify Owner if at any point during the Work it appears that there is a realistic risk that the Construction Budget will be exceeded.

§ 1.7 Project Scope of Work. The Project includes Phase 1 and Phase 2, which are described below:

Phase 1 – The Construction Manager’s scope of work for Phase 1 is anticipated to include Preconstruction and Construction Services for the following:

1. two new pancake style digesters, new Digester Complex, and tie-ins to existing East Digester and gas handling facilities;
2. Rehabilitation of East Digesters and Digester Complex;
3. Rehabilitation of Boiler Room;
4. Installation of isolation valves at key locations on existing plant hot water loops;
5. Minor piping improvements to provide conveyance of digested sludge to and from West Digesters. Improvements will be limited to those allowing conveyance to and from tanks without the need for comprehensive code upgrades and to high priority structural rehabilitation;
6. Construction of a new Digester Blending Complex and tie-ins to existing north primary sludge and TWAS force mains. Digester Blending Complex will be connected to the existing South Primary Complex via a buried tunnel;
7. Relocation of South Primary Clarifier sludge pumps to the Digester Blending Complex;
8. Replacement of North Primary Clarifier sludge pumps (in kind/to match existing);
9. Replacement of flare piping from the Digester Complexes to the flares, including isolation valve and flame arrestors;
10. Replacement of Main Switchgear;
11. Construction of three new Tier II Generators;
12. Replacement of Substation 9;
13. Replacement of Feeders AR-F-1B and AR-F-2B;
14. Associated Site Work, including relocation of existing utilities where required for the above improvements; and,
15. Ancillary improvements, including electrical, instrumentation and control, architectural, HVAC, and plumbing required for the above improvements.
Phase 2 – The Construction Manager’s scope of work for Phase 2 is anticipated to only include Preconstruction Services for the following:

(1) Rehabilitation of North Primary Sludge Pumping Station;
(2) Equipment demolition and code improvements in South Primary Sludge Pumping Station;
(3) Rehabilitation and conversion of West Digesters and Digester Complex to dedicated sludge holding tanks;
(4) Necessary Heat Exchanger Building-related improvements;
(5) Replacement of Feeders AR-F-1A, AR-F-2A, AR-CB-1, AR-CB-2, and feeders for Cogen;
(6) Walkable buried utility corridor for sludge piping between existing West and East Digester Control Facilities;
(7) Rehabilitation of plant hot water piping and implementation of hybrid hot water/natural gas heating system;
(8) Associated Site Work, including relocation of existing utilities where required for the above improvements; and,
(9) Ancillary improvements, including electrical, instrumentation and control, architectural, HVAC, and plumbing required for the above improvements.

The design for Phase 1 is anticipated to be completed by September 2022 and the design for Phase 2 is anticipated by February 2023. After the design for Phase 1 reaches 90% design, the Construction Manager will provide the Guaranteed Maximum Price Proposal for Phase 1. The Construction Manager will not be providing a GMP Proposal for Phase 2 as part of this Agreement. Phase 2 construction is anticipated to commence sometime in the next ten years under a separate agreement.

ARTICLE 2 CONSTRUCTION MANAGER’S RESPONSIBILITIES

Construction Manager shall perform and provide all of the Work described in this Agreement. The Construction Manager’s Preconstruction Phase responsibilities for both Phase 1 and Phase 2 are set forth in the Contract Documents including, but not limited to, Sections 2.2-2.5 herein. The Construction Manager shall provide all construction management services necessary for the proper management and construction of the Project. The Construction Manager’s Construction Phase responsibilities for Phase 1 are set forth in the Contract Documents including, but not limited to, Section 2.8 herein. The Owner and Construction Manager may agree in writing, in consultation with the Engineer, for the Construction Phase Services for Phase 1 to commence prior to completion of the Preconstruction Phase Services for Phase 1, in which case, both the Preconstruction Phase Services and the Construction Phase Services for Phase 1 will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. The team assigned by the Construction Manager during the Construction Phase shall work cooperatively with the Owner and shall be the same team identified in Construction Manager’s proposal and assigned to the Project during the Preconstruction Phases.

The Construction Manager acknowledges that the Owner is entering this Agreement in reliance on the Construction Manager’s abilities to perform the services requested under this Agreement correctly, and on a timely basis. To the extent that any service hereunder shall be performed by Consultants or Subcontractors retained by the Construction Manager, the term “Construction
Manager" as used in this Agreement shall be deemed to include any such Consultant or Subcontractor.

§ 2.1 Construction Manager's Standard of Care

§ 2.1.1 The Construction Manager shall perform the Work in a competent manner, consistent with the standards of skill and care exercised by entities licensed to perform (where required under Applicable Law) and regularly performing comparable work in the same or similar locality under the same or similar circumstances.

§ 2.1.2 Extent of Responsibility. The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager shall promptly report to the Engineer and Owner any nonconformity, inconsistency, or ambiguity in the Contract Documents discovered by or made known to the Construction Manager, as a request for information in such form as the Engineer may require.

§ 2.1.3 Limit of Construction Manager’s Responsibility. The Construction Manager is not responsible for the Engineer’s negligence or the Engineer’s failure to properly perform the Engineer’s contract.

§ 2.2 Preconstruction Phase(s) Requirements

§ 2.2.1 The Construction Manager’s Preconstruction Services for Phase 1 and Phase 2 will begin on the date(s) set forth in the notice(s) that the Owner will issue to the Construction Manager ("Notice to Proceed").

§ 2.2.2 Organizational Meeting

§ 2.2.2.1 The Preconstruction Services for Phase 1 and Phase 2 will begin with an organizational meeting between the Owner, Engineer, and Construction Manager. All of the Construction Manager’s key personnel involved in the Project shall attend the organizational meeting. Upon approval by Owner in writing, the Organizational Meetings for Phase 1 and Phase 2 may be combined into one meeting.

§ 2.2.2.2 During the Organizational Meeting(s), the attendees will:

.1 review the responsibilities of each of the Owner and Owner’s key personnel involved in the Project;

.2 review the scope of the Construction Manager’s services and the responsibilities of each of the Construction Manager’s key personnel involved in the Project;

.3 review the scope of the Engineer’s services and the responsibilities of each of the Engineer’s key personnel involved in the Project;

.4 review and establish lines of communication between the Owner, Engineer, and Construction Manager;

.5 review then-available documents that reflect the current status of the Project’s design; and

.6 review the various periods of time established in the Contract Documents and determine whether any adjustments are needed in view of the Project’s scope, schedule, and budget requirements while providing reasonable periods for the Owner, and Engineer if applicable, to review the
Construction Manager’s deliverables and for the Construction Manager to revise and resubmit those deliverables.

§ 2.2.2.3 Following the Organizational Meeting(s), the Construction Manager shall schedule and conduct monthly meetings with the Engineer and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work for each phase. The Construction Manager shall advise the Owner and the Engineer on proposed site use and improvements, selection of materials, and systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Engineer on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.2.2.4 For each phase, the Construction Manager shall develop and maintain a Project Schedule with a logical sequence of events coordinated with the Engineer’s design schedule; reasonable periods of time for the Owner and Engineer to review the Construction Manager’s deliverables and for the Construction Manager to revise and resubmit those deliverables; and sufficient detail to properly anticipate and monitor progress on the Project.

§ 2.2.2.5 As part of the Preconstruction Services for each phase, the Construction Manager shall provide an evaluation of the Schedule and construction budget requirements, each in terms of the other.

§ 2.2.3 Subdividing the Work for Bidding. Bid Packages are those portions of the overall Work that will be released for competitive bidding by subcontractors to the Construction Manager, or to be bid upon by the Construction Manager itself for Phase 1. Bid Packages may be phased in order to accelerate the Construction Schedule to deal with Project constraints. The purpose of developing Bid Packages is to account for every item of Work in the overall Project without overlaps or omissions between trades.

The Construction Manager shall prepare a single written Subcontracting Plan that will define all Bid Packages to ensure that the Schedule for Phase 1 is maintained and that all Work is included. See Section 2.4 for additional details regarding the Subcontracting Plan.

The Subcontracting Plan must be consistent with Construction Manager’s response to Section 1.08, Tab 5, Paragraph a.ii of Owner’s RFP.

§ 2.2.3.1 Subcontractor/Vendor Solicitation and Prequalification

.1 The Construction Manager shall promote and generate interest of local and regional bidders and develop a master list of Vendors and Subcontractors, which have shown interest in submitting Bid Proposals for the Project. This list should include Vendors and Subcontractors for all categories of Work included in the total Project. The Construction Manager is required to report the percentage of the total Cost of Work that the local firms represent. Each bid package shall be submitted to Owner’s Human Relation Council (HRC) for establishment of PEP Goals.

.2 This list should include only companies that are responsible, qualified and financially capable.
.3 The Construction Manager shall meet with Owner to discuss potential subcontractors for the Project.

.4 Subcontracts will be awarded on a “best value” basis, as determined by Construction Manager, with Owner’s concurrence.

§ 2.2.4 Preliminary Cost Estimate. (Applies to Phase 1 and Phase 2 of the Project.)

§ 2.2.4.1 Based on the materials prepared by the Engineer and provided to the Construction Manager during the Proposal Phase, the Construction Manager shall prepare a separate preliminary estimate of the Cost of the Work for Phase 1 and Phase 2, for Owner’s review.

§ 2.2.4.2 Following the preparation of the preliminary estimates of the Cost of the Work for Phase 1 and Phase 2, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager, and Engineer, estimates of the Cost of the Work for Phase 1 and Phase 2 of increasing detail and refinement in a format acceptable to the Owner. Such estimates shall be provided for the Engineer’s review and the Owner’s approval. The Construction Manager shall inform the Owner and Engineer when the Preconstruction Fee, plus Construction Fee, plus estimated Cost of the Work, plus Contingency exceed the latest approved Construction Budget and make recommendations for corrective action.

§ 2.2.4.3 The Construction Manager shall advise the Owner in writing if at any time during the Preconstruction Phase for Phase 1 and Phase 2 it appears that the Project Schedule for either phase or Construction Budget for either phase may be exceeded and make recommendations for corrective action.

§ 2.2.5 Project Schedule for Phase 1. The Construction Manager shall prepare a Project Schedule for Phase 1 in a format acceptable to the Owner for the Engineer’s review and the Owner’s acceptance. The Project Schedule shall coordinate and integrate the Construction Manager’s services, the Engineer’s services, other Owner consultants’ services, and the Owner’s responsibilities, and identify items that could affect the Project’s timely completion. The Project Schedule for Phase 1 shall include the following: Date for Substantial Completion; Date for Final Completion; milestone dates; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.2.5.1 The Construction Manager shall recommend to the Owner and Engineer a schedule for procurement of long-lead-time items that will constitute part of the Work as required to meet the Project Schedule.

§ 2.2.5.2 The Construction Manager shall identify and detail for construction phasing and scheduling that will minimize interruptions to the Owner’s operations.

§ 2.2.5.3 The Construction Manager shall develop the Project Schedule in increasing detail taking into account Engineer-provided information and related requirements and the Owner’s operational requirements.

§ 2.2.5.4 The Construction Manager shall update and re-issue the Project Schedule as necessary to keep the Owner and Engineer apprised of the Project Schedule’s current status.

§ 2.2.6 Permits for Phase 1.
§ 2.2.6.1 The Construction Manager shall participate in meetings with the Owner and Engineer and regulatory agencies in order to expedite the design/permit process.

§ 2.2.6.2 The Construction Manager shall assist the Owner and Engineer with filing documents required for the approvals of governmental authorities with jurisdiction over the Project.

§ 2.2.6.3 The Construction Manager shall prepare permit applications and supporting data, and obtain required permits as required in the Contract Documents.

§ 2.2.7 The Construction Manager shall review the Construction Documents for each Bid Package to minimize areas of conflict, gaps, and overlaps in the Work to be performed by various Subcontractors.

§ 2.2.7.1 The Construction Manager shall identify areas that the Construction Manager recognizes as having incomplete documentation and uncoordinated multi-discipline Work.

§ 2.2.7.2 The Construction Manager shall assist the Engineer to develop and include Alternates and Allowances in the Construction Documents.

§ 2.2.8 Value Engineering. For Phase 1 and Phase 2, the Construction Manager shall submit a detailed list of value engineering options and the associated estimated costs. The Construction Manager shall meet and work with the Owner and Engineer in the evaluation of the various options and incorporate selected options into the Budget Estimates for each phase. The Construction Manager shall participate as a Project team member in maximizing the Project value for the Owner for both Phase 1 and Phase 2.

§ 2.2.9 Cash Flow Analysis. Concurrent with the submission of each Estimate for Phase 1 and Phase 2, the Construction Manager shall submit a cash flow analysis for the overall construction duration of the Project. This analysis should be derived from cost loading the construction schedule as developed and revised by the Construction Manager, showing projected monthly billings for Completed Work in Place. The analysis shall list individual monthly billings, accumulated billings to date, and percentages of completion on a monthly basis.

§ 2.3 Guaranteed Maximum Price Proposal and Contract Time for Phase 1 Services

§ 2.3.1 For Phase 1, Construction Manager shall submit its GMP Proposal near the completion of its Preconstruction Services for Phase 1, but before bidding any of the Work, unless Owner otherwise agrees to a different timing.

§ 2.3.2 Construction Manager guarantees that it shall not exceed the Phase 1 GMPs, subject to adjustments that may be allowed under the Contract Documents and Section 5.2.2 herein. All other costs which cause the Phase 1 GMP(s) to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. The use of the Contingency by the Construction Manager and all other costs incurred by the Construction Manager are subject to open book pricing in accordance with Sections 6.11 and 10.13 of this Agreement.

§ 2.3.3 To the extent that the Drawings and Specifications are anticipated to require further development by the Engineer, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not
include such things as changes in scope, systems, kinds and quality of materials, finishes, or equipment, any of which, if required, shall be incorporated by Change Order.

§ 2.3.4 The Construction Manager shall include with each GMP Proposal a written statement of its basis, which shall include the following:

§ 2.3.4.1 A schedule and date for all milestones, Substantial Completion, and Final Completion of the Project upon which the GMP is based;

§ 2.3.4.2 A list of the Drawings and Specifications, including all Addenda thereto, upon which the GMP is based;

§ 2.3.4.3 A list of key personnel and consultants for the applicable Scope of the Project (the "Project Team");

§ 2.3.4.4 An equipment schedule, in form satisfactory to the Owner;

§ 2.3.4.5 A completed Proposal Form (See Exhibit 1), with the pricing for each of the components of the pricing criteria identified including, but not limited to:

.1 Construction Fee, as defined in the Contract Documents, for the applicable Phase.

.2 General Conditions Costs, as defined in the Contract Documents (based upon Itemized General Conditions, submitted with the Initial Proposal).

.3 Contingency, as defined in the Contract Documents.

.4 Maximum Estimated Cost of the Work.

.5 Guaranteed Maximum Price, as calculated.

§ 2.3.4.6 The Date of Substantial Completion and Date of Final Completion, upon which the proposed Guaranteed Maximum Price is based; and

§ 2.3.4.7 All other information necessary for the parties to enter into a GMP Amendment, including a list of the clarifications and assumptions made by the Construction Manager in the preparation of the GMP, but none that conflict with any term or condition of the Contract Documents previously agreed to. Any attempt by the Construction Manager to alter the terms of this Agreement or the General Conditions that were included in the Owner’s RFP as a condition or assumption of the GMP Proposal shall be a material breach of this Agreement by the Construction Manager.

§ 2.3.4.8 Properly Completed City of Dayton Procurement Enhancement Plan Commitment and/or Waiver Request Form as provided in Exhibit 6.

§ 2.3.4.9 Properly Completed Disadvantaged Business Enterprises Forms as provided in Exhibit 21.

§ 2.3.5 The Construction Manager shall meet with the Owner and Engineer to review the GMP Proposal and reconcile any questions, discrepancies or disagreements relating to the GMP or the qualifications and assumptions. Any qualifications and assumptions shall be documented in writing and approved in writing by Owner. In the event that the Owner and Engineer discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price Proposal, its basis, or both.
§ 2.3.6 Following acceptance of a GMP Proposal, the Owner and Construction Manager shall execute a GMP Amendment amending this Agreement, in the form attached hereto as Exhibit 1. Should the parties fail to reach agreement regarding the Guaranteed Maximum Price, the Owner shall be entitled to terminate this Agreement without owing any further payment to Construction Manager.

§ 2.3.7 Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.3.8 If necessary, Owner shall authorize the Engineer to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are completed.

§ 2.3.9 The Construction Manager shall include in the Guaranteed Maximum Price all applicable sales, consumer, commercial activity, use, and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.3.10 Substantial Completion and Final Completion shall be achieved no later than the dates identified in the GMP Amendment. The Date for Substantial Completion shall only be changed or modified by Change Order or other Modification, regardless of any dates in the Construction Schedule, created by any person, including the Construction Manager. The Date for Final Completion shall only be modified by Change Order or other Modification regardless of any dates in Construction Schedule, created by any person, including the Construction Manager. Owner and Construction Manager agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

§ 2.4 Subcontractors and Suppliers.

§ 2.4.1 The Construction Manager shall place development, review, and approval of the Subcontracting Plan on the Project Schedule.

§ 2.4.2 Before soliciting Bids for any particular Subcontract, the Subcontracting Plan shall (1) include a proposed list of prequalified prospective Bidders for that Subcontract and a proposed Bidding Schedule for that Subcontract and (2) be submitted to and approved by the Owner. In considering whether a Subcontractor is “qualified,” the Construction Manager shall:

§ 2.4.2.1 consider the experience of the bidder, the bidder’s financial condition, conduct and performance on previous contracts, facilities, management skills, and the ability to execute the contract properly;

§ 2.4.2.2 require a prospective bidder to submit proof of current licenses held by the prospective bidder, its Consultants, or Sub-Consultants to perform the Work as required by the Owner or by applicable law.

