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 Hearing: N/A
12. Discussion Item: N/A
13. Comments by Citizens - Please register to speak with the Clerk of Commission
   (Non - Calendar items) sign-up sheets at entrance of Commission Chambers
14. Comments by City Manager
15. Comments by City Commission
16. Work Session: N/A
17. Miscellaneous (See Section VI)

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

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

1. Purchase Orders:

   **AVIATION**
   A1. American Assoc. of Airport Executives (annual service, maintenance, and support agreement for the Interactive Employee Training System - IETS) $13,200.00
1. (Cont’d):

### ECONOMIC DEVELOPMENT

| B1. Bladecutter’s Lawn Service, Inc. (commercial ground maintenance services through 12-31-20) | $61,005.00 |

### FIRE

| C1. Acme Spring, Inc. (heavy duty fire equipment repair parts and services as needed through 04-30-21) | 9,000.00 |
| C2. P H & S Products LLC (EMS examination gloves through 03-31-21) | 10,000.00 |
| C3. Stryker Medical (one Stryker power load system and cot) – PO200878 | 43,479.34 |
| C4. Stryker Medical (eight automated CPR Lucas three devices) – PO200879 | 111,509.60 |
| C5. Stryker Medical (two Lifepak monitors/defibrillators and accessories) – PO200880 | 57,831.12 |

### INFORMATION TECHNOLOGY

| D1. Dell Marketing LP (Microsoft computer software licensure and support agreement through 12-31-22) – PO200869 | 1,482,768.81 |
| D2. Dell Marketing LP (Microsoft server and cloud enrollment – SCE through 12-31-22) – PO200870 | 428,203.53 |

### LAW

| E1. Calfee Halter & Griswold LLP (professional legal services as needed through 12-31-20) | 70,000.00 |

### POLICE

| F1. Kiesler Police Supply (Patrol rifle upgrades through 03-31-23) | 97,748.80 |
| F2. Moonlight Security, Inc. (armed security services as needed through 12-31-23) | 10,700.00 |

### PUBLIC WORKS

| G1. Dailey’s Lawn and Landscaping (repair damaged brick work) | 10,450.00 |
| G2. Quality Masonry Company, Inc. (repair damaged brick work) | 14,600.00 |
| G3. Garland/DBS, Inc. (roof repair and replacement including removal and installation services) – PO200863 | 235,339.00 |
| G4. Garland/DBS, Inc. (roof repair and replacement including removal and installation services) – PO200864 | 245,476.00 |
1. (Cont’d):

**G5. Kimmatt Corp.** (installation of tempered glass through 03-31-21) **$12,000.00**

**G6. Site-Safe Products LLC dba Site-Safe LLC** (crash attenuator parts and related traffic safety products as needed through 12-31-20) **27,815.94**

**WATER**

**H1. DXP Enterprises, Inc.** (Pulsa feeder brand parts and related items as needed through 12-31-20) **15,000.00**

**H2. M L Johnson Company** (repair and calibration of gas flow meters, level sensors and magmeters) **15,000.00**

**H3. Miami Industrial Trucks, Inc.** (one forklift) **33,321.54**

**Total:** $3,004,448.68


**$27,200.00**

(Thru 04/31/21)

3. **Briggs Creative Services, LLC – Service Agreement** – for professional surveying services in connection with the Salem Avenue Reconstruction Phase 3 and the Wayne Avenue Widening projects – Dept. of Public Works/Civil Engineering.

**$70,172.00**

(Thru 12/31/25)

4. **Development Projects Inc. – Service Agreement** – to manage and administer the activities of the Dayton Region Israel Trade Alliance – DRITA – Dept. of Economic Development.

**$113,000.00**

(Thru 12/31/21)

5. **Fifth Third Bank – Contract Modification** – to receive a currency processing solution – Dept. of Economic Development. **$18,780.00**

(Thru 5 years)

6. **Hazen & Sawyer – Service Agreement** – for the design phase of the Phase 1 Anaerobic Digester Project for the Water Reclamation Facility – Dept. of Water/Water Reclamation.

**$8,500,000.00**

(Thru 12/31/26)
7. **O. R. Colan Associates LLC** – **Service Agreement** – to perform property acquisition services in connection with the Salem Avenue Reconstruction Phase 2 and the West Hillcrest Sidewalk Phase 2 projects – Dept. of Public Works/Civil Engineering. $116,880.00 (Thru 12/31/26)

8. **Progress Corporation** – **Service Agreement** – for licensing, maintenance and support services for the Progress Relational Database Management System platform that supports the Public Safety Management Information System – Dept. of Central Services/Information Technology. $52,650.68 (Thru 12/31/20)

9. **Turn-Key Environmental Consultants, Inc.** – **Service Agreement** – for environmental consulting and testing services on an as-needed basis – Dept. of Economic Development. $50,000.00 (Thru 12/31/22)

10. **Wood Environment & Infrastructure Solutions, Inc.** – **Service Agreement** – for environmental consulting and testing services on an as-needed basis – Dept. of Economic Development. $50,000.00 (Thru 12/31/22)

B. **Construction Contracts:**

11. **Brumbaugh Construction, Inc.** – **Award of Contract** – for the 2020 Wyoming Street 2 Reconstruction (10% MBE and 5% WBE Participation Goal/10.58% MBE and 5.08% WBE Participation Achieved) (State Issue I Funds) – Dept. of Public Works/Civil Engineering. $630,123.00 (Thru 08/30/22)

12. **Double Jay Construction, Inc.** – **Award of Contract** – for the Springfield Street Reconstruction & Water Main Replacement Phase III (8% DBE Participation Goal/12.4% DBE Participation Achieved) (Federal Construction Funds) – Dept. of Public Works/Civil Engineering. $1,646,636.80 (Thru 08/30/22)
13. **John R. Jurgensen Company – Award of Contract**— for the 2020 Residential Asphalt Resurfacing II (5% SBE & 15% MBE Participation Goal/5.03% SBE and 15.19% MBE Participation Achieved) – Dept. of Public Works/Civil Engineering. $2,310,180.96 (Thru 08/14/22)

**C. Revenue to City:**

14. **Miami Valley Hospital – Other** – for Special Use Permit to install storm pipe beneath Wyoming Street east of the intersection of North Main Street into the public right-of-way at One Wyoming Street – Dept. of Public Works/Civil Engineering. $200.00

**D. Neighborhood Agreement:**

15. **Wright-Dunbar, Inc. – Development Agreement** – to assist with funding building improvements, HVAC system upgrades, machinery and equipment, signage and lighting for property located at 1100 West Third Street – Dept. of Economic Development. $250,000.00 (Thru 12/31/21)

**E. Other – Contributions, Etc.:**

16. **Vandalia-Butler City Schools – Other** – for the Community Reinvestment Area (CRA) Income Tax Sharing Payments – Dept. of Economic Development. $215,430.79 (Thru 12/31/20)

**BY THE BOARD OF REVISION OF ASSESSMENTS**

17. In the Matter of Declaring the Intention of the Commission to Vacate the Alley North of East Third Street from the Alley East of More Avenue to the East Property Line of City Lot #30313 - Recommendation to Proceed.

18. In the Matter of Declaring the Intention of the Commission to Vacate the Alley North of West Second Street from North Conover Street to the Railroad Right-of-Way - Recommendation to Proceed.
IV. LEGISLATION:

Emergency Ordinances – First and Second Reading:

19. **No. 31804-20** Authorizing the City of Dayton to enter into a Guarantee Agreement with Victoria Theatre Association for a Public Purpose, and Declaring an Emergency.

20. **No. 31805-20** Authorizing the Submission, Acceptance, Acquisition and Purchase of Two Hundred Sixteen (216) Properties from Montgomery County, Ohio, and the Subsequent Disposition of those Properties in Connection with the Real Estate Acquisition Program ("REAP"), and Declaring an Emergency.

Emergency Resolutions – First and Second Reading:

21. **No. 6498-20** Authorizing the Acceptance of Equipment from the Montgomery County Emergency Management Agency on Behalf of the City of Dayton, and Declaring an Emergency.

22. **No. 6499-20** Ratifying the Acceptance of a Technology Grant Award from the Ohio Supreme Court in the Amount of Fourteen Thousand Eight Hundred Fifty-Eight Dollars and Fifty Cents ($14,858.50), and Declaring an Emergency.

23. **No. 6500-20** Authorizing the City Manager to Apply for, Accept, and Enter Into a Water Pollution Control Loan Fund ("WPCLF") Loan Agreement on Behalf of the City of Dayton, Ohio for Design of the Water Reclamation Facility Phase I Anaerobic Digester Project, and Designating a Dedicated Repayment Source for the Loan, and Declaring an Emergency.

25. **No. 6502-20** Approving the Necessity of Acquiring, Constructing, and Improving Certain Public Improvements in the City of Dayton, Ohio in Cooperation with the Dayton Regional Energy Special Improvement District, and Declaring an Emergency.

**Ordinances – First Reading:**

26. **No. 31806-20** To Vacate the Alley North of East Third Street from the Alley East of More Avenue to the East Property Line of City Lot #30313.

27. **No. 31807-20** To Vacate the Alley North of West Second Street from North Conover Street to the Railroad Right of Way.

28. **No. 31808-20** Consenting to the Painting Bridges of U.S. State Route 35 Within the City of Dayton, and Agreeing to Cooperate in Matters Incidental Thereto, Including the Execution of Agreements Necessary to Implement this Ordinance.

**Resolution – Second Reading:**

29. **No. 6492-20** Honorably Naming Barnet Street Between Home Avenue and West Fifth Street as Ronald C. Foster Way.

VI. **MISCELLANEOUS:**

**ORDINANCE NO. 31809-20**

**RESOLUTION NO. 6503-20**

**IMPROVEMENT RESOLUTION NO. 3598-20**

**INFORMAL RESOLUTION NO. 978-20**
City Manager’s Report

From 2730 – PMB/Procurement

Supplier, Vendor, Company, Individual

Name See Below
Address See Below

2020 Purchase Orders

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

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

Description

AVIATION

(A1) P0200867 – AMERICAN ASSOC OF AIRPORT EXECUTIVES, ALEXANDRIA, VA

• Annual service, maintenance, and support agreement for the Interactive Employee Training System (IETS).
• These services are required to provide employee training to ensure compliance with Federal regulations and will provide a training system that includes continuous operation, version upgrades, system enhancements and technical support.
• American Assoc of Airport Executives is recommended as the original software developer and sole source of this proprietary service agreement; therefore, this purchase was negotiated.
• The Department of Aviation recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<tr>
<td>2020</td>
<td>Technology Software</td>
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</table>

Signatures/Approval

Approved by City Commission

FORM NO. MS-16

Updated 06/2016
ECONOMIC DEVELOPMENT

(B1) P0200865 – BLADECUTTER'S LAWN SERVICE, INC., HARRISON TOWNSHIP, OH

- Commercial ground maintenance services through 12/31/2020.
- These services are required to maintain fifty-four (54) acres of City owned property associated with the Home Avenue Project which is overseen by Economic Development.
- Rates are in accordance with the City of Dayton's existing price agreement IFB D19017 with pricing through 12/31/2020.
- The Department of Economic Development recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
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<tr>
<td>2020</td>
<td>Other Professional Services</td>
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<td>$61,005.00</td>
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</tbody>
</table>

FIRE

(C1) P0200183 – ACME SPRING, INC., DAYTON, OH

- Heavy duty fire equipment repair parts and services as needed through 12/31/2020.
- These goods and services are required to repair Department of Fire heavy duty equipment.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB U16022 with pricing extended through 4/30/2021.
- This amendment increases the previously authorized amount of $10,000.00 by $9,000.00 for a total not to exceed $19,000.00 and therefore requires City Commission approval.
- Acme Spring, Inc. qualifies as a Dayton local entity.
- The Department of Fire recommends approval of this order.

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<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>2020</td>
<td>Other Equipment Maintenance</td>
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<td>$9,000.00</td>
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</table>

(C2) P0200008 – P H & S PRODUCTS LLC, MINERVA, OH

- EMS examination gloves.
- These goods are required to protect Fire and EMS employees during normal daily tasks including protection from the Covid-19 virus.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB S17021 with firm pricing extended through 3/31/2021.
- This amendment increases the previously authorized amount of $9,000.00 by $10,000.00 for a total not to exceed $19,000.00 and therefore requires City Commission approval.
- The Department of Fire recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
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<th>Fund Amount(s)</th>
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<tbody>
<tr>
<td>2020</td>
<td>Supplies and Materials</td>
<td>10000-6330-1301-71</td>
<td>$10,000.00</td>
</tr>
</tbody>
</table>
FIRE (CONTINUED)

(C3) P0200878 – STRYKER MEDICAL, CHICAGO, IL
- One (1) Stryker power load system and cot.
- These goods are required to equip the medic crews with lifesaving equipment.
- Stryker Medical is recommended as the Original Equipment Manufacturer (OEM); therefore, this purchase was negotiated.
- The Department of Fire recommends approval of this order.

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<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
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<tr>
<td>2020</td>
<td>Motorized Equipment</td>
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<td>$43,479.34</td>
</tr>
</tbody>
</table>

(C4) P0200879 – STRYKER MEDICAL, CHICAGO, IL
- Eight (8) automated CPR Lucas 3 devices.
- These goods are required to equip the medic crews with lifesaving equipment.
- Rates are in accordance with the State of Ohio Term Schedule Contract pricing #800799 and Index #STS652.
- The Department of Fire recommends approval of this order.

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<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
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<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2020</td>
<td>Furniture, Fixtures &amp; Equip Assets</td>
<td>16122-6330-1411-71</td>
<td>$110,000.00</td>
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<tr>
<td></td>
<td>Furniture, Fixtures &amp; Equip Assets</td>
<td>10000-6340-1411-71</td>
<td>$1,509.60</td>
</tr>
</tbody>
</table>

(C5) P0200880 – STRYKER MEDICAL, CHICAGO, IL
- Two (2) Lifepak monitors/defibrillators and accessories.
- These goods are required to equip the medic crews with lifesaving equipment.
- Rates are in accordance with the State of Ohio Term Schedule Contract pricing #800799 and Index #STS652.
- The Department of Fire recommends approval of this order.

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<tr>
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<tbody>
<tr>
<td>2020</td>
<td>Computer Hardware</td>
<td>40018-6330-1413-71</td>
<td>$57,831.12</td>
</tr>
</tbody>
</table>
INFORMATION TECHNOLOGY

(D1) P0200869 – DELL MARKETING LP, ROUND ROCK, TX

- Microsoft computer software licensure and support agreement.
- These goods and services are required to provide Microsoft brand computer software to the City organization.
- Rates are in accordance with the State of Ohio Term Schedule Contract pricing #0A1252.
- This order provides firm pricing for Microsoft products and related services for three (3) years and amortizes the City’s expense for these products over that same three-year period, interest free.
- The Departments of Information Technology and Water request additional authority of $988,512.54 through 12/31/2022.
- The Departments of Information Technology and Water recommend approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
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<td>2020</td>
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<td>10000-5560-1166-65</td>
<td>$398,453.18</td>
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<td>2020</td>
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<td>53000-3421-1164-54</td>
<td>$95,803.09</td>
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<td>2021</td>
<td>Maintenance Agreements</td>
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<td>$398,453.18</td>
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<td>2021</td>
<td>Computer Maintenance</td>
<td>53000-3421-1164-54</td>
<td>$95,803.09</td>
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<tr>
<td>2022</td>
<td>Maintenance Agreements</td>
<td>10000-5560-1166-65</td>
<td>$398,453.18</td>
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<tr>
<td>2022</td>
<td>Computer Maintenance</td>
<td>53000-3421-1164-54</td>
<td>$95,803.09</td>
</tr>
</tbody>
</table>

(D2) P0200870 – DELL MARKETING LP, ROUND ROCK, TX

- Microsoft server and cloud enrollment (SCE).
- These goods and services are required to enhance the enterprise computing environment.
- Rates are in accordance with the State of Ohio Term Schedule Contract pricing #0A1252.
- This order provides firm pricing for Microsoft products and related services for three (3) years and amortizes the City’s expense for these products over that same three-year period, interest free.
- The Departments of Information Technology and Water request additional authority of $285,469.02 through 12/31/2022.
- The Departments of Information Technology and Water recommend approval of this order.

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<tbody>
<tr>
<td>2020</td>
<td>Maintenance Agreements</td>
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<td>$33,559.54</td>
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<tr>
<td>2020</td>
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<td>53000-3421-1164-54</td>
<td>$109,174.97</td>
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<td>2021</td>
<td>Maintenance Agreements</td>
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<td>$33,559.54</td>
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<td>2021</td>
<td>Computer Maintenance</td>
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<tr>
<td>2022</td>
<td>Maintenance Agreements</td>
<td>10000-5560-1166-65</td>
<td>$33,559.54</td>
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<tr>
<td>2022</td>
<td>Computer Maintenance</td>
<td>53000-3421-1164-54</td>
<td>$109,174.97</td>
</tr>
</tbody>
</table>
LAW

(E1) P0200790 – CALFEE HALTER & GRISWOLD LLP, CINCINNATI, OH
- Professional legal services as needed through 12/31/2020.
- These services are required to provide legal consultation and representation on behalf of the City related to distribution rates and electric aggregation.
- The law firm of Calfee Halter & Griswold LLP is recommended based upon past proven performance and subject matter expertise; therefore, this purchase was negotiated.
- The Department of Law recommends approval of this order.

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<thead>
<tr>
<th>Fiscal Year</th>
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<tr>
<td>2020</td>
<td>Legal Services</td>
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<td>$70,000.00</td>
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</tbody>
</table>

POLICE

(F1) P0200877 – KIESLER POLICE SUPPLY, JEFFERSONVILLE, IN
- Patrol rifle upgrades.
- These goods are required to arm our police officers for duty, practice and evaluations.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 19013S with firm pricing through 3/31/2023.
- The Department of Police recommends approval of this order.

<table>
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<tr>
<td>2020</td>
<td>Supplies and Materials</td>
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<td>$97,748.80</td>
</tr>
</tbody>
</table>

(F2) P0200306 – MOONLIGHT SECURITY, INC., WEST CARROLLTON, OH
- Armed security services as needed through 12/31/2020.
- These services are required to provide security for in custody prisoners while in the hospital before being booked into the County Jail.
- Rates are in accordance with the City of Dayton’s existing price agreement RFP 18009CSFM with pricing through 12/31/2023.
- This amendment increases the previously authorized amount of $89,500.00 by $10,700.00 for a total not to exceed $100,200.00 and therefore requires City Commission approval.
- The Department of Police recommends approval of this order.

<table>
<thead>
<tr>
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<th>Fund Source(s)</th>
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<tbody>
<tr>
<td>2020</td>
<td>Security Services</td>
<td>10000-6221-1157-71</td>
<td>$10,700.00</td>
</tr>
</tbody>
</table>
PUBLIC WORKS – CIVIL ENGINEERING

(G1) P0200882 – DAILEY’S LAWN AND LANDSCAPING, DAYTON, OH
- Repair damaged brick work.
- These goods and services are required to fix damage caused by a vehicle crash.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 20019D.
- Dailey’s Lawn and Landscaping qualifies as a Dayton local entity.
- The Department of Public Works recommends approval of this order.

<table>
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<th>Fund Amount(s)</th>
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<td>2020</td>
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<td>Buildings</td>
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</table>

(G2) P0200881 – QUALITY MASONRY COMPANY, INC., MARION, OH
- Repair damaged brick work.
- These goods and services are required to fix damage caused by a vehicle crash.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 20019D.
- The Department of Public Works recommends approval of this order.

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<thead>
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<tr>
<td>2020</td>
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</table>

PUBLIC WORKS – PROPERTY MANAGEMENT

(G3) P0200863 – GARLAND/DBS, INC., CLEVELAND, OH
- Roof repair and replacement including removal and installation services.
- These goods and services are required to replace roofing at Lohrey Recreation Center.
- Rates are in accordance with the public, cooperative bid established with the US Communities Master Intergovernmental Cooperative Purchasing Agreement (MICPA) Contract #PW1925.
- The Department of Public Works recommends approval of this order.

<table>
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</table>
PUBLIC WORKS – PROPERTY MANAGEMENT (CONTINUED)

(G4) P0200864 – GARLAND/DBS, INC., CLEVELAND, OH
- Roof repair and replacement including removal and installation services.
- These goods and services are required to replace roofing at Fire Station #2.
- Rates are in accordance with the public, cooperative bid established with the US Communities Master Intergovernmental Cooperative Purchasing Agreement (MICPA) Contract #PW1925.
- The Department of Public Works recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2020</td>
<td>Improvements other than Buildings</td>
<td>49008-6480-1423-54</td>
<td>$240,000.00</td>
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<tr>
<td>2020</td>
<td>Improvements other than Buildings</td>
<td>40003-6480-1423-54</td>
<td>$5,476.00</td>
</tr>
</tbody>
</table>

(G5) P0200437 – KIMMATT CORP., DAYTON, OH
- Installation of tempered glass.
- These goods and services are required for repairs at the Dunbar Field Office.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB S17012 with firm pricing through 3/31/2021.
- This amendment increases the previously authorized amount of $3,000.00 by $12,000.00 for a total not to exceed $15,000.00 and therefore requires City Commission approval.
- Kimmatt Corp qualifies as a Dayton local entity.
- 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>2020</td>
<td>Improvements other than Buildings</td>
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<td>$12,000.00</td>
</tr>
</tbody>
</table>

PUBLIC WORKS – STREET MAINTENANCE

(G6) P0200853 – SITE-SAFE PRODUCTS LLC dba SITE-SAFE LLC, COLUMBUS, OH
- Crash attenuator parts and related traffic safety products as needed through 12/31/2020.
- These goods are required to maintain and repair crash attenuators to ensure traffic safety.
- Site-Safe Products LLC dba Site-Safe LLC is recommended as the sole regional distributor of the Energy Absorption System; 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>
</tr>
</thead>
<tbody>
<tr>
<td>2020</td>
<td>Supplies and Materials</td>
<td>21100-6430-1301-54</td>
<td>$27,815.94</td>
</tr>
</tbody>
</table>
WATER – WATER RECLAMATION

(H1) P0200491 – DXP ENTERPRISES, INC., CINCINNATI, OH
- Pulsa feeder brand parts and related items as needed through 12/31/2020.
- These goods are required to maintain the bleach pumps for the controlling of Wastewater Treatment Plant processes.
- DXP Enterprises is recommended as the sole authorized distributor for Pulsa feeder brand parts; therefore, this purchase was negotiated.
- This amendment increases the previously authorized amount of $15,000.00 by $15,000.00 for a total not to exceed $30,000.00 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>
</tr>
</thead>
<tbody>
<tr>
<td>2020</td>
<td>Supplies and Materials</td>
<td>55000-3460-1301-54</td>
<td>$15,000.00</td>
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(H2) P0200883 – M L JOHNSON COMPANY, CINCINNATI, OH
- Repair and calibration of gas flow meters, level sensors and magmeters.
- These services are required to provide necessary data feedback for the controlling of Wastewater Treatment Plant processes.
- M L Johnson Company is recommended as the exclusive representative for this area; therefore, this purchase was negotiated.
- The Department of Water recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
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<tbody>
<tr>
<td>2020</td>
<td>Other Equipment</td>
<td>55000-3460-1167-54</td>
<td>$15,000.00</td>
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</table>

WATER – WATER UTILITY FIELD OPERATIONS

(H3) P0200871 – MIAMI INDUSTRIAL TRUCKS, INC., MORaine, OH
- One (1) forklift.
- This equipment is required to support the daily operations of the Division of Water Utility Field Operations and will replace Unit #1065 which will be disposed of in the best interest of the City.
- Rates are in accordance with the Sourcewell Contract #032119-CAT.
- 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>
</tr>
</thead>
<tbody>
<tr>
<td>2020</td>
<td>Motorized Equipment</td>
<td>53000-3445-1412-54</td>
<td>$33,321.54</td>
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The aforementioned departments recommend approval of this order.
City Manager's Report

From: 5560 - CS/Information Technology
Supplier, Vendor, Company, Individual
Name: Avenu Government Systems, LLC
Address: 130 Division Street
Waite Park, MN 56387

Date: May 13, 2020
Expense Type: Service Agreement
Total Amount: $27,200.00 (Thru 04/30/2021)

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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</thead>
<tbody>
<tr>
<td>General Fund</td>
<td>10000-5560-1166-65</td>
<td>$27,200.00</td>
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Includes Revenue to the City: Yes
Affirmative Action Program: Yes

Description

REMOTE DATABASE ADMINISTRATION SERVICE AGREEMENT FOR BANNER SYSTEM

The Department of Information Technology requests permission to enter into a Service Agreement with Avenu Government Systems, LLC in the amount of $27,200.00. Avenu will provide Remote Database Administration (RDBA) services and maintenance help for the Oracle Relational Database Management System platform that supports Banner Finance, Human Resources, General Ledger and Procurement modules. The total amount of this agreement is $27,200.00 which includes reimbursable expenses of $2,000.00 for travel related to on-site assistance not covered under the contractual service hour cost of $25,200.00.

Avenu Government Systems, LLC is the sole source provider of Banner sales, support and services to the local government market.

This Agreement shall commence upon execution and it shall terminate on April 30, 2021.

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

The Certificate of Funds and a copy of the Agreement is attached.

Signatures/Approval

<table>
<thead>
<tr>
<th>Division</th>
<th>Department</th>
<th>City Manager</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kenneth R. Couch</td>
<td></td>
<td>FORM NO. MS-16</td>
</tr>
</tbody>
</table>

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>________</th>
<th>Renewal Contract</th>
<th>________</th>
<th>Change Order:</th>
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<tbody>
<tr>
<td></td>
<td>Contract Start Date</td>
<td>Upon Execution</td>
<td>Expiration Date</td>
<td>04/30/21</td>
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<td>Original Commission Approval</td>
<td>$ 27,200.00</td>
<td>Initial Encumbrance</td>
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<tr>
<td></td>
<td>Remaining Commission Approval</td>
<td>$ -</td>
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<td></td>
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<td></td>
<td>Original CT/CF</td>
<td>Increase Encumbrance</td>
<td>Decrease Encumbrance</td>
<td>Remaining Commission Approval</td>
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</table>

<table>
<thead>
<tr>
<th>Required Documentation</th>
<th>X</th>
<th>Initial City Manager's Report</th>
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<tbody>
<tr>
<td></td>
<td>X</td>
<td>Initial Certificate of Funds</td>
</tr>
<tr>
<td></td>
<td>X</td>
<td>Initial Agreement/Contract</td>
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</tbody>
</table>

| Amount: | $ 27,200.00 |

<table>
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<tr>
<th>Fund Code</th>
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<tbody>
<tr>
<td>Fund</td>
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</table>

| Amount: | |

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

Attach additional pages for more FOAPALs

Vendor Name: Avenu Government Systems, LLC

Vendor Address: 130 Division Street Waite Park MN 56387

Street City State Zipcode + 4

Federal ID: 232154345

Commodity Code: 94620

Purpose: Avenu Government Systems, LLC will provide remote database administration services and support for the Banner database upon execution of the agreement through April 30, 2021.

Contact Person: Desa Foster

Central Services/Information Technology Department/Division Date

Originating Department Director's Signature: Kenneth R. Couch

Finance Director's Signature: [Signature]

Date: 04/29/2020

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully 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's Signature: [Signature]

Date: 04/29/2020

Finance Department

October 18, 2011
Technology Services Agreement

Avenu Government Systems, LLC
City of Dayton, Ohio

This agreement for technology services ("Agreement"), is made by and between Avenu Government Systems, LLC, FKA Conduent Government Systems, L.L.C., 130 Division Street, Waite Park, MN 56387 ("Avenu"), and the City of Dayton, a government entity in the State of Ohio, 130 West 2nd Street, Dayton, OH 45402 ("Client"). Avenu and Client (each individually a “party” and collectively the “parties”) agree as follows:

1. SERVICES  Avenu agrees to provide to Client the technology services described in the Statement of Work ("Services"), which is attached to and incorporated in this Agreement as Schedule A, in accordance with the terms and conditions set forth in this Agreement.

2. TERM  This Agreement will become effective on May 1, 2020 ("Effective Date") and will continue through April 30, 2021 ("End Date"), unless otherwise extended or terminated by the parties in accordance with the provisions of this Agreement ("Term").

3. COMPENSATION AND PAYMENT  Client agrees to pay Avenu for the Services, as set forth in Schedule A, Section C, including any partially completed work performed to the date of termination for loss of funding or any other reason except default by Avenu. Avenu will submit a monthly invoice to Client for each payment due, and Client agrees to pay each invoice within thirty (30) calendar days after receipt of the invoice.

4. TAXES  If Client is by law exempt from property taxes or sales and use taxes, those taxes will not be included in invoices submitted to the Client under this Agreement. Avenu may be considered a limited agent of Client for the sole purpose of purchasing goods or services on behalf of Client without payment of taxes from which Client is exempt. If Avenu is required to pay taxes by determination of a proper taxing authority having jurisdiction over the products or services provided under this Agreement, Client agrees to reimburse Avenu for payment of those taxes.

5. DELIVERY AND ACCEPTANCE  Client will have ten (10) business days after notification by Avenu that a portion of the Services are complete and ready for acceptance to inspect and accept or decline that portion of the Services. If Client declines to accept all or any part of the Services, Client will provide Avenu a written description of the deficiencies and a reasonable opportunity to cure those deficiencies. Client will indicate acceptance of the Services in writing. However, if Client fails to accept or decline the Services and deliver a written list of deficiencies to Avenu within ten (10) business days after receipt of notice of delivery, the Services will be deemed to have been accepted by Client.

6. CONFIDENTIALITY  With respect to Client business information that is confidential and clearly designated as confidential ("Client Confidential Information"), Avenu will keep that information confidential by using the same degree of care and discretion that is used with information that Avenu regards as confidential. Avenu will not be required to keep confidential any information that: (a) is or becomes publicly available; (b) is already lawfully possessed by Avenu; (c) is independently developed by Avenu outside the scope of this Agreement without reliance on Client Confidential Information; or (d) is rightfully obtained from third parties. Avenu is not required to keep confidential any ideas, concepts, methodologies, inventions, discoveries, developments, improvements, know-how, or techniques developed by Avenu while providing the Services. Avenu and Client agree to use confidential information only for the purposes of this Agreement and on a strictly need-to-know basis, and will not disclose confidential
information to any third party (other than as permitted under this Agreement) or to the employees of the other party, Avenu subcontractors, or permitted consultants engaged by the Client with the prior written consent of Avenu.

7. **OWNERSHIP, USE, AND RETURN OF DATA** All information, records, documents, files, data, and other items relating to the business of Client, whether prepared by Client or Avenu or otherwise coming into the possession of Avenu in connection with performing the Services or otherwise during the Term will remain the exclusive property of Client. All data and personal information transferred from Client to Avenu under this Agreement will be transferred by (a) Secure Large File Transfer (SLFT) that password protects and encrypts the data or (b) Avenu FTP site accessible only by account. If Client uses the Avenu FTP site, access to account information will be limited to authorized personnel. If Client transfers data or personal information to Avenu by any other means, Avenu shall not be responsible for any damages related to loss of data or personal information.

8. **ACCESS TO FACILITIES AND INSURANCE** Client agrees to provide Avenu with reasonable access to Client facilities for provision of Services, as well as secure storage areas for materials, equipment, and tools, if required. If Avenu performs any of the Services on Client premises, Avenu agrees to maintain standard insurance coverage in accordance with its corporate policy, including but not limited to the following coverages, which Avenu shall maintain at its sole cost and expense:

1. General Liability Insurance, having a combined single limit of $1,000,000 in the aggregate.
2. Errors and omissions insurance in the amount of $1,000,000
3. Workers’ Compensation Insurance in such amounts as required by law for all employees

Current certificates of insurance for all policies and concurrent policies required to be maintained by Avenu pursuant to this Article shall be furnished to the City upon reasonable request. The General Liability Insurance policy shall name the City, its elected officials, officers, agents, employees, and volunteers as additional insureds, but only to the extent of the policy limits stated herein. Avenu shall provide a minimum of thirty (30) days advance written notice to the City in the event of cancellation or diminution of coverage below the amounts required hereunder. Upon request, Avenu will provide evidence of coverage on a standard ACORD form certificate of insurance.

9. **FORCE MAJEURE** Neither party shall be responsible for delays or failures in performance as a result of limitations or problems inherent in the use of the Internet and electronic communications; force majeure events, including but not limited to Acts of God, fire, flood, earthquake, weather, climate change, elements of nature, war, terrorism, civil disturbance, labor disruptions or strikes, quarantines, embargoes, or other governmental action, or cause beyond the reasonable control of a party.

10. **WARRANTIES** Avenu warrants that the Services will be performed in a professional and workmanlike manner. If third-party hardware or commercial software is furnished under this Agreement, then Avenu will, to the maximum extent allowable by third-party vendors, pass-through to Client all warranties for materials furnished under this Agreement. Avenu will provide only the warranties and exchange policies for any defective items that are offered by the manufacturers. **THE LIMITED WARRANTIES SET FORTH IN THIS SECTION ARE MADE TO CLIENT EXCLUSIVELY AND AVENU MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE SERVICES PROVIDED. AVENU EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

11. **LIMITATIONS OF LIABILITY. EXCEPT FOR SERVICE FEES AND AMOUNTS EXPRESSLY DUE AND PAYABLE TO AVENU HEREUNDER, IN NO EVENT SHALL EITHER PARTY TO THIS AGREEMENT BE LIABLE TO THE OTHER PARTY HEREUNDER FOR ANY CLAIMS, PENALTIES OR DAMAGES, WHETHER IN CONTRACT, TORT, OR BY WAY OF INDEMNIFICATION, IN AN AMOUNT EXCEEDING ONE HUNDRED PERCENT (100%) OF THE FEES AND CHARGES PAID TO AVENU DURING THE PRECEDING TWELVE MONTHS**
PERIOD. UNDER NO CIRCUMSTANCES WILL EITHER PARTY TO THIS AGREEMENT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR SPECIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY EXCEPT THEORIES OF WILFULNESS OR GROSS NEGLIGENCE. THIS LIMITATION SHALL APPLY EVEN IF SUCH A PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES.

THE PARTIES AGREE AND ACKNOWLEDGE THAT THE CLIENT HAS NOT WAIVED ITS SOVEREIGN IMMUNITIES BY ENTERING INTO OR PERFORMING UNDER THIS AGREEMENT.

12. TERMINATION FOR BREACH OR DEFAULT If either party materially breaches any of the terms and conditions of this Agreement or fails to perform the obligations set forth in this Agreement and fails to cure the breach or failure within forty-five (45) calendar days (or any longer period stated in the notice) after receipt of written notice specifying the basis for the breach or failure to perform, the party giving notice of breach may terminate this Agreement. Client shall only be required to pay for the work that was properly performed prior to termination.

13. TERMINATION WITH NOTICE AND EFFECT OF TERMINATION This Agreement is subject to termination for convenience by Client upon not less than fifteen (15) days written notice to Avenu. If this Agreement is terminated before the End Date, Avenu will invoice Client for work performed, and due, up to the date of termination. Upon termination of this Agreement for any reason, all software and other Avenu-owned material will promptly be returned to Avenu at the sole expense of Client.

14. NOTICES TO PARTIES Unless otherwise specified in this Agreement, all notices, requests, or consents required to be given in writing under this Agreement shall be hand delivered, delivered by overnight delivery service, or mailed (certified mail, postage prepaid).

To Avenu:
Avenu Government Systems, LLC
130 Division Street
Wait Park, MN 56387
Attn: Jay McDaniel

To Client:
City of Dayton
130 West 2nd Street
Dayton, OH 45402
Attn: Ms. Desa Armstrong-Foster

With a copy to:
Avenu Insights & Analytics
5860 Trinity Parkway, Suite 120
Centreville, VA 20120
Attention: Contracts Department

15. ASSIGNMENT AND SUBCONTRACTING This Agreement is binding on the parties and their successors and assigns. Avenu may assign or otherwise transfer this Agreement and any rights, duties, or obligations under this Agreement to a corporate parent, subsidiary, or affiliate of Avenu. Any other attempt to make an assignment without prior written consent of the other party will be void. Avenu may provide for the delivery of all or part of the Services through the use of subcontractors. Avenu will notify Client of work being performed by any subcontractor that performs work on the premises of Client and shall ensure that the insurance requirements that apply to Avenu under this Agreement apply to and are complied with by each subcontractor.

16. GOVERNING LAW This Agreement shall be governed by, interpreted, construed, and enforced in accordance with the laws of the State of Ohio without reference to the principles of conflict of laws.
17. ENTIRE AGREEMENT The contents of this Agreement (including the Statement of Work) constitute the entire understanding and agreement between the parties and supersede any prior agreements, written or oral, that are not specifically referenced and incorporated in this Agreement. The terms and conditions of this Agreement shall not be changed or modified except by written agreement signed by both parties.

18. MODIFICATION The parties to this Agreement may mutually agree to amend this Agreement. However, no such amendment shall be effective unless it is reduced to a writing, which references this Agreement, and is executed by a duly authorized representative of each party and, if applicable or required, approved by the Commission of the City of Dayton, Ohio.

19. INDEMNIFICATION Avenu shall indemnify Client and its elected officials, officers, employees and agents (collectively, "Indemnitees") from and against all third-party claims, losses, damages, and expenses of whatsoever kind and nature, to the extent that such claims, losses, damages, or expenses are caused by or arise out of the negligent acts, omissions, or willful misconduct or fraud of Avenu and its agents, employees, consultants, sub-consultants and representatives in undertaking and performing the Services; however, no indemnification will be required for any claims, losses, damages or expenses resulting from any negligence or willful misconduct of Client or any of the other Indemnitees. This Article shall survive early termination or expiration of this Agreement.

20. INTEGRATION This Agreement, the attached exhibits, and any Software License Agreement executed by and between the Parties with respect to the subject matter described herein, constitute the entire agreement between the Parties. No agreements, representations, or warranties other than those specifically included in this Agreement and the attached exhibits shall be binding on either of the Parties. In case of a conflict between the terms of this Agreement and any attached exhibit, the terms of this Agreement shall prevail.

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

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

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

Avenu understands and agrees that none of its employees, agents or contractors are City of Dayton employees, and, therefore, none shall be entitled to, nor will any make a claim for, any of the emoluments of employment with the City of Dayton. Avenu further understands and agrees that none of its employees, as a result of performing services under this Agreement, are "public employees" for the purpose of membership in the Ohio Public Employees Retirement System (OPERS). Avenu shall be solely responsible to withhold and pay all applicable local, state and federal taxes.
23. POLITICAL CONTRIBUTIONS  Avenu affirms and certifies that it complies with Ohio Revised Code § 3517.13 limiting political contributions.

IN WITNESS WHEREOF, the undersigned authorized representatives of Avenu and the Client have executed this Agreement.

Avenu Government Systems, LLC

Signature  
Mike Melka  
Name  
Chief Financial Officer  
Title  
03/31/2020  
Date

City of Dayton, Ohio

Signature  
Name  
Title  
Date
APPROVED BY THE COMMISSION OF
THE CITY OF DAYTON, OHIO:

__________________________  2020

Min. / Bk._________ Pg._______

__________________________
Clerk of the Commission

APPROVED AS TO FORM AND
CORRECTNESS:

[Signature]
City Attorney
Schedule A

Statement of Work

A. Avenu Services

1. Avenu will provide remote database administration services ("Services") for the Client.

2. Avenu will provide the Services for the Avenu system(s) specified below under Remote DBA Deliverables.

3. A Avenu project manager will be responsible for coordinating the resources and schedules for the mutually agreed upon Services.

4. Avenu will provide up to one hundred forty-four (144) service hours (on a shared services basis) over the Term of the Agreement ("Service Hours"). Use of Service Hours in excess of twelve (12) hours per month may result in all Service Hours being expended prior to the End Date of the Term. Client Agrees to pay for additional Service Hours at the hourly rate set forth in Section C of this Schedule A.

5. Avenu will use the hours to provide the services described in Section B, below, as requested by Client, in accordance with the provisions of the Agreement and this Schedule A.

B. Remote DBA Deliverables

1. Avenu will review and document the existing computing environment and discuss the goals and direction of Client with representatives of the Client.

2. Avenu will periodically connect into the Client computer system to review and monitor the Oracle environment and operating characteristics of the Avenu system(s), and propose needed changes, upgrades, and tuning adjustments as necessary.

3. Avenu staff will coordinate with data processing and administrative staff to assist in or implement any needed changes.

4. The Client Information Systems Manager and Avenu consultant will mutually agree upon the monthly hours expended to monitor and support the system.

5. Avenu agrees to perform the following support activities, as requested by Client:

   (a) Assist in developing the policies regarding the administration of the Avenu system(s) and work towards devising a mutually agreeable plan for performing database maintenance that will minimize impact to the Client's production computer environment.

   (b) Perform periodic Avenu system and Oracle upgrades delivered by Avenu for the following Avenu systems: Finance and Human Resources. Upgrades must be scheduled in coordination with Information Systems staff and are typically performed in a test environment, then placed into the production environment after end users approve changes.
Technology Services Agreement

(c) Assist Client to install minor software corrections and fixes for the Oracle and Banner Finance systems when received from Avenu.

(d) Periodically, dial-in to monitor database activities, tune the database and work with the system and network manager(s) to improve overall performance.

(e) Develop and implement security and backup/recovery plans.

(f) Create new accounts and grant and revoke database privileges.

(g) Identify and resolve data and application-oriented problems. Help system and network managers identify problems in their areas.

(h) Propose changes, upgrades or tuning adjustments as necessary. Coordinate with the Information Systems staff to assist with or implement recommended changes, including on-site visits as necessary.

6. After hours work should be scheduled at least two weeks in advance. Avenu realizes that certain emergency situations may arise that will dictate off hours work be performed immediately, but work efforts such as upgrades or maintenance that need to be performed must be scheduled in advance. Services provided after hours will be charged at a double-time rate, i.e., each hour of service will be charged at a rate equivalent to two (2) service hours.

7. If requested, Avenu will send personnel on-site to perform any of the previously mentioned tasks. Client agrees to reimburse Avenu for all travel and living expenses related to on-site assistance.

C. Fees and Payment

1. Avenu will invoice Client on a fixed fee basis, and Client agrees to pay Avenu, twenty-five thousand two hundred dollars ($25,200.00) for the Services in monthly installments of two thousand one hundred dollars ($2,100.00) per month.

2. For Services provided above and beyond the 144 Service Hours during the Term, Client agrees to pay Avenu at the rate of one hundred seventy-five dollars ($175.00) per hour. Additional Service Hours must be requested in writing by an authorized representative of Client.

3. Reimbursable expenses are not included in the fees for Service Hours, and will be invoiced monthly, as expenses are incurred.

4. Activities related to the provision of on-site Services (including preparation time, actual travel time, identification of follow-up tasks, preparation of a written trip report, telephone consultation, and management follow-up) will be charged against available Service Hours.
City Manager's Report

From 6450 - PW/Civil Engineering

Supplier, Vendor, Company, Individual
Briggs Creative Services, LLC
Address 5390 Courseview Drive, Suite 2 South Mason, Ohio 45040

Date May 13, 2020
Expense Type Service Agreement
Total Amount $70,172.00 (thru 12/31/2025)

Fund Source(s) | Fund Code(s) | Fund Amount(s)
--- | --- | ---
Salem Ave Reconstruction Ph3 | 41488-6450-1159-54 | $34,998.00
2020 Infras Wayne Ave Widening | 49032-6450-1159-54 | $35,174.00

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

Description
SALEM AVENUE RECONSTRUCTION PHASE 3 AND WAYNE AVENUE WIDENING AGREEMENT FOR CONSULTING SERVICES

The Department of Public Works requests permission to enter into an agreement with Briggs Creative Services, LLC to perform the professional surveying services in connection with the Salem Avenue Reconstruction Phase 3 and the Wayne Avenue Widening projects. The consultant will perform all necessary surveying services.

Five firms responded to the Request for Proposal with Briggs Creative Services, LLC scoring the most points. The project is being funded from General Capital funds.

The professional service agreement is effective upon execution and expires on December 31, 2025 unless extended by mutual agreement of both parties. The agreement has been approved by the Law Department as to form and correctness.

A Certificate of Funds is attached.

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 06/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

X New Contract       >>><<<<<<<<<<<<<<<<<<<<<<<<<<<

Required Documentation

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

- Copy of City Manager's Report
- Copy of Original Certificate of Funds

Original CT/CF

Increase Encumbrance
Decrease Encumbrance
Remaining Commission Approval

<table>
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<tr>
<th>Amount: $ 34,998.00</th>
<th>Amount: $ 35,174.00</th>
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<td>Fund Code 49032 - 6450 - 1159 - 54 -</td>
</tr>
</tbody>
</table>

Attach additional pages for more FOAPALs

Vendor Name: Briggs Creative Services, LLC

Vendor Address: 5390 Courseview Drive, Suite 2 South Mason, Ohio 45040

Federal ID: 27-3397147

Commodity Code: 90772

Purpose: Professional Services Agreement for Professional Survey Services for the Salem Avenue Reconstruction Phase 3, and the Wayne Avenue Widening Projects.

Contact Person: Joe Weinel

Origining Department Director’s Signature: [Signature]

SECTION II - to be completed by the Finance Department

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

[Signature] Date 05/05/2020

Finance Department

October 18, 2011
AGREEMENT FOR
CONSULTING SERVICES

THIS AGREEMENT, dated this ____________ day of ____________, 2020 is between the City of Dayton, Ohio, a municipal corporation of the State of Ohio ("City") and The Briggs Creative Services, LLC. ("Consultant");

WITNESSETH THAT:

WHEREAS, City issued a Request for Proposal for Professional Surveying Services for Right of Way Plans for the Salem Avenue Reconstruction Phase 3, and the Wayne Avenue Widening projects; and,

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

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

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

ARTICLE 1- SERVICES TO BE PERFORMED

Consultant shall perform the professional surveying services for the Salem Avenue Reconstruction Phase 3, and the Wayne Avenue Widening projects, hereinafter referred to as the Project described in the Request for Proposal, hereinafter referred to as the RFP, a copy of which is attached as Exhibit A and incorporated herein by reference. To the extent not inconsistent with Exhibit A, Consultant shall perform the work and services for the project and comply with the representations detailed in Consultant's response to the RFP, hereinafter referred to as the Proposal, a copy of which is attached as Exhibit B and incorporated herein by reference.

For purposes of this Agreement, all professional surveying services to be performed by Consultant shall be hereinafter referred to as the "Services." Consultant shall have no liability for defects in the Services attributable to Consultant's reliance upon or use of data, design criteria, drawings, specifications, or other information furnished by City or third parties retained by City. The final documents, including digital copies of any plans, become the property of City upon payment.

Consultant shall provide its services pursuant to the Agreement in accordance with current accepted professional standards appropriate for the size, complexity, schedule, and other characteristics of the Project in the jurisdiction where the project is located ("Standard of Care"). Regardless of any other term or condition of this Agreement, Consultant makes no implied warranty of any sort. All warranties, including warranty of merchantability or warranty of fitness for a particular purpose are expressly disclaimed.
In performing the Services, Consultant shall utilize the services of competent and, where appropriate, licensed professionals, and warrant and represent that all Services will be provided consistent with its professional Standard of Care in an effort to comply with all applicable federal, state, local, and other laws, ordinances, codes, regulations, orders, and agency or industry standards or other standards.

ARTICLE 2- COMPENSATION

The City shall pay Consultant a sum not to exceed Seventy Thousand One Hundred Seventy-Two Dollars and Zero Cents ($70,172.00) for the Services actually provided in accordance with this Agreement. Payment for the Services shall be based upon the rates for each service to be provided as set forth in the Proposal. Consultant may submit invoices to City for partial payment on a monthly basis.

ARTICLE 3- TERM

This Agreement shall commence upon execution by City and shall terminate on December 31, 2025, unless extended to a later date by mutual written amendment to this agreement or terminated according to Article 6 of this Agreement.

ARTICLE 4- INDEMNIFICATION

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

ARTICLE 5- INSURANCE

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

1. General/Comprehensive liability insurance, with a combined single limit of One Million Dollars ($1,000,000) for each occurrence and One Million Dollars ($1,000,000) in the aggregate; and
2. Automobile liability insurance, with a combined single limit of One Million Dollars ($1,000,000) for each person and One Million Dollars ($1,000,000) for each accident; and
3. Workers’ compensation insurance, in such amounts as required by Ohio law, and Employer’s liability insurance with a limit of Five Hundred Thousand Dollars ($500,000) for each occurrence; and
4. Professional liability, with a minimum annual aggregate of Five Hundred Thousand Dollars ($500,000); and
5. Errors and omissions insurance in the amount of Five Hundred Thousand Dollars ($500,000), to protect the City from any errors that Consultant or its employees may perpetrate in the preparation of the plans, specifications, and cost estimates and any resulting damage from said errors.
All policies of general/comprehensive liability insurance required herein shall name City, its elected officials, officers, employees, agents, and volunteers as additional insureds. All insurance policies, excluding Workers’ compensation insurance, shall contain the requirement that City be notified thirty (30) days in advance of any termination or diminution of coverage.

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

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

**ARTICLE 6- TERMINATION**

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

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

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

**ARTICLE 7- COMMUNICATIONS**

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

**Consultant:** Briggs Creative Services, LLC  
5390 Courseview Drive, Suite 2, South Mason, Ohio 45040  
Attention: R. Douglas Briggs

**City:** City of Dayton  
Department of Public Works  
101 West Third Street  
Dayton, Ohio 45402  
Attention: Frederick M. Stovall, Director
Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Consultant and City.

ARTICLE 8- NON DISCRIMINATION

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

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

ARTICLE 9- CONFIDENTIALITY

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

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

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

ARTICLE 10- OWNERSHIP OF DOCUMENTS & INTELLECTUAL PROPERTY

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

Consultant shall retain its rights in standard scripts, databases, computer software, and other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of Consultant.
ARTICLE 11- GENERAL PROVISIONS

A. Waiver

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

B. Delay

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

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

C. Governing Law & Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws. Any suit regarding this Agreement must be brought in a court of competent jurisdiction in Montgomery County, Ohio.

D. Meetings and Evaluation

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

E. Independent Contractor

By executing this Agreement, Consultant acknowledges and agrees that it will be providing Services to City as an “independent contractor.” As an independent contractor for City, Consultant is prohibited from representing or allowing others to construe the parties’ relationship in a manner inconsistent with this Paragraph. Consultant shall have no authority to assume or create any obligation on behalf of, or in the name of City, without the express prior written approval of a duly authorized representative of City.
Consultant understands and agrees that it is not a City employee, and therefore, will not be entitled to, nor will it make any claim for, any of the emoluments of employment with the City of Dayton. Further, Consultant will be solely responsible to withhold and pay all applicable local, state, federal taxes and Workers’ Compensation Insurance. Contractor is not a “public employee” for the purpose of the Ohio Public Employees Retirement System (OPERS) membership.

F. Assignment

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

G. Third Party Rights

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

H. Amendment

This Agreement may be amended by mutual agreement between the parties. No amendment shall be effective unless it is reduced to writing, executed by a duly authorized representative of City and Consultant, approved by the City’s Director of Public Works, and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.

I. Effect of Conflicting Documents

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

J. Entire Agreement/Integration

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

K. Political Contributions

Consultant affirms and certifies that it complies with Ohio Revised Code §3517.13 limiting political contribution.
IN WITNESS WHEREOF, City and Consultant, each by a duly authorized representative, have executed this Agreement as of the day and date first set forth above.

BRIGGS CREATIVE SERVICES, LLC

By: ________________________

Its: ________________________

CITY OF DAYTON, OHIO

__________________________
City Manager

APPROVED AS TO FORM AND CORRECTNESS

__________________________
City Attorney

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

__________________________ , 20___
Min./Bk. _____  Pg. _____

__________________________
Clerk of the Commission
EXHIBIT A

REQUEST FOR PROPOSAL
PROFESSIONAL SURVEYOR SERVICES
FOR THE SALEM AVENUE RECONSTRUCTION PHASE 3, WAYNE AVENUE
WIDENING AND SIEBENTHALER AND PHILADELPHIA SIGNAL UPGRADE
RIGHT OF WAY PLANS
RFP 20-003PWCE
FEBRUARY 2020
EXHIBIT B

BRIGGS CREATIVE SERVICES, LLC
PROPOSAL DATED MARCH 20, 2020
### Vendor Maintenance FTMVEND 9.3.14 (BANPROD)

**Vendor:**

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<tr>
<th>Corporation</th>
<th>First Name</th>
<th>Last Name</th>
<th>Middle Name</th>
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**HRC Exp Date:**

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<tr>
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<th>Location</th>
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</table>

### Organization Budget Status 568586P 9.3.16 (BANPROD)

**Chart:**

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<th>Account</th>
<th>Title</th>
<th>Adjusted Budget</th>
<th>YTD Activity</th>
<th>Committed</th>
<th>Available Balance</th>
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</table>

### Budget Availability Status 568586P 9.3.13 (BANPROD)

**Chart:**

<table>
<thead>
<tr>
<th>Account</th>
<th>Title</th>
<th>Adjusted Budget</th>
<th>YTD Activity</th>
<th>Committed</th>
<th>Available Balance</th>
</tr>
</thead>
</table>

---

**Notes:**

- The budget status appears to be for a specific organization and includes details on various accounts and their associated budgets. The tables show adjusted budgets, YTD activity, committed funds, and available balances for different accounts.