§ 2.4.3 The Owner may eliminate any prospective bidder it determines is not qualified and will notify the Construction Manager of its decision.

§ 2.4.4 Construction Manager shall competitively bid all Work. Construction Manager is obligated to seek bids from a minimum of 3 Subcontractors for each Bid Package, unless otherwise agreed to in writing by the Owner.
§ 2.4.5 Subject to the consent of the Owner, the Construction Manager is not required to award a Subcontract to a low bidder.

§ 2.4.6 When a specific bidder (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the Subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.4.7 Immediately upon execution of each Subcontract with a Subcontractor or Supplier, the Construction Manager shall provide the Owner an executed copy of such Subcontract. All Subcontracts on the Project shall comply with Ohio law and shall conform to the following:

§ 2.4.7.1 Mutual rights and responsibilities: The Subcontract form shall contain a provision requiring:

1. the Construction Manager and the Subcontractor to be mutually bound to the terms of the Contract Documents;

2. the Construction Manager to assume toward the Subcontractor the rights, remedies, obligations, and responsibilities that the Owner has and assumes toward the Construction Manager;

3. the Subcontractor to assume toward the Construction Manager the rights, remedies, obligations, and responsibilities that the Construction Manager assumes towards the Owner; and

4. the Subcontractor to perform its portion of the Work on the Project in accordance with the Contract Documents.

§ 2.4.7.2 Contingent assignment: The Subcontract form shall contain a provision providing for the assignment of the Subcontract to the Owner, at the Owner’s option, upon the termination of the Construction Manager’s contract and written notice to the Subcontractor.

§ 2.4.7.3 Intended third-party beneficiary: The Subcontract form used for the contract with Subcontractors, Sub-Subcontractors, Consultants, and Sub-Consultants shall contain a provision indicating that the Owner is an intended third-party beneficiary of the Subcontract, entitled to enforce any rights thereunder for its benefit.

§ 2.4.7.4 Insurance: The Subcontract form shall contain a provision requiring the Subcontractor to maintain insurance in accordance with the Contract Documents.

§ 2.4.7.5 Right to audit: The Subcontract form shall contain a provision entitling the Owner and any agents designated by the Owner to have access to and the right to audit and copy, at the Owner’s reasonable cost, all of the Subcontractor’s and Sub-Subcontractor’s books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders and memorandum relating to the Work for not less than ten (10) years following completion of the Work.
§ 2.4.7.6 Indemnification: The Subcontract form shall contain a provision requiring the Subcontractor and its Sub-Subcontractors to indemnify, defend and hold harmless, to the fullest extent permitted by law, the Owner, its consultants, and employees from all claims and expenses for bodily injury and property damage other than to the work itself that may arise from the performance of the subcontract work, but only to the extent caused by the negligence of the Subcontractor, its Sub-Subcontractors or a person or entity for whom the Subcontractor or Sub-Subcontractor may be liable. The Subcontract form shall not require a Subcontractor to waive its immunity under the workers' compensation laws of this state from claims brought against the Subcontractor by the Subcontractor's employees. The indemnification required by this provision is in addition to, and not a limitation of, the other indemnification requirements in the Contract Documents.

§ 2.4.7.7 Prompt payment: The Subcontract form shall contain a provision requiring the Construction Manager, notwithstanding a contingent payment clause, to make payments to the Subcontractor in accordance with applicable law, including Section 4113.61 of the Ohio Revised Code, and that progress payments to the Subcontractor for satisfactory performance of the subcontract work shall be made no later than ten days after receipt by the Construction Manager of payment from the Owner for that subcontract work.

§ 2.4.7.8 Retainage: The Subcontract form shall contain a provision requiring that retainage shall be at a rate equal to or less than the percentage retained from the Construction Manager's payment by the Owner for Subcontract work.

§ 2.4.7.9 Warranty: The Subcontract form shall contain a provision requiring that the Subcontractor fully warrant, for the benefit of the Owner, that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents and free from defective workmanship or materials.

§ 2.4.7.10 Nondiscrimination: The Subcontract form shall contain a provision specifically requiring the Subcontractor to comply with applicable law regarding equal employment opportunity and, to the extent applicable, all executed orders issued by the Governor of the State of Ohio.

§ 2.4.7.11 Dispute resolution: The Subcontract form shall require the contract between the Construction Manager and Subcontractor to contain a dispute resolution provision that is consistent with the dispute resolution provision contained in or referenced by this Agreement.

§ 2.4.8 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.4.9 The Construction Manager shall be responsible to the Owner for acts and omissions of the Construction Manager's employees, Consultants, Sub-Consultants, Subcontractors, Sub-Subcontractors and their agents and employees, and other persons or entities performing any portion of the Construction Manager's obligations under the Contract Documents.

§ 2.4.10 The Construction Manager shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the
Construction Manager needs to provide such services in order to carry out the Construction Manager’s responsibilities for construction means, methods, techniques, sequences, and procedures. Construction Manager has a duty to inspect the Work of its Subcontractors, Sub-Subcontractors, Consultants, and Sub-Consultants for appropriate conformance with the Contract Documents and assumes responsibility to Owner for the proper performance of the Work of Subcontractors, Sub-Subcontractors, Consultants, and Sub-Consultants and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including, but not limited to, any third-party beneficiary rights except that the Owner is an intended third-party beneficiary of Construction Manager’s agreements with its Consultants, Sub-Consultants, Subcontractors, Sub-Subcontractors and Suppliers.

§ 2.4.11 Construction Manager shall coordinate the activities of all Subcontractors. If Owner performs other Work on the Project or at the Site with separate contractors under Owner’s control, Construction Manager shall reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without disruption.

§ 2.4.12 Procurement Enhancement Plan ("PEP") Program. Prior to the completion of the Preconstruction Phase Services for Phase 1, the Owner will establish Performance Enhancement Plan participation goals for the Project ("PEP Goals"). The Construction Manager shall either meet the PEP Goals for the Project or obtain a waiver from the PEP Goals by making Good Faith Efforts to meet the PEP Goals as determined by the Human Relations Council ("HRC"). The failure of the Construction Manager to either meet the PEP Goals or obtain a waiver from the HRC by properly making Good Faith Efforts to meet the PEP Goals shall be a material breach of contract.

§ 2.4.13 Disadvantaged Business Enterprises ("DBE") Utilization. Construction Manager shall comply with all DBE requirements as provided in Exhibit 21.

§ 2.5 Self Performance. If Construction Manager intends to self-perform a portion of the Work on the Project, the Construction Manager shall submit a sealed bid to Owner’s Representative for the portion of the Work prior to accepting any bids from Subcontractors for the same Work. The Construction Manager may only self-perform Work to the extent that Owner determines that the bid provides to the Owner the best value. The Construction Manager can only self-perform Work upon approval by the Owner.

§ 2.6 Notices and Compliance with Laws. The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Agreement, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities for inclusion in the Contract Documents.

§ 2.7 Bonds and Insurance. For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide Payment and Performance Bonds (Exhibit 7) in the form included in Owner’s RFP. With the acceptance of each new GMP Proposal as demonstrated by execution of a new GMP Amendment, Construction Manager will furnish new Payment and Performance Bonds in an amount equal to the new GMP for the particular Project Phase, plus all prior GMPs, as adjusted. At that time all prior Payment and Performance Bonds will be null and void.

§ 2.8 Construction Phase General Responsibilities
§ 2.8.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Engineer.

§ 2.8.2 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Engineer, in a format acceptable to the Owner, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Engineer, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on Site, identification of equipment on Site, problems that might affect progress of the Work, accidents, injuries, and other information required by the Owner.

§ 2.8.3 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Engineer and shall provide this information in a monthly report to the Owner and Engineer, in a format acceptable to the Owner.

§ 2.8.4 Consistent with the Construction Manager’s Proposal, the Construction Manager shall maintain a competent, full-time staff at the Site at all times that Work is in preparation or progress on the Project and shall establish and implement on-Site organization and authority so that the Work is accomplished in conformance with the Project Schedule.

§ 2.8.5 The Construction Manager shall develop and keep current the Construction Project Schedule in accordance with Section 4.04 of the General Conditions and prepare and keep current a schedule of submittals that is coordinated with the Construction Project Schedule, for the Owner’s acceptance.

§ 2.8.6 The Construction Manager shall monitor the progress of the Work for conformance with the Construction Project Schedule and shall initiate revisions as required by Section 4.04 of the General Conditions. The Construction Manager shall establish the Project’s regular working hours, subject to the Owner’s approval.

§ 2.8.7 In the event of default of the Construction Manager, the Construction Manager shall cooperate with the Engineer, Owner, and Construction Manager’s Surety to achieve the Date of Substantial Completion and Date of Final Completion.

§ 2.8.8 The Construction Manager shall remove all snow and ice as may be required for reasonably safe access to the Site including, but not limited to, building entries, driveways, parking lots, and sidewalks, to the extent required for Construction Manager’s operations.

ARTICLE 3 OWNER’S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 Structural and Environmental Tests, Surveys, and Reports. During the Preconstruction Phase and with reasonable promptness, the Owner shall furnish tests, surveys and reports, to the extent the Owner has such information, to Construction Manager. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Construction Manager’s performance of the Work with reasonable promptness after receiving the Construction Manager’s written request for such information or services. Such documents are not Contract Documents. Construction
Manager may not rely upon or make any Claim against the Owner or Engineer, or any of their agents or employees, with respect to any of the following:

.1 the completeness of such reports or tests for Construction Manager’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed and safety precautions and programs incident thereto; or

.2 any interpretation by the Construction Manager of or conclusion drawn from any technical data or any such other data, interpretations, opinions, or information. For example, all interpolations and extrapolations of data performed by the Construction Manager to estimate locations or quantities of subsurface strata are independent factual assumptions, which Owner does not warrant.

§ 3.1.2 The Owner, when such services are requested and determined to be necessary by the Owner, shall furnish services of a geotechnical engineer, which may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests, and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. Such documents are not Contract Documents. Construction Manager may not rely upon or make any Claim against the Owner or Engineer, or any of their agents or employees, with respect to any of the following:

.1 the completeness of such reports or tests for Construction Manager’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed and safety precautions and programs incident thereto; or

.2 any interpretation by the Construction Manager of or conclusion drawn from any technical data or any such other data, interpretations, opinions, or information. For example, all interpolations and extrapolations of data performed by the Construction Manager to estimate locations or quantities of subsurface strata are independent factual assumptions, which Owner does not warrant.

§ 3.1.3 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Construction Manager’s performance of the Work with reasonable promptness after receiving the Construction Manager’s written request for such information or services.

§ 3.2 Owner’s Designated Representative. The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner’s Representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in the Contract Documents, the Engineer does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation
§ 4.1.1 For the Construction Manager's Preconstruction Phase services for Phase 1 and Phase 2 as described in the Contract Documents, the Owner shall compensate the Construction Manager as set forth herein.

§ 4.1.2 Preconstruction Fees. The Preconstruction Fees for Phase 1 and Phase 2 are the combination of compensation for all services, labor, direct personnel expenses, equipment, material, home office overhead, and profit for such services provided during the Preconstruction Phase of the Project for each separate phase.

The Construction Manager's Preconstruction Fee for Phase 1 shall be a lump sum of $124,500.00.

The Construction Manager's Preconstruction Fee for Phase 2 shall be a lump sum of $22,000.00.

The Preconstruction Fees for Phase 1 and Phase 2 shall not be included in the GMP.

§ 4.1.3 Construction Manager's Preconstruction Fees for Phase 1 and Phase 2 include the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans, and similar contributions. The Preconstruction Fees for Phase 1 and Phase 2 include all Direct Personnel Expenses incurred by the Construction Manager to provide the services during the Preconstruction Phases of the Project as defined in the Contract Documents.

§ 4.1.4 Additional Services. Any Additional Services outside of the scope of Preconstruction Services set forth in this Agreement for either Phase 1 or Phase 2 will be compensated based upon a written, signed Amendment between the Owner and Construction Manager authorizing such additional services and setting forth the agreed-upon price. Before the Construction Manager incurs any time or expenses on any activity that may be an additional service, the Construction Manager shall provide verbal notice to the Owner followed immediately by written communication to the Owner. No additional services shall be performed without written, signed agreement between the Owner and Construction Manager, prior to the performance of such services.

§ 4.1.5 Payments. Unless otherwise agreed, payments for Preconstruction Services shall be made monthly in proportion to services performed.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES FOR PHASE 1

§ 5.1 For the Construction Manager's performance of the Construction Phase Services for Phase 1, the Owner shall pay the Construction Manager the Contract Price set forth in the GMP Amendment for Phase 1. The Contract Price is the sum of the Cost of the Work (as defined in Article 6 of this Agreement), the Construction Fee, General Conditions, and the amount of Contingency used, as each is defined in the Contract Documents, exclusive of the Preconstruction Fees.

§ 5.1.1 The method of adjustment of the Construction Manager's Fee for changes in the Work shall be in accordance with this Agreement and the General Conditions.

§ 5.1.2 Limitations, if any, on a Subcontractor’s overhead and profit for increases in the cost of its portion of the Work shall be in accordance with Section 11.04 of the General Conditions.
§ 5.1.3 Federal Davis-Bacon prevailing wage rates are required on this Project. Construction Manager and its subcontractors, regardless of tier, shall strictly comply with their obligation to pay their employees working on the Project site at the applicable prevailing wage rates for the type of work, including any changes thereto, and to comply with all requirements of the Federal Davis-Bacon Act, including Paragraph 18.10 of the General Conditions. Davis Bacon wage rates are included at Exhibit 9.

§ 5.1.4 Retainage shall be withheld in accordance with Ohio Revised Code Section 153.14.

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 Construction Manager guarantees that the Contract Price for Phase 1 shall not exceed the Guaranteed Maximum Price (GMP) set forth in the Guaranteed Maximum Price Amendment, as it may be amended from time to time. To the extent the Contract Price exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

§ 5.2.2 Savings. The Savings is the difference between the GMP and the Contract Price if the Contract Price is less than the GMP.

§ 5.2.2.1 Savings. Notwithstanding any provision in this Agreement to the contrary, if the Contract Price is less than the GMP, as such GMP may have been adjusted over the course of the Project, that Savings shall be retained 100% by the Owner.

§ 5.2.2.2 The GMP includes the Construction Fee, General Conditions, the Contingency, and the Maximum Estimated Cost of the Work, as defined herein.

.1 Construction Fee. The Construction Fee is the combination of overhead, including, but not limited to, home office overhead and profit for services provided during the Construction Phase of Phase 1 of the Project as defined in the Contract Documents. The amount of the Construction Fee for the Project is identified in the GMP Amendment (Exhibit 1).

.2 General Conditions. General Conditions are the Construction Manager’s costs for materials, services, and equipment necessary to perform the Work on the Construction Phase of the Project but that are not incorporated into the Project. General Conditions costs are not a Cost of the Work (meaning that the Construction Fee does not get applied to General Conditions, therefore General Conditions should include Construction Manager’s overhead and profit associated with such items). The cost of any item not expressly identified in the General Conditions will be deemed to be included as part of the Construction Fee if not defined as a Cost of the Work in this Agreement. The amount of the Construction Manager’s General Conditions costs for Phase 1 of the Project shall be identified in the GMP Amendment (Exhibit 1) and shall be consistent with the Construction Manager’s Initial Price Proposal included in the Proposal. The General Conditions costs shall not include costs for any of the items listed herein that are included in Subcontract agreements. The Construction Manager’s General Conditions costs, to the extent applicable to the Project, will include:
- Construction Manager’s home office management personnel, (e.g., President, General Manager, Operations Manager, Business Development Manager, Corporate Counsel, Health and Safety Director, Procurement Manager, Finance and Accounting Manager, Quality Assurance Manager, Estimators);
- Project Management personnel (e.g., Project Executive, Project Manager, Deputy Project Manager, Construction Manager, Deputy Construction Manager, Resident Engineer, Safety Officer, Project Controls staff, superintendents, Quality Manager, contract administration staff, procurement staff, general clerical and administrative support staff, legal staff, estimators, finance and accounting staff);
- progress scheduling;
- compliance notices;
- Contract and Subcontract administration;
- trash removal for construction office;
- project record keeping, documentation, document control, and status reporting;
- Ohio Utilities Protection Services/Dig Safe program notice and coordination;
- Project health and safety program including, but not limited to, equipment, supplies, training, record keeping, plan development, incentives, audits and drills;
- taxes, subject to the terms of this Agreement;
- staff expense allowances;
- personnel and site vehicle rental/mileage, fuel and maintenance;
- relocation and temporary lodging and per diem expense;
- ice and water;
- drug testing;
- communications equipment;
- field/project offices including furnishings, office equipment, utilities, heat, office supplies, telephones, facsimile machines, internet connections, computers/networks/Cadd machinery, janitorial, mail and shipping, security systems, temporary fencing and barricades, office mobilization and demobilization;
- badging and Site security;
- photography/progress photos;
- tool trailer and hand tools;
- Project signage;
- portable toilets, lockers and washrooms;
- temporary power;
- business licenses;
- patent fees and royalties;
- training and recruiting;
- premiums for that portion of insurance and bonds required by the Contract Documents that can be attributed to this Agreement (self-insurance for either full or partial amounts of the coverages required by the Contract Documents may be included, with the Owner’s prior approval) – the premium
charges will be set forth as a line item in the Itemized General Conditions attached hereto as Exhibit 10.