---

**Additional Information:**

- The budget status is for the fiscal year specified.
- The organization's specific accounts and their budget allocations are detailed.
- The available balances are calculated based on the budget allocations and committed funds.
City Manager’s Report

From 2600 - Economic Development
Supplier, Vendor, Company, Individual
Name Development Projects Inc.
Address c/o Dayton Development Coalition
1401 South Main Street, Suite 200
Dayton, OH 45409

Date May 13, 2020
Expense Type Service Agreement
Total Amount $113,000.00 thru 12-31-2021

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<tr>
<td>Development Fund</td>
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<td>$113,000.00</td>
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Includes Revenue to the City  Yes  No  Affirmative Action Program  Yes  No  N/A

Description

Professional Services Agreement

The Department of Economic Development is requesting approval to enter into a Professional Services Agreement with Development Projects, Inc. (DPI) to manage and administer the activities of the Dayton Region Israel Trade Alliance (DRITA). DPI is the public contracting affiliate of the Dayton Development Coalition. The City of Dayton, Montgomery County, and the Dayton Development Coalition are each providing funding for the program. The total cost of program during the two-year term of this agreement is approximately $339,000.00; therefore the City's share is $113,000.00. This contract includes funds for 2020 and 2021.

DRITA’s objectives include developing business alliances and relationships with Israeli companies in aerospace sensors, advanced materials, and unmanned aerial vehicles, as well as developing customer contacts in Israel for Dayton area businesses and recruiting Israeli companies to the Dayton region. The business attraction efforts of DRITA will utilize private sector funding for direct investment in business development.

The Agreement will commence upon execution by the City and expire December 31, 2021.

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

A Certificate of Funds for $60,000.00 is attached.

Signatures/Approval

Approved by City Commission

Division

Department

City Manager

FORM NO. MS-16

Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

- x New Contract
- Renewal Contract
- Change Order

Contract Start Date: upon execution
Expiration Date: 12/31/2021
Original Commission Approval: $113,000.00
Initial Encumbrance: $60,000.00
Remaining Commission Approval: $53,000.00

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

Required Documentation:
- x Initial City Manager's Report
- x Initial Certificate of Funds
- x Initial Agreement/Contract

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

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

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

Attach additional pages for more FOAPALs

Vendor Name: Development Projects, Inc.
Vendor Address: 1401 N. Main St., Ste. 200 Dayton OH 45409
Street City State Zipcode + 4

Federal ID: 31-1425883
Commodity Code: 96100

Purpose: Agreement with Dayton Development Coalition dba Development Projects, Inc. providing funding toward management of activities for Dayton Regional Israel Trade Alliance (DRITA).

Contact Person: Jill Bramini
Economic Development 4/27/2020
Department/Division 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 of any previous encumbrance.

Finance Director Signature: 
Date: 05-05-2020

CP Prepared by: 
Date: 05/05/2021

Finance Department
April 28, 2020

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

LaShea Lofton, Director  
Finance Department

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

SUBJECT: Request for Approval – Professional Services Agreement with Development Projects, Inc. for the Dayton Region Israel Trade Alliance (DRITA)

Attached for City Commission approval is a Professional Services Agreement with Development Projects, Inc. (DPI), to fund the 2020-2021 work associated with the Dayton Region Israel Trade Alliance (DRITA). This is a two-year agreement in the total amount of $113,000.

This project is critical because it continues a long-term public-private partnership with Montgomery County and the Dayton Development Coalition to support DRITA as it attracts foreign investment to Dayton and develops commercial opportunities for Dayton businesses.

If you have any questions, please contact me at extension 3621.

FPW
PROFESSIONAL SERVICES AGREEMENT
Dayton Region Israel Trade Alliance

This AGREEMENT ("Agreement") is made between the City of Dayton, Ohio ("City"), a municipal corporation in and of the State of Ohio, and the Development Projects, Inc., ("DPI"), an entity incorporated under the laws of the State of Ohio and having its principal offices located at 1401 S. Main Street, Suite 200, Dayton, Ohio 45409.

WITNESSETH THAT:

WHEREAS, The Dayton Development Coalition, Montgomery County ("County"), and City have partnered in the creation of the Dayton Region Israel Trade Alliance; and

WHEREAS, City’s Department of Economic Development identified a need for certain professional services to further economic and business development with Israeli companies; and

WHEREAS, DPI is the public contracting affiliate of the Dayton Development Coalition, organized for the purpose of promoting regional economic development in partnership with local, regional, state, and federal government agencies; and

WHEREAS, DPI represented that it is a skilled, experienced, and competent consulting firm, with the personnel to perform the professional services set forth hereinafter.

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

ARTICLE 1. SCOPE OF ASSIGNMENT
DPI agrees to undertake an ongoing economic development program in conjunction with the Dayton Development Coalition to manage the activities of the Dayton Region Israel Trade Alliance (DRITA).

Program activities will include hiring and supervising a consultant or consultants to plan, develop and implement the goals of the DRITA.

In addition, DPI shall provide the specific services set forth in Exhibit A, titled “SCOPE OF SERVICES,” which is attached hereto and incorporated herein by reference. The services provided hereunder shall be collectively referred to as the “Development Services.”

ARTICLE 2. TERM AND TERMINATION
This Agreement is effective upon execution by City and will expire on December 31, 2021. This agreement may be renewed for an additional year by mutual agreement of the parties.

Either party may terminate this Agreement at any time or without cause upon giving the other party fifteen (15) days advance written notice. The notice of termination shall be made by mailing written notice to the addresses listed below by certified mail. If such termination occurs,
DPI will be paid for the professional services actually performed up to the effective date of termination.

ARTICLE 3. COMPENSATION

Total compensation under this Agreement shall not exceed One Hundred Thirteen Thousand Dollars ($113,000) for the Development Services provided, of which an amount not to exceed One Hundred Three Thousand Dollars ($103,000) shall be used solely and exclusively for performing the Development Services, and an amount not to exceed Ten Thousand Dollars ($10,000) shall be used to reimburse DPI for related program expenses as defined herein. DPI shall establish appropriate accounting procedures to maintain separate accounts for all public funds.

Schedule of compensation for Development Services. Upon execution, DPI shall invoice City for $25,000.00. Subsequent invoices for Development Services shall be consistent with the following:

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<thead>
<tr>
<th>Amount</th>
<th>Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>$25,000</td>
<td>Thru end of year 2020</td>
</tr>
<tr>
<td>Not to exceed $26,500</td>
<td>Thru mid - year 2021</td>
</tr>
<tr>
<td>Not to exceed $26,500</td>
<td>Thru end of year 2021</td>
</tr>
</tbody>
</table>

Related Program Expenses. DPI may submit the following DRITA-related expenses, (collectively, “Related Program Expenses”) for reimbursement: costs of convening, hosting, and traveling to business meetings; costs of participating in, attending, and traveling to conferences, trade shows, and other informational and/or marketing events; and the cost of producing and/or disseminating marketing and informational materials. All Related Program Expenses shall be borne pro rata by DPI, County, and City. When submitted to the City for payment, all Related Program Expenses, accompanied by evidence of payment thereof, shall be itemized with a breakdown of DPI, County and City’s pro rata shares.

ARTICLE 4. REPORTING

DPI shall prepare and deliver to City quarterly reports documenting the efforts and progress made on the Development Services during the reporting period.

ARTICLE 5. LIABILITY AND INDEMNIFICATION

DPI shall defend, indemnify, and hold harmless City and its elected officials, employees, and agents from and against all judgments, losses, damages, and expenses for bodily injury, death, and physical damage to real or tangible personal property, to the extent such judgments, losses, damages, or expenses are caused by DPI’s acts, errors, or omissions arising out of its performance herein.

The parties hereto specifically agree, notwithstanding any other provision in this Agreement to the contrary, that City will not, under any circumstances, be liable or responsible for any negligent acts, errors, or omissions of DPI.
Regardless of completion of the services, obligations, and duties provided for in this Agreement, or if this Agreement is terminated for any reason, the terms and conditions of this Article will survive.

ARTICLE 6. COMMUNICATIONS

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

DPI:  Jeff Hoagland, President
Development Projects, Inc.
1401 S. Main Street, Suite 200
Dayton, OH 45409

City:  Shelley Dickstein
City Manager
City of Dayton, Ohio
101 W. Third St.
Dayton, Ohio 45402

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

ARTICLE 7. EQUAL EMPLOYMENT OPPORTUNITY

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

It is expressly agreed and understood that Section 35.14 of the Revised Code of General Ordinances of City of Dayton constitutes a material condition of this contract as fully as if specifically rewritten herein and that failure to comply therewith will constitute a breach hereof.

ARTICLE 8. INDEPENDENT CONTRACTOR

DPI will, at all times, be an independent contractor and not subject to control by City, except as provided pursuant to this Agreement. As an independent contractor, the parties hereby agree that the relationship between the parties will not be held out or construed as employer-employee, joint venture, or principal-agent. Neither party shall act or represent itself in such a manner as to assume or create any obligation on behalf of, or in the name of, the other party, without the prior written and express authority to do so by a duly authorized representative.

DPI understands and agrees that any and all persons retained or hired to perform the duties and responsibilities under this Agreement are not City’s employees and are not entitled to any of the emoluments of City of Dayton employment. Further, DPI will be responsible to withhold and
pay, or cause such agents, contractors, or sub-contractors to withhold and pay, all local, state, and federal taxes.

DPI acknowledges its employees are not public employees for purposes of Ohio Public Employees Retirement System ("OPERS") membership.

ARTICLE 9. INDIRECT DAMAGES
Each party hereby waives its rights to recover from the other party any consequential, economic, indirect or incidental damages (including, but not limited to, loss of use, income, profits, financing or reputation), arising out of, or relating to, this Agreement or the performance of the services.

ARTICLE 10. COUNTERPARTS
This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and such counterparts shall constitute one and the same instrument.

ARTICLE 11. GENERAL PROVISIONS
   A. Conflict of Interest. DPI covenants that it has no interest and shall not acquire any interest, direct or indirect, that would cause conflict in any manner or degree with the performance of this Agreement or completion of the project.

   B. Governing Law and Venue. This Agreement is governed by and construed in accordance with the laws of the State of Ohio without giving effect to the principles thereof relating to conflicts or choice of laws, and is deemed to be executed in Dayton, Ohio. Any suit regarding this Agreement must be brought in a court of competent jurisdiction in Montgomery County, Ohio.

   C. Third Party Rights. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and DPI.

   D. Assignment. Neither City nor DPI may assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article will prevent DPI from employing independent consultants, associates, and subcontractors to assist in the performance of the services.

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

   F. Integration. This Agreement represents the entire and integrated agreement between City and DPI. This Agreement supersedes all prior and contemporaneous
communications, representations, and agreements, whether oral or written, relating to
the subject matter of this Agreement.

G. Political Contributions. DPI affirms and certifies that it complies with Ohio Revised
Code 3517.13 limiting political contributions.

IN WITNESS WHEREOF, City and DPI, each by a duly authorized representative,
have executed this Agreement on the date below.

CITY OF DAYTON, OHIO

________________________________________
City Manager

Date:_____________________________________

DEVELOPMENT PROJECTS, INC.

By: ________________________________

Its: ________________________________

APPROVED AS TO FORM AND
CORRECTNESS:

4/23/2020

× Amelia N. Blankenship for

City Attorney
Signed by: Blankenship, Amelia

APPROVED BY THE COMMISSION
OF THE CITY OF DAYTON, OHIO

_________________________, 2020

Min./Bk. _________ Pg. _________

__________________________
Clerk of the Commission
EXHIBIT A

SCOPE of SERVICES

DPI will provide the following services for the Dayton Region Israel Trade Alliance:

- Establish administrative, fiscal and reporting procedures for DRITA in concert with the DRITA work plan; implement the DRITA work plan; and modify the DRITA work plan as the DPI, County, and City believe is necessary or appropriate to fulfill the parties’ intent.

- Act as the DRITA’s liaison with cities, government agencies, trade organizations, etc.

- Assist in recruiting companies for missions and/or reverse missions represented by the DRITA. Assist the DRITA in the activities of travel coordination, logistics and transportation for participants.

- Identify and recruit Israeli companies that may be of interest to the DRITA. This includes but is not limited to the following technologies:
  - Water Technology
  - Advanced Manufacturing Technology
  - Aerospace Technology
  - Sensors Technology
  - Life Science Technology

- Identify Israeli companies who may be prospects for co-location, investment, joint venture, R&D and other business cooperation with Dayton Region officials, companies and organizations including preparation of a working data base and company profiles.

- Develop and implement an informational/PR program to promote the assets and resources of the Dayton Region to Government officials, economic development organizations, trade associations and industry leaders.

- Coordinate and schedule business meetings with Israeli companies, organizations and individuals as requested by the DRITA.

- Other as-needed services as requested by the City of Dayton, Department of Economic Development.
From 2600 - Economic Development

Name Fifth Third Bank
Address P. O. Box 636045
Cincinnati, Ohio 45263-6045

Date May 13, 2020
Expense Type Contract Modification
Total Amount $18,780.00 thru 5 years

Fund Source(s) Fund Code(s) Fund Amount(s)
General Fund 10000-2602-1159-44 $18,780.00

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

Description

Amendment to Managed Service Agreement

The Department of Economic Development Division of Building Services is requesting approval to Amend the Managed Service Agreement with Fifth Third Bank to receive a currency processing solution that will include a device, software, data service, posting of provisional credit, currency processing, maintenance services, and customer support.

The Amendment will provide up to $18,780.00 in services over the next five years which equals $313.00 per month. The services being performed are the bi-weekly pick-up of daily deposits from 371 West Second Street and delivery of deposits to the City of Dayton account at Fifth Third Bank.

The Agreement will be effective upon execution and will expire five years from execution.

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

A Certificate of Funds for $2,191.00 is attached.

Signatures/Approval

Approved by City Commission

Division

City Manager
FORM NO. MS-16

Clerk
Date
Updated 8/2016
May 1, 2020

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

    LaShea Lofton, Director
    Finance Department

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

SUBJECT: Request for Approval – Amendment to Managed Service Agreement

The Department of Economic Development Division of Building Services is requesting approval to Amend the Managed Service Agreement with Fifth Third Bank to receive a currency processing solution that will include a device, software, data service, posting of provisional credit, currency processing, maintenance services, and customer support.

This service is critical to our operations and will save time and money compared to the previous solution with Brink's Inc.

If you have any questions, please contact me at extension 3621.

FPW
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

New Contract
---

Renewal Contract

Change Order

Contract Start Date: upon execution
Expiration Date: 5 yrs from execution

Original Commission Approval: $18,780.00
Initial Encumbrance: $2,191.00
Remaining Commission Approval: $16,589.00

Original CT/CF: CT19-2254, CT202254
Increase Encumbrance: $-
Decrease Encumbrance: $-
Remaining Commission Approval: $-

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

Amount: $2,191.00

Fund Code: 10000 - 2602 - 1159 - 44 - XXXX - XXXX

---

Amount: __________

Fund Code: XXXX - XXXX - XXXX - XXXX - XXXX - XXXX

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Attach additional pages for more FOAPALs

Vendor Name: Fifth Third Bank
Vendor Address: P.O. Box 636045 Cincinnati Ohio 45263-6045
Street City State Zipcode + 4

Federal ID: 31-0676865
Commodity Code: 94625
Purpose: Fifth Third Bank will provide a currency processing solution for daily deposits for the Division of Building Services.

Contact Person: Jill Bramini
Economic Development Department Division 4/30/2020
Originating Department Director's Signature:

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: ____________________________
Date: 05-05-2020

OF Prepared by: ____________________________
Date: 05/05/2020
CF/CT Number: CT20-2254

October 18, 2011
Amendment to Managed Service Agreement

CPS 2,000

This Amendment ("Amendment") is dated the Signature Date set forth below and amends the Managed Service Agreement CPS 2,000 ("MSA") in effect between the "Customer" executing this Amendment and Fifth Third Bank, N.A. ("FTB"). Capitalized terms used but not defined in this Amendment have the meaning assigned to them in the MSA.

1. **CPS 1,000 Device Type.** The parties agree that the MSA shall include the CPS 1,000 Device type in addition to the CPS 2,000 Device type. Accordingly, the MSA is hereby amended to include reference to the CPS 1,000 Device where appropriate.

2. **Schedule A.** The parties desire to add a Facility to the MSA at which a Device may be installed. Accordingly, Schedule A to the MSA is hereby amended by adding to it the following Facility under the heading "Post-POC Facilities:":

<table>
<thead>
<tr>
<th>Location #</th>
<th>Address</th>
<th>City</th>
<th>State</th>
<th>Zip</th>
<th>Device</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>371 West Second Street</td>
<td>Dayton</td>
<td>OH</td>
<td>45402</td>
<td>1k Universal</td>
</tr>
</tbody>
</table>

FTB will notify the Customer Courier to update Appendix A to the CIT Terms accordingly.

3. **Schedule D.** The parties desire to add pricing to the MSA in connection with the new Device type. Accordingly, Schedule D to the MSA is hereby amended by adding to it the following information under the heading "CPS Managed Service (per month):":

"CPS 1,000 Universal:
One delivery of Validated Currency from a Device every other week - $313 per Device"

4. **Miscellaneous.** Each party represents and warrants to each other that this Amendment has been authorized by all necessary corporate action, and that the person signing this Amendment on each party’s behalf is duly authorized to do so. This Amendment evidences the entire agreement and understanding between the parties with respect to the subject matter of this Amendment and supersedes all prior agreements and discussions between the parties with respect to such subject matter.

****Signature Page Immediately Follows****
Signature Page to Amendment

WITNESS, the parties have caused this Amendment to be executed by their duly authorized representatives as of the date set forth below.

FIFTH THIRD BANK, N.A.          CUSTOMER: CITY OF DAYTON

By: Sean McLaughlin Digitally signed by Sean McLaughlin
Print name: McLaughlin
Print title: 2020.05.01
Date: 05:42:47 -04'00'

By: ______________________________
Print name: ______________________________
Print title: ______________________________

By: ______________________________
Print name: Thomas A Harp
Print title: Digitally signed by Thomas A Harp
Signature Date 2020.05.01
Date: 07:46:33 -04'00'

Fifth Third and Fifth Third Bank are registered service marks of Fifth Third Bancorp. Member FDIC.

DMS 16450838v2

APPROVED BY THE COMMISSION
OF THE CITY OF DAYTON, OHIO

---20---Min. Book---Page---

APPROVED AS TO FORM AND CORRECTNESS
CITY ATTORNEY

CLERK OF THE COMMISSION
FIFTH THIRD BANK

CHANNEL SERVICE SCHEDULE

CURRENCY PROCESSING SERVICES

This Channel Service Schedule for Currency Processing Services ("Schedule") is part of the Online Channel Access Agreement (the "OCAA") between Fifth Third Bank, National Association ("FTB," "we" or "us") and the Customer executing this Schedule ("Customer" or "you") and is effective as of the date indicated under our signature on the Signature Page. Capitalized terms used but not defined in this Schedule have the meaning given to them in the OCAA unless otherwise noted.

CPS

FTB and Customer are parties to a Managed Services Agreement ("MSA") which governs our Currency Processing Solution ("CPS"). The Device (as defined in the MSA) used in CPS includes Device-level software for the administration of the use of the Device. The Channel Services for CPS enable the remote administration of the use of the Device including establishing users of the Device and access to certain Device data and reports through one of our Access Channels including the CPS Portal available on or through Fifth Third Direct (the "CPS Portal") and together with the features and related services provided through the CPS Portal or other Access Channels, the "CPS Portal Services"). The CPS Portal may be hosted by us or one of our Processors. The Devices that may be accessed through the CPS Portal Services and the available features and options are described in the Channel Documentation for CPS as it may be updated from time to time.

Channel Administration

Implementation. Customer agrees to provide us with any information that FTB reasonably requires to enable us to provide the CPS Portal Services to Customer. Customer represents and warrants to FTB that all information provided to us in connection with the establishment and ongoing administration of the CPS Portal Services is and will be true, accurate and complete. FTB will rely on the information and authorization provided to us by Customer in this process in setting up and providing the CPS Portal Services to Customer.

Channel Administrator. Customer must either have a Channel Administrator or establish one in the set up process.

Service Administrator. Once FTB has enabled the CPS Portal Services for CPS, the Channel Administrator has the option to designate and establish as an administrator solely for CPS with the authority to administer, manage and use the CPS Portal Services (for the CPS Portal Services, the "Service Administrator"). The Channel Administrator may also act as Service Administrator. The Service Administrator has all of the authority of a Channel
Administrator but only with respect to the CPS Portal Services under this Schedule including the following authority:

- Add and change Device Users (as described below);
- Designate other Service Administrators with some or all of the authority of that Service Administrator;
- Designate and provision Users of the CPS Portal Services;
- Monitor the status of the Device and Device capacity; and,
- Receive reports and alerts available with the CPS Portal Service.

Customer is responsible for the administration of the CPS Portal Services including updates to the status of a Service Administrator, and for all use of the CPS Portal Services by the Service Administrator.

**Device Users.** The Service Administrator has the authority to establish “Device Users” who shall have the rights to access the Device for purposes of the processing currency through CPS. The Service Administrator may also assign a Device User with manager entitlements that include the authority to generate and obtain reports from the Device, establish and provision of Device Users on a particular Device at the local level, and approve currency extraction as part of CPS. Once established as a Device User, the Device User manages his or her ID and password at the Device.

**Controls.** Customer agrees to carefully monitor the use of the CPS Portal Services and institute reasonable procedures and controls so that the Portal Services are used only by authorized personnel for authorized purposes in connection with the proper use of CPS in accordance with the MSA.

**Termination**

This Schedule and the CPS Portal Services shall automatically terminate upon the expiration or any termination by either party of the OCAA or the MSA. Either party may terminate the CPS Portal Services and this Schedule by giving written notice to the other party. In addition, FTB may terminate this Schedule or suspend or terminate any Portal Service if Customer: (a) has breached a material obligation under this Schedule or violated any Applicable Law in connection with the CPS Portal Services; or (b) the continued provision of the CPS Portal Services in accordance with the terms of this Schedule or the OCAA would, in our good faith opinion, violate Applicable Law or any requirement, policy or directive of any regulatory authority, or subject us to an unacceptable risk of loss.

**Miscellaneous**

**Customer Support.** Our Commercial Support Center is available to assist Customer in using the CPS Portal Services during posted hours of operation and will provide additional assistance if requested.
Representations. Each party represents to the other that this Schedule has been authorized by all necessary corporate or other entity action and represents its valid, legal and binding obligations, respectively.

WITNESS, the parties have caused this Channel Service Schedule –CPS to be executed by their respective duly authorized representatives.

CUSTOMER NAME: ____________________________
Tax ID: ____________________________
By: ____________________________
Print name: ____________________________
Print title: ____________________________

APPROVED AS TO FORM AND CORRECTNESS

CITY ATTORNEY

FIFTH THIRD BANK
By: ____________________________ Sean
McLaughlin
Digitally signed by Sean
Print name: ____________________________ McLaughlin
Date: ____________________________ 2020.05.01
Print title: ____________________________
05:41:14 -04'90'

[Second Bank Officer]
By: ____________________________ Thomas A
Harp
Digitally signed by Thomas A
Print name: ____________________________ Harp
Date: ____________________________ 2020.05.01
Print title: ____________________________
07:48:11 -04'00'

APPROVED BY THE COMMISSION
OF THE CITY OF DAYTON, OHIO

20 Min. Book Page

CLERK OF THE COMMISSION
MANAGED SERVICE AGREEMENT

CPS 2,000

This Managed Service Agreement CPS 2,000 ("Agreement") is between Fifth Third Bank, an Ohio banking corporation ("FTB") and the City of Dayton, a municipal corporation ("Customer"), and is dated the date executed by FTB.

FTB’s Managed Service for CPS 2,000 enables the posting of provisional credit to Customer’s deposit account at FTB and related settlement for cash receipts secured in, and reported to FTB by an intelligent, automated safe device with dual bill acceptors (a “Device”) installed at Customer’s locations, and includes FTB’s proprietary communications and device management software, managed services (including Device and courier management) and reporting capabilities (collectively, the “Solution”).

INTENDING TO BE LEGALLY BOUND, the parties agree as follows:

1. **Currency Processing Solution.** During the Term (as defined below), FTB agrees to provide, and Customer agrees to use the Solution as described in this Agreement and the attached Schedules. If there is any inconsistency between the provisions of this Agreement and the Schedule, the provisions of this Agreement shall control to the extent necessary to resolve the conflict. The Solution includes the features described in this Section.

   1.1. **Devices.** Customer agrees to place each Device in operation in mutually agreed upon space at the Customer facilities listed on Schedule A to this Agreement (as updated by mutual written agreement from time to time) to be used in connection with the Solution. Each location at which a Device is installed in accordance with this Agreement is referred to as a “Facility.” For the POC Period (as defined below), a Device will be provided at each Facility designated as a POC Facility on Schedule A.

   1.2. **FTB Software.** Each Device will have installed on it FTB developed and owned or licensed software that provides for connectivity to FTB’s data network and Device data management ("FTB Software"). FTB grants to Customer during the Term a non-exclusive, non-transferable, limited royalty-free license to use the FTB Software on each Device identified on Schedule A solely in connection with Customer’s use of the Solution. Customer consents to the installation of the FTB Software on each Device.

   1.3. **Data Service.** FTB will provide a data network as part of the Solution to facilitate real time electronic communications between each Device and FTB including the transmission of data reporting Device activity, currency verification and other Device data.

   1.4. **Posting of Provisional Credit.** During each Business Day, FTB will post provisional credit to a mutually agreed upon account at FTB (the “Designated Account”) in an amount equal to the amount of currency accepted and validated by, and stored in each Device, and reported to FTB (referred to as “Validated Currency” as further described below) all as provided in this Agreement. Provisional credit is subject to verification and final settlement. A “Business Day” is a weekday on which FTB is open to the public for the transaction of business.
1.3. Currency Processing. FTB will arrange for and manage the pick up and transportation by Customer Courier (as defined below) of Validated Currency held in each Device, process and verify the Validated Currency and effect the final settlement of the transaction all as described in this Agreement.

1.6. Maintenance Services. FTB will provide general maintenance and repair services for the Device as identified on Schedule B to this Agreement. Additional maintenance resulting from misuse of or damage to the Device will be charged to Customer at FTB’s or its subcontractors’ then prevailing rates. Customer acknowledges that FTB will subcontract maintenance services to a third party.