.3 Contingency. Unless agreed to by the Construction Manager or otherwise provided in the Contract Documents, Construction Manager's Contingency is not for use by the Owner for scope increases or design changes. Subject to the limitations described herein, the Contingency is available for Construction Manager's use for unanticipated costs it has incurred that are not due to gross negligence or willful or wanton conduct. By way of example, and not as a limitation, such costs may include: (a) overtime or acceleration due to failure of performance by Construction Manager's Subcontractors or Suppliers; or (b) costs arising from Subcontractor defaults to the extent not recoverable from the Subcontractors, sureties, insurance, or other sources using commercially reasonable efforts. The Contingency may also be used by Construction Manager for the correction of defective, damaged, or nonconforming Work only to the extent Construction Manager is unable to recover these costs from the responsible Subcontractor, its surety, insurance, or any other source. Construction Manager shall first submit to the Owner for approval a written request for a specific amount and justification for use of Contingency; Construction Manager shall also report use of such Contingency in its monthly report and shall submit Contingency cost item(s), clearly described, with the corresponding Application for Payment.

a. Construction Manager agrees that with respect to any expenditure from the Contingency for which insurance or a bond may provide reimbursement, Construction Manager will in good faith exercise all efforts to obtain recovery from any surety or insurance company. Construction Manager agrees that if Contingency funds are advanced to Construction Manager and Construction Manager subsequently recovers said costs from a collateral source, then said recovery will be credited back to the Contingency.

b. Any unused portion of the Contingency upon Final Payment shall be reallocated to the Savings and added to the remaining balance of the Savings.

c. The use of the Contingency by the Construction Manager is subject to open book pricing in accordance with Sections 6.11 and 10.13 of this Agreement.

§ 5.2.2.3 Buyout Savings. Notwithstanding any other provision in the Contract Documents to the contrary, if the Maximum Cost of the Work in the GMP Proposal is greater than the actual Cost of the Work following the bidding of all Bid Packages on the Project, such "Buyout Savings" shall be added to the GMP Contingency, via a Change Order.

§ 5.2.2.4 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.
§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions. The Owner shall issue such changes in writing, in accordance with the Contract Documents.

§ 5.3.2 Allowances

§ 5.3.2.1 The Contract Price may include the Allowances identified in the GMP Amendment.

§ 5.3.2.2 All Allowances include the cost to the Construction Manager (less any applicable trade discounts) of materials and equipment required by the Allowances to be delivered at the Site, and all applicable taxes.

§ 5.3.2.3 The Construction Fee and costs for unloading and handling on the Site, labor, installation costs, and other expenses contemplated for the Allowances are not identified in the Allowance amounts but are otherwise included in any Allowance amounts.

§ 5.3.2.4 Before final payment, a Change Order will be issued to reconcile the Contract Price so that it reflects actual amounts due to the Construction Manager on account of performed Work covered by Allowances. Remaining Allowance amounts not due to the Construction Manager on account of Work covered by the Allowances shall be retained by the Owner and shall not be included in any Savings.

§ 5.3.3 Unit Prices

§ 5.3.3.1 The Contract Price may include the Unit Price Work identified in the GMP Amendment.

§ 5.3.3.2 Where the Contract provides that all or part of the Work is to be Unit Price Work, initially the Contract Price will include for all Unit Price Work (1) an amount equal to the sum of the established Unit Prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Contract plus (2) the Construction Fee on that Unit Price Work. Notwithstanding any other provision in the Contract Documents to the contrary, Construction Manager shall not be paid for any Unit Price Work that represents an actual quantity greater than 110% of the estimated quantity, without a Change Order. Construction Manager shall document all Unit Price Work in accordance with open book pricing, maintain such records as required to track the quantities of Unit Price Work in anticipation of exceeding the 110% threshold, and act promptly in submitting a Claim.

§ 5.3.3.3 The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of determining an initial Contract Price. The Owner will determine the actual quantities and classifications of Unit Price Work performed by the Construction Manager.

§ 5.3.3.4 Before final payment, an appropriate Change Order will be issued per the Contract Documents, to reconcile the Contract Price so that it reflects actual amounts due to the Construction Manager on account of Unit Price Work actually performed.
§ 5.3.4 **Schedule of Values.** Construction Manager shall maintain a Schedule of Values for the Project.

§ 5.3.4.1 Within ten (10) days after receipt of the Notice to Proceed for a Phase of Work for the Project, or other period as mutually agreed by the Construction Manager and Owner, the Construction Manager shall prepare and submit to the Engineer a Schedule of Values for such Phase of Work, in a format acceptable to the Owner.

§ 5.3.4.2 Following the buy-out of Subcontracts, and on a continuing basis thereafter, Construction Manager shall update the Schedule of Values such that the grand total shown on the Schedule of Values equals the Contract Price. The Owner may use the approved Schedule of Values to determine the cost or credit to the Owner resulting from any change in the Work. For the Schedule of Values:

1. The first items shall be a breakdown of General Conditions Costs.
2. The amounts for labor and materials shall accurately reflect the cost for each item.
3. If the material allocation exceeds fifty-five percent (55%) of the Contract Price, the Construction Manager shall provide, upon request, sufficient information to support the higher percentage.
4. Subcontract Work shall show amounts for labor and materials. Fringe benefits shall be shown as a part of labor costs.
5. When more than one major structure is included in the Work, the Construction Manager shall subdivide the Schedule of Values accordingly, with cost details for each structure shown separately.
6. The line items shall be coordinated with line items in the Project Schedule, which may require division of items of Work by area of the Project by floor, phase, or other appropriate area.
7. Mechanical and electrical Work shall include separate line items for all major pieces of equipment, and group smaller equipment items by type.
8. Line items shall be included for each Allowance, Contingency, and the Construction Fee.

§ 5.3.5 Owner may return the Schedule of Values to the Construction Manager for resubmittal if it does not meet the requirements or contains insufficient items or details of the Work, or approve the Schedule of Values if the Owner determines that it conforms to this Section. No payment shall be made until the Owner has approved the Construction Manager’s Schedule of Values.

ARTICLE 6  COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed Under the GMP

§ 6.1.1 Subject to the GMP, the term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work for the Construction Phase for Phase 1. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.
§ 6.1.3 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost. The Construction Manager shall endeavor to identify any such costs prior to executing the Guaranteed Maximum Price Amendment.

§ 6.1.4 The amounts included in Article 6 are subject to open book pricing in accordance with Sections 6.11 and 10.13 of this Agreement.

§ 6.2 Construction Manager's Labor Costs for Self-Performing Work

§ 6.2.1 Actual costs, without markup, for wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the Site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Actual costs, without markup, for wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.3 Actual costs, without markup, for costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 and 6.2.2.

§ 6.2.4 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 6.3 Subcontract Costs. Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the Subcontracts.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Actual costs, without markup, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Actual costs, without markup of materials described in the preceding Paragraph 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials, Equipment and Related Items

§ 6.5.1 To the extent such costs are not included in the General Conditions costs, actual costs, without markup of transportation, storage, installation, maintenance, dismantling, and removal of materials, supplies, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the Site and fully consumed in the performance of the Work. Costs of materials, supplies, machinery, equipment, and hand tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project Site less the value of the item when it is no longer used at the Project Site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.
§ 6.5.2 To the extent such costs are not included in the General Conditions costs, actual rental charges without markup for machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the Site and costs of transportation, installation, minor repairs, dismantling, and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner’s prior approval.

§ 6.5.3 To the extent such costs are not included in the General Conditions costs, actual costs, without markup of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.6 Miscellaneous Costs

§ 6.6.1.1 To the extent such costs are not included in the General Conditions costs, and subject to 6.8.1.11, taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable, not including Commercial Activity Tax or income taxes which shall be the sole responsibility of Construction Manager.

§ 6.6.1.2 To the extent such costs are not included in the General Conditions costs, fees and assessments for the building permit and for other permits, licenses, and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.1.3 To the extent such costs are not included in the General Conditions costs, fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 14.05 of the General Conditions or by other provisions of the Contract Documents.

§ 6.6.1.4 To the extent such costs are not included in the General Conditions costs, royalties and license fees paid for the use of a particular design, process, or product required by the Contract Documents.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other actual costs, without markup, incurred in the performance of the Work if, and to the extent, approved in advance by writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss in case of an emergency affecting the safety of persons and property, as provided in Section 7.15 of the General Conditions.

§ 6.8 Costs Not To Be Reimbursed as Cost of the Work

§ 6.8.1 The Cost of the Work shall not include the items listed below:

§ 6.8.1.1 Construction Fee, which includes salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the Site office;

§ 6.8.1.2 Expenses of the Construction Manager’s principal office and offices other than the Site office;

§ 6.8.1.3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;

§ 6.8.1.4 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;
§ 6.8.1.5 Except as provided in Section 5.2.2.3, costs due to the negligence or failure of the Construction Manager, Subcontractors, and Suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract, including, but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property;

§ 6.8.1.6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;

§ 6.8.1.7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;

§ 6.8.1.8 Costs for Preconstruction Fees for Phase 1 and Phase 2 incurred during the Preconstruction Phase;

§ 6.8.1.9 Computers (desktop, laptop, tablet, etc.) and software unless such are acquired solely, not partially or substantially, for the beneficial use of the Project, and computers may not contain other unrelated Project or personal data unless otherwise specifically approved by Owner in writing;

§ 6.8.1.10 Corporate accounting, data and check processing, and similar business transaction related costs related to the Work are part of Construction Manager’s overhead business expenses and should have been included in Construction Manager’s Fee;

§ 6.8.1.11 All taxes, including, but not limited to, Federal, State, or Local Business Tax, Franchise Tax, Commercial Activities Tax, or similar taxes are the responsibility of the Construction Manager, and the Owner shall not pay or reimburse the Construction Manager for such tax obligations;

§ 6.8.1.12 Consultants to the Construction Manager not previously approved in writing by the Owner;

§ 6.8.1.13 Unless otherwise provided in this Agreement, Owner shall not reimburse the Construction Manager for rental charges more than two (2) weeks prior to and one (1) week after such temporary facilities, machinery, and equipment that are needed to be used directly in the Work;

§ 6.8.1.14 Costs which are included in the Construction Manager's General Conditions costs as defined in Paragraph 5.2.2.2; and,

§ 6.8.1.15 Relocation and temporary living allowances of personnel required for the Work unless such relocation meets the "distance test" under the United States Internal Revenue Publication 521.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts; equipment rental discounts; insurance and surety bonding discounts; and credits, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.
§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article 2. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Article 2.

§ 6.11 Accounting Records. The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner shall be afforded access to review and audit the Construction Manager's records as set forth herein.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Payments for Construction Phase services shall be in accordance with the General Conditions, including Article 15.

ARTICLE 8 INSURANCE AND BONDS

§ 8.1 For all phases of the Project, the Construction Manager and the Owner shall purchase and/or provide, and maintain insurance, and the Construction Manager shall provide bonds as set forth in the General Conditions.

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with process set forth in the General Conditions, including Articles 12 and 17.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 Ownership and Use of Documents. Section 3.05 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

§ 10.2 Assignment. The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the
Contract. Nothing contained in this Article shall prevent Contractor from employing independent Contractors, Associates, and Subcontractors to assist in the performance of the Services.

§ 10.3 Modification. No modification or waiver of any of the terms of this Agreement or of any other Contract Document will be effective against a party unless set forth in writing and signed by or on behalf of a party and, if applicable or required, approved by the Commission of the City of Dayton, Ohio. Under no circumstances will forbearance, including the failure or repeated failure to insist upon compliance with the terms of the Contract Documents, constitute the waiver or modification of any such terms. The parties acknowledge that no person has authority to modify this Agreement or the other Contract Documents or to waive any of its or their terms, except as expressly provided in this paragraph.

§ 10.4 Construction. The parties acknowledge that each party has reviewed this Agreement and the other Contract Documents and voluntarily entered into this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement, the other Contract Documents, or any amendments or exhibits to it or them.

§ 10.5 Approvals. Except as expressly provided herein, the approvals and determinations of the Owner and Engineer will be subject to the sole discretion of the respective party and be valid and binding on the Construction Manager, provided only that they be reasonable and made in good faith, i.e., honestly. If the Construction Manager challenges any such approval or determination, the Construction Manager will have the burden of proving that it was not made in good faith by clear and convincing evidence.

§ 10.6 Partial Invalidity. If any term or provision of this Agreement is found to be illegal, unenforceable, or in violation of any laws, statutes, ordinances, or regulations of any public authority having jurisdiction, then, notwithstanding such term or provision, this Agreement will remain in full force and effect and such term will be deemed stricken; provided this Agreement will be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision.

§ 10.7 Entire Agreement. This Agreement and the other Contract Documents constitute the entire agreement among the parties with respect to their subject matter and will supersede all prior and contemporaneous, oral or written, agreements, negotiations, communications, representations, and understandings with respect to such subject matter, and no person is justified in relying on such agreements, negotiations, communications, representations, or understandings.

§ 10.8 Counterparts. This Agreement may be executed in any number of counterparts each of which when so executed and delivered will be an original hereof, and it will not be necessary in making proof of this Agreement to produce or account for more than one counterpart hereof. This Agreement may be executed and delivered by electronic mail.

§ 10.9 Liquidated Damages. If the Construction Manager does not have its Work for any Phase of Work on the Project substantially complete by the Date for Substantial Completion for such Phase, the Construction Manager shall pay the Owner (and the Owner may set off from sums coming due the Construction Manager) liquidated damages in the per diem amount of $3,000 per day for each day beyond the Date for Substantial Completion that the Work fails to be substantially complete. The Construction Manager acknowledges that such amount of liquidated damages represents a reasonable estimate of the actual damages that the Owner will incur if the Work is not substantially complete by the Date for Substantial Completion. The liquidated damages set forth herein are intended to compensate the Owner for any damages
the Owner incurs on account of (1) any claims attributable to the Construction Manager that are brought by others including separate consultants and separate contractors or (2) any failure of the Construction Manager to timely, properly, and completely perform the Contract other than the failure to achieve the Milestones within their associated Contract Times.

If the Construction Manager does not have its Work for any Phase of Work on the Project finally complete by the Date for Final Completion for such Phase, the Construction Manager shall pay the Owner liquidated damages in the per diem amount of $800 per day for each day beyond the Date for Final Completion that the Work fails to be finally complete.

These liquidated damages shall be the sole and exclusive remedy available to the Owner as a result of the Construction Manager's failure to achieve Completion by the dates provided herein. However, the liquidated damages shall not be a limitation on any other claims by the Owner, including, but not limited to, claims for defective work on the Project.

§ 10.10 Waiver of Consequential Damages

§ 10.10.1 Notwithstanding anything herein to the contrary (except as set forth in Section 10.10.2 below), the Construction Manager and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

§ 10.10.1.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

§ 10.10.1.2 damages incurred by the Construction Manager for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

§ 10.10.2 The consequential damages limitation set forth in Section 10.10.1 above is not intended to affect the payment of liquidated damages or direct damages, if any, set forth in the Agreement, which both parties recognize has been established, in part, to reimburse Owner for some damages that might otherwise be deemed to be consequential.

§ 10.10.3 This Section 10.10 shall survive termination of the Contract.

§ 10.11 Conflict of Interest. Except with the Owner's prior knowledge and written consent, the Construction Manager shall not engage in any activity or accept any employment, interest, or contribution that would reasonably appear to compromise the Construction Manager's professional judgment with respect to this Project.

§ 10.12 No Findings for Recovery. The Construction Manager represents that the Construction Manager is not subject to a finding for recovery under Section 9.24, Ohio Revised Code, or that the Construction Manager has taken the appropriate remedial steps required under Section 9.24, Ohio Revised Code, or otherwise qualifies under this section.

§ 10.13 Open Book Pricing. Construction Manager acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. Construction Manager shall allow the Owner and the Owner's consultants access to review and audit the Construction Manager's records.
§ 10.13.1 Records and Audits. The Owner and the Owner’s consultants shall be afforded access to review and audit the Construction Manager’s records, books, correspondence, instructions, drawings, receipts, Subcontracts, purchase orders, vouchers, memoranda, timesheets, payroll, and other data relating to this Project, records of time spent by each person performing work on the Project and time spent on all other projects; such time and payroll records shall include the location of services, detailed description of time and work on this Project and any other projects (redacting the client name or description to the extent necessary) and the Construction Manager shall preserve these for a period of four years after final payment, or for such longer period as may be required by law. Construction Manager shall make all such records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, timesheets, payroll, and other data relating to this Project, available to the Owner and the Owner’s consultants in a mutually convenient location and document format. In the event that the Construction Manager’s records are not available at the agreed upon time or place, or in the event that the Owner finds incomplete records or inaccurate accounting of paid expenses, the Construction Manager shall reimburse the Owner for its time, travel, related expenses and Construction Manager shall reimburse Owner the full amount of any discrepancies or overages.

§ 10.14 Protection of the Project

§ 10.14.1 The Construction Manager shall protect the Work from weather and maintain the Work and all materials, apparatus, and fixtures free from injury or damage until Substantial Completion of the Work.

§ 10.14.1.1 The Construction Manager shall at all times cover or protect the Work.

§ 10.14.1.2 The Construction Manager, at its expense, shall remove, and replace with new, any Work damaged as a result of the Construction Manager’s failure to provide coverage or protection.

§ 10.14.1.3 The Construction Manager, at its expense, shall repair or replace any adjacent property, including, but not limited to, roads, walks, shrubbery, plants, trees, or turf, damaged during performance of the Work.

§ 10.14.1.4 After the date of Substantial Completion, the Owner is responsible for protecting and maintaining all materials, apparatus, and fixtures for the occupied portion of the Project free from injury or damage.

§ 10.14.2 The Construction Manager shall protect the Project and existing or adjacent property from damage at all times and shall erect and maintain necessary barriers, furnish and keep lithe and necessary danger signals at night, and take reasonable precautions to prevent injury or damage to individuals or property.

§ 10.14.3 The Construction Manager shall not load, or permit any part of the Project to be loaded, in any manner that endangers the Project, or any portion thereof. The Construction Manager shall not subject any part of the Project or existing or adjacent property to stress or pressure that endangers the Project or property.

§ 10.14.4 The Construction Manager shall provide all temporary bracing, shoring, and other structural support required for safety of the Project and proper execution of the Work.
§ 10.14.5 Vibration, Noise, and Dust Control

§ 10.14.5.1 The Construction Manager shall provide controls/barriers for vibrations, noise, and dust control in occupied buildings as required by the construction operations.

§ 10.14.5.2 The Construction Manager will not be permitted to exhaust or release unfiltered air, dust, construction debris, or other undesirable products into the exterior atmosphere or into occupied areas of the building outside the Site. The Project Manager may limit or stop the Work if the Construction Manager does not maintain proper air-quality standards.

§ 10.14.5.3 In certain occupied buildings, tasks might be of such a nature that noise and vibration cannot be tolerated. In such spaces, Work shall be scheduled for other than normal working hours. The Construction Manager is cautioned that weekend or overtime work, if required, shall be performed at no additional cost. Permission to work other than standard hours shall be received from the Owner prior to the occurrence. Weekend and overtime Work shall be reflected in the Construction Progress Schedule.

§ 10.14.5.4 The Construction Manager is responsible for vibration control and control of transmission of noise arising from the Work. Principal considerations that shall be given to noise and vibration control are:

1. Noise control in compliance with Occupational Safety and Health Administration ("OSHA") requirements for the health and safety of building occupants; control shall be for all areas of the facility, including equipment rooms, boiler rooms, and fan rooms.

2. Vibration control to limit sound produced by construction equipment, and for protection of the equipment existing in a building and the building structure.

3. Vibration control to provide for maximum usefulness of the facility by keeping levels of vibration within ranges conducive to study and work or other uses for which the facility is designed.

§ 10.15 Progress Cleaning

§ 10.15.1 The Construction Manager shall remove all waste materials, rubbish, and mud attributable to the Work to an appropriate disposal location at or near the Site.

§ 10.15.2 The Construction Manager shall perform weekly broom cleaning of hard flooring surfaces in the area of the Work.

§ 10.15.3 The Construction Manager shall remove, once each working day or as appropriate for the Project, all waste materials and rubbish from the disposal location at or near the Site.

§ 10.15.4 The Construction Manager shall remove, as appropriate for the Project or as the Engineer or Owner directs, any waste materials or rubbish from areas adjacent to the Project.

§ 10.15.4.1 The Construction Manager shall dispose of waste materials, rubbish, and construction debris in a lawful manner in approved recycling facilities or landfills.
§ 10.15.5 If the Construction Manager fails to clean up during the progress of the Work, the Owner may clean up on behalf of the Construction Manager and at the Construction Manager’s expense. If the Construction Manager fails to maintain the areas adjacent to the Project clean and free of waste materials and rubbish, the Owner may also direct the local jurisdiction responsible for the area to have the area cleaned to its satisfaction at the Construction Manager’s expense.

§ 10.15.5.1 The Owner may deduct the cleaning costs from payments then or thereafter due the Construction Manager. If payments then or thereafter due the Construction Manager are not sufficient to cover those amounts, the Construction Manager shall immediately pay the amount of the insufficiency to the Owner.

§ 10.15.6 The Construction Manager shall remove excavated material and spoil to a suitable off-site location approved by the Owner.

§ 10.15.6.1 If the Owner designates a location on its property for disposal or storage of clean topsoil and/or subsoil in the Contract Documents, the Construction Manager shall remove such materials to the designated location.

§ 10.16 Interruption of Existing Operations

§ 10.16.1 Whenever it becomes necessary to interrupt existing operations in use by the Owner, including, but not limited to, sewer, water, gas, and steam lines, electric, telephone, and cable service, the Construction Manager shall continue the associated Work on a non-stop 24-hour per day basis until that Work is completed and the service restored, or at an alternate time required by the Owner.

§ 10.16.2 Before beginning that Work, the Construction Manager shall apply in writing to, and receive approval in writing from, the Owner, through the Engineer, to establish a time when interruption of the service will cause a minimum of interference with the activities of the Owner.

§ 10.17 Explosives and Blasting

§ 10.17.1 The Construction Manager shall not conduct blasting on, or bring explosives to, the Site without the prior written approval of the Owner and other authorities with jurisdiction.

§ 10.17.2 The Construction Manager shall perform all blasting, storing, and handling of explosives as required under Applicable Law.

§ 10.17.2.1 The Construction Manager shall carry appropriate liability insurance coverage, as required by the Contract Documents, for its blasting and explosives storage and handling operations. Immediately upon request, the Construction Manager shall deliver evidence of that insurance to the Owner.

§ 10.18 Construction Manager Insolvency

§ 10.18.1 Bankruptcy of Construction Manager. If the Construction Manager files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it, the Construction Manager, the Construction Manager as the debtor-in-possession, or the trustee of the Construction Manager’s bankruptcy estate shall file a motion to assume or reject the Contract under Bankruptcy Code §365, 11 U.S.C. §365, within 20 days after the filing of the voluntary petition or involuntary petition and shall diligently prosecute that motion to conclusion so as to obtain an order granting or denying that motion within 45 days after the filing of the voluntary or involuntary petition. The failure to file and prosecute that motion within the time limits provided by this Section shall constitute a material breach
of the Contract as time is of the essence with respect to Construction Manager's performance of all terms of this Contract. The Construction Manager agrees to the granting of relief from the automatic stay of the Bankruptcy Code, 11 U.S.C. §362(a), to permit the Owner to terminate the Contract for cause in such instance and issue and serve all notices necessary to terminate the Contract or arising out of the termination of the Contract and to take any and all other action necessary to terminate the Contract.

§ 10.18.2 Receivership or Assignment for the Benefit of Creditors. If the Construction Manager makes a general assignment for the benefit of creditors or if a receiver is appointed for all or a substantial part of the Construction Manager's business or property, the Owner shall serve written notice on the Construction Manager and Construction Manager's Surety stating that any failure of the Construction Manager to provide adequate assurance of continued performance shall be considered a rejection of the Contract, which shall result in termination of the Contract for cause. Such termination of the Contract need not be evidenced by an order of any court.

§ 10.19 Construction Manager's Documents and Contract Documents

§ 10.19.1 The Owner alone owns any design drawings, shop drawings or plans prepared by the Construction Manager as part of the Project (the "Construction Manager's Documents") and the Contract Documents and every right, title, and interest therein.

§ 10.19.1.1 The Construction Manager must execute and deliver and cause its employees and agents and all Subcontractors and Consultants to execute and deliver, to the Owner any transfers, assignments, documents, or other instruments (if any) necessary to vest in the Owner complete right, title, interest in and ownership of the Construction Manager's Documents and the Contract Documents.

§ 10.19.2 The Construction Manager may retain copies, including reproducible copies, of the Construction Manager's Documents and the Contract Documents for information, reference, and performance of the Work.

§ 10.19.3 The submission or distribution of the Construction Manager's Documents or the Contract Documents to meet official regulatory requirements or for similar purposes in connection with the Project is not a waiver of the Owner's reserved rights in the Construction Manager's Documents and the Contract Documents. Any unauthorized use of the Construction Manager's Documents and the Contract Documents shall be at the sole risk of the entity making the unauthorized use.

§ 10.19.4 The Construction Manager shall provide Electronic Files (in native format) to Separate Consultants and Separate Contractors for their use in connection with the Project. The Construction Manager shall provide the Electronic Files (1) at no additional cost to the Separate Consultants, Separate Contractors, and Owner and (2) without requiring the Separate Consultants, Separate Contractors, or Owner to agree to any terms or conditions concerning the provision, receipt, or use of the Electronic Files that differ in any material respect from the Contract.

§ 10.20 Successors and Assigns

§ 10.20.1 The Owner and Construction Manager each bind themselves, their successors, assigns, and legal representatives, to the other party to this Contract and to the successors, assigns, and legal representatives of the other party with respect to all terms of this Contract.
§ 10.20.2 The Construction Manager shall not assign, or transfer any right, title, or interest in this Contract without the Owner’s prior written consent.

§ 10.21 No Third-Party Interest. Except as otherwise set forth herein, (1) no person or entity, other than the Owner and Construction Manager, will have any right or interest under the Contract, and (2) the Contract does not create a contractual relationship of any kind between any people or entities other than the Owner and Construction Manager.

§ 10.22 Rights and Remedies. The duties, obligations, rights, and remedies under the Contract are in addition to and not a limitation of the duties, obligations, rights, and remedies otherwise imposed by or available under Applicable Law.

§ 10.23 Contribution Limits. The Construction Manager hereby certifies that neither the Construction Manager nor any of the Construction Manager’s partners, officers, directors, shareholders nor the spouses of any such person have made contributions in excess of the limitations specified in ORC Section 3517.13.

§ 10.24 Violating Facilities. Construction Manager agrees to comply with all applicable standards, orders, or requirements under Section 306 of the Clean Air Act, 42 USC 1857(h), Section 508 of the Clean Water Act, 33 USC 1368, Executive Order 11738, and EPA regulations, 40 CFR Part 32, which prohibits the use under non-exempt Federal contracts, grants, or loans of facilities included in the EPA List of Violating Facilities.

§ 10.25 Non-Discrimination. The Construction Manager shall not discriminate on the basis of race, color, national origin, sex gender identity, ancestry, place of birth, age, marital status, or handicap with respect to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, lay-off, termination, rates of pay or other forms of compensation, or selection for training, including apprenticeship in the performance of this Agreement. The Construction Manager shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Construction Manager to carry out these requirements is a material breach of this Agreement which may result in the termination of this Contract or other legally available remedies. In addition, Construction Manager agrees:

§ 10.25.1 That in the hiring of employees for the performance of Work under this Agreement or in any Subcontract, neither the Construction Manager, Subcontractor, nor any person acting on behalf of either of them, shall by reason of race, creed, sex, handicap, or color, discriminate against any citizen of the state in the employment of labor or workers who are qualified and available to perform the Work to which the employment relates.

§ 10.25.2 That neither the Construction Manager, Subcontractor, nor any person acting on behalf of either of them, shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this Agreement on account of race, creed, sex, handicap, or color.

§ 10.25.3 That there shall be deducted from the amount payable to the Construction Manager by the Owner under this Agreement a forfeiture of twenty-five dollars ($25.00) as required by Ohio Revised Code Section 153.60 for each person who is discriminated against or intimidated in violation of this Agreement.

§ 10.25.4 That Section 35.14 of the Revised Code of General Ordinances of the City of Dayton constitutes a material condition of this Agreement as fully and as if specifically, rewritten herein and that failure to comply therewith shall constitute a breach thereof.
entitling the City to terminate this Agreement at its option and may bar Contractor from receiving future City contracts.

§ 10.26 Communications. Any written communication or notice from Owner to Construction Manager required by the Contract Documents may be delivered personally, sent by express delivery, certified mail or first-class U.S. mail, postage pre-paid to the address specified below:

<table>
<thead>
<tr>
<th>Construction Manager:</th>
<th>Peterson Construction Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td>18817 S. R. 501 North</td>
</tr>
<tr>
<td>City, State Zip Code</td>
<td>Wapakoneta, OH 45895</td>
</tr>
<tr>
<td>Attention:</td>
<td>Mike Fritchie</td>
</tr>
<tr>
<td>Title:</td>
<td>Senior Project Manager</td>
</tr>
</tbody>
</table>

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Construction Manager and Owner.

§ 10.27 Independent Contractor.

§ 10.27.1 By executing this Agreement, Construction Manager acknowledges and agrees that it will be providing services to the Owner as an “independent contractor.” As an independent contractor for the Owner, Construction Manager shall be prohibited from representing or allowing others to construe the parties’ relationship in a manner inconsistent with this Article. Construction Manager shall have no authority to assume or create any obligation on behalf of, or in the name of the Owner, without the express prior written approval of a duly authorized representative of the Owner.

§ 10.27.2 Construction Manager, its employees and any persons retained or hired by Construction Manager to perform the duties and responsibilities under this Agreement, are not employees of the Owner, and therefore, such persons shall not be entitled to, nor will they make a claim for, any of the emoluments of employment with the City of Dayton. Further, Construction Manager shall be responsible to withhold and pay, or cause such agents, Contractors and Subcontractors to withhold and pay, all applicable local, state and federal taxes. Construction Manager acknowledges its employees are not public employees for purposes of Ohio Public Employees Retirement System (“OPERS”) membership.

§ 10.28 Living Wage Ordinance. By signing this Agreement, the Construction Manager certifies that it complies with the City of Dayton Ordinance #30829-09 and the City of Dayton’s Revised Code of General Ordinances Section 35.70 through 35.74 regarding Living Wages.

§ 10.29 Tax Exemption. All items purchased under this Contract will be exempt from the State of Ohio Sales Tax as provided for in Section 5739-02(b)(1) of the Revised Code of Ohio and will be exempt from the State of Ohio Use Tax, Section 5741.02(C)(2). Blanket Certification of Exemption Form will be furnished to Construction Manager by the Division of Purchasing upon request.

§ 10.30 Procurement Enhancement Program. It is the policy of the Owner to promote full and equal business opportunity to all persons doing business with the City of Dayton. The Owner must ensure that businesses seeking to participate in contracting and procurement activities with the Owner are not prevented from doing so based on the race or gender of their owners. The Owner is committed to ensuring that it is not engaged in passive participation in any form of discrimination. (R.C.G.O. Section 35.32) It is the City of Dayton's position to encourage the greatest participation possible on all projects connected with any
aspect of the City’s auspices through the Procurement Enhancement Program (“PEP”). PEP, other certification programs and a list of currently certified Minority-Owned, Woman-Owned and Small Business Enterprises Construction Managers is available at http://daytonhrc.org/business-technical-assistance/certification/.

§ 10.31 Financial Obligations to Owner. By signing this Agreement, Construction Manager certifies that it is not in arrears or in default to the City of Dayton, or that it is a defaulter of surety or otherwise upon any obligation to the City of Dayton or has failed to perform faithfully any previous contract with the City of Dayton.

§ 10.32 Debarment Requirements. Prior to executing the Agreement, Construction Manager shall provide a Certification Regarding Debarment, Suspension, and Other Responsibility Matters Form as provided in Exhibit 18.

§ 10.33 American Iron and Steel Requirements. The Construction Manager’s Work on the Project shall comply with all requirements of the American Iron and Steel Act, including the provisions provided in Exhibit 16. Prior to executing the Agreement, the Construction shall provide the Owner with a properly completed American Iron and Steel Act Acknowledgement Form as provided in Exhibit 17.

§ 10.34 Utilization Of Small Businesses In Rural Areas (SBRA). This Agreement is subject to the EPA policy of encouraging the participation of small businesses in rural areas. It is EPA policy that recipients of EPA financial assistance awards utilize the services of small businesses in rural areas (SBRAs), to the maximum extent practicable. The objective is to assure that such small business entities are afforded the maximum practicable opportunity to participate as subcontractors, suppliers and otherwise in EPA-awarded financial assistance programs. This policy applies to all contracts and subcontracts for supplies, construction, and services under EPA grants or cooperative agreements. Small purchases are also subject to this policy.

§ 10.35 Continuous Treatment. Federal regulations prohibit by-passing of any sewage during construction operations. The Construction Manager will be responsible for providing any required temporary pumping facilities piping, etc., necessary to complete the project without any plant by-passing and continuous treatment must be provided at the same level during construction as existed prior to construction. Unless otherwise previously or subsequently specified, the Construction manager shall procure and pay for all permits, licenses, and approvals necessary for the execution of his Agreement. The Construction shall comply with all laws, ordinances, rules, orders, and regulations relating to the performance of the work required to complete the Work under this Agreement.

§ 10.36 Affirmative Action Assurance (“AAA”). Prior to performing any Work on the Project, the Construction Manager shall electronically submit an Affirmative Action Assurance application via the City of Dayton’s online vendor portal (citybots.com) and obtain approval from the Human Relations Council (HRC) to do business with the City of Dayton. Construction Manager may contact the HRC for the Rules and Regulations regarding AAA certification at:
Human Relations Council  
371 West Second Street, Suite 100  
Dayton, Ohio 45402  
(937) 333-1403 (Office)  
(937) 222-4589 (Fax)

Failure of the Construction Manager to maintain active AAA certification with the HRC may result in termination of this Agreement and/or denial of future contract awards from the City of Dayton. AAA certification must be updated annually via citybots.com.

**ARTICLE 11  SCOPE OF THE AGREEMENT**

§ 11.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

This Agreement is entered into as of the day and year of the Owner’s execution.