1.7. Customer Support. FTB will provide the customer support via email and call center through FTB’s Commercial Support Center. In addition, Customer will be assigned a Relationship Manager who will support overall Customer needs and issue resolution as needed.

2. Devices. FTB and Customer will agree on the Facilities in the State of Ohio only at which the Devices may be installed and the Solution may be implemented.

2.1. Devices. The Devices are owned by FTB and remain FTB’s property throughout the Term. FTB and Customer agree that each Device shall be installed in agreed upon space in each Facility listed on Schedule A solely for use in connection with the Solution. Customer grants to FTB all necessary and sufficient rights to have each Device installed at the applicable Facility. Customer agrees to keep the Devices free and clear of all liens, claims and encumbrances at all times, and agrees to remove or cure, at Customer’s expense any lien, claim or encumbrance on any Device arising by or through Customer including from any lessor of the Facility. Customer agrees to maintain all plates and other markings on the Device that identify FTB’s ownership, and to allow FTB to affix such other plates and markings as FTB deems necessary in its discretion.

2.2. Installation and Operation. Customer agrees that each Device shall be installed in an area in each Facility that is not accessible to the general public or to Customer personnel other than Authorized Users (as defined below). FTB recommends that Customer be able to control effectively and account for access to the area around each Device. Customer agrees to secure each Device, and to permit Authorized Device Personnel (as defined below) to secure each Device to the permanent structure of the applicable Facility in such manner and by such reasonable means as are mutually agreed upon by the parties. If Customer is the lessee of the Facility, Customer represents and warrants that Customer has the right to secure, and to authorize FTB to secure the Devices to the Facility as contemplated in this paragraph.

2.3. Utilities and Communications. Customer agrees to provide at its expense utilities sufficient for the operating requirements of each Device. If sufficient utilities are not available to a Device at any time, regardless of the reason, the Device may not operate properly and the Solution will not be available from the affected Device.

2.4. Use and Responsibility. FTB grants Customer the right to access and operate each Device solely for purposes of the use of the Solution as described in this Agreement. Customer is responsible for any loss, theft, damage, destruction of a Device and its
contents while at a Facility except as caused by the Authorized Device Personnel. Customer agrees to promptly notify FTB in writing if Customer has knowledge of any loss, theft, damage or destruction of the Device or any of its components or contents. FTB recommends that Customer carry comprehensive liability insurance against all loss and damage to each Device and its contents while located at a Facility. Customer further agrees to return the Devices to FTB in good working condition (ordinary wear and tear excepted) upon expiration or termination of this Agreement.

3. Implementation

3.1. Work Plan. FTB and Customer will mutually agree upon and develop a written implementation plan or statement of work ("Work Plan") identified by the parties as such in writing that will include the general outline of the scope of work, objectives and key performance indicators, processes, and related implementation matters. FTB will assign a project manager to oversee the execution of the Work Plan and have overall responsibility to manage the delivery, installation and connection of the Devices in accordance with the Work Plan. The Solution will be available to Customer at a particular Device once that Device has been installed and become operational to the parties' mutual satisfaction, and data communications between FTB and that Device have been established and tested.

3.2. Administrator. In the set up process, Customer will appoint an individual to serve as Customer's administrator ("Administrator") with complete authority to administer and manage the use of the Solution on Customer's behalf. Unless expressly restricted by Customer in a signed writing provided to FTB, the Administrator has access to all of the administrative features of the Solution as well as the authority to: designate personnel including the Administrator with access to the Solution ("Authorized Users"); and establish User IDs, passwords and access credentials (including swipe technology) for Authorized Users to access the Solution; request and schedule maintenance; select the Customer Courier; and approve the CIT Terms; and, accept and act on all communications from FTB regarding the Solution. FTB is entitled to rely on the authority of the Administrator in providing the Solution.

4. Courier

4.1. Selection. Customer has selected the armored courier or couriers identified on Schedule C to this Agreement to act as Customer's agent to provide courier services with respect to Validated Currency in the Devices (each, a "Customer Courier"). The Customer Courier will provide transportation of the Validated Currency in each Device from Customer's Facilities to delivery points approved by FTB ("CIT Functions") pursuant to a separate agreement between Customer and Customer Courier in the form of Schedule C ("CIT Terms") to this Agreement. Each Customer Courier has authorized FTB to make available to Customer the CIT Terms, and to obtain from Customer delivery and transaction information, and related data necessary to implement the CIT Terms. Customer authorizes FTB to share such information and data with the Customer Courier.

4.2. Managed Services. While Customer and the Customer Courier are the contracting parties for the CIT Terms, Customer authorizes FTB, and FTB agrees, to: (a) manage the courier relationship for Customer and assist Customer with the CIT Terms; (b) handle and
process all billing and related charges for the Customer Courier for CIT Functions subject to receipt of payment from Customer; (c) assist Customer in handling all related disputes with the Customer Courier including disputes or incidents relating to the contents of any shipment handled by the Customer Courier subject to Customer approval; and, (d) terminate the CIT Terms if Customer or FTB determine that the performance of the Customer Courier is unsatisfactory. Customer agrees to provide FTB with prompt notice of any incident, loss of currency or dispute with the Customer Courier within 24 hours of discovery and to fully cooperate with FTB at its request with respect to any such dispute, incident or other loss. Customer may not, without the prior written consent of FTB, change any material provision of the CIT Terms including with respect to pricing, liability or the scheduled number of, or day or date for, pickups. Customer acknowledges that the pricing for the Solution is based in part upon an agreed upon frequency of, and dates for deliveries of Validated Currency to the Customer Courier or another third party as FTB’s cash processing agent. FTB reserves the right to change any agreed upon fee or charge payable by Customer if there is any change in the CIT Terms. Customer is solely responsible to the Customer Courier for the performance of its obligation under the CIT Terms. FTB is not assuming any obligation of Customer to the Customer Courier under the CIT Terms, nor is Bank responsible for any obligation of Customer to Customer. If, however, FTB pays any obligation of Customer under the CIT Terms, Customer is obligated to reimburse FTB for any such payment and related costs and expenses upon demand.


5.1. Access. Customer agrees that FTB’s employees, designated agents and vendor personnel that FTB identifies to Customer in writing (“Authorized Device Personnel”) and the Customer Courier may enter each Facility and have access to the Device at any time during Customer’s regular business hours for any purpose related to the Solution including maintenance, servicing, and verifying and retrieving Validated Currency. Customer and FTB will also agree on an access plan for emergency access after regular business hours. If FTB is unable to have access to the Device when requested, regardless of the reason, FTB may suspend the Solution until the required access is provided.

5.2. Surveillance. FTB recommends that Customer install and maintain at least one industry-standard, digital surveillance camera that monitors each Device and records through each camera all access to the Device every day, 24 hours a day. In the event of an Incident (as defined below) or other dispute relating to the Device or its contents, Customer agrees to make available to FTB the applicable camera and all recordings at any reasonable time upon request.

5.3. Operation. Customer agrees to use reasonable efforts to keep each Device in good working order, and to comply with operating requirements and restrictions communicated to Customer by FTB. Customer also agrees to maintain the paper supplies in each Device as required for proper operation of the Devices and the Solution.

5.4. Security. Customer agrees to: (a) implement and enforce policies and procedures to ensure that only Customer’s Authorized Users and Authorized Device Personnel have access to the Devices; and (b) implement reasonable security procedures to ensure the secure and authorized use of the Solution at each Device. Customer is solely responsible for all
use of the Solution at or through the Device, whether or not authorized by Customer, other than access by Authorized Device Personnel. FTB recommends that Customer have in place property insurance insuring the contents of the Device and fidelity insurance insuring Customer against unauthorized use of the Solution.

5.3. Restrictions. Customer agrees that it will not, and will not allow its employees, agents, or vendors to, directly or indirectly: (a) decompile, reverse engineer, disassemble or otherwise attempt to derive source code or trade secrets of the Solution; (b) copy (except in the case of normal backups and archival copies), reproduce, incorporate, use, or allow access in any portion of the FTB Software, or seek to circumvent any technological measures controlling access to the Solution; (c) use the Solution for any purpose other than cash processing through the Device as part of the Solution; (d) adapt, modify, transform or create derivative works of, any aspect of the Solution (including the removal or alteration of any copyright, trademark or proprietary rights notices); (e) license, lease, encumber, distribute, resell, or otherwise transfer or disclose the Solution to any third party or for the benefit of any third party, or allow third parties to use the Solution in any manner or way; or (f) create any software or documentation that is in any way similar to the Solution based in whole or in part on any information provided by FTB in connection with this Agreement or the Solution.


6.1. Device Operation. Only Authorized Users are permitted to place currency in the Device in connection with the Solution using the credentials established by the Administrator. The procedures for access to the dual currency acceptor features of each Device will be provided as part of the user guide provided by FTB to Customer in connection with the Solution ("User Guide"). Customer agrees to place only U.S. currency through the currency acceptors in each of the Devices. Checks, drafts and other documents are not permitted to be placed in the Devices, except as authorized by FTB for Devices with the Manual Drop.

6.2. Manual Drop. If a Device includes a manual drop feature ("Manual Drop") and FTB has agreed in the set-up process to enable this feature, Customer may place U.S. currency in the Manual Drop, coin, checks, and U.S. currency bills rejected by the currency acceptor of such Device. No provisional credit is given for the contents of the Manual Drop until such contents are physically delivered by Customer’s Courier to FTB or FTB’s authorized agent. The contents of the Manual Drop remain Customer’s property and Customer is solely responsible for, and retains all risk of loss for contents of the Manual Drop. The contents of the Manual Drop and any other currency or checks delivered to FTB or FTB’s cash processing agent by Customer’s Courier or otherwise intended for deposit with FTB are not part of this Agreement and are exclusively subject to the applicable Banking Agreements (as defined below).

6.3. Validated Currency. For purposes of this Agreement, "Validated Currency" is the currency that has been accepted and counted by a Device’s bill validation process and collected and stacked in the cassette receptacle of that Device ("Cassette"). Any currency not accepted by a Device including the contents of the Manual Drop remains Customer’s property and is not considered Validated Currency.
6.4. **Provisional Credit.**

(a) **Posting.** On each Business Day, FTB will post provisional credit to the Designated Account for the amount of Validated Currency reported to FTB by each Device. Provisional credit posted prior to FTB's processing cut-off time will be considered "available funds" in the Designated Account for that Business Day in accordance with the Banking Agreements; provisional credit posted after that time or on a day that is not a Business Day will not become available funds until the next Business Day. All credit given is provisional and subject to verification and correction based upon a report obtained from the Device and for the amount of Validated Currency actually received by FTB upon physical count and final settlement. Adjustments will be made for Device errors, counterfeit currency, discounts and all other discrepancies in the actual Validated Currency in a Device compared to the provisional credit given to Customer with respect to that Device.

(b) **Final Settlement.** If the actual contents of a Device for which FTB gave provisional credit or settlement are at any time and for any reason less than the amount for which FTB gave credit or settled or if any of the Validated Currency is missing or not delivered to FTB on the schedule set forth in the CIT Terms, then regardless of the reason or circumstances, FTB will reverse the corresponding credit given to Customer (and any related earnings credit and interest credited to Customer) and Customer is obligated to FTB for such adjustment, along with any applicable account fees. Once FTB posts provisional credit in the Designated Account, Customer is responsible to FTB for all such Validated Currency (including the currency constituting Validated Currency) and waives, relinquishes, disclaims, and transfers to FTB all ownership interests, including legal, equitable, and beneficial, to the Validated Currency. To the extent Customer retains any rights over the Validated Currency, Customer agrees to hold such funds in trust for the sole and exclusive ownership of FTB and grants to FTB a first priority and properly perfected security interest in all such Validated Currency.

(c) Notwithstanding the foregoing, the parties acknowledge that the cost of processing adjustments may outweigh the value of such adjustment. Accordingly, where the discrepancy between the amount of Validated Currency reported by the Device and the amount received by FTB is less than $50, no adjustment will be made. Each party recognizes that any foregone adjustments may be positive or negative.

(d) If the final settlement for the contents of any one Device results in an adjustment to the corresponding provisional credit for those contents of more than $250 more than two times in any calendar quarter that are not the result of FTB or Customer Courier error, FTB reserves the right to suspend the Solution at that Device pending resolution of the cause of the adjustments.

6.5. **Data Transmission.** The correct and timely posting of provisional credit to the Designated Account depends on the timely transmission of the appropriate and accurate data by each Device. FTB is not responsible for any errors in the data generated by a Device. While a Device is not functioning properly or is failing to transmit necessary or accurate data, FTB will be unable to post provisional credit to the Designated Account and FTB may suspend the posting
of provisional credit related to that Device or make such adjustments as it determines to be necessary to posted credit. FTB will cooperate with Customer to restore functionality as soon as practicable. If necessary, FTB will work with Customer to provide reasonable alternatives to processing Customer’s currency from the affected Facility.

6.6. Delivery of Validated Currency. Customer agrees that all Validated Currency is FTB’s property and will be delivered to Customer’s Courier for transportation to FTB or to an approved cash processing facility authorized by FTB for verification and processing in accordance with the delivery schedule approved by FTB in connection with the CIT Terms. Customer agrees not to remove any Validated Currency from a Device, pledge, give or grant any interest (including security interest) in the Validated Currency to any third party or use any Validated Currency for any purpose.

6.7. Additional Adjustments. If at any time a Device is lost, stolen, damaged or compromised, any Validated Currency has been accessed other than by Authorized Device Personnel, or FTB determines that there is an error in, or compromise in the security, accuracy or integrity of any communication or data from a Device, FTB is entitled to make an adjustment to Customer’s Designated Account in the amount determined by FTB in good faith to correctly reflect the effects of the situation. FTB also reserves the right to suspend the Solution at the affected Device pending resolution of the situation to FTB’s satisfaction.

6.8. Counts. Customer agrees that FTB’s or FTB’s cash processing agent’s count of currency in or from each Device including the amount of Validated Currency is final and conclusive. FTB is not liable for any shortage of currency due to any counterfeit, illegal, foreign or damaged currency, whether discovered before or after settlement. In no event is Customer entitled to any amount in excess of the actual amount of currency received by FTB, regardless of the nature of the error or reason for the adjustment.

6.9. Reporting. Customer agrees to promptly review all statements and reports provided or made available to Customer in connection with the Solution, and to report any discrepancy with Customer’s records, missing transaction, incorrect posts or other transaction issues not involving an Incident (“Transaction Problem”) as promptly as practical but not later than ten (10) days after the statement or report on which the Transaction Problem appeared or would have been reported is first provided or made available to Customer. Customer acknowledges that the failure of Customer to promptly report a Transaction Problem may reduce the ability of FTB to effectively respond to the issues and FTB will not have any obligation to correct a Transaction Problem that is not promptly reported to FTB. The parties will cooperate and work together in good faith to resolve a timely reported Transaction Problem.

6.10. Incidents. In the case of any incident involving the compromise of a Device or currency or coin missing from a Device or from any delivery by a courier or other personnel handling Validated Currency (an “Incident”), the parties agree to cooperate in a thorough investigation of each Incident. The results of each party’s investigation and relevant non-proprietary or privileged evidence will be made available to the other party subject to any regulatory or legal obligation. Customer agrees to make available to FTB any employees or agents whether Authorized Users or not who have had access to the applicable Device around the time of the Incident. FTB and Customer acknowledge and agree that prompt and timely notice
of an Incident is essential for minimizing losses. Customer agrees to give FTB prompt oral notice (to be confirmed in writing within 24 hours) not later than two (2) Business Days after it learns of an Incident.

7. **Fees.** Customer agrees to pay FTB the applicable charges set forth on Schedule D to this Agreement including during the POC Period. Customer understands that such fees and charges include amounts allocable to charges to Customer under the CIT Terms that FTB will remit to the Customer Courier. Additional charges may apply, including, but not limited to certain maintenance fees as set forth on Schedule D to this Agreement and additional Customer Courier charges for excess premise time and additional Customer Courier services. Unless otherwise expressly agreed to by FTB in writing, Customer authorizes FTB to debit Customer’s account for such charges including amounts due under the CIT Terms. Customer is responsible for all taxes attributable to its use of the Solution or this Agreement (excluding taxes based on FTB’s employees, property or net income). For avoidance of doubt, if a services, value added or similar tax is assessed on FTB’s provision of the Solution to Customer or on FTB’s fees from Customer under this Agreement, Customer will be responsible for and pay the amount of any such tax. To the extent that FTB advances or otherwise pays to the Customer Courier in connection with the Solution any fee, charge or other cost payable by Customer, FTB shall reimburse FTB immediately upon demand.

8. **Representations and Warranties.**

8.1. **Mutual.** Each party represents and warrants to the other that: (a) it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized; (b) the execution, delivery and performance of this Agreement has been authorized by all necessary entity and governmental action on its part; (c) the person signing this Agreement on its behalf is duly authorized to do so; and (d) this Agreement represents its legal, valid and binding obligation enforceable against it in accordance with its terms.

8.2. **FTB.** FTB agrees to provide the Solution in a diligent, workmanlike manner consistent with standards prevailing for similar processing services.

FTB makes no other representations or warranties, either express or implied, of any kind with respect to the Solution, including, without limitation, those of merchantability and fitness for a particular purpose. No descriptions or specifications constitute representations or warranties of any kind.

8.3. **Customer.** Customer represents and warrants to FTB that: (a) Customer has provided FTB with true and accurate copies of Customer’s most recently available quarterly and audited annual financial statements and such financial statements fairly present, in all material respects, Customer’s financial condition, cash flows and results of operations as of and for the periods indicated; and (b) Customer has not experienced a material adverse change in its financial condition, cash flows or results of operations since the date of the most recent audited financial statements provided to FTB.

8.4. **Financial Matters.** FTB’s willingness to continue to provide the Solution is subject to FTB’s review in its discretion of Customer’s financial condition and results. Unless
Customer is subject to, and in compliance with the periodic reporting requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, Customer agrees to provide FTB with such financial information as FTB reasonably requests and to cooperate with FTB in such review. If Customer is subject to such reporting requirements, Customer acknowledges that FTB may review and is entitled to rely on Customer's publicly available financial information; Customer understands that FTB may suspend the Solution if Customer fails to provide or make available the requested financial information or if the results of FTB’s review are not satisfactory to FTB.

9. Standard Banking Services. The parties acknowledge that in connection with the Solution, FTB may be providing one or more banking accounts in addition to the Designated Account and treasury management services offered by FTB from time to time including change orders (collectively “Banking Services”). The Banking Services, if any, are provided pursuant to, and as described in, a Master Treasury Management Agreement (or similar agreement) executed or to be executed by the parties and the related Terms and Conditions for treasury services, the Commercial Account Rules, Signature Card and related banking documentation (collectively “Banking Agreements”). The parties agree that (a) the Banking Agreements shall exclusively govern the Banking Services; and (b) this Agreement shall exclusively govern the Solution. In the case of any conflict with respect to the Solution between the Banking Agreements and this Agreement that cannot be resolved by application of the principle set forth in the preceding sentence, this Agreement shall control to the extent necessary to resolve the conflict.

10. IP Rights. Customer acknowledges and agrees that FTB and its vendors, processors or other third parties expressly engaged by FTB to provide any part of the Solution (“Service Providers”), as the case may be, shall own and exclusively retain any and all patent, trademark, copyright or trade secret rights (collectively referred to as “Intellectual Property Rights”) and any related rights associated with the Solution (and each component) and the software, hardware, design, functionality, processes, procedures, systems, know-how, inventions, sales materials, technical materials, implementation guides, checklists and other materials provided in connection with the Solution. Customer further acknowledges and agrees that FTB or its Service Providers, as the case may be, shall exclusively own all Intellectual Property Rights in and to any and all improvements, enhancements, derivative works, modifications, or developments made to or resulting from any of the foregoing materials. including materials that were developed, worked on, learned, or conceived by FTB or its Service Providers in connection with the Solution and Customer assigns any such rights to FTB or its designee. Customer’s sole Intellectual Property Rights are to use the Solution as provided in this Agreement.

11. Confidentiality.

11.1. Definitions. For purposes of this Agreement, “Confidential Information” means any and all information in any form or medium that is received by one party (a “Receiving Party”) from the other party (a “Disclosing Party”) in connection with the Solution (including prior to the date of this Agreement) that a reasonable person would reasonably be expected to know is confidential or proprietary information of the other party. FTB’s Confidential Information includes, but is not limited to, all information FTB discloses to Customer regarding or related to the Solution including product and service capabilities, features,
design, processes, and pricing, presentations, financial, transmission and performance data, data protocols, costs, strategies and general product and market information. Customer’s Confidential Information includes Customer’s store design, employee performance and processes, cash handling methodologies, and store and company financial and business data.

11.2. Obligations. During the Term and for a period of two years following any expiration or termination of the Term, Receiving Party shall keep in strict confidence, and shall not disclose to any third party without the prior written consent of the Disclosing Party, any Confidential Information except that Confidential Information may be disclosed by a party to its employees and agents who need to know such information for purposes of their duties to such party in connection with use or provision of the Solution. Neither party shall use the Confidential Information for any purpose other than in connection with the use or provision of the Solution and in no event is Customer permitted under any circumstances to disclose any FTB Confidential Information to, or use it in any way to obtain cash processing services from any person or entity other than FTB. Upon request of the Disclosing Party the Receiving Party will return all forms and copies of the Confidential Information in the possession of the Receiving Party subject, in the case of FTB, to FTB’s duties under Applicable Law.

11.3. Exceptions. The confidentiality restrictions contained in this Section shall not apply to information that the Receiving Party can demonstrate (a) was lawfully received from a third party without violation of a confidentiality obligation or duty by the third party, (b) is in or through no fault of the Receiving Party, becomes part of the public domain, or (c) is lawfully and independently developed or acquired by the Receiving Party without reliance in any way on the information received or generated in the course of use or provision of the Solution. Disclosure of Confidential Information is not precluded if such disclosure is required in compliance with a court subpoena, regulatory requirement or other government order, so long as the party complying with the subpoena, requirement or order provides, to the extent legally permitted reasonable advance notice to the other party before disclosing the Confidential Information. If the parties have executed and there is in effect a confidentiality, nondisclosure or similar agreement covering the information to be exchanged pursuant to this Agreement, then the parties agree that this Agreement controls over and supersedes any such prior agreement in its entirety.

12. Limitation of Liability and Indemnification. CUSTOMER AGREES TO THE MAXIMUM EXTENT PERMITTED BY LAW THAT IN NO EVENT WILL FTB BE LIABLE OR RESPONSIBLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR SPECULATIVE LOSSES OR DAMAGES (INCLUDING LOST PROFITS, GOOD WILL AND OPPORTUNITIES) THAT CUSTOMER OR ANY OTHER PERSON MAY INCUR OR SUFFER IN CONNECTION WITH THIS AGREEMENT OR THE SOLUTION, EVEN IF FTB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES AND REGARDLESS OF THE TYPE OF CLAIM.

Customer further agrees, to the maximum extent permitted by law, that FTB’s liability to Customer for any and all claims arising under or in connection with this Agreement or the Solution is limited to actual monetary damages. In no event shall the liability of FTB for any claims exceed the amount of fees actually paid by Customer to FTB in the twelve month period preceding the making of any claim by Customer.
12.1. **Customer.** Customer agrees to indemnify and hold FTB and FTB’s officers, directors, employees, affiliates, shareholders and agents harmless from and against any and all losses, liabilities, damages, actions, claims and expenses including court costs and reasonable attorneys’ fees and expenses ("Losses") resulting directly or indirectly from, or arising in connection with: (a) Customer’s breach of any of Customer’s agreements, representations, warranties or covenants in this Agreement; (b) Customer’s violation of Applicable Law (as defined below); (c) Customer’s use of the Solution; and, (d) any breach or failure to timely perform by Customer of the CIT Terms. Customer is not, however, obligated to indemnify FTB for any Loss directly resulting from FTB’s gross negligence, willful misconduct or bad faith.

12.2. **FTB.** FTB agrees to indemnify and defend at its own expense or settle any action brought against Customer to the extent that it is based on a claim against Customer that Customer’s proper use of the Solution in accordance with this Agreement and the directions of FTB directly infringes a United States copyright, trademark or patent of a third party, or constitutes misappropriation of a third-party trade secret by FTB; provided, however, that Customer: (a) promptly notifies FTB in writing of such claim; (b) has not made any admission of liability or agreed to any settlement or other material issue relating to such claim; (c) reasonably cooperates with FTB at FTB’s expense in the defense or settlement; and, (d) gives FTB sole control and authority over all aspects of the defense or settlement of such claim. FTB will have no liability or obligation to Customer, and shall have no obligation to indemnify or defend Customer with respect to any infringement claim based upon: (i) use of a superseded or altered release of Solution if the infringement would have been avoided by the use of a current or an altered release of the applicable aspect of the Solution that FTB makes reasonably available to Customer; (ii) the combination, operation or use of any aspect of the Solution with software, hardware or other materials not furnished by FTB if such infringement would have been avoided without such software, hardware or other materials; or (iii) any misuse, or use in violation of this Agreement or manufacturer or FTB instructions, of the applicable aspect of Solution.

12.3. **IP Matters.** If the Solution or any component of the Solution becomes or, in FTB’s good faith opinion, is likely to become, the subject of any legal or equitable claim or action preventing its use as contemplated in this Agreement, FTB may, at its option: (a) procure for Customer the right to continue using the Solution; (b) replace or modify the Solution or component so that it becomes non-infringing without substantially compromising the overall functionality of the Solution; or if (a) and (b) are not reasonably available to FTB, then (c) terminates Customer’s right to use the Solution or allegedly infringing aspect or component of the Solution.
13. **Compliance.** This Agreement and the use and provision of the Solution are subject to all applicable state, federal, local and foreign laws, rules, regulations and other laws including, without limitation, the Uniform Commercial Code in effect in the State of Ohio, rules and regulations of any money transfer system, check clearing or payment clearing house, association or network used by FTB in providing the Solution to Customer and the regulations and operating circulars of the Federal Reserve Board (collectively, “Applicable Law”). Customer agrees to use the Solution only in compliance with Applicable Law.

14. **Term and Termination.**

14.1. **Term.** The term of this Agreement will begin on the date this Agreement is signed by FTB (the “Effective Date”) and be comprised of the “POC Period” and, subject to the conditions described below, a “Full Term.”