<table>
<thead>
<tr>
<th>City of Dayton</th>
<th>Peterson Construction Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Signature)</td>
<td>(Signature)</td>
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<tr>
<td>(Printed name and title)</td>
<td>(Printed name and title)</td>
</tr>
<tr>
<td>Date</td>
<td>Date</td>
</tr>
</tbody>
</table>

Robert K. Knapke - VP Water/Wastewater Div.  
04/26/2022  

**APPROVED AS TO FORM AND CORRECTNESS:**

City Attorney

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

____________________________, 2022  
Min. / Bk. ____________  Pg. ____________  

____________________________  
Clerk of the Commission
A RESOLUTION

Authorizing the City Manager to Apply for, Accept, and Enter into a Water Pollution Control Loan Fund ("WPCLF") Supplemental Loan Agreement on Behalf of the City of Dayton, Ohio for the Construction Manager at Risk for the Water Reclamation Anaerobic Digester Project; Designating a Dedicated Repayment Source for the Loan, and Declaring an Emergency.

WHEREAS, The City of Dayton completed the Facility Master Plan for the Water Reclamation Facility in 2018; and

WHEREAS, The first prioritized major project identified in the Master Plan was the Anaerobic Digester Project which would add additional Anaerobic Digesters and rehabilitate the existing Digester Complex; and

WHEREAS, The City of Dayton has entered into a Professional Service Agreement with Hazen & Sawyer for the design of the Anaerobic Digester Improvements Project with the design currently at 30% complete; and

WHEREAS, In preparation for the Construction Phase of the Digester Improvements Project, the City of Dayton has evaluated alternate delivery methods rather than the standard design/bid/build that could result in cost savings to the City and would like to proceed with a Construction Manager at Risk for the Anaerobic Digester Project; and

WHEREAS, The City of Dayton intends to apply for a Water Pollution Control Loan Fund ("WPCLF") Supplemental Loan for the Construction Manager at Risk; and

WHEREAS, The Ohio WPCLF requires the government authority to pass legislation for the application of a loan and the execution of an agreement as well as designating a dedicated repayment source; and,

WHEREAS, For the immediate preservation of the public property, health and safety, and the usual operations of City departments, it is necessary that this Resolution take effect immediately now, therefore,

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

Section 1. That the City Manager, or her designee, be and is hereby authorized to apply for a WPCLF Loan Supplement, execute any and all necessary documents for, and enter into a WPCLF agreement with the Ohio Environmental Protection Agency and the Ohio Water Development Authority for Construction Manager at Risk on behalf of the City of Dayton, Ohio.

Section 2. That the dedicated source of repayment will be Sewer Revenue Funds.
Section 3. For the reasons stated in the preamble hereof, the Commission declares this Resolution to be an emergency measure which shall take effect immediately upon its adoption.

ADOPTED BY THE COMMISSION....FEBRUARY 2..., 2022

SIGNED BY THE MAYOR............FEBRUARY 2..., 2022

[Signature]
Mayor of the City of Dayton, Ohio

Attest:

[Signature]
Clerk of Commission

Approved as to form:

[Signature]
City Attorney
CERTIFICATE OF CLERK OF THE COMMISSION

STATE OF OHIO,
COUNTY OF MONTGOMERY, SS:
CITY OF DAYTON.

The undersigned, Clerk of the Commission of said City, hereby certifies that the foregoing is a true and correct copy of RESOLUTION NO. 6629-22

passed as an emergency measure by the Commission of said City FEBRUARY 2, 2022.

In Testimony Whereof, witness my hand and official seal, this 7TH

day of FEBRUARY, 2022. [Signature]

Clerk of the Commission of the City of Dayton, Ohio
GENERAL CERTIFICATE
TO BE DELIVERED TO
OHIO ENVIRONMENTAL PROTECTION AGENCY
AND OHIO WATER DEVELOPMENT AUTHORITY

The undersigned, being the Clerk of Commission of the City of Dayton, Ohio, hereby certifies that:

I. At the times of the enactment of the Loan Legislation (as defined below) and the execution of the Water Pollution Control Loan Fund (WPCLF) Agreement (as defined below), the following were the incumbents of the listed offices:

<table>
<thead>
<tr>
<th>Title</th>
<th>Name</th>
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<tbody>
<tr>
<td>Chief Executive Officer</td>
<td>City Manager</td>
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<tr>
<td></td>
<td>Shelley Dickstein</td>
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<tr>
<td>Chief Fiscal Officer</td>
<td>Director of Finance</td>
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<td></td>
<td>Robbie Stivers</td>
</tr>
<tr>
<td>Chief Legal Officer</td>
<td>Director of Law</td>
</tr>
<tr>
<td></td>
<td>Barbara Doseck</td>
</tr>
<tr>
<td>Officer Responsible for Records</td>
<td>Clerk of Commission</td>
</tr>
<tr>
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<td>Regina D. Blackshear</td>
</tr>
</tbody>
</table>

Legislators: City of Dayton : Commissioner Jeffrey Mims, Mayor: Commissioner Matt Joseph; Commissioner Shenise Turner-Sloss; Commissioner Chris Shaw; Commissioner Darryl Fairchild

II. The regular meetings of City of Dayton Commission (the “Legislative Body”) of the Borrower was held on February 2, 2022.

III. Attached hereto is (a) a true and exact copy of Resolution No. 6629-22 (the “Loan Legislation”), approved by the Dayton City Commission Body on February 2, 2022, authorizing the Borrower to enter into a Water Pollution Control Loan Fund (WPCLF) Supplemental Loan Agreement with the Ohio Environmental Protection Agency and the Ohio Water Development Authority in the form attached to the Legislation as Exhibit A (the “Water Pollution Control Loan Fund (WPCLF), including a description of the Project Facilities being financed under the Water Pollution Control Loan Fund (WPCLF) Agreement, and (b) a copy of the Water Pollution Control Loan Fund (WPCLF) Agreement executed by the official or officials of the Local Government authorized by the Loan Legislation to execute the Water Pollution Control Loan Fund (WPCLF) Agreement on behalf of the Local Government. The undersigned hereby certifies that the Legislation remains in full force and effect and has not been repealed, rescinded, amended or modified.

IV. Attached hereto is a true and exact copy of Ordinance No. 31785-19 (the “Rate Legislation”), approved by the Legislative Body on January 8, 2020 authorizing the current water and sewer rates of the City of Dayton to which the Water Pollution Control Loan Fund (WPCLF) Agreement relates, and of any special assessment legislation related to any special assessments of the Local Government referred to in the Water Pollution Control Loan Fund (WPCLF) Agreement.

V. All meetings of the Legislative Body and of its committees and any other public bodies, at which the formal actions referred to in Sections III or IV above were taken, or at which deliberations that resulted in such formal actions were held, were open meetings, and such formal actions were taken and any such deliberations took place while such meetings were open to the public, in compliance with all legal requirements including (if applicable) Section 121.22, Revised Code. Notice and notification of the aforementioned meetings were given Section 121.22, in compliance with all legal requirements including (if applicable) Section 121.22, Revised Code and the rules of the Legislative Body.

Regina D. Blackshear – Clerk of Commission

[Signature]

(Date)
City Manager’s Report

From 2360 - Planning, Neighborhoods & Dev. / Mediation Center

Date May 11, 2022

Expense Type Service Agreement
Total Amount $35,000.00 thru 12-31-2023

Name Institute for the Study of Conflict Transformation
Address 371 West Second Street, Suite 300
Dayton, Ohio 45402

Fund Source(s) Fund Code(s) Fund Amount(s)
General Fund 10000-2360-22606-33 $35,000.00

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

Description

Service Contract

The Department of Planning, Neighborhoods & Development requests approval to enter into a Service Contract with the Institute for the Study of Conflict Transformation (ISCT) in the amount of $35,000.00. The Division of Mediation will manage the operational support and programming services for the ISCT.

ISCT is the international leader in the field of Transformative Mediation and Conflict Resolution. As an international think tank ISCT promotes the understanding of conflict processes and intervention from the transformative approach through membership, research, publications, programs, and events.

The Contract will be paid over a two-year period. The first year (2022) will receive revenue of $16,600.00 and the second year (2023) will receive revenue of $18,400.00 for a total of $35,000.00.

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

The revenue will be received into the Division of Mediation’s General Fund.

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

A Certificate of Revenue is attached.

E-SIGNED by Michelle Zaremba on 2022-04-29 13:23:52 GMT

Division
E-SIGNED by Steven Gondol on 2022-04-29 13:35:33 GMT

Department
City Manager
FORM NO. MS-16

Signatures/Approval

Approved by City Commission
Clerk
Date

Updated 10/2019
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name Institute for the Study of Conflict Transformation, Treasurer
Address 371 West Second Street
City Dayton State Ohio Zip+4 45402
Customer Number 134078222 Address Location

Revenue Information: Fund 10000 Organization 2360 Revenue 22606 Program 33

Contract Information: Contract Start Date Upon Execution Contract Expiration Date 12/31/2023

Billing Information: Rate: $5,533.00/qtr Arrears XX Pre-bill
Monthly (1st month of billing)
Quarterly (1st month of quarter) xx
Semi-annual (1st month of half)
Annual (1st month of billing)
Other (explain)
Rate Change Date 4/30/2023 Rate Change Amount $4,600.00

Description of Services (wording on invoice): The Dayton Mediation Center will continue to provide administrative management of the Institute for the Study of Conflict Transformation.
(See Exhibit B)

Departmental Approval

E-SIGNED by Steven Gondol on 2022-04-29 13:36:16 GMT

TO BE COMPLETED BY FINANCE

Revenue Contract Number 8 - 8222 Auditor D Billy Date 5-2-2022
I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

Director of Finance 5/3/22
April 29, 2022

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

FROM: Steve Gondol, Deputy Director  
Department of Planning, Neighborhoods & Development

SUBJECT: Service Contract - The Institute for the Study of Conflict Transformation

The Department of Planning, Neighborhoods & Development requests to enter into a Service Contract with The Institute for the Study of Conflict Transformation (ISCT) for $35,000.00. This contract will provide operational support and programing services for the ISCT.

The Dayton Mediation Center and ISCT have had a relationship since 2014. The Dayton Mediation Center has had contracts to provide similar services for ISCT in the past (2014 - 2018.) The Dayton Mediation Center manages the ISCT operations, and this organization is housed within the Dayton Mediation Center.

ISCT is the international leader in the field of Transformative Mediation and Conflict Resolution. As an international think tank ISCT promotes the understanding of conflict processes and intervention from the transformative approach through membership, research, publications, programs, and events.

Providing this service to ISCT is a benefit to Mediation and the City. Being closely connected with the international leader in the field enhances the Dayton Mediation Center’s positive reputation and ensures we continue to be a place of innovation for our city.

SG/mz

Attachments

C: Ms. Lofton; Mr. Parlette; Ms. Zaremba; file
INSTITUTE FOR THE STUDY OF CONFLICT TRANSFORMATION

SERVICE CONTRACT

THIS AGREEMENT, made and entered into on this ______ day of ________, 20___, in Dayton, Montgomery County, Ohio by and between the INSTITUTE FOR THE STUDY OF CONFLICT TRANSFORMATION, located at 371 West Second Street 3rd Floor, Dayton, Ohio 45402 (hereinafter called the “INSTITUTE”), and the CITY OF DAYTON, located at 101 West Third Street, Dayton, Ohio 45402 (hereinafter called the “PROVIDER”).

WITNESSETH THAT:

WHEREAS, the INSTITUTE and the PROVIDER mutually desire to contract with each other to provide build and strengthen the mediation field and develop the practice of the Transformative Approach to conflict worldwide as embodied in the scope of services attached hereto and hereinafter referred to as “Exhibit A”; and,

WHEREAS, the PROVIDER is uniquely qualified, experienced, and willing to perform said work, when there is a Contract specifying the rights and duties of each party; and

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties to this Contract, with intent to be legally bound, agree as follows:

ARTICLE ONE: SCOPE OF SERVICE

1.1 The PROVIDER agrees to perform the services embodied in the work scope attached hereto and hereinafter referred to as “Exhibit A”. Said Exhibit A is incorporated by reference as if written hereinafter in full.

1.2 The PROVIDER further agrees that it will notify the INSTITUTE prior to undertaking any activity or authorizing any expenditure that is not clearly consistent with the terms of this Contract and that no such activity or expenditure of a questionable nature shall be authorized without the prior approval of the INSTITUTE.

ARTICLE TWO: SCHEDULE OF PAYMENT

2.1 The INSTITUTE agrees to compensate the PROVIDER for authorized expenditures incurred in the performance of this Contract and services described in Exhibit A, which can be verified by documentation. The INSTITUTE shall pay PROVIDER an amount not to exceed THIRTY-FOUR THOUSAND DOLLARS AND ZERO CENTS ($35,000.00) for the services provided during the term of this Contract. Payment shall occur as outlined in Exhibit B, Schedule of Payment.

2.2 It is understood and agreed by the parties hereto that the INSTITUTE will be under no financial obligation to pay any excess costs arising from changes, modifications, or extra work without the prior written approval of the INSTITUTE.

2.3 Payment will be made to the PROVIDER after the INSTITUTE has received and approved invoices from the PROVIDER during the previous quarter. Invoices shall be submitted to the INSTITUTE no later than 31 days after the conclusion of the previous quarter or July 31, 2022; October 31, 2022; January 31, 2023; April 30, 2023; July 31, 2023; October 31, 2023; and January 31, 2024. Quarterly invoices from the PROVIDER shall be sent to The Institute for the Study of Conflict Transformation, Attn: Lydia VanderKaay, 371 W. Second St 3rd Floor, Dayton OH 45402.
ARTICLE THREE: TERM

3.1 The term of this Contract shall begin the upon execution and shall terminate on December 31, 2023.

3.2 All parties agree that the terms of the herein Contract shall apply to any time period between the above-stated start date, and the full execution of this Contract by way of signature of the parties.

ARTICLE FOUR: RELATIONSHIPS/COMPLIANCE

4.1 The PROVIDER, its agents, employees, assigns are not officers, agents or employees of the INSTITUTE; but, to the contrary, are independent contractors. The PROVIDER, at all times shall have the status of an independent contractor without the right or authority to impose tort, contractual or any other liability on the INSTITUTE.

4.2 The PROVIDER agrees to comply with all applicable federal, state, and/or local laws and regulations in the delivery of the services called for herein.

4.3 The PROVIDER, for itself, its employees and assigns, accepts full responsibility for payment of all unemployment compensation, insurance premiums, worker’s compensation premiums, all income tax deductions, and any and all other taxes (i.e., Social Security) or payroll deductions required of the PROVIDER as employer.

ARTICLE FIVE: CONFLICT OF INTEREST

5.1 This Contract in no way precludes, prevents, or restricts the PROVIDER from obtaining and/or working under additional contractual arrangement(s) with a party other than the INSTITUTE, assuming that the additional contractual work in no way impairs the PROVIDER’s ability to perform the services required under this Contract.

5.2 The PROVIDER contracts that at the time of entering into this Contract he has no interest in or shall he acquire any interest, direct or indirect, in any contractual agreement which will conflict in any manner with performance of the services required under this Contract.

ARTICLE SIX: MODIFICATION AND SEVERABILITY

6.1 This Contract constitutes a total integration of the entire understanding between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties. Any proposed change in this Contract shall be submitted to the INSTITUTE for its prior written approval. If any term or provision of this Contract or the application thereof to any person or circumstance shall, to any extent be invalid or unenforceable, the remainder of this Contract or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

6.2 There are no promises, terms, conditions, or obligations other than those contained herein; and this Contract shall supersede all previous communications, representations or agreements, either written or oral, between the parties to this Contract.

ARTICLE SEVEN: SAFEGUARDING OF CLIENT

7.1 PROVIDER agrees that disclosure of any information by the PROVIDER, his agents, employees or assigns concerning services to the individuals should be done within the purview of the Ohio Revised Code.
ARTICLE EIGHT: NON-DISCRIMINATION AND ACCESSIBILITY

8.1 During the performance of this Contract, the PROVIDER will not discriminate against any employee, applicant for employment or any client because of race, color, religion, sex, national origin, ancestry, handicap, age, political belief or place of birth.

8.2 The PROVIDER, or person claiming through the PROVIDER, agrees not to establish or knowingly permit any such practices of discrimination or segregation in reference to anything relating to this Contract or in reference to any contractors or subcontractors of said PROVIDER. The PROVIDER shall guarantee accessibility to services for all clients regardless of physical ability.

ARTICLE NINE: INDEMNIFICATION

9.1 The INSTITUTE and the PROVIDER each shall assume responsibility for any loss, cost or damages caused by or arising out of any acts, errors and omissions of its own respective employees and agents in the performance of this Contract. Each is entitled to common law and statutory immunities and defenses, none of which are waived by this Contract.

ARTICLE TEN: ASSIGNMENT

10.1 The parties expressly agree that this Contract shall not be assigned by the PROVIDER without the written approval of the INSTITUTE.

ARTICLE ELEVEN: TERMINATION

11.1 This Contract may be terminated by either party upon notice, in writing delivered upon the other party thirty (30) days prior to the effective date of termination. The INSTITUTE shall not be liable to tender and/or pay to the PROVIDER any further compensation after the date of termination of this Contract.

11.2 The parties further agree that should the PROVIDER become unable for any reason to complete the work called for by virtue of this Contract, that such work as the PROVIDER has completed upon the date of its inability to continue the terms of this Contract shall become the property of the INSTITUTE, and further the INSTITUTE shall not be liable to tender and/or pay to the PROVIDER any further compensation after the date of the PROVIDER’S inability to complete the terms hereof, which date shall be the date of termination unless extended upon request by the INSTITUTE.

1.3 Notwithstanding the above, the PROVIDER shall not be relieved of liability to the INSTITUTE for damages sustained by the INSTITUTE by virtue of any breach of the Contract by the PROVIDER; and the INSTITUTE may withhold any compensation to the PROVIDER for the purpose of set-off until such time as the amount of damages due the INSTITUTE from the PROVIDER is agreed upon or otherwise determined.