(a) **Proof of Concept.** The parties are agreeing that the Solution will initially be provided by FTB and used by Customer on a short term, test basis to prove the Solution at a limited number of Facilities identified as POC Facilities on Schedule A (“POC Period”). The POC Period will begin on the Effective Date and end on the POC Expiration Date, which shall be the date that is one-hundred twenty (120) after the date on which provisional credit through the Solution is first posted to the Designated Account based on data from a Device in the POC Period. During the POC Period, the parties will test and evaluate the Solution against the “Evaluation Metrics” set forth in the Work Plan, if any. Either party may terminate the POC Period at any time by giving written notice of termination to the other party prior to the POC Expiration Date (“POC Termination Notice”); provided, however, that if the Evaluation Metrics are achieved during the POC Period, Customer intends to not give a POC Termination Notice. Upon the giving of the POC Termination Notice, the POC Period and the Term, and this Agreement shall terminate. In the event FTB grants to Customer any extension of the POC Period (“Extended POC Period”), which shall be at the sole discretion of FTB, and Customer terminates this Agreement prior to the expiration of such Extended POC Period, Customer shall be responsible for payment of the Device refurbishing fees set forth on Schedule D to this Agreement.

(b) **Full Term.** If neither party gives a POC Termination Notice before the expiration of the POC Period, the Term will continue and be deemed to have commenced on the Effective Date and end on a Device by Device basis, for each Device on the fifth anniversary of the Commencement Date (as defined below) for that Device (the “Device Term”); and for this Agreement, on the fifth anniversary of the latest Commencement Date (“Initial Term”). Each Device Term shall automatically be extended to coincide with the expiration of the Initial Term unless Customer provides at least 90 days advance written notice of non-extension prior to the expiration of the applicable Device Term. The Initial Term will automatically be extended for additional periods of one year each (each, a “Renewal Term”) unless either party gives written notice of termination not later than thirty (30) days before the expiration of the Initial Term or Renewal Term, as the case may be (the Initial Term (including the POC Period) and any Renewal Term are the “Term”). Upon or in anticipation of the commencement of the Initial Term, the parties will work together in good faith to update the Work Plan for the application of the
14.2. **FTB Termination.** FTB may terminate or suspend immediately the Solution or terminate this Agreement upon notice to Customer if: (a) (i) Customer breaches a material obligation under this Agreement provided FTB gives Customer notice of the breach and a reasonable opportunity to cure such breach and Customer fails to cure such breach within thirty (30) day period, (ii) Customer breaches any other material agreement with FTB, or (iii) Customer violates Applicable Law in connection with the Solution; (b) Customer becomes insolvent, is placed in receivership or is adjudicated bankrupt or Customer becomes subject to any voluntary or involuntary bankruptcy proceeding or any assignment for the benefit of its creditors; (c) Customer’s financial condition has become materially impaired such that FTB, in its good faith opinion, believes there is a material risk Customer will be unable to perform a material obligation of Customer under this Agreement; (d) any person or group acting in concert that does not on the date of this Agreement control a majority of Customer’s outstanding stock acquires, directly or indirectly (whether by merger, stock purchase or issuance, recapitalization, reorganization or otherwise), a majority of Customer’s outstanding stock; or (e) the continued provision of Solution in accordance with the terms of this Agreement would, in FTB’s good faith opinion, subject FTB to a material risk of loss. Each of the foregoing events is referred to as a "Termination Event." FTB may also terminate or suspend immediately the Solution or terminate this Agreement (i) upon 30 days written notice to Customer if FTB determines in good faith that the continued provision of the Solution by FTB in accordance with the terms of this Agreement would violate Applicable Law or any other requirement, directive or policy of any regulatory authority or governmental agency having jurisdiction over FTB; or (g) upon 90 days written notice to Customer.

14.3. **Customer Termination.** Customer may terminate this Agreement in the case of a material breach by FTB of a material obligation of FTB under this Agreement by giving thirty (30) days prior written notice to FTB, provided FTB has been given a reasonable opportunity to cure such breach and failed to cure such breach within that thirty (30) day period.

14.4. **Effect of Termination.** Upon any termination or expiration of this Agreement, the Term shall terminate and Customer shall: (a) promptly pay to FTB all sums due or reasonably estimated by FTB to become due under this Agreement including fees; (b) return immediately to FTB at Customer’s expense, the FTB Software and all materials related to the Solution including user and operating manuals, including all copies and reproductions, whether written or in electronic media and whether received from FTB or otherwise; (c) have no further right to make use of the Solution; (d) return all Devices to FTB; and, (e) terminate the CIT Terms and timely perform all of its obligations under the CIT Terms. Should FTB suspend or terminate the Solution, credits to the Designated Account will only be given for any contents of the Device actually received and counted by FTB at the agreed upon delivery point (to the extent not previously credited to the Designated Account) in accordance with the Banking Agreements. FTB may require the establishment of a reserve for any transactions processed by FTB but not finally settled prior to termination. Termination of this Agreement does not relieve or excuse Customer’s payment obligations for any aspect of the Solution (including any adjustment to provisional credit or related settlement) that FTB provides to Customer before or after this
Agreement is terminated, it does not release Customer or FTB from any of their respective obligations that arose or became effective prior to such termination. In addition, all provisions of this Agreement relating to the parties' warranties, representations, confidentiality or non-disclosure obligations, proprietary rights, limitation of liability and indemnification shall survive the termination of this Agreement.

14.5. Devices. Upon termination or Expiration of the POC Period without commencement of the Initial Term, Customer agrees to provide FTB and the Authorized Device Personnel with immediate access to any Devices provided for the POC Period upon request in order to remove all Devices and Validated Currency at FTB's expense; provided, however, that if Customer is granted an Extended POC Period without commencement of the Initial Term, Customer shall be responsible for all expenses to remove the Devices and Validated Currency. Upon any other termination or expiration of this Agreement for any reason, Customer agrees to provide FTB and the Authorized Device Personnel with immediate access to each Device upon request to remove them and all Validated Currency from the Facility by any reasonable method, and to cooperate with FTB to effect removal of the Validated Currency and the Device from each Facility, all at the expense and cost of Customer; provided, however, FTB shall be responsible for de-installation of and shipping costs for all Devices if Customer terminates this Agreement expressly in accordance with Section 14.3 or FTB terminates this Agreement under the last sentence of Section 14.2.

14.6. Termination Payment. Customer acknowledges that FTB has devoted substantial resources to the development of the Solution including for application in Customer's business and has priced the Solution on the basis of the length of the Term stated above. Accordingly, without limiting any other remedy FTB may have in connection with a breach of this Agreement, if the Initial Term begins, Customer agrees to compensate FTB under certain circumstances as follows:

(a) If (i) Customer terminates this Agreement other than pursuant to and in compliance with Section 14.3 or ceases using the Solution for any reason or (ii) FTB terminates this Agreement under Section 14.2 following a Termination Event, then Customer shall pay FTB upon demand a termination fee equal to, for each Device, the sum of the product of the average of the monthly fees for the Solution (including with respect to the CIT Terms) for each Device during the most recent three months prior to termination multiplied by the Time Factor (as defined below) for that Device;

(b) If Customer ceases to use the Solution and pay related fees at any time with respect to one or more Devices (each, a "Terminated Device") other than as a result of the expiration or termination of this Agreement, whether as a result of the closing or direct or indirect sale or other transfer of a Facility or otherwise, Customer shall pay to FTB upon demand a unit termination fee equal to, for each Terminated Device, the product of the average of the monthly fees for the Solution (including with respect to the CIT Terms) for that Terminated Device during the most recent three months for which fees were paid with respect to the Terminated Device, multiplied by the Time Factor for that Device. It is understood and agreed that the temporary closing of a Facility for remodeling or due to relocation of a Facility (in each case, with the consent of FTB and upon payment by Customer of all expenses incurred by FTB in connection with
the closing, relocation or change in location) does not result in the applicable Device being a Terminated Device provided that such Device is not out of use for more than 90 days and Customer continues to timely pay fees applicable to that Device while not in use. The date on which this Agreement is terminated or Customer ceases using the Solution in total or with respect to one or more Devices as provided in this Section 14.6 is the "Termination Date."

(e) The "Time Factor" for each Device is,

(i) If the Termination Date occurs on or prior to the first anniversary of the Commencement Date for that Device, thirty (30);

(ii) If the Termination Date occurs after the first anniversary of the Commencement Date but on or prior to the second anniversary of the Commencement Date for that Device, twenty four (24);

(iii) If the Termination Date occurs after the second anniversary of the Commencement Date but on or prior to the third anniversary of the Commencement Date for that Device, eighteen (18); or

(iv) If the Termination Date occurs after the third anniversary of the Commencement Date but on or prior to the fifth anniversary of the Commencement Date for that Device, twelve (12) or if less, the number of months remaining in the Term.

15. Miscellaneous.

15.1. Direct Use. The Solution is provided solely to Customer for its direct benefit. The Solution may not be resold or resold to, or used by any third party including subsidiaries and affiliates. If Customer wishes to make the Solution available for use by any subsidiary, that subsidiary will be required to first execute an addendum to this Agreement in a form provided by FTB.

15.2. Setoff. Customer grants FTB a contractual right of setoff against Customer's deposits and funds in Customer's accounts with FTB or any FTB affiliate at any time (excluding any account expressly titled to clearly demonstrate that the account is held by Customer in a fiduciary or representative capacity for a third party) in order to satisfy any unpaid or unperformed obligation of Customer under this Agreement, now or at any time in the future. FTB may exercise the right of setoff without demand or notice. FTB's rights as described above are limited only to the extent of limitations and restrictions imposed by Applicable Law.

15.3. Notices. Except for communications in the ordinary course of providing and using the Solution or as otherwise expressly provided in this Agreement, all notices and other communications by either party relating to this Agreement or the Solution shall be given promptly in writing or electronic medium and shall be effective either on the date it is actually received or five (5) days after it is mailed, sent by courier, transmitted or posted, whichever is earlier. The address to which all notices (other than notices given electronically as permitted in this Agreement) concerning this Agreement shall be sent to Customer is that address FTB has in
its records with respect to this Agreement. The address for notice to FTB will be as FTB may specify to Customer in writing.

15.4. **Assignment.** Customer may not sell, assign or transfer, or grant a security interest in any of its rights or obligations under this Agreement without FTB’s prior written consent. FTB may assign FTB’s rights and obligations under this Agreement in whole or in part without Customer’s consent (a) pursuant to, or in connection with any merger, consolidation or amalgamation involving FTB or FTB’s parent company, or the sale or transfer of all or substantially all of FTB’s assets or stock, or (b) in connection with the sale or other disposition of the business line or unit providing the Solution. FTB will use reasonable efforts to notify Customer of any such assignment.

15.5. **Force Majeure.** Neither party shall be responsible, and neither shall incur any liability to the other, for any failure, error, malfunction or any delay in carrying out any of its obligations under this Agreement directly resulting from causes beyond such party’s reasonable control, including without limitation, fire, casualty, lockout, strike, unavoidable accident, act of God, act of terrorism, riot, war or the enactment, issuance or operation of any adverse governmental law, ruling, regulation, order or decree, or an emergency that prevents such party from operating normally; provided, however, that Customer shall not be relieved of its responsibility for timely performance of any of its payment obligations to FTB.

15.6. **Validity.** If performance of Solution in accordance with the terms of this Agreement would result in a violation of any Applicable Law or governmental policy to which FTB is subject, then this Agreement shall, at FTB’s option, be deemed amended to the degree necessary to comply with such Applicable Law, and the parties shall work together in good faith to modify the Solution to the extent necessary to satisfy the requirements of such Applicable Law. If any provision of this Agreement is held to be invalid, illegal or unenforceable, such provision shall be valid, legal and enforceable to the maximum extent permitted by such holding and the validity, legality, or enforceability of the other provisions of this Agreement will not be affected or impaired by such holding.

15.7. **Amendment.** This Agreement may be modified by a written agreement executed and signed by the parties. Notwithstanding the foregoing, if a modification to this Agreement is required by or under Applicable Law or by a regulatory authority with jurisdiction over FTB or is, in FTB’s good faith opinion, necessary to preserve or enhance the security of the Solution, FTB may modify this Agreement by giving Customer notice of the modification by any means permitted by Applicable Law, and the modification will be effective immediately upon FTB giving such notice.

15.8. **Integration; Waiver.** This Agreement and the Schedules contain the complete and exclusive understanding of the parties with respect to the Solution and supercede any prior or contemporaneous agreements between the parties with respect to the Solution. For avoidance of doubt, the Banking Agreements apply to the extent of the account and treasury management services provided by FTB to Customer and the CIT Terms are separate agreements between the parties to such agreements. No waiver, alteration or modification of any of the provisions of this Agreement will be binding unless in writing and signed by a duly authorized
representative of the party to be bound. Neither the course of conduct between the parties nor
trade usage will act to modify or alter the provisions of this Agreement.

15.9. **Waiver of Jury Trial.** Each party agrees that any suit, action or
proceeding, whether as part of a claim or counterclaim, brought or instituted by Customer or
FTB on or with respect to this Agreement or any event, transaction or occurrence arising out of
or in any way connected with this Agreement shall be tried only by a court and not by a jury.
EACH PARTY EXPRESSLY, KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT
TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING.

15.10. **Governing Law; Venue.** This Agreement and any claims or disputes
relating to or arising out of this Agreement or the Solution shall exclusively be governed by, and
construed in accordance with, the laws of the State of Ohio, without regard to Ohio's conflict of
law principles, and with applicable federal laws and regulations. Customer irrevocably submits
to the nonexclusive jurisdiction of the courts of the state and federal courts in Hamilton County,
Ohio and agrees that any legal action or proceeding with respect to this Agreement may be
commenced in such courts.

15.11. **Publicity.** Neither party shall advertise or otherwise make known to others
any information regarding this Agreement including, but not limited to, any pricing
arrangements. Both parties further agree not to use in any advertising or sales promotion, press,
releases or other publicity matters, any endorsements, direct or indirect quotes, or pictures
implying endorsement by either party or either party's employees without prior written approval.
Each party shall submit to the other for written approval, prior to publication, all publicity
matters that mention or display the name or marks of the other party or contain language from
which a connection to the other party may be clearly inferred. This provision shall survive
termination of this Agreement.

15.12. **Independent Contractor.** FTB is providing the Solution as an independent
contractor. None of the terms set forth in this Agreement will be construed as creating a
partnership, joint venture, agency, trust, or any other similar relationship between Customer and
FTB or any of their respective employees, or between or among FTB and the Customer. This
engagement is nonexclusive and nothing in this Agreement will in any way restrict FTB's
right to provide the Solution or similar services to any person or entity.

15.13. **Counterparts.** The Agreement may be executed in counterparts, each of
which shall be deemed an original and all of which shall constitute a single instrument. The
parties agree that this Agreement and any amendments may be executed and delivered by
facsimile electronic mail in PDF or similar format or other electronic method (including
document and similar electronic signature systems) and that the copies or counterpart signature
pages so sent shall be treated and have the same force and effect as delivery of an original with a
manual signature. Customer agrees and consents that FTB may, at its option, send to Customer
any record, notice, disclosure, and other information via electronic means (including through a
Channel Service), including information that FTB is required by Applicable Law to provide to
Customer in writing. Electronic communication methods include methods FTB employs that
deliver visual text or images to be displayed on a computer or mobile device screen (such as e
mail, SMS or other mobile phone text, and posting through a Channel Service). FTB may,
however, require that Customer deliver an original of this Agreement and any amendment with a manual original signature.

[Signature Page Follows]
WITNESS, the parties have caused this Agreement to be executed by their respective duly authorized representatives.

CITY OF DAYTON

Tax ID: 31-0614175
By: Mark E. Oakes
Print name: Mark E. Oakes
Print title: Clerk of Court

FIFTH THIRD BANK

By: Matthew E. Koehn
Print name: Lynn L. Kridolph
Print title: Vice President

By: [Signature]
Print name: [Signature]
Print title: [Title]

DATE SIGNED: 1/1/19

Address:
301 W 3rd St
Dayton, Ohio 45402

Address:
38 Fountain Square Plaza
Cincinnati, Ohio 45263
STATEMENT OF SCHEDULES

Schedule A  Facilities
Schedule B  Maintenance
Schedule C  CIT Terms
Schedule D  Pricing
Schedule A
Facilities

POC Facilities:

<table>
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<tr>
<th>Location #</th>
<th>Location</th>
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<td>Oh</td>
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<td>2k Universal XL BNF</td>
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Post-POC Facilities:

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<td>Dayton</td>
<td>Oh</td>
<td>45402</td>
<td>2k Universal XL BNF</td>
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Schedule B
Maintenance

1. The following, with the exception of Level 3 on-site assistance, are included in FTB's maintenance program at no cost to Customer:

   a) Schedule and perform Preventive Maintenance services defined as preventive maintenance services conforming in frequency and scope to manufacture specifications at mutually arranged times during the stated Term.

   b) Unscheduled on-call Remedial Maintenance is provided during the Term. "Remedial Maintenance" shall include all the services necessary to restore a Device to its operating condition. The following procedures will apply for all Remedial Maintenance calls:

     _level 1: FTB shall provide telephonic diagnostic assistance in determining problem origin, seven days per week, twenty-four hours per day. In the event the problem cannot be resolved through Level 1 assistance, FTB will escalate Customer's call to Level 2 assistance.

      Level 2: Level 2 assistance is available Monday through Saturday. Typically, a call back to the client site will be required as Level 2 assistance will be provided by a resource with greater technical skills in a continued effort to resolve the issue via telephone. Level 2 assistance will leverage FTB's Device Management tool to gather more details about the device, which may require the end user to perform certain functions to assist with the validation (e.g., ensure cords are properly plugged into the device). In the event the issue cannot be resolved by Level 2 assistance, the call will be escalated to Level 3 assistance.

      Level 3: Subject to certain weekend and holiday limitations, within 24 hours of escalation to Level 3, a Technician will be dispatched to perform on-site issue resolution support to the Customer.

   c) Installation, at mutually agreed upon times, of mandatory equipment updates (generally consisting of bug fixes) required by FTB or manufacturer. This will include currency upgrades when available from the manufacturer at no additional cost to Customer.

   d) Provision of all parts necessary for maintenance on an exchange basis. Such parts will be new or guaranteed to perform as new when installed in the Equipment.
e) Limited equipment training/orientation will be performed at the time of installation. If Customer desires additional training during the Term, such training shall be provided at FTB's current market rates.

2. Maintenance that is required or due to the following events or causes will be charged to Customer at FTB's then applicable rates:

a) Accident, transportation (except for transportation provided by or contracted for by FTB), power surge or failure, neglect, misuse, fire, dirt, water, or environment (temperature) that fails to meet manufacturer's specification;

b) Negligent acts, omissions or willful misconduct by non-FTB personnel and agents;

c) Services necessary to replace consumable parts (such as paper and ribbons), for which the cost of the consumable parts, without mark-up, are also the responsibility of Customer;

d) External maintenance such as the replacement of cables, printers and supply items; and

e) Excessive bill jams caused by foreign objects such as staples, rubber bands, paper clips or tools.

3. The following fees apply to any services for which additional fees apply:

a) Install and De-install rates (for relocation or suspension of use) shall be quoted separately at the time of request.

b) Shipping and return shipping rates shall be quoted separately at the time of request.

c) Level 3 Service visits to a Customer Location resulting from the causes identified in #2 above will be invoiced at standard rates plus an administrative fee. Rates may vary outside of coverage hours and on holidays.

d) Coverage Hours – Seven days per week, 24 hours per day for Level 1 assistance. All other assistance available Monday through Saturday 8:00 am to 5:00 pm, excluding U.S. Federal Holidays.

B-2
Appendix A to Brink's CIT Terms
City of Dayton

Device Type: CPS 2,000

Maximum Liability Amount: $100,000

Pickup Frequency: As mutually agreed with Bank

Premise Time: 5 Minutes

Excess Premises Time Charge: $2.25 per minute

Approximate Start Date:

Customer Locations:

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<tr>
<th>Location #</th>
<th>Location</th>
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<th>City</th>
<th>State</th>
<th>Zip</th>
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<td>Oh</td>
<td>45402</td>
<td>2k Universal XL BNF</td>
</tr>
</tbody>
</table>
SCHEDULE D
Pricing

CURRENCY PROCESSING SOLUTIONS FEE DETAIL

CPS Managed Service (per month):

CPS 2,000 Universal XL BNF:
One delivery of Validated Currency from a Device per week - $623 per Device

Pricing is exclusive of all applicable taxes, which are the sole responsibility of Customer

CPS Managed Services includes:

- CPS Device (monthly lease from Leasing Company or rental from FTB)
- Licensed FTB Software
- Data Transmission to and from Device (internet/cellular connection not included)
- Courier management
- Customer support
- Currency processing and verification
- Initial Device site survey and initial shipping and installation*

* Rush order/installation of Devices incur a per Device charge of $500

Banking Services included in the CPS Fee:

- Provisional credit
- Change order fulfillment (non-routine change orders not included)
- On-line information reporting of intra and prior day transactions
- Account maintenance and structure

Additional CIT Charges:

The following charges may be incurred under the CIT Terms and will be charged to Customer at the applicable Courier’s then applicable rates plus applicable taxes and an administrative fee payable to FTB:

- Emergency or non-routine change order fulfillment and delivery — charged at actual rates
- Excess premise time charge — Varies by carrier
- Fuel surcharges
- Remote location surcharge

D-1
Additional Maintenance Fees:

Maintenance that is required or due to the following events or causes will be charged to Customer at FTB's or its contractor's then applicable rates plus applicable taxes and an administrative fee payable to FTB:

- Accident, transportation (except for transportation provided by or contracted for by FTB), power surge or failure, neglect, misuse, fire, dirt, water, or environment that fails to meet manufacturer’s specification; and
- Negligent acts, omissions, willful misconduct and similar acts or inaction by individuals other than Authorized Personnel.
- Additional charges for parts will apply.

Maintenance fees are subject to actual charges incurred. Rates generally are per visit plus a per time increment charge and administrative fee. Current rates are available upon request.

Device Removal, De-Installation, Moves and Other Changes:

For any removal, de-installation, moves, retrofitting or changes in Device configuration or location after initial installation, Customer will be responsible for all actual costs incurred plus applicable taxes and an administrative fee payable to FTB.

In the event Customer decides not to move forward with the Solution after any Extended POC Period, whether upon expiration or termination of this Agreement, Customer shall be responsible for the following refurbishing fees, immediately payable to FTB upon removal of the Devices from Customer’s Facilities:

CPS 2,000 Universal XL BNP:
$200 per Device, per month for each month of any Extended POC Period.

CPI Fee Increases

FTB may increase fees annually by an amount no more than the percentage increase in the Consumer Price Index (as reported publicly by the U.S. Department of Labor, Bureau of Labor Statistics).

Administrative Fee:

The administrative fee will equal 10% of the underlying charge, exclusive of taxes.

New and additional services, including extra training, can be included for additionally negotiated fees.
From 3460 - Water/Water Reclamation
Supplier, Vendor, Company, Individual
Hazen & Sawyer
Address 7870 E. Kemper Rd.
Cincinnati, Ohio 45249

Date May 13, 2020
Expense Type Service Agreement
Total Amount $8,500,000.00 (thru 12/31/2026)

Fund Source(s) | Fund Code(s) | Fund Amount(s)
--- | --- | ---
2020-2022 Sanitary Capital Funds | 55101-3460-1424-54-SF1901 | $8,500,000.00

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

Description

PROFESSIONAL SERVICE AGREEMENT FOR
THE PHASE I ANAEROBIC DIGESTER PROJECT

The Department of Water requests permission to enter into a Professional Services Agreement with Hazen and Sawyer in the amount of $8,500,000.00 for the design phase of the Phase 1 Anaerobic Digester Project for the Water Reclamation Facility. This project was identified as a priority in the 2018 Water Reclamation Facility’s Master Plan. 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 City solicited Letters of Interest and Statement of Qualifications using the Request for Qualifications (RFQ) which is based on the State of Ohio’s guidelines for the Qualification Based Selection (QBS) process. Seven consultants provided Letters of Interested and Qualifications received for this project on December 16, 2019. After evaluating the consultant submittals, the top three consultants were interviewed on January 28, 2020. Hazen and Sawyer was chosen in response to the City’s Request for Qualifications (RFQ No. 19018WTWE) and will best meet the Department of Water’s Objectives.

This project will be funded by an Ohio EPA Division of Environmental and Financial Assistance Design Loan. This Commission agenda includes the Resolution that authorizes the City Manager to apply for and enter into a Design Loan Agreement with the Ohio EPA DEFA. Once the design has been completed, the construction will be funded by a separate Ohio EPA DEFA Construction Loan and upon completion both the Design Loan and Construction Loan will be rolled together for final debt service payments.

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

A Certificate of Funds and a copy of the Agreement are attached. The encumbrance request is for the design portion of the agreement only in the amount of $4,604,311.00.

Signatures/Approval

Approved by City Commission

Division

Department

City Manager

FORM NO. MS-16

Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

X New Contract

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

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

Amount: $ 4,604,311.00

Fund Code

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</table>

Attach additional pages for more FOAPALs
Vendor Name: Hazen & Sawyer
Vendor Address: 7870 E. Kemper Rd. Cincinnati, Ohio 45249
Federal ID: 13-2904652
Commodity Code: 96895
Purpose: Award of Contract for Professional Services for Phase 1 of the Anaerobic Digester Project - Design

PORTION EXBA.

Contact Person: Lisa Burton-Yates

Water/Water Engineering

Department/Division

5/1/2020

Date

SECTION II - to be completed by the Finance Department

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

Finance Director Signature

05-05-2020

Date

CF/CT Number

Finance Department

October 18, 2011
May 5, 2020

TO: Shelley Dickstein
    City Manager

FROM: Chris Clark, Division Manager
    Division of Water Reclamation

SUBJECT: Resolution – Submittal of an Ohio EPA Division of
          Environmental and Financial Assistance Loan Supplement
          Application for the Phase I Anaerobic Digester Project Design

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 was selected as the design firm and the Professional Service Agreement with H&S for the design and construction administration will be scheduled with City Commission at the same time as the attached funding resolution. The negotiated fees with Hazen & Sawyer for the project design are $4,604,311.

The City of Dayton is applying for an Ohio EPA DEFA Design Loan for this project. The DEFA Design Loan will only finance the Design Fees. The Construction Service Fees will be included in a future Construction Loan Application. One of the first steps in the submittal of a loan application is the adoption of a Resolution that authorizes the City Manager to apply for and receive a design loan from the Ohio EPA.

Attached is a draft of the Resolution. The Resolution must be introduced and passed at the same time that the Professional Service Agreement with Hazen & Sawyer is approved. The resolution has been reviewed and approved by the Law Department as to form and correctness. I am currently working on the Loan Application and once the Resolution passes, I will be routing the loan application to the Law Department, Finance and CMO for final approvals. If you need any additional information, please contact me at x1834.