ARTICLE TWELVE: MONITORING AND EVALUATION

12.1 The INSTITUTE and the PROVIDER will monitor the manner in which the terms of the Contract are being carried out and evaluate the extent to which services are being provided. The PROVIDER will also participate in program evaluation activities being undertaken by the INSTITUTE and/or an independent evaluator.

12.2 The PROVIDER shall submit to the INSTITUTE all prescribed reports detailing the progress of the work performed under this Contract.

12.3 The PROVIDER shall attend INSTITUTE management meetings and Board of Directors meetings. Management meetings will be scheduled as needed and will consist of management committee operation discussions. Board of Directors meetings will take place bi-monthly and will consist of INSTITUTE
business decision-making. Scheduling of Board of Directors meeting and agenda will adhere to the INSTITUTE by-laws. Unless otherwise specified, the Management meetings and Board of Directors meetings will be held virtually.

12.4 The PROVIDER shall maintain a financial management system, which records all Contract costs and expenditures. The PROVIDER shall comply with all applicable State and Federal fiscal management guidelines.

12.5 The PROVIDER shall maintain and preserve all financial and program records related to this Contract including any documentation used in the administration of the program, for a period of at least three (3) years from the termination date of this Contract. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three (3) year period, the records must be retained until completion of the action and resolution of all issues which arise from it or until the end of the regular three (3) year period, whichever is later.

12.6 All financial and program records related to this Contract shall be subject to inspection, review or audit by the INSTITUTE and their duly authorized representatives.

ARTICLE THIRTEEN: DISCLOSURE

13.1 The PROVIDER must review and comply with the Ohio Ethics Law, released by The Ohio Ethics Commission. The law and related statutes can be accessed here: https://ethics.ohio.gov/education/overview.html. The PROVIDER certifies that it (1) has reviewed and understands the Ohio Ethics Law and Related Statutes, and (2) will take no action inconsistent with those laws. The PROVIDER understands that failure to comply with the Ohio Ethics Law is, in itself, grounds for termination of this contract and may result in the loss of other contracts or grants with the State of Ohio.

ARTICLE FOURTEEN: GOVERNING LAW AND VENUE

14.1 This Contract and any modifications, amendments, or alterations, shall be governed, construed, and enforced under the laws of Ohio, without giving effect to the principles thereof relating to conflicts of choice of laws. Any arbitration, litigation or other legal matter regarding this Contract or performance by either party must be brought in a court of competent jurisdiction in Montgomery County, Ohio.

ARTICLE FIFTEEN: SIGNATURES

15.1 The PROVIDER hereby acknowledges that this Contract must be signed and returned to the INSTITUTE by the PROVIDER within thirty (30) days of receipt of said Contract for signature or the Contract may be canceled and voided by the INSTITUTE.
IN WITNESS WHEREOF, the parties have hereunto set their hands on this ___ day of __________________, 20__.

WITNESS: 

__________________________________________

INSTITUTE FOR THE STUDY OF CONFLICT TRANSFORMATION

By: _______________________________________

Anna Belkin, Institute President

CITY OF DAYTON, OHIO

By: _______________________________________

Shelley Dickstein, City Manager

APPROVED AS TO FORM AND CORRECTNESS:

4/5/2022

X  John Musto for Dayton City Attorney

Signed by: Musto, John

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

_____________________, 20__

Min./Bk. _____ Pg. ____________

_____________________

Clerk of the Commission
EXHIBIT A
SCOPE OF SERVICES

The Dayton Mediation Center will manage the Institute for the Study of Conflict Transformation. Duties include:

Overview
Working closely with the ISCT Management Team, manage the day-to-day operations and programming of the ISCT, as well supporting the Board, Fellows, Committees and working groups.

Tasks
1. Ensure programing and project decisions fit with the Strategic Plans and Aspirations.
2. Facilitate Board of Directors/Fellow involvement.
3. Track all projects and set up systems that will reduce time and effort.
4. Identify and oversee projects, ensuring that work is completed as planned.
5. Monitor finances in conjunction with the ISCT Treasurer.
7. Ensure that regular strategic planning happens.
8. Oversee the Assistant Coordinator.
9. Work with service providers (accountants, tech experts, etc).
EXHIBIT B
ISCT CONTACT PAYMENT SCHEDULE

PAYMENT SCHEDULE

Payments for work in 2022
July 31, 2022 $5,533
October 31, 2022 $5,533
January 31, 2023 $5,534
Total $16,600

Payments for work in 2023
April 30, 2023 $4,600
July 31, 2023 $4,600
October 31, 2023 $4,600
January 31, 2024 $4,600
Total $18,400
Ohio Municipal League Membership Dues for 2022

The Ohio Municipal League (OML) was incorporated as an Ohio non-profit corporation in 1952 by city and village officials who saw the need for a statewide association to serve the interests of Ohio municipal governments. Any city or village, by proper action of its legislative body and payment of the annual membership fee, may become a member. Membership dues are based on census population for the municipality. When an Ohio municipality becomes an active League member, all of the elected and key appointed officials are eligible to use the available services.

The OML represents the collective interest of Ohio cities and villages before the Ohio General Assembly and the state elected and administrative offices. OML staff testifies before legislative committees, coordinates testimony of municipal courts, prepares amendments, and meets and confers with legislators and their staff regularly.

It is recommended that the City of Dayton renew its membership through December 31, 2022 with The Ohio Municipal League to provide legislative representation and related services.

A Certificate of Funds in the amount of $11,090.00 is attached.
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

New Contract

- Contract Start Date: 05/11/22
- Expiration Date: 12/31/22
- Original Commission Approval: $11,090.00
- Initial Encumbrance: $11,090.00
- Remaining Commission Approval: $

Renewal Contract

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

Change Order

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

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<td>10000</td>
<td>9980</td>
<td>1221</td>
<td>99</td>
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NO DRAFT DOCUMENTS PERMITTED

Attach additional pages for more FOAPALs

Vendor Name: Ohio Municipal League
Vendor Address: 175 S. 3rd Street, Suite 510 Columbus OH 43215
Federal ID: 31-6402416
Commodity Code: 961-02
Purpose: membership dues for the period January 1 - December 31, 2022

Contact Person: Shonda Bryant
Department/Division: DPMB/M&B
Date: 4/22/2022
Originating Department Director's Signature: [Signature]
Date: 4/22/22

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: 5/3/22
CF Prepared by: [Signature]
Date: 5/12/22
CF/CT Number: CF22-044

October 18, 2011
2022 Membership Invoice ~ Reminder

City of Dayton
Mayor and/or Finance Director
101 W. Third St
Dayton, Ohio 45401

The Ohio Municipal League
175 S. 3rd Street, Suite 510
Columbus, Ohio 43215
Phone: 614-221-4349
Email: Info@omlohi.org

Municipality: City of Dayton
2010 Census Population: 141527
Dues Amount: $11090
Membership Period January 1 ~ December 31, 2022
Includes Legal Advocacy Program (not optional)

Ohio Municipal League Services:
- Legislative Representation: In Columbus, OH
- Field Representative
- Member Alerts, Legislative & Special Bulletins
- Cities & Villages Magazine Online Access
- OML Legal Advocacy Program
- Workers’ Compensation Group Rating Pool
- Annual Conference of Municipal Officials
- Seminar for New Officials & Regional Conferences
- Mayor's Court Certification
- Municipal Webinars
- Free Online Classified Postings for Members
- Website: www.omlohi.org
- GrantFinder Discount

Membership Benefits will be suspended on June 1st, 2022

DO NOT combine dues payment with any other OML payment. Combined payments will be returned. Thank You

--------------------------------------------------------------------------------------------------

Do NOT Staple to Check

Tear on Perforated Line

2022 Ohio Municipal League
Membership Invoice

Municipality: City of Dayton
Dues Amount: $11090
Membership Period
January 1 ~ December 31, 2022

OML Office Use Only
10790
LAF 300

DO NOT combine dues payment with any other OML payment. Combined payments will be returned.

Thank You
April 2022

This is a reminder that dues payments for membership renewal for the Ohio Municipal League are due by **June 1**. Municipalities that do not send in their dues payments for membership renewal by June 1 will lose all League membership benefits.

Municipalities that do not send in their dues payments by June 1 will no longer receive communication from the League including **Member Alerts** related to state and federal issues impactful to municipalities, our weekly **Legislative Bulletins**, participation in the **National League of Cities, Cities & Villages Magazine**, access to **Member Section**, will not be eligible for discounted **Member Rates** for conferences, webinars, and trainings, and will not be eligible to participate in the OML group rating program for **Workers' Compensation** discounts.

We greatly appreciate and value the over 700 municipalities that have renewed their membership with the League and hope those that have yet to submit their membership renewal fees will do so soon to avoid any disruptions in the receiving of information critical to Ohio cities and villages.

Please send your dues payments before June 1 to ensure you do not lose access to these critical membership opportunities and resources.
City Manager's Report

**From** 5610 - Human Resources

Supplier, Vendor, Company, Individual

**Name** PowerDMS INC.

**Address** 101 S Garland Ave. STE 300 
Orlando, FL 32801

**Date** May 11, 2022

**Expense Type** Payment of Voucher

**Total Amount** $7,116.39 thru 12/31/2022

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>EE Professional Development</td>
<td>16903-5610-1159-62</td>
<td>$7,116.39</td>
</tr>
</tbody>
</table>

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

**Description**

**Payment of Voucher – PowerDMS Inc.**

The Department of Human Resources requests approval to pay an outstanding 2022 invoice with PowerDMS Inc. in the amount of $7,116.39. PowerDMS is a software program that generates, tracks, and updates personnel policies and discipline cases for the City.

This payment of voucher is due to several administrative changes in HR when the Purchase Order was up for renewal resulting in an oversight, delayed timing for renewal and therefore the invoice payment was missed.

The Human Resources department has since completed previously mentioned administrative changes to avoid this lapse in timing going forward.

A Purchase Requisition and Purchase Order form is attached.

**Signatures/Approval**

**Approved by City Commission**

Clerk

Date

FORM NO. MS-16

Updated 8/2016
## CERTIFICATE OF FUNDS

### SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>New Contract</th>
<th>Renewal Contract</th>
<th>Change Order</th>
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<tbody>
<tr>
<td>Contract Start Date</td>
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<tr>
<td>Expiration Date</td>
<td>12/31/22</td>
<td>X Initial City Manager's Report</td>
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<tr>
<td>Original Commission Approval</td>
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<td>X Initial Certificate of Funds</td>
</tr>
<tr>
<td>Initial Encumbrance</td>
<td>$ 7,116.39</td>
<td>X Initial Agreement/Contract</td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$ -</td>
<td></td>
</tr>
<tr>
<td>Original CT/CF</td>
<td></td>
<td>Copy of City Manager's Report</td>
</tr>
<tr>
<td>Increase Encumbrance</td>
<td></td>
<td>Copy of Original Certificate of Funds</td>
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<tr>
<td>Decrease Encumbrance</td>
<td>$ -</td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>-</td>
<td></td>
</tr>
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</table>

### Amount:

- **Amount:** $ 7,116.39

<table>
<thead>
<tr>
<th>Fund Code</th>
<th>16903 - 5610 - 1159 - 62 - XXXX - XXXX</th>
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</thead>
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<tr>
<td>Fund</td>
<td>Org</td>
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### Amount:

- **Amount:**

<table>
<thead>
<tr>
<th>Fund Code</th>
<th>XXXX - XXXX - XXXX - XX - XXXX - XXXX</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund</td>
<td>Org</td>
</tr>
</tbody>
</table>

### Attach additional pages for more FOAPALS

- **Vendor Name:** PowerDMS INC.
- **Vendor Address:** 101 S. Garland Ave. STE 300 Orlando FL 32801
- **Federal ID:** 593668886
- **Commodity Code:** 20964
- **Purpose:** PowerDMS is a software program that generates, tracks, and updates personnel policies and discipline cases for the City. There will be 20 user licenses for HR to be able to log in and work on the software.

### Contact Person:

- **Contact Person:** Danielle Mattson x4063
- **Department/Division:** Human Resources
- **Date:** 4/27/2022

### Originating Department Director's Signature:

- **Ken Couch**

### 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:** 4/29/22

- **CF Prepared by:**
- **Date:** 4/28/22
- **CF/CT Number:** CF22-0143

---

**Finance Department**

**October 18, 2011**
April 5, 2022

TO: Melissa Wilson
    Department of Procurement

FROM: Kenneth R. Couch, Director
      Department of Human Resources

SUBJECT: Purchase Requisition – PowerDMS, Inc. HR2XX014

Human Resources (HR) is requesting a requisition for services with PowerDMS, Inc. (PowerDMS). PowerDMS is a software program that generates, tracks and updates personnel policies and discipline cases for the City. There will be 20 user licenses for HR to be able to log in and work on the software.

The software will accommodate the ability to work from home and easily forward files between HR and the Law Department.

Furthermore, the software will aid in tracking discipline cases from conception to resolution; this in turn will aid HR in responding to public record requests in a timelier manner.

Attached is a quote for services ending 12/31/2022. We would like to begin services as soon as possible and are requesting this be treated as a RUSH. This requisition is a continuation of services from the previous purchase order with PowerDMS, Inc. that ended on 12/31/2021.

Please contact Danielle Mattson at x4063 or Dawn Manuel at x4062 if you have any questions.

KRC/dm
# Procurement Requisition Form

**Date:** 4/1/2022  
**Requisition #:** HRZXX014

**Price Agmt Ref #:**  
**PY PO #:**

## Department Information:

- **Department:** Human Resources  
- **Division:**
- **Requestor Name:** Dawn Manuel  
- **Requestor Ext:** 4061
- **POC Name:** Danielle Mattson  
- **POC Ext:** 4063
- **Ship To Add. Code:** HRD-0  
- **Comdty Code:**

## Vendor Information:

- **Vendor Number:** 59-3668885  
- **Vendor Address:** 101 S. Garland Ave. Ste 300 Orlando, FL 32801
- **Vendor Name:** Power DMS, Inc.  
- **AAA Expiration Date:** 10/14/2023

## Description of Need:

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<tr>
<th>Qty Requested</th>
<th>Item Name</th>
<th>UOM</th>
<th>Cost/UOM:</th>
<th>Total Line Cost:</th>
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<tr>
<td>1</td>
<td>Power DMS Pro Base</td>
<td>EACH</td>
<td>$4,326.01</td>
<td>$4,326.01</td>
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<tr>
<td>20.00</td>
<td>Power DMS Pro Licenses</td>
<td>EACH</td>
<td>$27.02</td>
<td>$540.38</td>
<td></td>
</tr>
<tr>
<td>1.00</td>
<td>Power DMS University 1-99 &amp; Public Facing</td>
<td>EACH</td>
<td>$2,250.00</td>
<td>$2,250.00</td>
<td></td>
</tr>
</tbody>
</table>

**Description:** Capture signatures to ensure acknowledgement of crucial content, and generate reports based on user activity. Create workflows to simplify content updates and approvals. View content changes side-by-side.

**Description:** Per user license for Power DMS Pro

**Description:** Qty 1: PowerDMS University 1-99: Access to to PowerDMS University with unlimited Boot Camp registrations (Total $250.00) Qty 1: Public Facing Documents - Local Agencies - Small. Public-Facing Documents is an add-on feature for the Policy product that allows an admin user to make content visible in a PowerDMS site to be made public. Total $2,250.00

**Total Price:** $7,116.39

**Notes to Procurement/MR Description:**
- Vendor services are due on 05/01/2022.
- We ask that this PO is labeled as a RUSH, please.
- Subscription for software to end 12/31/2022.

## Signatures:

**Div. Manager:**

**Dept. Director:**

**IT:**

**Fleet:**

**Law:**

## Buyer Section:

**Assigned Buyer:** BR  
**Buyers Notes:**
## Purchase Order

**Vendor:** PowerDMS INC  
101 S Garland Ave STE 300  
Orlando FL 32801

**Date:** 04/05/22

**P.O. No.:** P0220861

**Ship To:** Danielle Mattson  
Human Resources  
101 W. Third St./City Hall/RM338  
Dayton OH 45402

**NOTE:** Submit invoice in duplicate to:
CITY OF DAYTON, OHIO
ADDRESS: THE SAME AS SHIP TO AS SHOWN ABOVE
Note: Purchase Order Number on ALL Documents.
No cash, check or Federal Funds may be included in prices billed.
Payment will be made upon receipt of approved invoice, which must be kept.

### Buyer Name: NICOLE FOX

<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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</thead>
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<tr>
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<td>CITY OF DAYTON CONTACT: DANNY MANUAL 937-333-4051</td>
<td>1.00</td>
<td>LOT</td>
<td>7,116.3900</td>
<td>7,116.39</td>
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<td></td>
<td>POWERDMS PRD BASE - QTY 1</td>
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<td></td>
<td>POWERDMS PRD LICENSE - QTY 20</td>
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<tr>
<td></td>
<td>POWERDMS UNIVERSITY - 1-99 - QTY 1</td>
<td></td>
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<tr>
<td></td>
<td>PUBLIC FACILITY DOCUMENTS - LOCAL AGENCIES - SMALL - QTY 1</td>
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<td></td>
<td>PRICING PER ORDER NO. Q-114505</td>
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</tr>
<tr>
<td></td>
<td>TERMS: NET 60</td>
<td></td>
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<td></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.

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.