APPROVED:

[Signature]

Michael Powell, Director
Department of Water
A RESOLUTION

Authorizing the City Manager to Apply for, Accept, and Enter Into a Water Pollution Control Loan Fund (“WPCLF”) Loan Agreement on Behalf of the City of Dayton, Ohio for Design of the Water Reclamation Facility Phase I Anaerobic Digester Project; and 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 Phase I Anaerobic Digester Project which would add additional Anaerobic Digesters and rehabilitate the existing East Digester Complex; and,

WHEREAS, The City of Dayton has entered into a Professional Service Agreement with Hazen & Sawyer for the design of this project; and,

WHEREAS, The City of Dayton intends to apply for a Water Pollution Control Loan Fund (“WPCLF”) Loan for the design of the Phase I Anaerobic Digester Project; 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 with the Ohio Environmental Protection Agency and the Ohio Water Development Authority for design of the Phase I Anaerobic Digester Project 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.........................., 2020

SIGNED BY THE MAYOR.............................., 2020

Mayor of the City of Dayton, Ohio

Attest:

Clerk of Commission

Approved as to form:

City Attorney
By: ........................................

No: ......................................

A RESOLUTION

Authorizing the City Manager to Apply for, Accept, and Enter Into a Water Pollution Control Loan Fund (“WPCLF”) Loan Agreement on Behalf of the City of Dayton, Ohio for Design of the Water Reclamation Facility Phase I Anaerobic Digester Project; and Designating a Dedicated Repayment Source for the Loan, and Declaring an Emergency.

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ADOPTED BY THE COMMISSION................................., 2020

SIGNED BY THE MAYOR..........................................., 2020

Mayor of the City of Dayton, Ohio

Attest:

Clerk of Commission

Approved as to form:

City Attorney
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<th>Points Possible/ Weight Per Reviewer</th>
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<th>Black &amp; Veatch</th>
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PROFESSIONAL SERVICES AGREEMENT

This Agreement ("Agreement") is made this ___ day of _______________, 2020, between the City of Dayton, Ohio, ("City"), and Hazen and Sawyer with an office at 7870 East Kemper Road, Suite 300, Cincinnati, OH 45249 (hereinafter referred to as the "Consultant").

WITNESSETH THAT:

WHEREAS, The City desires professional services in connection with Improvements to the Anaerobic Digesters for the City of Dayton, Ohio. Water Department; and,

WHEREAS, Consultant is willing to perform such professional services and represents that its staff is fully qualified to perform such services; and,

WHEREAS, The professional services to be provided under this Agreement are necessary to achieve the purposes of the City’s Water Department.

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

ARTICLE 1. TERM
The Agreement shall commence upon execution by the City and it shall terminate upon expenditure of all funds provided herein or on December 31, 2026. The City, however, reserves the right to extend the term of this Agreement to a later date by mutual written agreement, as described in Article 11, J.

ARTICLE 2. SERVICES TO BE PERFORMED BY CONSULTANT
Consultant shall provide all professional services necessary to complete the Services that are described in Attachment A, Scope of Services, which is incorporated herein by reference.

ARTICLE 3. COMPENSATION
The total remuneration of this Agreement shall not exceed EIGHT MILLION FIVE HUNDRED THOUSAND AND ZERO CENTS ($8,500,000.00) for all services to be provided by Consultant pursuant to this Agreement. All services will be paid according to Attachment B, which is incorporated herein by reference. The Consultant shall submit invoices, not more frequently than monthly, for payment of the Services actually provided. Such invoices shall state the invoice period, total amount requested, and Services provided during the invoice period. The City will, unless disputed, remit payment of all undisputed amounts of invoices within thirty (30) days from receipt thereof.

ARTICLE 4. CITY’S RESPONSIBILITIES
The City will furnish Consultant, at no cost or expense, all reports, records, and data that might be necessary or useful to complete the Services required under this Agreement.

ARTICLE 5. STANDARD OF CARE
Consultant shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily possessed and exercised by a professional under similar circumstances at the time the services are performed. Consultant shall have no liability for defects in the Services attributable to Consultant’s reliance upon or use of data or other information furnished by the City or third parties retained by the City.
If, during the one year period following completion of the Services, it is shown there is an error in the Services caused by Consultant’s failure to meet such standards and the City has notified Consultant in writing of any such error within that period, Consultant shall perform, at no additional cost to the City, such Services within the original Project as may be necessary to remedy such error.

ARTICLE 6. LIABILITY AND INDEMNIFICATION
Consultant agrees to defend, indemnify, and hold harmless City, its elected officials, employees and agents from and against claims, losses, damages, and expenses (including reasonable attorneys’ fees) to the extent such claims, losses, damages, or expenses are caused by or arise out of the performance or non-performance of this Agreement and/or the acts, omissions or conduct of the Consultant or its employees, agents, and representatives.

This Article 6 shall survive termination of this Agreement.

ARTICLE 7. INSURANCE
During the term of this Agreement, Consultant shall maintain, at its sole cost and expense, no less than the following insurance issued by an insurance company authorized to conduct business in the State of Ohio and having an “A” rating or better by A.M. Best:

(1) General liability insurance, having a combined single limit of $1,000,000 for each occurrence and $1,000,000 in the aggregate.
(2) Automobile liability insurance, having a combined single limit of $1,000,000 for each person and $1,000,000 for each accident.
(3) Employers’ liability insurance, having a limit of $500,000 for each occurrence.
(4) Professional liability insurance, having a limit of $1,000,000 annual aggregate.
(5) Consultant shall maintain errors and omissions insurance in the amount of $1,000,000.

Current certificates of insurance for all policies and concurrent policies required to be maintained by Consultant pursuant to this Article shall be furnished to the City. All such insurance policies, excluding Professional Liability Insurance, shall name the City and its elected officials, officers, agents, employees, and volunteers as additional insureds, but only to the extent of Consultant’s legal liability and to the extent of the policy limits stated herein. All policies of insurance required hereunder shall contain a provision requiring a minimum of thirty (30) days advance written notice to the City in the event of cancellation or diminution of coverage. In the event of a claim, Consultant shall make copies of applicable insurance policies available for review by the City. Consultant, however, shall retain its right to restrict disclosure of Consultant’s proprietary information contained in such policies in accordance with Article 8.

Consultant also shall maintain Workers’ Compensation Insurance in such amounts as required by law for all employees and shall furnish to the City evidence of same.

ARTICLE 8. CONFIDENTIALITY
Either party may provide the other party with information that it considers confidential or proprietary. Proprietary information is information that, if made public, would put the disclosing party at a disadvantage in the market place or trade of which the party is a part. Confidential information is information that, under the laws of the State of Ohio, is classified as being
“private.” Such information shall be marked “confidential” and/or “proprietary” by the party providing it.

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

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

ARTICLE 9. OWNERSHIP OF DOCUMENTS & INTELLECTUAL PROPERTY
Except as otherwise provided in this Agreement, documents and reports prepared by Consultant as part of the Services shall become the sole and exclusive property of the City upon payment. However, Consultant shall have the unrestricted right to their use.

Consultant shall retain its rights in pre-existing and standard scripts, databases, computer software, models, and other proprietary property. Rights to intellectual property that is not specifically designed or created exclusively for the City in the performance of this Agreement shall also remain the property of Consultant.

ARTICLE 10. TERMINATION
This Agreement may be terminated by the City upon written notice in the event of substantial failure by Consultant to perform in accordance with the terms of this Agreement. Consultant shall have fifteen (15) calendar days from the date of the termination notice to submit a plan to the City.

The City may terminate or suspend performance of this Agreement for the City’s convenience upon thirty (30) days prior written notice to Consultant. In the event of termination by the City hereunder, the City will pay Consultant for Services actually provided up to the date of termination.

ARTICLE 11. STANDARD TERMS

A. DELAY IN PERFORMANCE
Neither the City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either the City or Consultant under this Agreement.
Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

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

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

Consultant: Hazen and Sawyer
7870 East Kemper Road, Suite 300,
Cincinnati, Ohio 45249
Attention: W. James Gellner, Vice President

City: City of Dayton, Department of Water
320 West Monument Avenue
Dayton, Ohio 45402
Attention: Michael Powell, Director

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

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

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

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

F. SEVERABILITY
The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void, unenforceable, invalid or illegal provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision. The parties further agree to amend this Agreement to
replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision, which is of the essence of this Agreement, be determined void.

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

Consultant, its employees and any persons retained or hired by Consultant to perform the duties and responsibilities under this Agreement are not City employees, and therefore, such persons shall not be entitled to, nor will they make a claim for, any of the emoluments of employment with the City of Dayton. Further, Consultant shall be responsible to withhold and pay, or cause such agents, contractors and sub-contractors to withhold and pay, all applicable local, state and federal taxes.

Consultant acknowledges its employees are not public employees for purposes of Ohio Public Employees Retirement System (“OPERS”) membership.

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

I. THIRD PARTY RIGHTS
Except as expressly provided in this Agreement, nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and Consultant.

J. AMENDMENT
The parties may mutually agree to amend this Agreement. However, no such amendment shall be effective unless it is reduced to a writing, which references this Agreement, executed by a duly authorized representative of each party and, if applicable or required, approved by the Commission of the City of Dayton, Ohio.

The parties may mutually agree to extend the term of this Agreement to a later date. The Director of the Department of Water is authorized to extend the term of this Agreement for the City.

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

L. INTEGRATION
This Agreement represents the entire and integrated agreement between the City and Consultant. This Agreement supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement.

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

CITY OF DAYTON, OHIO

________________________
City Manager

HAZEN AND SAWYER
By:    
________________________
W. James Geller II
Title:  VICE PRESIDENT

APPROVED AS TO FORM
AND CORRECTNESS

________________________
City Attorney

APPROVED:

________________________
Director, Department of Water

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

________________________, 2020

Min./Bk.: _______ Page: __________

________________________
Clerk of the Commission
ATTACHMENT A
SCOPE OF SERVICES

City: City of Dayton, Ohio
Project: Phase 1 Anaerobic Digestion Project
Consultant: Hazen and Sawyer

SCOPE OF WORK

Hazen and Sawyer shall provide engineering services to the City of Dayton, Department of Water for the Phase 1 Anaerobic Digestion Improvements. The PROJECT includes engineering services for evaluation, detailed design, bidding and construction phase services for improvements to the anaerobic digesters and related facilities at the Dayton Water Reclamation Facility (WRF). Anticipated improvements are described in Tasks 3 and 4/5. The engineering services to be provided by the ENGINEER for the PROJECT are described as follows.

Project Scope

Task 1 – Project Management and Coordination

ENGINEER will provide project management and coordination to maintain the progress on the project and complete the project within the desired schedule. ENGINEER will maintain frequent communication as necessary with OWNER’s WRF and Engineering Divisions.

ENGINEER will schedule a recurring weekly conference call with the OWNER’s project manager. Purpose of the call will be to discuss project coordination, upcoming meetings, and deliverables. The call will be held approximately weekly, acknowledging that calls on some weeks may not be necessary.

The anticipated schedule for the project is summarized in the table below. ENGINEER will prepare a Microsoft Project schedule at the beginning of the project which will include specific durations and anticipated dates of major workshops and deliverables. The schedule will be updated on a monthly basis.

<table>
<thead>
<tr>
<th>Major Activity</th>
<th>App. Duration</th>
<th>Estimated Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>NTP / Kickoff Meeting</td>
<td>-</td>
<td>May 21, 2020</td>
</tr>
<tr>
<td>Task 2 – Design Criteria / Existing Facility Memo</td>
<td>2 months</td>
<td>July 2020</td>
</tr>
<tr>
<td>Task 3 – Design Calcs/Layout (BODM)</td>
<td>7 months</td>
<td>Feb 2021</td>
</tr>
<tr>
<td>Task 4 – 30% Design</td>
<td>4 months</td>
<td>June 2021</td>
</tr>
<tr>
<td>Task 4 – 60% Design</td>
<td>4 months</td>
<td>Oct 2021</td>
</tr>
<tr>
<td>Task 5 – 90% Design</td>
<td>4 months</td>
<td>Mar 2022</td>
</tr>
<tr>
<td>Task 6 – 100% Design</td>
<td>2 months</td>
<td>May 2022</td>
</tr>
<tr>
<td>Task 8 – Bidding / Award</td>
<td>2 months</td>
<td>July 2022</td>
</tr>
<tr>
<td>Contracts / Construction NTP</td>
<td>2 months</td>
<td>Sept 2022</td>
</tr>
<tr>
<td>Task 9 - Construction</td>
<td>30 months</td>
<td>Dec 2024</td>
</tr>
<tr>
<td>Contract Closeout</td>
<td>3 months</td>
<td>March 2025</td>
</tr>
</tbody>
</table>
ENGINEER will maintain and update the following additional items on at least a monthly basis (see below). Up to date versions will be posted on a shared site allowing City access:

- Meeting Register
- Deliverable Log
- Key Decisions Log
- Action Item List
- Change Direction List
- Risk Register

ENGINEER will submit a monthly invoice, along with progress summary which conforms to OWNER requirements. The invoice will include a summary of completed work during the period, planned activities for the upcoming period, and any issues/concerns impacting the project.

ENGINEER will coordinate with OWNER to schedule and facilitate meetings throughout design and construction. Progress meetings will be held monthly during design. Where possible, these meetings will be scheduled to coincide with the following anticipated meetings (NOTE – budgeted time for meetings and billing for those meetings will be tracked within the individual tasks shown below). Specific meetings for construction phase services will be provided as outlined in Tasks 9 and 10.

<table>
<thead>
<tr>
<th>Task No.</th>
<th>Duration</th>
<th>Meeting Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 - Project Management / Coord.</td>
<td>-</td>
<td>Kickoff Meeting*&lt;br&gt;Weekly Coordination Calls</td>
</tr>
<tr>
<td>2 – Site Visit / Review Existing</td>
<td>2 months</td>
<td>O&amp;M Workshop*&lt;br&gt;Design Criteria / Existing Facilities Workshop*</td>
</tr>
<tr>
<td>3 – Design Calcs / Layout</td>
<td>7 months</td>
<td>4 Evaluation Workshops*&lt;br&gt;BODM Workshop*&lt;br&gt;Monthly Progress Meetings (2)</td>
</tr>
<tr>
<td>4/5 – Drawings / Specifications</td>
<td>14 months</td>
<td>30% Design Submittal Workshop*&lt;br&gt;60% Design Submittal Workshop*&lt;br&gt;90% Design Submittal Workshop*&lt;br&gt;Operations Design Review Workshops (2 total)&lt;br&gt;SCADA Coordination Workshop (one at 90%)&lt;br&gt;Construction Sequencing (post 60%)*&lt;br&gt;Monthly Progress Meetings (6)</td>
</tr>
</tbody>
</table>

NOTES: Includes meetings for design – meetings during construction will be as outlined in Tasks 9 and 10 * Monthly progress updates will be given at these workshops

For all meetings, ENGINEER will prepare a brief summary of key information discussed, key decisions and action items. ENGINEER will distribute a draft meeting summary to the project team and incorporate comments. Final meeting minutes will be maintained on the project share site.

ENGINEER will provide the following deliverables during preliminary and final design. Budgeted time for specific deliverables is included within specific project tasks shown in the table. Project schedule is based on a 2-week review time by OWNER. Deliverables for construction phase services will be provided as outlined in Tasks 9 and 10.
<table>
<thead>
<tr>
<th>Task No.</th>
<th>Deliverable</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 – Site Visit / Review Existing</td>
<td>Design Criteria / Existing Facilities Memorandum</td>
</tr>
<tr>
<td>3 – Design Calcs / Layout</td>
<td>Basis of Design Memorandum</td>
</tr>
<tr>
<td>4/5 – Drawings / Specifications</td>
<td>30% Plans and Specifications</td>
</tr>
<tr>
<td></td>
<td>60% Plans and Specifications</td>
</tr>
<tr>
<td></td>
<td>90% Plans and Specifications</td>
</tr>
<tr>
<td></td>
<td>100% Plans and Specifications</td>
</tr>
<tr>
<td>8 – Bidding Phase Services</td>
<td>Addenda</td>
</tr>
<tr>
<td></td>
<td>Bid Evaluation / Award</td>
</tr>
</tbody>
</table>

NOTES:
Includes major deliverables during preliminary and final design. Deliverables during construction are described in Tasks 9 and 10.

ENGINEER will perform QA/QC throughout the project consistent with our corporate QA Policy Manual and project specific QA/QC plan. Deliverables will undergo QA/QC review prior to submittal to OWNER. QA/QC consistent with industry practice for construction management will also be provided during construction phase services. Budgeted time for QA/QC is included within specific project tasks relating to specific deliverables and activities.

**Task 2 – Site Visit / Review Existing Documents**

Prior to the kickoff meeting ENGINEER will prepare an information request and submit this to the OWNER. In general, the information request will include items in addition to data already provided by OWNER as part of the selection process. It is anticipated that the OWNER will provide data and information in electronic format where possible.

ENGINEER will review existing documents and information provided by the City in advance of site visits and discussions with O&M staff. ENGINEER will conduct site visits and meet with City operations staff. Objective of site visit / meetings is to increase understanding of existing plant facilities and to gather input on current operation and needs to be addressed as part of the project.

ENGINEER will also perform a code compliance and condition audit of existing facilities during the period of the site visits. Specific areas of review will include:

- East Digesters and Digester Complex
- West Digesters and Digester Complex
- Boiler Room
- Plant Main Switchgear
- Substation 9
- Heat Exchanger Building
- South Primary Clarifier (odor covers)
- Influent Parshall Flume (odor covers)
- Main Diversion Chamber (odor covers)
- Manhole 16 (odor containment)
- North and South Primary Sludge Pumping
Inspections will be limited to visual inspections to supplement the condition assessment performed during the master plan. No tank or confined space entries will be made and components will be limited to those that can be accessed through existing structures and access/egress. No materials testing will be provided. A one-week period is anticipated for the effort and will require OWNER presence for most of the inspection/walk throughs. During that week, ENGINEER will conduct an O&M workshop to gather input from OWNER staff on existing equipment and facilities.

ENGINEER will begin evaluation of increasing primary sludge concentrations during these site visits. ENGINEER will develop a testing/evaluation protocol for field operations to test the operating strategy.

ENGINEER will meet with City’s SCADA Consultant and OWNER SCADA staff to coordinate SCADA, Instrumentation, and Control requirements. As part of the meeting, ENGINEER will establish key milestones and check-in points on the I&C design.

As directed by OWNER, ENGINEER will provide as needed operations assistance with existing digester operations. Purpose of assistance will be to assist in troubleshooting of current operational issues and to evaluate potential minor improvements to streamline and improve operations until new improvements are implemented.

ENGINEER will develop a draft Design Criteria/Existing Facility Memorandum. The Memorandum will include the following:

- Summary of existing facilities and associated condition
- Code compliance issues and items that require attention during the upgrades
- Current and future criteria for solids loading under annual average, maximum month, and peak week
- Summary of input from operations staff which will impact overall design project.

ENGINEER will submit draft memorandum to OWNER for review and meet with OWNER to gather comments. Comments will be incorporated into the final memo, to be included in the Basis of Design Memorandum (BODM - see Task 3).

**Task 3 – Design Calculations/Layout/Details**

ENGINEER will evaluate process alternatives and prepare a Basis of Design Memorandum (BODM) as part of this task. Specific tasks are detailed below:

ENGINEER will work with OWNER project team to perform the following evaluations:

- **1A - New Digester Sizing/Volume** – ENGINEER will use design criteria and input from operations staff from Task 2 to finalize sizing of proposed new digesters. Anticipated improvements include the following:
  - Two new silo style digesters, sized with same volume as East Digesters
  - Rehabilitation of East Digesters including new roofs, new pumps, new heat exchangers, evaluation of concrete supports and new mixing systems.

City of Dayton Dept of Water
o Rehabilitation / modification of east digester complex for code compliance.

o Upstream sludge blending tank equipped with mixing, pumping to digesters, odor control.

ENGINEER will also evaluate use of the existing west digesters for post digestion storage. Improvements to allow use for storage are anticipated to be minimal, without the need for code classification upgrades. High priority structural / building improvements to address current facility conditions will also be identified.

• **1B – Blending Tank Sizing / Configuration** - ENGINEER will evaluate sizing, layout, and configuration of upstream blending tank, including ancillary equipment. Generally, the blending tank is anticipated to have two chambers to allow for cleanout / maintenance and will have common manifolder pumps for pumping combined TWAS/PS to the digesters. Other equipment will include tank mixing, odor control covers, potential addition of ferric chloride and odor control scrubber for treatment of exhaust. Depending on selection of new digester sizing / volume and strategy, ENGINEER will also evaluate use of one or more west digester tanks for the sludge blending tank.

• **1C – Existing Complex Rehabilitation** – ENGINEER will evaluate rehabilitation of the existing East Digester complex to address code related issues. In general, improvements will be evaluated to address Class 1 Div 1 areas within the complex so that those areas requiring increased ventilation of explosion proof design are minimized. Improvements will also address necessary rehabilitation for structural and architectural needs. Specific equipment within the east complex will be evaluated along with systems for the new digesters.

• **1D – Process Enhancements and Solids Pumping to Sludge Blending Tank** – ENGINEER will evaluate improvements necessary to optimize primary sludge concentration and pumping. ENGINEER will also evaluate sizing and configuration of primary sludge pumps for both the north and the south primary clarifiers. It is assumed that up to four new pumps for the North Primary Clarifiers and three new pumps at the South Primary Clarifiers will be installed. Piping improvements / modifications, including potential new force mains will also be evaluated.

• **2A – Digester Covers and Mixing** – ENGINEER will perform an evaluation of cover and mixing options for the new digesters. Covers and mixer options for the existing east digesters will also be included.

• **2B - Gas Handling** – ENGINEER will evaluate the gas handling system for the new and existing digesters. Improvements that address current isolation issues, condensate, and debris will also be evaluated. Flexibility to support multiple end uses, including natural gas pipeline injection, storage, flaring, and fueling of existing engine generators will also be evaluated. ENGINEER will evaluate replacement of flare piping, from the digester complex to the flares and including isolation valve and flame arrestors. Flares and associated equipment are assumed to remain.

• **2C – Recirculation / Feed Strategy** – ENGINEER will evaluate the recirculation, feed, and heating strategies for the digesters and sludge blending
tank. Currently, solids are fed to an external, common loop for each bank of digesters. ENGINEER will evaluate modifications to the strategy to accommodate individual heating and feed loops for each digester. Combined sludge would be fed to individual loops located nearer individual digesters.

- **2D – Boiler / Heating Strategy** – ENGINEER will evaluate replacement of the existing 14.6 MMBTU-hr boilers and potential expansion of the existing building to accommodate additional boilers. ENGINEER will evaluate use of natural gas for building heat in lieu of the existing hot water systems throughout the plant. The evaluation will include a conceptual level evaluation of capital costs and operating costs for both options.

- **3A – Control Building Configuration** – ENGINEER will evaluate control building layout / configuration for the new digesters (and additional buildings for existing complex depending on digester option). Initial concept for the new facility is a dual level facility with physically separated areas for gas handling, sludge transfer and heat exchangers, and pumped mixing.

- **3B – Substation 9 Improvements** – ENGINEER will evaluate electrical improvements needed for the proposed equipment to be added on the project, including potential relocation and replacement of Substation 9. Alternatives for consideration include improvements to existing substation 9 for reliability and the complete replacement of the Substation.

- **3C – Main 12.47kV Switchgear Replacement** - ENGINEER will evaluate and plan replacement of the main 12.47 kV Switchgear and the installation of up to four diesel or natural gas generators. Main switchgear will include automatic paralleling equipment to allow operation parallel with incoming power, and with the co-generation system in conjunction with the proposed generators for plant power. ENGINEER will evaluate required upgrades to the co-generation system to further define rehabilitation needs. ENGINEER will also coordinate with DP&L on potential replacement of incoming feeders to the switchgear.

- **3D – Sludge Degritting** – ENGINEER will evaluate sludge degritting either upstream or downstream of the digesters for purposes of minimizing O&M related to grit. Detailed design of sludge degritting will not be implemented without full demonstration of effectiveness.

- **4A – Site Layout / Civil/SW** – ENGINEER will evaluate site improvements necessary to accommodate proposed improvements. Range of improvements will be dependent on digester expansion option selected. Anticipated improvements include site utility relocation, potential site stormwater improvements, and plant access road modifications.

- **4B – Odor Control** – ENGINEER will evaluate use of the existing biofilter for captured / exhausted air from the proposed blending tank. There are two alternatives for handling / treating odors from the proposed sludge blending tank: conveyance / piping to existing biofilter or construction of new dedicated modular biofilter for the sludge blending tanks. ENGINEER will also evaluate replacement of covers on South Primary Clarifier weirs, North Primary Clarifier weirs, influent Parshall Flume, Main Distribution Box, and junction box, also referred to as Manhole 16.
• **4C - Construction Sequencing** – ENGINEER will develop a preliminary construction sequencing plan to implement improvements while maintaining compliance with Class B solids stabilization requirements. Plan will be refined during detailed design.

For each evaluation, ENGINEER will identify alternatives (where applicable) and develop conceptual level concept drawings/layouts of alternatives. ENGINEER will also identify advantages and disadvantages of each alternative and key non-cost factors for consideration. Conceptual level cost estimates (AACE Class 5) will be developed for alternatives during the evaluation to aid in decision making. For each area evaluated, a PowerPoint summary and supporting documents will be developed for review by the OWNER in advance of four workshops that will be held during the evaluation phase (see numbering for general target workshop for decision making).

Four workshops will be held during the alternative evaluation. The purpose of each workshop will be to gain consensus on alternatives evaluated prior to the workshop and to identify and discuss alternatives that will be evaluated in the next group (and for the next workshop). Identification and discussion of alternatives to be evaluated in the first group will be discussed at the O&M Workshop. Consensus decisions on alternatives will be documented in meeting minutes and then summarized in the Basis of Design Report.