---

**Approving Authority:**

Approved by
CITY COMMISSION

*Signature*

**Signatures:**

- Purchasing Agent
- Director of Finance
- Clerk of Commissions
POWERDMS INC  
101 S Garland Ave  
Orlando FL 32801

VENDOR 593669885

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

PURCHASE ORDER

<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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<table>
<thead>
<tr>
<th>Date</th>
<th>Payment Terms</th>
<th>F.O.S. Point</th>
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</thead>
<tbody>
<tr>
<td>12/31/22</td>
<td>SEE BELOW</td>
<td>FOB Destination, Frt. Prepaid</td>
</tr>
</tbody>
</table>

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.  
For state or federal types, are to be included in purchase order.  
Payment will be made upon receipt of an  
approved invoice or material, whichever is later.

Buyer Name: NICOLE FOX  
Date Required: 12/31/22  
Payment Terms: SEE BELOW  
F.O.S. Point: FOB Destination, Frt. Prepaid

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 signature has been used for the above order and  
that a certificate of the necessity of this expenditure has been placed on file in this  
office.

Purchasing Agent

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 amount of the fund from which it is to  
be drawn free and clear of any previous  
encumbrances

Director of Finance

APPROVED BY  
CITY COMMISSION

Chief of Camararia
Terms & Conditions

3 of 3

1. RELATIONS: 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, only the City of Dayton, Division of Procurement, will be bound. Invoices submitted to City of Dayton must be in accordance with the purchase order and must be corrected to reflect any corrections furnished by the City. Invoices submitted to the City of Dayton must be paid within 30 days of receipt.

2. DIVOCES: 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 involved separately. Invoices for fractional shipments will be accepted; full invoices must be sent separately.

3. CARB DISCOUNTS: All similar items will be offered from state of 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 submit their payment(s) electronically via a credit card by the City, and all payments will be processed online. Any other form of payment will be subject to the discretion of the vendor.

5. F.O.B.: Destination (City of Dayton, Ohio) with delivery to the specified address at the specified street address. NO COLLECT FREIGHT SHIPMENTS WILL BE ACCEPTED. All quantities are entered into a delivered price basis. When, in the event of a discrepancy in the quantities as filled, the City accepts a quantity and quantity of goods, the purchase order shall be fulfilled, and the vendor and agreed to be paid, and any balance of the original purchase order will be returned.


7. DELIVERIES: All deliveries on this order must be in full accordance with specifications, provided in the purchase order, and shall 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 in accordance with the terms and conditions of this order. Any cancellation of this order will not relieve the Vendor of its obligation to pay for work already performed.

9. DEFECTUAL PROVISIONS: In case of default by the Vendor, the City of Dayton may name all the issues from other vendors, and the Vendor shall be responsible for any costs occasioned thereby.

10. NO VERBAL 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 the fulfillment. Confirmation by City personnel must be received as indicated in the purchase order before any agreements are made.

11. PATENT AND COPYRIGHT INFRINGEMENT: 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 claims, causes of action or suits in any court, including, but not limited to damage claims, claims for lost profits, claims for injury or death, claims for loss of business, claims for recovery of incidental and consequential damages, costs, expenses, and any and all other claims, damages, loss of profits, and any expenses of any kind, including but not limited to attorneys fees, arising out of any acts or conditions of the Vendor, or its officers and employees, including but not limited to temporary employment that the City of Dayton may be required by the City of Dayton to any degree; consultants, agents, and contractors of the Vendor or any other person in any way to provide the goods or services for this purchase order.

12. FORGE MAJORS: Neither the City nor the Vendor shall be considered to be in default of this 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: force majeure, natural disasters; floods; earthquakes; fires; epidemics; wars, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sickness; judicial restraint; and inability to procure materials or any other condition that may prevent performance, license, or authorization from any local, state, or federal agency for any of the materials, machinery, services, or merchandise required to be provided by the City of Dayton 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.

13. INSURANCE: If requested by the City of Dayton, the Vendor shall maintain policies of liability insurance of such types and amounts and with such companies as may be designated by the City of Dayton, which policies will be written as to protect the City of Dayton and the Vendor from the risk incurred 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 subconectors 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 on or any of its other claims against the person licensed under said policies.

14. SPECIFICATIONS: All specifications, drawings, notes, instructions, engineering notes or technical data referred to in this Purchase Order shall be deemed to be incorporated herein by reference to the extent the same is fully set forth. The City of Dayton shall at all times retain title to all such documents and the Vendor shall not duplicate or use any part of any other document in the care of the Vendor, only as necessary for the performance of the work rendered by the Vendor, and which constitute part of the purchase order, after the work has been completed and the equipment has been received.

15. EXAMINATION OF PREMISES: If work is to be performed hereunder, the Vendor shall examine the premises of the City of Dayton to determine the extent of the work to be performed and to satisfy itself that it has received the information to perform the work to the satisfaction of the City of Dayton. Upon the City of Dayton request, the Vendor shall promptly return all such documents to the City of Dayton.

16. EQUAL EMPLOYMENT OPPORTUNITY: EEOC Sec. 25.14: (a) The Vendor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status, or handicap, or in any other manner contrary to the provisions of this purchase order and agree that no allowances shall be made in respect of any order so as to each part of the Vendor.

17. 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 or relied on any representation except in respect of the subject matter of this Purchase Order or any representation regarding the delivery and execution of this Purchase Order except as specified in this agreement. The Vendor and the City of Dayton agree that such representations are made in writing and are not subject to the jurisdiction of the purchase order. In any suit or proceeding for the recovery of damages arising out of the execution of this Purchase Order, the Vendor shall be subject to the jurisdiction of the court of the State of Ohio.

18. PRODUCT MANUFACTURE LABOR STANDARDS: The manufacturer of the product shall be subject to the jurisdiction of the court of the State of Ohio. In any suit, proceeding or action under this Purchase Order, the product shall be subject to the jurisdiction of the court of the State of Ohio.

19. CONTRACTOR: Contractor acknowledges that employment is not public employment for purposes of Ohio Public Employees Retirement System (OPERS) membership.
**INVOICE**

**Billing Information**

Dawn Manuel  
City of Dayton (OH)  
101 West Third Street  
Dayton, OH 45401

**Prepared for**

City of Dayton (OH)  
PO BOX 22  
Dayton, OH 45401

<table>
<thead>
<tr>
<th>Product</th>
<th>Description</th>
<th>Start Date</th>
<th>End Date</th>
<th>Quantity</th>
<th>Total Price</th>
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<tbody>
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<td>PowerDMS Pro Base</td>
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<tr>
<td>PDMSProUser</td>
<td>PowerDMS Pro License</td>
<td>01-01-2022</td>
<td>12-31-2022</td>
<td>20</td>
<td>$540.38</td>
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<td>PDMSUniv99</td>
<td>PowerDMS University - 1-99</td>
<td>01-01-2022</td>
<td>12-31-2022</td>
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<td>12-31-2022</td>
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<td>$2,000.00</td>
</tr>
</tbody>
</table>

**SUBTOTAL**  
$7,116.39

**Sales Tax**  
$0.00

**TOTAL**  
$7,116.39

**Payments/Credits**  
$0.00

**Balance Due**  
$7,116.39

Questions or concerns regarding this invoice? Please contact receivables@powerdms.com or call (800) 749-5104.

Need a W-9? Click here on the electronic version of this invoice: PowerDMS W-9 PDF

**Please remit checks to:**
PowerDMS, Inc.  
101 S. Garland Ave, Ste 300  
Orlando, FL 32801

**Please remit electronic payments to:**
PNC Bank  
East Brunswick, NJ 08816  
Routing #: 031207607  
Account #: 8026392336

**PO/CT/CF#** 220861  
**APPROVED AMT** $7,116.39

**AC** 16903 - 5010 - 1154 - 42

**FINAL PAY** - YES  
**NO**

**DIVISION APPROVAL**

**DEPT APPROVAL** Dawn Manuel
### Contract Details
- **Account Number:** A-42200
- **Customer:** City of Dayton (OH)
- **Sales Rep:** Salesforce Administrator

### Order Details
- **Order #:** Q-114585
- **Order Date:** 01/1/2022
- **Valid Until:** 05/1/2022
- **Subscription Start Date:** 1/1/2022
- **Subscription Term (months):** 12

### Customer Contact
- **Billing Contact:** City of Dayton (OH)
- **Address:** PO BOX 22, Dayton, OH 45401

### Payment Terms
- **Payment Term:** Net 60

### Subscription Service
- **Notes:**

### Item Details
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<th>Item</th>
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<th>End Date</th>
<th>Qty</th>
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<td>12/31/2022</td>
<td>1</td>
<td>$4,326.01</td>
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<td>Capture signatures to ensure acknowledgement of crucial content, and generate reports based on user activity. Create workflows to simplify content updates and approvals. View content changes side-by-side.</td>
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</tr>
<tr>
<td>Per user license for PowerDMS Pro</td>
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<tr>
<td>PowerDMS University - 1-99</td>
<td>Recurring</td>
<td>1/1/2022</td>
<td>12/31/2022</td>
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<td>$250.00</td>
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<td>Access to PowerDMS University with unlimited Boot Camp registrations.</td>
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<td>Public Facing Documents - Local Agencies - Small</td>
<td>Recurring</td>
<td>1/1/2022</td>
<td>12/31/2022</td>
<td>1</td>
<td>$2,000.00</td>
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<td>Public-Facing Documents is an add-on feature for the Policy product that allows an admin user to make content within a PowerDMS site to be made public.</td>
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<td><strong>TOTAL:</strong></td>
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<td></td>
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<td></td>
<td>$7,116.39</td>
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</tbody>
</table>

**Additional Terms and Conditions**

Payment Terms All invoices issued hereunder are due upon the invoice due date. The fees set forth in this Service Order are exclusive of all applicable taxes, levies, or duties imposed by taxing authorities and Customer shall be responsible for payment of any such applicable taxes, levies, or duties. All payment obligations are non-cancellable, and all fees paid are non-refundable.

Terms & Conditions Unless otherwise agreed in a written agreement between GovernmentJobs.com, Inc. (D/B/A/ NEOGOV), parent company of PowerDMS, Inc., Cueit, Inc., Ragnasoft LLC (D/B/A/ PlanT Schedule), and Design PD, LLC (D/B/A Agency960) (collectively, "NEOGOV") and Customer, this Service Order and the services to be furnished pursuant to this Service Order are subject to the terms and conditions set forth here: http://www.powerdms.com/terms-and-conditions/. The Effective Date (as defined in the terms and conditions) shall be the Subscription Start Date.

**PO/CT/CF #:** 220861  **APPROVED AMT:** $7,116.39

**A/C:** 16903  5610  1159  602

**FINAL PAY:** YES  NO

**DIVISION APPROVAL:**

**DEPT APPROVAL:** Dawn D. Manuel
A RESOLUTION

Authorizing the Acceptance of a Grant Award for a Fair Housing Assistance Program from the United States Department of Housing and Urban Development on Behalf of the Human Relations Council of the City of Dayton in an Amount Not to Exceed Sixty-Six Thousand Eight Hundred Dollars and Zero Cents ($66,800.00), and Declaring an Emergency.

WHEREAS, The United States Department of Housing and Urban Development ("HUD") is offering Fair Housing Assistance Program grants; and

WHEREAS, HUD determined that the Human Relations Council of the City of Dayton ("Human Relations Council") is a substantially equivalent jurisdiction for purposes of processing complaints of housing discrimination within the City of Dayton; and

WHEREAS, By previous agreements with HUD, the Human Relations Council received grant funding for processing housing discrimination complaints; and

WHEREAS, HUD has offered the Human Relations Council a Fair Housing Assistance Program grant award in the amount of Sixty-Six Thousand Eight Hundred Dollars and Zero Cents ($66,800.00) to continue processing complaints of housing discrimination; and

WHEREAS, The Commission finds it in the best interest of the City of Dayton to receive this award of grant funding; and

WHEREAS, In order that complaints of housing discrimination may be timely resolved and for the immediate preservation of the public peace, property, health and safety, it is necessary that this resolution take effect at the earliest possible date; now, therefore,

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

Section 1. That the Executive Director of the Human Relations Council is authorized and directed to execute a Grant Agreement and any other documents necessary to accept a Fair Housing Assistance Program grant award from HUD, in the maximum amount of SIXTY-SIX THOUSAND EIGHT HUNDRED DOLLARS AND ZERO CENTS ($66,800.00), in support of the continued efforts by the Human Relations Council to process housing discrimination complaints.
Section 2. That for the reasons stated in the preamble hereof, the Commission declares this resolution to be an emergency measure which 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 29, 2022

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

FROM: Joann Mawasha, Deputy Director,
Human Relations Council

SUBJECT: FHAP Cooperative Agreement

Please find attached a resolution, approved as to form by the Law Department, authorizing the acceptance of $66,800.00 to our fair housing grant from the U.S. Department of Housing and Urban Development (HUD). Also, attached is a copy of the HUD approved voucher.

The Human Relations Council has substantial equivalency with HUD; as such, these funds are received based on complaints processed the previous year and required training. We request this item be placed on the City Manager’s calendar for May 4, 2022.

Typically, the HRC receives funds from HUD for cases closed on a yearly basis. As such, the allocations are disbursed late in the year, and we utilize the funding for expenses associated with programming, public hearings, office supplies, etc., which allows us to continue our operations. Emergency legislation to accept these funds would ensure that there is no disruption in the provision of services to the community such as filing complaints of alleged discrimination as well as other aspects of HRC programming.

If you have any questions, please call me at x1402. Thank you.
A RESOLUTION

Supporting an Application by SP Rotunda LLC for the Ohio Department of Development Brownfield Remediation Program for Interior Demolition of the Dayton Arcade Property at 28 West Third Street, and Declaring an Emergency.

WHEREAS, The Ohio Department of Development (ODOD) launched a Brownfield Remediation Program on December 14, 2021, providing nearly $350 million to assist in the remediation of hazardous substances at industrial, commercial, or institutional properties; and

WHEREAS, The 87,000 square foot structure at 28 W. Third Street was found to have significant quantities of asbestos, a hazardous substance, complicating the redevelopment; and

WHEREAS, The redevelopment of 28 W. Third Street is part of the Phase 2 Dayton Arcade project and meets the goals and requirements of the ODOD Brownfield Remediation Program; and

WHEREAS, SP Rotunda LLC has applied for ODOD Phase I Brownfield Remediation Program funding to perform interior demolition and remediation in the vacant buildings; and

WHEREAS, ODOD requires a resolution from a local government sponsor to access the funding award; and

WHEREAS, The City of Dayton has a vested interest in the success of the Dayton Arcade and agrees to sponsor SP Rotunda LLC’s ODOD Phase I Brownfield Remediation grant application; and

WHEREAS, On June 7th, 2018, the City of Dayton entered into a Development Agreement for the South Dayton Arcade and has partnered in the revitalization of the Dayton Arcade; and

WHEREAS, Ordinance 31646-18 authorized the City Manager to execute nonmaterial amendments to the South Dayton Arcade Development Agreement as appropriate to achieve City purposes; and

WHEREAS, In order to meet the funding application deadline, and for the immediate preservation of the public peace, property, health and safety, it is necessary that this Resolution take effect at an early date; now; therefore,

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

Section 1. The Commission of the City of Dayton, Ohio, hereby expresses its support for the application for Ohio Brownfield Remediation Program funding for the demolition of vacant buildings at 28 W. Third Street and encourages the Ohio Department of Development to award said grant funding.
Section 2. The City Manager is hereby authorized to negotiate and enter into an agreement with the grant applicant for the utilization of the Ohio Brownfield Remediation Program funding.

Section 3. For the reasons stated in the preamble hereof, this Resolution is declared to be an emergency measure and shall take effect immediately upon its passage.

ADOPTED 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
A RESOLUTION

Declaring the Intention to Appropriate Real Property Interests in Parcels 74 T, 89 WD & T, and 92 T in Connection with the Salem Avenue Reconstruction Phase 3 Project.

WHEREAS, The acquisition of interests in certain real estate is required for the Salem Avenue Reconstruction Phase 3 Project; and

WHEREAS, The City has been unable to reach an agreement with the legal owner/owners of the property that may have an interest; now, therefore,

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

Section 1. That the Commission hereby declares its intention to appropriate a fee simple interest in Parcels 74 T, 89 WD & T, and 92 T for the purpose of clearing the title in connection with the Salem Avenue Reconstruction Phase 3 Project, said real estate being more fully described in exhibits “A” through “F” attached hereto and made a part hereof.

Adopted 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
May 2, 2022

To: Shelley Dickstein  
   City Manager

From: Joseph Weinl, Chief Engineer  
       Division of Civil Engineering

Subject: Resolution for Appropriation

Attached is the Resolution declaring the Intention to appropriate 3 parcels in connection with the Salem Avenue Reconstruction Phase 3 project. Please present this Resolution to the City Commission at the May 11 and May 18 meetings. The Department of Law has reviewed and approved this document as to form.

The parcels are being appropriated because the City has been unable to locate the legal owners, or the property owner has been unable to deliver clear title.

If you have any questions, please contact me at extension 4218.