ENGINEER will develop a Basis of Design Report (BODR) which summarizes the alternative evaluation and consensus decisions for design elements. The BODR will also include:

- Summary of design criteria (detailed analysis in appendix as memo)
- Summary of unit process sizing and configuration, including major equipment design criteria
- Overall opinion of probable construction cost (OPCC) – AACE Class 4
- List of anticipated specifications
- Anticipated detailed design sheet list
- Permit list and schedule

ENGINEER will also develop drawings to approximately 10% completion, which will include the following:

- Major equipment layout in schematic format with some plans and sections
- Preliminary process flow diagrams
- Overall control system architecture and major systems preliminary P&IDs
- Electrical one-line diagram and preliminary switchgear layout with sequencing

ENGINEER will submit the draft conceptual level drawings and BODR to the OWNER for review. ENGINEER will schedule and facilitate a workshop approximately two weeks after the submittal to provide a summary of the BODR and to gather comments from OWNER. OWNER review comments and responses will be documents consistent with Hazen’s QA/QC policy and incorporated into the drawings and BODR. A separate submittal of the deliverables will not be made to the OWNER, but a comment and responses log will be provided to the OWNER for review.
Task 4/5- Drawing and Specification Development (Detailed Design)

ENGINEER will develop Contract Documents for recommended improvements, consisting of drawings, technical specifications, and front-end bidding documents suitable for competitive bidding by General Contractors. Assumed improvements include the following:

- Two new silo style digesters, including support systems (i.e. covers, mixing, heating, gas systems, and transfer pumping).
- New control building for new digesters, including separated space layout for gas handling, heating / sludge pumping, and mixing.
- New sludge blending tanks, including two-cell cast-in place concrete structure with attached pumping station, including odor control and ancillary support systems. ENGINEER will specify concrete lining and/or concrete additives as required.
- Code improvements to East Digester Complex, including:
  - New HVAC and constructed isolation within the building.
  - Relocation of gas handling systems to separately constructed buildings (two)
  - New digester heating loops and solids feed piping (piping replaced as needed based on condition and sizing).
  - Updates to existing electrical equipment.
  - Operator control area for control of upgraded East Complex and New Digesters.
- Upgrades to existing four East Digesters including new covers, structural rehabilitation, new mixing systems, new heating / recirculation, new feed systems, and new transfer pumps.
- Digester feed line modifications for ferric chloride addition to maintain compliance with hydrogen sulfide digester gas concentrations less than 1000 ppm.
- Modifications to West Digesters to allow use for post-digestion non-mixed, non-heated storage. 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.
- Replacement of existing three boilers for digester and building heating.
- Replacement of gas piping to existing flares, including isolation valves and flame arrestors. Existing flares and associated equipment are assumed to remain.
- Sludge dewatering system located in the East Digester Complex. Dewatering system is assumed to include single step dewatering without dilution / re-thickening and includes handling and dumpster for collection. Dewatering will only be implemented if effectiveness can be fully demonstrated.
- New primary sludge pumps at North and South Primary Clarifiers, including instrumentation to aid in optimization of primary sludge concentrations.
- Modifications to sludge feed piping for both TWAS and primary sludge.
- Replacement of existing building heating loops with hot water loops (similar to existing) or with natural gas supply (and associated building HVAC / heating improvements).
- Replacement of Substation 9.
• Replacement of existing 12.47 kV Main Switchgear, including automatic paralleling switchgear and up to four new diesel or natural gas generators.
Replacement of incoming feeder (if necessary) will be by DP&L (DP&L fees for feeder replacement are not included in ENGINEER fees)
• Replacement of odor covers at South Primary Clarifier weirs, North Primary Clarifier weirs, influent Parshall Flume, Main Distribution Box, and junction box also referred to as Manhole I6.
• Associated site work, including relocation of existing utilities where required.
• Ancillary improvements including electrical, instrumentation and control, architectural, HVAC, and plumbing.

ENGINEER will prepare 30%, 60%, 90%, and 100% submittals for review by OWNER. Submittals shall consist of drawings in portable document format (PDF), and specifications in searchable PDF format. For the 60% and 90% submittals, ENGINEER will provide up to two sets of both half and full-size drawings. For the 100% submittal electronic versions in both AutoCAD and PDF will be provided.

For the 30%, 60%, and 90% design submittals, ENGINEER will coordinate and facilitate workshops with the OWNER to review the design. Generally, workshops will be held two weeks after the submittal. Workshops will consist of up to three separate meetings: 1) Workshop with design team to discuss plans and specifications, 2) workshop with operations staff, including walkthrough of the 3-D model for visualization and review (at 60 and 90% submittals) and 3) workshop with OWNER SCADA integration consultant (at 90% submittal).

ENGINEER will prepare a construction schedule for each design submittal with refinements as the design progresses. A separate Construction Schedule Workshop will be held after the 60% design submittal to discuss construction sequencing and key tie-ins and shutdowns.

Revit 3-D facility models will generally be developed for the design and used to produce design drawings. Drawings for facilities with minor modifications may be developed in the latest version of AutoCAD. Drawings will be developed in 22 x 34 full-size drawing format. ENGINEER will provide OWNER with electronic AutoCAD (in the City’s most up to date version of AutoCAD) and pdf drawings for the bid sets. Anticipated drawings include the following:

<table>
<thead>
<tr>
<th>Discipline</th>
<th>No. of Sheets</th>
</tr>
</thead>
<tbody>
<tr>
<td>General</td>
<td>4</td>
</tr>
<tr>
<td>Civil</td>
<td>32</td>
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<tr>
<td>Process Mechanical</td>
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<td>Instrumentation</td>
<td>21</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>422</strong></td>
</tr>
</tbody>
</table>

Specifications will be developed in CSI MasterSpec 50 Division format, using Dayton Construction & Material Specifications (CMS) where applicable. ENGINEER will assist City of Dayton Dept of Water
OWNER with development of the front-end specifications using OWNER standard documents. Changes to section 100 of the CMS will only be made after acceptable justification is provided by ENGINEER and approved by OWNER. It is assumed that front-end documents will be provided by the OWNER between the 60% and 90% completion stage so that adequate coordination can be performed prior to finalizing the Bidding Documents. ENGINEER will prepare Bid Form in OWNER excel file, provided by OWNER PM. Final specifications will be provided in both Word and PDF format.

ENGINEER will prepare permit submittals required for OEPA Permit to Install (PTI) and any local building / code reviews. It is assumed that OWNER will pay for review fees associated with the submittals. ENGINEER will coordinate and respond to comments provided by regulatory and code agencies and make appropriate changes to plans and specifications. Coordination with regulatory agencies may include meetings before or during review.

Task 6 – Cost Estimates

ENGINEER shall develop and update an Opinion of Probable Construction Cost (OPCC) during the design. Cost estimates used in the evaluation of alternative are included in Task 3. OPCCs shall be provided to OWNER at the 60%, 90%, and 100% design submittals. Estimates will be prepared based on 50 Division format and will be prepared consisted with AACE standards, including industry accepted ranges and contingency which will be decreased as the design is completed. Near bidding, ENGINEER will provide an itemized Cost Estimate for determination of appropriate PEP Goals for construction broken out into materials and labor costs.

ENGINEER will assist the OWNER with preparation of Loan Application for DEFA funding. OWNER will generally prepare the submittal and pay any associated fees, and ENGINEER will review and provide detailed project information where necessary.

Task 7 – Field Survey / Geotechnical Investigation

ENGINEER will subcontract with a licensed surveyor to update surveying and topographic mapping of the area of the digester and main switchgear improvements. For line replacements, including sludge feed and building heating loops, existing survey information will be used. Survey in the area of the digester improvements will include investigation of up to three hundred (300) sewer manholes, electric manholes, storm catch basins, and other vaults, including survey elevations for incoming and outgoing lines.

ENGINEER will subcontract with a vacuum excavation subconsultant for up to one-hundred and twenty (120) vacuum excavations at strategic locations for locating existing utilities, identified by OWNER and ENGINEER. These will include locations within the area of the digester improvements and for yard piping associated with sludge feed lines and building heat lines. OWNER shall be responsible for filling vacuum excavations and patching asphalt after surveying is complete (which may be completed after vacuum excavation activities to consolidate surveyor mobilizations). Field located lines will be recorded and incorporated into existing facility piping drawings.
ENGINEER will subcontract with a geotechnical consultant to perform geotechnical investigation and provide recommendations on foundations, allowable bearing pressures, lateral earth pressures, estimated settlement, presence/absence of rock, suitability of on-site material for structural fill, and seismic parameters for proposed structures. The scope includes up to 23 borings for new structures.

**Task 8 – Bidding Phase Services**

ENGINEER will provide bidding assistance services to the OWNER for the PROJECT. Services provided for bidding assistance include the following:

- Preparation of Bid Form (covered in Task 4/5)
- ENGINEER will coordinate with OWNER or with local reprographics firm for distribution of Bidding Documents and associated addenda. It is assumed that OWNER will distribute all documents and maintain a bidder’s list for the project.
- Attend and prepare minutes for the pre-bid meeting.
- Answer prospective bidder questions and prepare addenda as required.

ENGINEER will evaluate bids and provide a recommendation of award for the project. It is assumed that OWNER will review contractor experience and conformance with City of Dayton requirements.

**Task 9 – Construction Phase Services**

**Construction Administration**

ENGINEER will provide full-time Construction Administrator to provide the following services:

- Develop, maintain and monitor a project-specific work plan (i.e., Project Management Plan) and coordinate with project personnel.
- Oversee and coordinate office services, field services, project controls, and operational support services provided under this work authorization.
- Develop and submit monthly invoices to the Owner for services performed under this scope of services. Each invoice will be accompanied by a monthly progress report that will include a summary of work completed since the previous monthly progress report; work anticipated in the upcoming month; scheduled and actual percent completes for major tasks; budget status, including contracted amount, total billed to date, amount remaining, variances in the project budget and/or schedule; list of coordination and information required; list of problems encountered and proposed resolution.
- Attend the Pre-Construction Conference and attendance at construction progress meetings.

**Conformed Documents**

ENGINEER will assemble and coordinate execution of contract documents and provide "conformed" documents through incorporation of changes made through addenda issued during the bidding phase into the Bidding Documents. ENGINEER will provide up to 5 full-size sets for the contractor and 2 full-size and 2 half-size sets for OWNER of conformed documents.

ENGINEER will provide electronic drawings and specifications accompanied by the appropriate release documentation as requested by Contractor and approved by OWNER.
Construction Coordination and Meetings

Pre-Construction Meeting - Upon Contract Award, ENGINEER will coordinate with OWNER and arrange for a pre-construction meeting with the Contractor. The Contractor will be advised of the procedural requirements for execution of the work, organization, line of authority and communication with OWNER, work plan and progress, quality control, shop drawings and other submittals, field operations (pile driving, concrete placement, etc.), cost control, construction contract compliance, and other special administrative issues. Engineer will provide Notice to Proceed (NTP) documentation to the Contractor at the Pre-Construction Meeting.

Monthly Progress Meetings - Monthly progress meetings will be held with the contractor and OWNER to discuss progress, review shop drawings and request for information (RFI) status, and coordinate construction activities. A four-week work plan will be requested from the contractor and discussed prior to the conclusion of each monthly progress meeting. Provide meeting agenda and meeting minutes for all monthly progress meetings.

Monthly Invoices and Progress Reports — Monthly invoices and progress reports will be prepared and submitted to OWNER. Reports will identify any out of scope items and will include current status of the budget, number of submittals, RFIs, claims, correspondence, and contractor pay estimates reviewed to date.

Coordination with Plant Staff - ENGINEER will coordinate with the plant operations staff to establish any procedures that facilitate the contractor's access without adverse effect on other projects or plant operation.

Document Control and Submittals Review

Document Management — ENGINEER will develop, execute and maintain a document management system via Procore (or latest construction management software) for Contractor submittals required by the Contract Documents, including but not limited to:

- Schedule of values.
- Initial construction schedules.
- Pay requests.
- Shop drawings and shop drawing re-submittals.
- Preliminary and final vendor operation and maintenance manuals.
- Shutdown or tie-in plans.
- Start-up/testing plans.
- Training materials.
- Spare parts list.
- Field test reports including:
  - soils compaction reports
  - concrete testing reports,
  - pipeline hydrostatic tests.
  - equipment shop tests.
  - equipment field tests.
  - independent electrical testing results.
  - instrument calibration.
- SCADA tests.
- loop tests and diagrams.
- functional tests.
- Performance tests.

Submittals will be logged in and recorded from the Contractor, distributed to the appropriate ENGINEER team member(s) for review, received back from ENGINEER’s reviewer(s), recorded for disposition of review (e.g., approved as submitted, approved as noted, not approved), and returned to the Contractor with appropriate copies to the OWNER and project record files.

Maintain orderly electronic and hard-copy files for correspondence reports of job conferences, shop drawings and sample submission, reproductions of original Contract Documents including all addenda, change orders, field orders, additional drawings issued subsequent to the execution of the contract, clarifications and interpretations of the Contract Documents, progress reports, and other project related documents. Electronic files will be turned over to Owner at the end of the project.

**Response to RFIs**

ENGINEER will provide necessary clarifications and interpretations of the Contract Documents as appropriate for the orderly completion of Contractor’s work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Construction Documents. Engineer may issue Field Orders authorizing minor variations in the Work from the requirements of the Contract Documents but shall promptly send all such Field Orders to the Owner’s representative for their review prior to finalization.

**Issuing RFPs and CO Review**

ENGINEER will review contract documents to ensure a Request for Proposal (RFP) is warranted. ENGINEER will create RFP documentation to send to contractor when a change in scope outside of the contract is deemed warranted or requested. Create and update ongoing RFP log. Review contactor’s proposal for technical content, cost and schedule prior to recommending acceptance as a Change Order to Owner.

**Claims Management**

ENGINEER will monitor the project to identify issues early, when they can be more easily resolved. Potential issues will be tracked through a computerized database. Contractor claims will be reviewed for entitlement based on contract provisions, supporting documentation, schedule impacts and field observations and records. When entitlement is verified, an independent change estimate will be prepared and reconciled with the contractor’s claim, which may require negotiation. ENGINEER will recommend to OWNER whether or not the claim is valid. Written documentation will be provided to support ENGINEER’s recommendation.

**Schedule Reviews**

After the baseline schedule is established, ENGINEER will monitor progress against the baseline plan, identify potential delays or adverse trends requiring corrective action, identify upcoming
interfaces that will require OWNER’s action, and verify that schedule revisions meet contract requirements. ENGINEER will verify that the monthly construction schedule portrays both the work and progress accurately and without bias. Schedule review commences with the contractor’s baseline schedule, to confirm that the schedule will be suitable for effective progress monitoring. Monthly reports will be provided to OWNER to indicate the current construction status and identify actions that would enhance or impact the project’s cost or schedule. ENGINEER will also utilize the progress schedule to review and analyze any contractor delay claims or requests for time extensions and will recommend an appropriate resolution.

**Progress Payments**

At project inception, ENGINEER will review the contractor’s proposed detailed cost breakdown (DCB) to confirm that they reasonably reflect anticipated costs. On a monthly basis, ENGINEER will work with OWNER to independently review the project’s schedule status and construction work in place, to develop a progress payment recommendation based on the value of work completed. ENGINEER will also ensure Project CPM Schedule approval and that Contractor has updated as-builts prior to monthly progress payment approval.

**Equipment Operation and Maintenance Manuals**

ENGINEER will review vendor equipment operation and maintenance manuals to verify compliance with the requirements stated in the Contract Documents such as complete information in connection with assembly, operation, lubrication, adjustment, wiring diagrams and schematics, maintenance, and repair, including detailed parts lists with drawings or photographs identifying the parts. ENGINEER will verify that final copies of all operation and maintenance manuals are provided to the OWNER, including digital and hard copies.

**Resident Project Representative**

ENGINEER will provide a full-time Resident Project Representative (RPR) to monitor progress and conduct on-site observations of the contractor’s work to determine if the work generally conforms to the construction Contract Documents including:

- Attend pre-construction conference.
- Serve as ENGINEER’s construction liaison with the Contractor, working principally through the ENGINEER's Construction Manager and aid in interpreting the Contract Documents.
- Assist in obtaining from OWNER’s staff additional details or information at the job site.
- Advise ENGINEER’s Construction Manager and the OWNER before scheduled major tests, inspections or start of important phases of construction.
- Verify that operation and maintenance procedures are available to the OWNER before equipment start-up and operator training is conducted by the Contractor as required by the Contract Documents and in the presence of the required personnel; observe, record, and report appropriate details relative to the test procedures and start-ups.
- Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project and record the outcome of these inspections in the daily reports.
- Review the Contractor’s work and reject and/or request correction of any work which will
not produce a completed project that conforms to the Contract Documents.

- Develop Non-Compliance Notices (NCN) for work that does not comply with the contract.
- Maintain orderly files of all job-related correspondence and documents on site.
- Maintain familiarity and compliance with Maintenance of Plant Operations (MOPO) through coordination with the contractor.
- Review monthly pay application.
- Review monthly schedule updates.
- Monitor as-built drawing updates.
- Document activities in Daily Field Reports with photos in electronic approved format including:
  - description of daily work performed and locations.
  - number of contractor’s work force.
  - equipment utilized.
  - materials delivered and materials installed.
  - testing performed.
  - non-conforming work.
  - synopsis of disputes.
  - review Time and Materials (T&M) sheets including personnel hours, equipment and materials utilized, as required.
  - daily weather conditions and precipitation.
- Observe and oversee testing/inspections including:
  - concrete placement.
  - rebar.
  - compaction.
  - backfill.
  - continuity and fall potential associated with grounding ring.
  - wiring continuity and megger testing.
  - dry film/wet film thickness testing for field painting.
  - hydrostatic pipe testing.
  - special inspections per code requirements.
- Observe loop test and I&C checkout prior to startup.
- Oversee equipment manufacturer review of equipment installation prior to startup.
- Ensure equipment manufacturer’s installation report is generated.
- Witness and document all equipment start-up, performance testing, and reliability demonstrations and alerting Construction Manager in advance of testing and startup activity dates.
- Coordinate any vendor supplied equipment training with OWNER. Ensure video documentation of training.
- Coordinate as-needed field observation and services with discipline Engineers.
- Log spare parts furnished by the Contractor prior to transmitting to the OWNER.
- Review and verify daily equipment and personnel on site and verify time and materials quantities.
- Develop meeting agendas and meeting minutes for progress meetings.

Additional Observation and Services

Depending on availability of OWNER personnel and specific construction activities, additional on-site observation and services will be provided. Services will be provided on an as-needed basis and shall include periodic observation, witness testing and Special Inspections of
process/mechanical, structural, architectural, electrical, instrumentation and HVAC items, including but not limited to the following:

- Process/mechanical inspections by design engineers of complex unit process equipment installations.
- Structural inspection of water-bearing structures.
- Architectural inspection of buildings.
- HVAC installations.
- Electrical inspections of raceway installations, major electrical equipment installations, major cable installations, electrical testing and startup, and troubleshooting.
- Instrumentation inspections of field installations, factory testing, field testing, witnessing of loop testing, witnessing of functional testing and final acceptance testing.

**Construction Materials Testing**

ENGINEER will subcontract with a material testing firm for conducting materials testing during construction. Testing will include gradation and proctor information for selected samples of backfill material, compaction testing of selected subgrade, backfill and asphalt paving locations, concrete material testing, concrete cylinder strength testing, and masonry mortar cube strength testing (if required). ENGINEER will review and confirm acceptance of testing results based on the contract requirements. A copy of the test results will be provided to the OWNER as part of the recordkeeping associated with the construction project.

**Startup Assistance**

ENGINEER will review the contractor's Startup Plan and verify that contractor complies with the construction sequencing, constraints and coordination requirements that must be followed to maintain the facility in operation. The major construction activities, their predecessor activities and restrictions (such as when shutdowns can take place) that are critical to maintaining continuous facility operation will be reviewed by the ENGINEER for conformance with the Contract Documents. ENGINEER will provide startup assistance and training services for the new system which is supplemental to manufacturer's training on new equipment. System training by ENGINEER is included in Task 10. Startup assistance is included in this task. Services will include:

- Manufacturer's Training – Review and approve the training agenda on new equipment and systems by the manufacturer/supplier in order for OWNER O&M staff to correctly maintain and operate the equipment. ENGINEER will verify that manufacturer’s training is delivered.
- Systems Startup and Testing Assistance - ENGINEER will provide start-up assistance prior to, during, and after startup of each major system. This assistance shall include review, coordination, and oversight of the contractor's startup plan. ENGINEER has assumed three major startup periods during construction, during which ENGINEER will assist in operating tests to ensure conformance and verify that all equipment and systems operate and perform as designed. Prior to conducting the operating performance test, ENGINEER will review the contractor's testing plan and provide comments to the
contractor and OWNER for review. Following completion of the operations performance test, ENGINEER will submit a testing report to OWNER.

Substantial and Final Completion Review

Upon substantial completion of the Work (or each component of the Work with a separate completion date or substantial completion date), ENGINEER will perform the following: (1) conduct inspection(s) to develop the “punch list” and determine if the Work is substantially complete; (2) if necessary, act as mediator between the OWNER and Contractor to develop an agreed punch list; and (3) conduct a final inspection to determine if the completed Work (or component of the Work) is in compliance with the punch list, contractor’s “as-built” drawing markups, shop drawings and specifications. Once ENGINEER determines that Work is substantially complete, recommend payment and issue certificate of substantial completion (subject to any conditions identified ENGINEER shall also review, all necessary documents, including but not limited to, lien waivers, Contractor's final affidavit, close-out change order, and final payment application, warranty letters from Contractor, subcontractor and equipment suppliers, as applicable.

Record Drawings

ENGINEER will take the as-built copy of the construction drawings that have been maintained at the Field Office by the contractor to create Record Drawings for the project. These drawings will be prepared within sixty (60) days of the date of receipt based on contractor record drawings and associated documentation of the OWNER and ENGINEER. Up to three full-sized copies of record drawings will be provided to OWNER, along with an electronic copy of all drawings in (AutoCAD, Revit, PDF) format acceptable to OWNER.

Construction Phase Services Assumptions

The construction phase services, and field observations scope and effort are based on the following assumptions:

- The OWNER will contract with a single, prime contractor for construction of the improvements (not multiple prime contractors).
- The construction phase effort, including monthly progress meetings, engineering and field observations is based on the planned construction schedule and duration of 30 months, included 27 months to substantial completion and 30 months to final completion.
- Field observation is based on full-time resident project representative for 24 months and half time for 6 months.
- Schedule for field observation personnel will be adjusted to minimize overtime. If overtime or additional hours are necessitated by contractor schedule acceleration, costs will be charged to the contractor according to the construction Contract requirements.
- OWNER will provide additional project observers as needed for times when ENGINEER is not on site for as-needed observation. Project observers will provide documentation consistent with RPR reporting to ENGINEER for project
files and documentation of work. ENGINEER will provide forms and instructions to OWNER.

- Fee is based on review / evaluation of up to ten (10) change orders due to unforeseen conditions and/or OWNER requested changes.
- Fee is based on review of up to 600 shop drawings (including 25% resubmittals and O&M manuals) and up to 200 requests for information. If additional resubmittals for shop drawings are necessary, costs associated with additional review will be charged to the contractor according to the construction Contract requirements.
- The cost for any additional engineering services, which result from extraordinary contractor acceleration, any contract time extensions, changed conditions, or OWNER/contractor-initiated substitutions/proposals above the number included herein, will be provided through an amendment to ENGINEER’s Contract.
- Fee estimate for as-needed observation and services in addition to full-time RPR is based on 900 hours of additional involvement during construction. ENGINEER and OWNER will coordinate as-needed observation hours based on available budget.
- A total of 480 hours of startup assistance by ENGINEER is included in fee proposal. This assumes as needed on-site assistance for startup and testing of major systems during the construction sequence and the equivalent of half-time assistance for two months after startup.
- Copies of all submittals will be provided by the contractor.
- All surveying required during construction will be provided by the contractor.
- “As-built” Contract Documents will be provided to OWNER based on contractor supplied information. ENGINEER will not be responsible for verifying as-built drawings to field conditions.
- Updates to the plant Arc-flash and short circuit analysis required for the new improvements will be performed by Contractor.

**Task No. 10 – Update O&M Manual & Training**

ENGINEER shall revise Sections 4.4 and 4.5 in the OWNER’s on-line O&M manual to reflect the improvements implemented as part of the project. ENGINEER shall also revise appropriate O&M sections related to the plant main switchgear. ENGINEER shall follow the format of the existing O&M manual for updating content. The O&M manual will cover operational basics, intended operation of the processes, start-up, shutdown, monitoring, alarm situations, troubleshooting procedures, alternate operating modes, and special process safety considerations. A summary of vendor-supplied equipment operation and maintenance information will be incorporated into the manual.

ENGINEER shall provide system training for new processes and equipment. ENGINEER shall provide four 8-hour days of training (32 hours of in-class training). Manufacturer’s training is specific to each individual piece of equipment. ENGINEER will provide instruction to OWNER’s personnel on the operation of major systems involving multiple pieces of equipment. This training will be focused on information for the new facilities and equipment included in the O&M manual (described above). Training format (including total number of repeated training
days for shift O&M staff) will be determined during construction and with input from OWNER. ENGINEER will prepare content in PowerPoint and training will also include field demonstrations for some unit process areas. ENGINEER shall prepare draft content for OWNER review prior to training and will provide contact hours for OEPA operating continuing education.