Attachments

Copy: Mr. Stovall
EXHIBIT A

PARCEL 74-T
MOT - SALEM AVENUE - PHASE 3
TEMPORARY EASEMENT FOR THE PURPOSE OF
PERFORMING THE WORK NECESSARY TO
GRADING AND SEEDING
FOR 12 MONTHS FROM DATE OF ENTRY BY THE
THE CITY OF DAYTON, MONTGOMERY COUNTY, OHIO

[Surveyor's description of the premises follows]

Situated in Sections 28 and 29, Town 2, Range 6 East, the City of Dayton, Montgomery County, Ohio, and being part of that real estate conveyed to Sumlin Sisters Incorporated by deed recorded in I. R. Deed 09-008601, also being part of Lot No. 28465 of the revised and consecutive Lot Numbers of the City of Dayton, of Jordan and Cummin's Subdivision as the same is recorded in Plat Book "A", Page 284 (all references to deeds microfiche, plats, surveys, etc. refer to the records of the Montgomery County, Ohio Recorder's Office, unless noted otherwise) with stations and offsets referenced to the centerline plat of survey for MOT-Salem Ave. Phase 3 as the same is recorded in Plat Book 237, Page 25, of the Montgomery County, Ohio Recorder's Office, and being more particularly described as follows:

BEGINNING at the intersection of the existing northerly right-of-way of Dartmouth Avenue (a 50' wide right-of-way) and the existing westerly right-of-way of Salem Avenue (a 75' wide right-of-way), said point being 37.50 feet left of station 321+49.16 of the centerline of right-of-way of Salem Avenue;

Thence South fifty-five degrees forty-eight minutes six seconds West (S 55°48'06" W), leaving the existing westerly right-of-way of Salem Avenue along the existing northerly right-of-way of Dartmouth Avenue for a distance of twenty and 00/100 feet (20.00') to a point being the westerly line of a proposed temporary construction easement, also being 57.50 feet left of station 321+49.13 of the centerline of right-of-way of Salem Avenue;

Thence leaving the existing northerly right-of-way of Dartmouth Avenue, along the westerly line of said proposed temporary construction easement the following three (3) courses:

1) North thirty-four degrees nine minutes nine seconds West (N 34°09'09" W) for a distance of ninety-eight and 89/100 feet (98.89') to a point being 57.50 feet left of station 322+48.02 of the centerline of right-of-way of Salem Avenue;
2) North fifty-five degree twenty-eight minutes forty-one seconds East (N 55°28'41" E) for a distance of five and 00/100 feet (5.00') to a point being 52.50 feet left of station 322+48.05 of the centerline of right-of-way of Salem Avenue;

3) North thirty-four degree nine minutes nine seconds West (N 34°09'09" W) for a distance of ninety and 00/100 feet (90.00') to the northerly property line of the grantor’s tract, also being in the southerly property line of a tract of land conveyed to St. Andrew’s Episcopal Church of Dayton, Ohio by deeds recorded in Deed Book 484, Page 594 and Deed Book 2288, Page 15, said point being 52.50 feet left of station 323+38.05 of the centerline of right-of-way of Salem Avenue;

Thence North fifty-five degrees twenty-eight minutes forty-one seconds East (N 55°28'41" E), leaving said proposed temporary construction easement along the northerly line of the grantor’s tract for a distance of fifteen and 00/100 feet (15.00’) to the existing westerly right-of-way of Salem Avenue, said point being 37.50 feet left of station 323+38.15 of the centerline of right-of-way of Salem Avenue;

Thence South thirty-four degrees nine minutes nine seconds East (S 34°09'09" E), leaving the northerly line of the grantor’s tract, along the existing westerly right-of-way of Salem Avenue for a distance of one hundred eighty-nine and 00/100 feet (189.00’) to the TRUE PLACE OF BEGINNING.

The above describe parcel contains a total of 764/10,000 acres (0.0764 acres) more or less from Auditor’s Parcel No. R72-07204-0005.

Prior Instrument Reference as of the date of this survey is I. R. Deed 09-008601 of the deed records of the Montgomery County, Ohio Recorder’s Office.

Iron pins designated as set are 5/8” diameter rods, 30” long with a yellow plastic cap stamped “BCS, LLS S-7366”

Bearings for this description are based State Plane Coordinate System for the State of Ohio (South Zone - 3402), NAD 83 (2011) 2010 epoch.

The above description was prepared under the direction and supervision of Paul W. Feie, Ohio Registered Surveyor No. 6723 in September of 2020, and is based upon a field survey performed by Briggs Creative Services, LLC for the City of Dayton, Ohio
EXHIBIT A

LPA RX 887 T

BRIGGS CREATIVE SERVICES, LLC

By: Paul W. Feie  Date: 5/24/2025
Paul W. Feie  Date
Ohio Registered Surveyor No. 6723
EXHIBIT B

LPA RX 851 WD

Page 1 of 2

Rev. 06/09

PID 108376

Ver. Date 01/26/2021

PARCEL 89-WD
MOT - SALEM AVENUE - PHASE 3
ALL RIGHT, TITLE AND INTEREST IN FEE SIMPLE
IN THE FOLLOWING DESCRIBED PROPERTY
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS
IN THE NAME AND FOR THE USE OF THE
THE CITY OF DAYTON, MONTGOMERY COUNTY, OHIO

Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, reserves all existing rights of ingress and egress to and from any residual area (as used herein, the expression “Grantor/Owner” includes the plural, and words in the masculine include the feminine or neuter).

[Surveyor’s description of the premises follows]

Situated in Section 29, Town 2, Range 6 East, the City of Dayton, Montgomery County, Ohio, and being part of that real estate conveyed to Pradeep P. Bekal by deed recorded in I. R. Deed 13-040427, also being part of Lot No. 32577 of the revised and consecutive Lot Numbers of the City of Dayton, of Dayton View Heights Subdivision as the same is recorded in Plat Book “H”, Page 13 (all references to deeds microfiche, plats, surveys, etc. refer to the records of the Montgomery County, Ohio Recorder’s Office, unless noted otherwise) with stations and offsets referenced to the centerline plat of survey for MOT-Salem Ave. Phase 3 as the same is recorded in Plat Book 251, Page 25, of the Montgomery County, Ohio Recorder’s Office, and being more particularly described as follows:

BEGINNING at the intersection of the existing northerly right-of-way of Kenilworth Avenue (a 50’ wide right-of-way) and the existing easterly right-of-way of Salem Avenue (a 75’ wide right-of-way), being the southwesterly corner of said Lot No. 32577, said point being 37.50 feet right of station 330+29.68 of the centerline of right-of-way of Salem Avenue;

Thence North thirty-four degrees nine minutes nine seconds West (N 34°09’09” W), leaving the existing northerly right-of-way of Kenilworth Avenue along the existing easterly right-of-way of Salem Avenue for a distance of ten and 03/100 feet (10.03’) to a set iron pin with cap being in the proposed easterly right-of-way of Salem Avenue, located 37.50 feet right of station 330+39.71 of the centerline of right-of-way of Salem Avenue;

Thence leaving the existing easterly right-of-way of Salem Avenue along the proposed easterly right-of-way of Salem Avenue along the arc of a curve to the left having a radius of ten and 00/100 feet (10.00’) for an arc distance of fifteen and 74/100 feet (15.74’), the chord of said arc
being subtended by a central angle of ninety degrees ten minutes eleven seconds (90°10’11") and a long chord bearing South seventy-nine degrees fourteen minutes fifteen seconds East (S 79°14’15” E) for a distance of fourteen and 16/100 feet (14.16’) to a set iron pin with cap being in the existing northerly right-of-way of Kenilworth Avenue, located 49.00 feet right of station 330+29.72 of the centerline of right-of-way of Salem Avenue;

Thence South fifty-five degrees forty minutes forty seconds West (S 55°40’40” W), leaving the proposed easterly right-of-way of Salem Avenue along the existing northerly right-of-way of Kenilworth Avenue for a distance of ten and 03/100 feet (10.03’) to the TRUE PLACE OF BEGINNING.

The above describe parcel contains a total of 5/10,000 acres (0.0005 acres) more or less from Auditor’s Parcel No. R72-06901-0001.

Prior Instrument Reference as of the date of this survey is I. R. Deed 13-040427 of the deed records of the Montgomery County, Ohio Recorder’s Office.

Iron pins designated as set are 5/8” diameter rods, 30” long with a yellow plastic cap stamped “BCS, LLS S-7366”

Bearings for this description are based State Plane Coordinate System for the State of Ohio (South Zone - 3402), NAD 83 (2011) 2010 epoch.

The above description was prepared under the direction and supervision of Paul W. Feie, Ohio Registered Surveyor No. 6723 in September of 2020, and is based upon a field survey performed by Briggs Creative Services, LLC for the City of Dayton, Ohio

BRIGGS CREATIVE SERVICES, LLC

By: 

Paul W. Feie 
Date 
Ohio Registered Surveyor No. 6723
EXHIBIT C

PARCEL 89-T
MOT - SALEM AVENUE - PHASE 3
TEMPORARY EASEMENT FOR THE PURPOSE OF
PERFORMING THE WORK NECESSARY TO
GRADING AND SEEDING
FOR 12 MONTHS FROM DATE OF ENTRY BY THE
THE CITY OF DAYTON, MONTGOMERY COUNTY, OHIO

Situated in Section 29, Town 2, Range 6 East, the City of Dayton, Montgomery County, Ohio, and being part of that real estate conveyed to Pradeep P. Bekal by deed recorded in I. R. Deed 13-040427, also being part of Lot No. 32577 of the revised and consecutive Lot Numbers of the City of Dayton, of Dayton View Heights Subdivision as the same is recorded in Plat Book “H”, Page 13 (all references to deeds microfiche, plats, surveys, etc. refer to the records of the Montgomery County, Ohio Recorder’s Office, unless noted otherwise) with stations and offsets referenced to the centerline plat of survey for MOT-Salem Ave, Phase 3 as the same is recorded in Plat Book 257, Page 25, of the Montgomery County, Ohio Recorder’s Office, and being more particularly described as follows:

COMMENCING at the intersection of the existing northerly right-of-way of Kenilworth Avenue (a 50’ wide right-of-way) and the existing easterly right-of-way of Salem Avenue (a 75’ wide right-of-way), being the southwesterly corner of said Lot No. 32577, said point being 37.50 feet right of station 330+29.68 of the centerline of right-of-way of Salem Avenue;

Thence North thirty-four degrees nine minutes nine seconds West (N 34°09'09" W), leaving the existing northerly right-of-way of Kenilworth Avenue along the existing easterly right-of-way of Salem Avenue for a distance of ten and 03/100 feet (10.03’) to a set iron pin with cap, located 37.50 feet right of station 330+39.71 of the centerline of right-of-right of Salem Avenue, also being the TRUE PLACE OF BEGINNING for the land herein described;

Thence North thirty-four degrees nine minutes nine seconds West (N 34°09'09" W), continuing along the existing easterly right-of-way of Salem Avenue for a distance of ninety-one and 68/100 feet (91.68’) to the northerly line of the grantor, also being in the southerly line of a tract of land conveyed to the City of Dayton by deed recorded in I. R. Deed 13-047737, also being 37.50 feet right of station 331+31.39 of the centerline of right-of-way of Salem Avenue;

Thence North fifty-eight degrees thirty-one minutes five seconds East (N 58°31'05" E), leaving the existing easterly right-of-way of Salem Avenue, along the north line of the grantor’s tract for
EXHIBIT C

LPA RX 887 T

a distance of ten and 01/100 feet (10.01’) to the easterly line of a proposed construction
easement, being located 47.50 feet right of station 331+30.92 of the centerline of right-of-way of
Salem Avenue;

Thence South thirty-four degrees ten minutes nine seconds East (S 34°10’09” E), leaving the
existing north line of the grantor’s tract along the easterly line of said proposed temporary
construction easement for a distance of one hundred one and 21/100 feet (101.21’) to a set iron
pin with cap, being in the existing northerly right-of-way of Kenilworth Avenue and the
proposed easterly right-of-way of Salem Avenue, being located 49.00 feet right of station
330+29.72 of the centerline of right-of-way of Salem Avenue;

Thence leaving the existing northerly right-of-way of Kenilworth Avenue along the proposed
easterly right-of-way of Salem Avenue along the arc of a curve to the right having a radius of ten
and 00/100 feet (10.00’) for an arc distance of fifteen and 74/100 feet (15.74’), the chord of said
arc being subtended by a central angle of ninety degrees ten minutes eleven seconds (90°10’11”)
and a long chord bearing South seventy-nine degrees fourteen minutes fifteen seconds East (S
79°14’15” E) for a distance of fourteen and 16/100 feet (14.16’) to the TRUE PLACE OF
BEGINNING.

The above describe parcel contains a total of 228/10,000 acres (0.0228 acres) more or less from
Auditor’s Parcel No. R72-06901-0001.

Prior Instrument Reference as of the date of this survey is I. R. Deed 13-040427 of the deed
records of the Montgomery County, Ohio Recorder’s Office.

Iron pins designated as set are 5/8” diameter rods, 30” long with a yellow plastic cap stamped
“BCS, LLS S-7366”

Bearings for this description are based State Plane Coordinate System for the State of Ohio
(South Zone - 3402), NAD 83 (2011) 2010 epoch.

The above description was prepared under the direction and supervision of Paul W. Feie, Ohio
Registered Surveyor No. 6723 in September of 2020, and is based upon a field survey performed
by Briggs Creative Services, LLC for the City of Dayton, Ohio
EXHIBIT C

BRIGGS CREATIVE SERVICES, LLC

By: [Signature]   [Date]
Paul W. Feie   Date
Ohio Registered Surveyor No. 6723
EXHIBIT D

PARCEL 92-T
MOT - SALEM AVENUE - PHASE 3
TEMPORARY EASEMENT FOR THE PURPOSE OF
PERFORMING THE WORK NECESSARY TO
GRADING AND SEEDING
FOR 12 MONTHS FROM DATE OF ENTRY BY THE
THE CITY OF DAYTON, MONTGOMERY COUNTY, OHIO

[Surveyor's description of the premises follows]

Situated in Section 20, Town 2, Range 6 East, the City of Dayton, Montgomery County, Ohio,
and being part of that real estate conveyed to Elegansky, LLC by deeds recorded in L.R. Deed 17-
041919 and 1. R. Deed 18-030002, also being part of Lot Nos. 30955 and 30956 of the revised
and consecutive Lot Numbers of the City of Dayton, of Heidelberg Heights Subdivision as the
same is recorded in Plat Book “G”, Page 58 (all references to deeds microfiche, plats, surveys,
etc. refer to the records of the Montgomery County, Ohio Recorder's Office, unless noted
otherwise) with stations and offsets referenced to the centerline plat of survey for MOT-Salem
Ave. Phase 3 as the same is recorded in Plat Book 257, Page 25, of the Montgomery
County, Ohio Recorder's Office, and being more particularly described as follows:

COMMENCING at the intersection of the existing northerly right-of-way of Delaware Avenue
(a 40' wide right-of-way) and the existing easterly right-of-way of Salem Avenue (a 75' wide
right-of-way), being North thirty-four degrees nine minutes nine seconds West (N 34°09'09" W)
three and 31/100 feet (3.31') from the original southwesterly corner of said Lot No. 30954, said
point being the northwesterly corner of a tract of land conveyed to the City of Dayton, Ohio by
deed recorded in Deed Book 1776, Page 638, said point being 37.50 feet right of station
332+99.69 of the centerline of right-of-way of Salem Avenue;

Thence North thirty-four degrees nine minutes nine seconds West, (N 34°09'09" W), continuing
along the existing easterly right-of-way of Salem Avenue for a distance of sixty and 54/100 feet
(60.54') to the southwesterly corner of the grantor's tract, located 37.50 feet right of station
333+60.23 of the centerline of right-of-way of Salem Avenue, said point being the TRUE
PLACE OF BEGINNING for the land herein described;

Thence North thirty-four degrees nine minutes nine seconds West (N 34°09'09" W), continuing
along the existing easterly right-of-way of Salem Avenue for a distance of eighty and 08/100 feet
(80.08'), being located 37.50 feet right of station 334+40.31 of the centerline of right-of-way of
Salem Avenue;
EXHIBIT D

Thence North fifty-five degrees thirty-five minutes eighteen seconds East (N 55°35'18" E), leaving the existing easterly right-of-way of Salem Avenue for a distance of four and 00/100 feet (4.00') to the easterly line of a proposed temporary construction easement, being 41.50 feet right of station 334+40.33 of the centerline of right-of-way of Salem Avenue;

Thence South thirty-four degrees nine minutes nine seconds East (S 34°09'09" E) along the easterly line of said proposed temporary construction easement for a distance of eighty and 09/100 feet (80.09") to the southerly line of the grantor’s tract, being 41.50 feet right of station 333+60.24 of the centerline of right-of-way of Salem Avenue;

Thence South fifty-five degrees forty-five minutes fifty-one seconds West (S 55°45'51" W), leaving said proposed temporary construction easement along the southerly line of the grantor’s tract for a distance of four and 00/100 feet (4.00') to the TRUE PLACE OF BEGINNING.

The above describe parcel contains a total of 74/10,000 acres (0.0074 acres) more or less from Auditor's Parcel No. R72-06911-0003.

Prior Instrument Reference as of the date of this survey are I. R. Deed 17-041919 and I. R. Deed 18-030002 of the deed records of the Montgomery County, Ohio Recorder's Office.

Iron pins designated as set are 5/8" diameter rods, 30" long with a yellow plastic cap stamped “BCS, LLS S-7366”

Bearings for this description are based State Plane Coordinate System for the State of Ohio (South Zone - 3402), NAD 83 (2011) 2010 epoch.

The above description was prepared under the direction and supervision of Paul W. Feie, Ohio Registered Surveyor No. 6723 in September of 2020, and is based upon a field survey performed by Briggs Creative Services, LLC for the City of Dayton, Ohio.

BRIGGS CREATIVE SERVICES, LLC

By: [Signature]
Paul W. Feie
Date 5/23/2021
Ohio Registered Surveyor No. 6723