If directed by OWNER, ENGINEER will develop a PowerBI dashboard as part of the O&M manual development for OWNER use for managing gas utilization.
ATTACHMENT B

FEE ESTIMATE

City: City of Dayton, Ohio
Project: Professional Engineering Staff Supplementation Support Services for City of Dayton Department of Water
Consultant: Hazen and Sawyer
### Design (Tasks 1 through 7)

<table>
<thead>
<tr>
<th>Task</th>
<th>Hours</th>
<th>Labor</th>
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<tr>
<td><strong>Task 1 - Project Management and Administration</strong></td>
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<tr>
<td>Project Kickoff Meeting</td>
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<td>Evaluate Optimization of PS concentrations</td>
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<td>Develop Design Criteria</td>
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<td>Design Criteria / Existing Facility Memo</td>
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<td>1A - New Digester Sizing / Volume</td>
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<td>1C - Existing Complex Rehabilitation</td>
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<td>1D - Process Enhancements / Pumping to Blending Tank</td>
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<td>2B - Gas Handling</td>
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Total Design Fee (including subs and ODCs) $4,604,311
### Bidding and Construction Phase Services (Tasks 8 through 10)

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<tr>
<td><strong>Task 9 - Construction Phase Services</strong></td>
<td></td>
<td></td>
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<tr>
<td>Construction Administration</td>
<td>6500</td>
<td>$1,220,594</td>
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<td>Conformed Documents</td>
<td>208</td>
<td>$29,703</td>
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<tr>
<td>Construction Coordination and Meetings (30)</td>
<td>200</td>
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</tr>
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<td>Document Control / Submittal Review (600)</td>
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<td>$645,181</td>
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<td>RFI Review / Response (200)</td>
<td>528</td>
<td>$93,420</td>
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<td>RFP / Change Order Review (10)</td>
<td>96</td>
<td>$20,389</td>
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<td>RPR</td>
<td>4680</td>
<td>$607,862</td>
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<td>Additional Observations / Site Visits</td>
<td>900</td>
<td>$144,617</td>
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<tr>
<td>Construction Materials Testing</td>
<td>16</td>
<td>$2,981</td>
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<td>Startup Assistance</td>
<td>480</td>
<td>$119,616</td>
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<td>SC/FC Punch List and Verification</td>
<td>116</td>
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<td>Record Drawings</td>
<td>452</td>
<td>$65,778</td>
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<td>QA/QC</td>
<td>174</td>
<td>$52,122</td>
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<tr>
<td><strong>Task 10 - Update O&amp;M Manual &amp; Training</strong></td>
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<td></td>
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<tr>
<td>Training</td>
<td>140</td>
<td>$37,534</td>
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<tr>
<td>O&amp;M Manual Updates</td>
<td>450</td>
<td>$80,027</td>
</tr>
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Subtotal Bidding / Construction Services Fee (including subs and ODCs) $3,562,670

Bidding and Construction Phase Contingency for Tasks 8 through 10 $333,019

**Total Bidding / Construction Services Fee (including subs and ODCs)** $3,895,689
**Task Summary**

<table>
<thead>
<tr>
<th>Task</th>
<th>Total Hours</th>
<th>Labor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Task 1 - Project Management and Administration</td>
<td>1118</td>
<td>$230,551</td>
</tr>
<tr>
<td>Task 2 - Site Visit / Review Existing Documents</td>
<td>1034</td>
<td>$215,425</td>
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<td>Task 3 - Design Calculations / Layout Details (BODM)</td>
<td>2784</td>
<td>$522,221</td>
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<tr>
<td>Task 4/5 - Drawings / Specifications</td>
<td>19647</td>
<td>$3,316,709</td>
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<td>Task 6 - Cost Estimate</td>
<td>286</td>
<td>$46,298</td>
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<tr>
<td>Task 7 - Field Survey / Geotechnical Investigation</td>
<td>172</td>
<td>$24,107</td>
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<tr>
<td>Task 8 - Bidding Phase Services</td>
<td>242</td>
<td>$42,290</td>
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<tr>
<td>Task 9 - Construction Phase Services</td>
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<td>Task 10 - Update O&amp;M Manual &amp; Training</td>
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<td>Totals</td>
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<td>$7,783,981</td>
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**Subconsultants**

<table>
<thead>
<tr>
<th>Subconsultant</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bowser-Morner - Design</td>
<td>$45,000</td>
</tr>
<tr>
<td>Bowser-Morner - Materials Testing</td>
<td>$100,000</td>
</tr>
<tr>
<td>Choice One</td>
<td>$90,000</td>
</tr>
<tr>
<td>Underground Utility Location</td>
<td>$80,000</td>
</tr>
<tr>
<td>Total Subconsultants</td>
<td>$315,000</td>
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</table>

**ODCs**

<table>
<thead>
<tr>
<th>ODCs</th>
<th>No.</th>
<th>Unit Cost</th>
<th>ODC Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mileage (miles)</td>
<td>40000</td>
<td>$0.575</td>
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<td>Reproduction / Postage (lump sum)</td>
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<td>$20,000</td>
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<tr>
<td>Travel (lump sum)</td>
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<td>$25,000</td>
</tr>
<tr>
<td>Total ODCs</td>
<td></td>
<td></td>
<td>$68,000</td>
</tr>
</tbody>
</table>

Bidding and Construction Phase Contingency for Tasks 8 through 10 | $333,019

**Grand Total Fee** | $8,500,000

**Firm Fee Breakdown (does not include contingency; if contingency funds utilize, PEP goals will continue to be met)**

<table>
<thead>
<tr>
<th>Firm</th>
<th>Hours</th>
<th>Cost</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hazen</td>
<td>40283</td>
<td>$7,031,375</td>
<td>86.1%</td>
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<tr>
<td>Clear</td>
<td>5340</td>
<td>$820,605</td>
<td>10.0%</td>
</tr>
<tr>
<td>Bowser Morner</td>
<td></td>
<td>$145,000</td>
<td>1.8%</td>
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<tr>
<td>Choice One</td>
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<td>$90,000</td>
<td>1.1%</td>
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<tr>
<td>Underground Utility Location</td>
<td></td>
<td>$80,000</td>
<td>1.0%</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td>45623</td>
<td><strong>$8,166,981</strong></td>
<td>100%</td>
</tr>
</tbody>
</table>

**Total Design Fee (includes Tasks 1 - 7)** | $4,604,311

**Total Bidding and Construction Services Fee (Tasks 8 - 10)** | $3,895,689
City Manager’s Report

From 6450 - PW/Civil Engineering

Supplier, Vendor, Company, Individual

Name O.R. Colan Associates LLC

Address 8790 Governor’s Hill Drive, Suite 101

Cincinnati, OH 45249

Date May 13, 2020

Expense Type Service Agreement

Total Amount $116,880.00 (thru 12/31/2026)

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<tbody>
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<td>Salem Ave Reconstruction Ph 2</td>
<td>41487-6450-1159-54</td>
<td>$72,840.00</td>
</tr>
<tr>
<td>West Hillcrest Sidewalk Install Ph 2</td>
<td>41486-6450-1159-54</td>
<td>$40,440.00</td>
</tr>
<tr>
<td>2020 Infras Titus Property Clean Oh</td>
<td>49023-6450-1159-54</td>
<td>$3,600.00</td>
</tr>
</tbody>
</table>

Includes Revenue to the City [ ] Yes [ ] No

Affirmative Action Program [ ] Yes [ ] No [ ] N/A

Description

SALEM AVENUE RECONSTRUCTION PHASE 2 AND WEST HILLCREST AVENUE SIDEWALK PHASE 2 AGREEMENT FOR CONSULTING SERVICES

The Department of Public Works requests permission to enter into an agreement with O.R. Colan Associates, LLC. to perform the property acquisition services in connection with the Salem Avenue Reconstruction Phase 2 and the West Hillcrest Sidewalk Phase 2 projects. The consultant will perform all necessary right-of-way acquisition services.

These property acquisition services are being funded by General Capital funds. Four firms responded to the request for proposal with O.R. Colan Associates, LLC scoring the most points.

The agreement commences upon execution by the City and shall terminate on December 31, 2026. The agreement has been approved by the Law Department as to form and correctness.

A Certificate of Funds is attached.

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 06/2016
SECTION I - to be completed by User Department

X  NEW CONTRACT  RENEWAL CONTRACT  CHANGE ORDER

Contract Start Date  Upon Execution  Required Documentation
Expiration Date  December 31, 2026  Initial City Manager's Report
Original Commission Approval  $116,880.00
Initial Encumbrance  $116,880.00
X  Initial Certificate of Funds
X  Initial Agreement/Contract
Remaining Commission Approval
Original CT/CF  -
Increase Encumbrance  -
Decrease Encumbrance  -
Remaining Commission Approval  -

<table>
<thead>
<tr>
<th>Amount: $72,840.00</th>
<th>Amount: $40,440.00</th>
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</thead>
<tbody>
<tr>
<td>Fund Code 41487 6450 1159 54</td>
<td>Fund Code 41486 6450 1159 54</td>
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<tr>
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<td></td>
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<tr>
<td>Fund  Org  Acct  Prog  Act  Loc</td>
<td>Fund  Org  Acct  Prog  Act  Loc</td>
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<tr>
<td>Amount: $3,600.00</td>
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<td>Fund Code 49023 6450 1159 54</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Fund  Org  Acct  Prog  Act  Loc</td>
<td></td>
</tr>
</tbody>
</table>

Attach additional pages for more FOAPALs

Vendor Name: O.R. Colan Associates, LLC
Vendor Address: 7005 Shannon Willow Rd., Suite 100 Charlotte NC 28226
Street City State Zipcode + 4
Federal ID: 01-0780018
Commodity Code: 96164
Purpose: Professional Service Agreement for Property Acquisition Services for the Salem Avenue Reconstruction Phase 2, West Hillcrest Sidewalk Phase 2, and Bridge Street/Wolf Creek Corridor Projects

Contact Person: Keith Steeber, City Engineer  Public Works/Civil Eng. (937) 333-3838 Deptartment/Division Phone Number
Originating Department Director's Signature: Keith Steeber 4/22/2020 Date

SECTION II - to be completed by the Finance Department

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

Finance Director Signature  4/23/2020 Date

Finance Department

October 18, 2011
AGREEMENT FOR CONSULTING SERVICES

THIS PROFESSIONAL SERVICE AGREEMENT ("Agreement"), dated this ___ day of __________, 2020 is between the City of Dayton, Ohio, a municipal corporation of the State of Ohio ("City") and O.R. Colan Associates, LLC ("Consultant").

WITNESSETH THAT:

WHEREAS, City submitted a Request For Proposal for Property Acquisition Services for the Salem Avenue Reconstruction, Phase 2 and West Hillcrest Sidewalk Phase 2 projects; and,

WHEREAS, Consultant responded to City’s Request for Proposal, setting forth that it is experienced and qualified to provide the property acquisition services for the Project, and willing to provide such professional Property Acquisition Services to City; and,

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

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

ARTICLE 1 – SERVICES TO BE PERFORMED

Consultant shall perform the property acquisition services for the Salem Avenue Reconstruction, Phase 2 and West Hillcrest Sidewalk Phase 2 projects, hereinafter referred to as the Project described in the Request for Proposal, hereinafter referred to as the RFP, a copy of which is attached as Exhibit A and incorporated herein by reference. To the extent not inconsistent with Exhibit A, Consultant shall perform the work and services for the project and comply with the representations detailed in Consultant’s response the RFP, hereinafter referred to as the Proposal, a copy of which is attached as Exhibit B and incorporated herein by reference.

For purposes of this Agreement, all professional surveying services to be performed by Consultant shall be hereinafter referred to as the “Services.” Consultant shall have no liability for defects in the Services attributable to Consultant’s reliance upon or use of data, design criteria, drawings, specifications, or other information furnished by City or third parties retained by City. The final documents, including digital copies of any plans, become the property of City upon payment.

Consultant shall provide its services pursuant to the Agreement in accordance with current accepted professional standards appropriate for the size, complexity, schedule, and other characteristics of the Project in the jurisdiction where the project is located ("Standard of Care").

ARTICLE 2- COMPENSATION

A. The City shall pay Consultant a sum not to exceed One Hundred Sixteen Thousand Eight Hundred Eighty Dollars ($116,880.00) for the Services actually provided in
accordance with this Agreement. Payment for the Services shall be based upon the rates for each service to be provided as set forth in the Proposal dated March 19, 2020 attached as Exhibit B.

B. Consultant shall invoice City, not more frequently than monthly, for payment. Such invoices shall state the invoice period and total amount requested, and contain itemized listing of the Services provided and the amount for each such Services. Unless disputed in good faith, City shall tender payment of all invoiced within thirty (30) days from receipt thereof.

ARTICLE 3- TERM

This Agreement shall commence upon execution by City and shall terminate on December 31, 2026, unless extended to a later date by mutual written amendment to this agreement or terminated according to Article 6 of this Agreement.

ARTICLE 4- INDEMNIFICATION

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

ARTICLE 5- INSURANCE

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

(1) General/Comprehensive liability insurance, with a combined single limit of One Million Dollars ($1,000,000) for each occurrence and One Million Dollars ($1,000,000) in the aggregate; and
(2) Automobile liability insurance, with a combined single limit of One Million Dollars ($1,000,000) for each person and One Million Dollars ($1,000,000) for each accident; and
(3) Workers’ compensation insurance, in such amounts as required by Ohio law, and Employer’s liability insurance with a limit of Five Hundred Thousand Dollars ($500,000) for each occurrence; and
(4) Professional liability insurance, with a minimum annual aggregate of Five Hundred Thousand Dollars ($500,000); and
(5) Errors and omissions insurance in the amount of Five Hundred Thousand Dollars ($500,000), to protect the City from any errors that Consultant and/or its employees may commit in the performance of the Services.

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

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

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

ARTICLE 6- TERMINATION

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

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

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

ARTICLE 7- COMMUNICATIONS

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

Consultant: O. R. Colan Associates, LLC  
8790 Governor’s Hill Drive, Suite 101  
Cincinnati, Ohio 45249  
Attention: Anna Lee Durastanti

City: City of Dayton  
Department of Public Works  
101 West Third Street  
Dayton, Ohio 45402  
Attention: Frederick M. Stovall, Director

Nothing contained in this Article shall be construed to restrict the transmission of routine 
communications between representatives of Consultant and City.
ARTICLE 8- NON DISCRIMINATION

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

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

ARTICLE 9- CONFIDENTIALITY

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

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

Nothing in this Section shall prohibit or limit either party’s use or disclosure of confidential or proprietary information: (i) previously known to it without an agreement of confidentiality, (ii) independently developed by it, (iii) acquired by it from a party that is not, to the other party’s knowledge, under an obligation not to disclose such information, (iv) that is or becomes publicly available through no breach of this Agreement by the other party, (v) when such disclosure is required by an order of a Court or under state or federal law, or (vi) when such disclosure is authorized in writing by a party to this Agreement.

ARTICLE 10- OWNERSHIP OF DOCUMENTS & INTELLECTUAL PROPERTY

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

Consultant shall retain its rights in standard scripts, databases, computer software, and other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of Consultant.
ARTICLE 11- GENERAL PROVISIONS

A. Waiver

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

B. Delay

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

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

C. Governing Law & Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws. Any suit regarding this Agreement must be brought in a court of competent jurisdiction in Montgomery County, Ohio.

D. Meetings and Evaluation

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

E. Independent Contractor

By executing this Agreement, Consultant acknowledges and agrees that it will be providing Services to City as an “independent contractor.” As an independent contractor for City, Consultant is prohibited from representing or allowing others to construe the parties’ relationship in a manner inconsistent with this Paragraph. Consultant shall have no authority to assume or create any obligation on behalf of, or in the name of City, without the express prior written approval of a duly authorized representative of City.
Consultant understands and agrees that it is not a City employee, and therefore, will not be entitled to, nor will it make any claim for, any of the emoluments of employment with the City of Dayton. Further, Consultant will be solely responsible to withhold and pay all applicable local, state, federal taxes and Workers’ Compensation Insurance. Contractor is not a “public employee” for the purpose of the Ohio Public Employees Retirement System (OPERS) membership.

F. Assignment

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

G. Third Party Rights

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

H. Amendment

This Agreement may be amended by mutual agreement between the parties. No amendment shall be effective unless it is reduced to writing, executed by a duly authorized representative of City and Consultant, approved by the City’s Director of Public Works, and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.

I. Effect of Conflicting Documents

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

I. Entire Agreement/Integration

This Agreement together with Exhibits A represents the entire and integrated agreement between City and Consultant. This Agreement supersedes all prior and contemporaneous communications, representations, agreements or contracts, whether oral or written, relating to the subject matter of this Agreement.
IN WITNESS WHEREOF, City and Consultant, each by a duly authorized representative, have executed this Agreement as of the day and date first set forth above.

CITY OF DAYTON, OHIO

________________________________________
City Manager

O. R. COLAN ASSOCIATES, LLC

By: ____________________________
Title: ____________________________

APPROVED AS TO FORM AND CORRECTNESS

________________________________________
City Attorney

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

__________________________, 20__
Min./Bk. _____Pg. _____

__________________________
Clerk of the Commission
EXHIBIT A

CITY OF DAYTON
REQUEST FOR PROPOSAL
February 2020
EXHIBIT B

O. R. COLAN ASSOCIATES, LLC
PROPOSAL DATED MARCH 19, 2020
Progress Corporation Maintenance and Support Agreement

The Department of Information Technology requests permission to enter into a Service Agreement with Progress Corporation in the amount of $52,650.68. Progress provides licensing, maintenance and support services for the Progress Relational Database Management System platform that supports the Public Safety Management Information System (MIS). The total amount of this agreement is $52,650.68.

Progress Corporation is the sole source provider of Progress Relational Database products, support and services to the local government market.

This Agreement shall commence upon execution and it shall terminate on December 31, 2020.

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

The Certificate of Funds and a copy of the Agreement is attached.

Approved by City Commission

Clerk

Date

Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

X New Contract

Renewal Contract

Change Order

Contract Start Date

Upon Execution

Expiration Date

12/31/20

Original Commission Approval

$52,650.68

Initial Encumbrance

$52,650.68

Remaining Commission Approval

$

Required Documentation

X Initial City Manager's Report

X Initial Certificate of Funds

X Initial Agreement/Contract

Copy of City Manager's Report

Copy of Original Certificate of Funds

Original CT/CF

Increase Encumbrance

Decrease Encumbrance

Remaining Commission Approval


Amount: $52,650.68

Fund Code 10000 - 5560 - 1166 - 65 - XXXX - XXXX

Fund Org Acct Prog Act Loc

Amount: $52,650.68

Fund Code XXXXX - XXXX - XXXX - XXXX - XXXX - XXXX

Fund Org Acct Prog Act Loc

Attach additional pages for more FOAPALs

Vendor Name: Progress Corporation

Vendor Address: 14 Oak Park Drive Bedford MA 01730

Street City State Zipcode + 4

Federal ID: 42746201

Commodity Code: 94620

Purpose: Progress Corporation will provide licensing, maintenance and support services for the Progress database utilized by Public Safety Services upon execution of the agreement through December 31, 2020.

Contact Person: Desa Foster

Information Technology

4/14/2020

Department/Division Date

Originating Department Director's Signature:


SECTION II - to be completed by the Finance Department

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

Finance Director Signature

Date

CF Prepared by

Date

CF/CT Number

Finance Department

October 18, 2011
MAINTENANCE AND SUPPORT
RENEWAL AGREEMENT
For
SOFTWARE

THIS MAINTENANCE AND SUPPORT RENEWAL AGREEMENT ("Agreement") is made and entered into on this ___ day of _______, 2020, between the City of Dayton, Ohio ("City"), a municipal corporation in and of the State of Ohio, and Progress Corporation ("Progress" or "Licensor"), with its principal office at 14 Oak Park Drive, Bedford, MA 01730.

WITNESSETH THAT:

WHEREAS, The Licensor licensed its software to the City on a perpetual basis and provides maintenance and support services related to its software on a recurring basis.

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

SECTION 1. MAINTENANCE AND SUPPORT RENEWAL

The Licensor shall renew the software and maintenance and support set forth in Exhibit "A", titled "Maintenance Renewal Quote", which is attached hereto and incorporated herein by reference for a 12-month term. Exhibit A defines the scope of the maintenance and support renewal agreed hereunder for Licensor’s software (the “Software”).

The Software was licensed to the City on a perpetual basis, pursuant to the terms and conditions of the End User License Agreements attached hereto as Exhibit “B” (the “License Agreements”). The license agreements for the listed products were originally accepted including the corresponding Progress Software maintenance and support policies, as described at http://www.progress.com/support-and-services/support-services when the products were first installed.

To the extent of any inconsistency between the License Agreements and this Agreement, this Agreement shall prevail.

SECTION 2. COMPENSATION FOR SOFTWARE MAINTENANCE AND SUPPORT RENEWAL

A. MAINTENANCE AND SUPPORT FEES

Total remuneration in this Agreement shall not exceed FIFTY TWO THOUSAND SIX HUNDRED FIFTY DOLLARS AND SIXTY EIGHT CENTS ($52,650.68) for the corresponding maintenance and support renewal of the Software for a 12-month term. The total remuneration is exclusive of taxes, that will be added to the respective invoice, unless the City is tax exempt, and in such case the respective official document(s) showing evidences of such status shall be presented to Licensor upon execution of this Agreement.
B. BILLING FREQUENCY

Licensor shall submit an invoice as outlined in Exhibit “A”, upon execution of this Agreement. Unless disputed, the City shall tender payment within thirty (30) days of receipt of the Licensor's invoice. In the event the City disputes an invoiced amount in good faith, the City shall notify Licensor of such dispute, providing sufficient detail of the basis of the dispute within ten (10) days of receipt of the Licensor's invoice and the parties shall work together promptly and in good faith to resolve such dispute within thirty (30) days and the City shall not be obligated to pay any amount so disputed in good faith during such period. If a resolution is not reached within the stated thirty (30) days, then the parties shall submit the dispute to the competent courts of justice, according to the GOVERNING LAW AND VENUE section below.

SECTION 3. TERM

The term of this Agreement is twelve (12) months, which is the term of the maintenance and support renewal as set forth in Exhibit “A”. Subsequent renewals of the maintenance and support of the Software may be subject to the process referenced within SECTION 9. GENERAL PROVISIONS, section I. AMENDMENT.

SECTION 4. CITY'S RESPONSIBILITIES

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

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

SECTION 5. STANDARD OF CARE

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

SECTION 6. CONFIDENTIALITY

All information provided to and/or gathered by Licensor from the City during the term of this Agreement shall be deemed "confidential" information to the extent that it is classified as "private" under the laws of the State of Ohio or is not independently available to the
B. COMMUNICATIONS

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

City:
City of Dayton, Ohio
101 West Third Street
Dayton, Ohio 45402
Attn: Desa Foster, Division of Information Technology

Licensor:
Progress Corporation
14 Oak Park Drive
Bedford, MA 01730
Attn: Chief Legal Officer

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

C. EQUAL EMPLOYMENT OPPORTUNITY

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

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

D. WAIVER

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

E. SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the void, unenforceable, invalid or illegal provision shall be deemed severed from this Agreement. Any void, unenforceable, invalid or illegal provisions shall be deemed severed from this
general public. To the extent permitted by law, Licensor agrees that it shall not disclose such information to any third party without the City's written consent. Licensor shall also take all reasonable steps to protect against the disclosure of the City's confidential information.

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

SECTION 7. INDEMNIFICATION AND LIABILITY

Licensor indemnification obligations and liabilities are set forth in the License Agreements and in the Progress Software maintenance and support policies, as duly referenced above, and are effective to the extent permitted by applicable law.

SECTION 8. TERMINATION

This Agreement may be immediately terminated by the City on the terms of the License Agreements and the Progress Software maintenance and support policies.

SECTION 9. GENERAL PROVISIONS

A. DELAY IN PERFORMANCE

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

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

GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws. Any litigation or dispute regarding this Agreement or performance by either party must be brought in a court of competent jurisdiction in Montgomery County, Ohio.
Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision.

F. INDEPENDENT CONSULTANT

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

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

G. ASSIGNMENT

Licensor shall not assign any rights or duties under this Agreement without the prior written consent of the City. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent Licensor from employing independent consultants, associates, and sub-consultants to assist in the performance of its obligations under this Agreement.

H. THIRD PARTY RIGHTS

Except as expressly provided in this Agreement, nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and Licensor.

I. AMENDMENT

The parties may mutually agree to amend this Agreement. However, no such amendment shall be effective unless it is reduced to a writing, which references this Agreement, executed by a duly authorized representative of each party and, if applicable or required, approved by the Commission of the City of Dayton, Ohio.

J. POLITICAL CONTRIBUTIONS

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

K. INTEGRATION

This Agreement represents the entire and integrated agreement between the City and Licensor. This Agreement supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement.

(The remainder of this page is intentionally blank)
IN WITNESS WHEREOF, the City and Licensor, each by a duly authorized representative, have executed this Agreement as of the date first set forth above.

CITY OF DAYTON, OHIO

__________________________
City Manager

PROGRESS CORPORATION

By:

__________________________
Print: David M. Fentzke

Its: Sr. Director Revenue Operations

APPROVED AS TO FORM AND CORRECTNESS

__________________________
City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO

__________________________ , 2020

Min./Bk. _______ Pg. _______

__________________________
Clerk of Commission
### EXHIBIT A
MAINTENANCE RENEWAL QUOTE

![Progress logo]

**Quote #: 2019-273481**

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Tax not included in quote. Applicable taxes will be added at invoicing.
## EXHIBIT A
### MAINTENANCE RENEWAL QUOTE

**Quote #: 2019-273481**

**Maintenance Renewal Quote**

**Payment Terms:** Net 30 Days

**Quote Currency:** US Dollar

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Total (USD) | 52,650.68

Tax not included in quote. Applicable taxes will be added at invoicing.
## EXHIBIT A
### MAINTENANCE RENEWAL QUOTE

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EXHIBIT B
LICENSE AGREEMENTS

Progress® OpenEdge® version 11.7 End User License Agreement

CAUTION: YOU SHOULD CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS OF THIS END USER LICENSE AGREEMENT BEFORE INSTALLING OR USING THE PRODUCT AND DOCUMENTATION TO WHICH THIS AGREEMENT RELATES. BY ACCEPTING THIS AGREEMENT YOU ARE CONSENTING TO BE BOUND BY THE TERMS AND CONDITIONS CONTAINED HEREIN AND ACKNOWLEDGING YOUR AUTHORITY TO DO SO ON BEHALF OF YOUR COMPANY (IF APPLICABLE). IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, DO NOT PROCEED WITH THE INSTALLATION OF THE PRODUCT(S) AND PROMPTLY RETURN THE PRODUCT(S), DOCUMENTATION, AND ALL COPIES THEREOF TO THE SUPPLIER FROM WHICH IT WAS ACQUIRED FOR A FULL REFUND OF THE LICENSE FEES, IF ANY, PAID FOR THE PRODUCT(S). THE TERM “PROMPTLY” AS USED HEREIN SHALL MEAN NO LATER THAN SIXTY (60) DAYS FOLLOWING THE DELIVERY OF THE PRODUCT TO YOU.

1. License Grant.

1.1 For purposes of this Agreement, “Progress” refers to Progress Software Corporation and “you” or “Licensee” refers to the individual installing or using the Product(s), if you are acting as an individual on your own behalf; otherwise, “you” or “Licensee” means the business or other entity for which you are obtaining the Product(s) and that will exercise the rights granted under this Agreement. Subject to the terms and conditions contained in this End User License Agreement, including all exhibits, Orders (as defined below) and License Addenda (as defined below) (collectively, this “Agreement”), Progress grants to you a non-exclusive, non-transferable, limited, personal license (without the right to sublicense) to use the software product(s) (each individually, a “Product”), for which valid control codes have been issued by Progress, identified in (i) the written or electronic order document, form or invoice provided or accepted by Progress or Progress’s authorized representative (each an “Order”) or (ii) the installation procedure. Any update, patch, solution pack, service pack, value-add pack, hotfix, workaround, prepackaged module and/or new release, version or enhancement issued to Licensee by Progress relating to the Product (each an “Update”) replaces part or all of a Product or Update previously licensed to Licensee and shall terminate such previously licensed Product or Update to the extent replaced by the Update. Each Update shall be subject to the terms and conditions of the license agreement accompanying the Update. In addition and subject to the terms and conditions contained herein, Progress grants Licensee a non-exclusive, non-transferable, limited, personal license (without the right to sublicense) to use the written technical materials and end user instructions including all updates and versions thereof released by Progress and associated with the Product, if any, distributed with the Product (the “Documentation”).

1.2 By virtue of this Agreement, Licensee acquires only the non-exclusive right to use the Product and does not acquire any rights of ownership to (i) the Product, (ii) any Documentation provided therewith or (iii) the media, if any, upon which the Product and Documentation are embodied. Progress and/or its licensors shall at all times retain all right, title, and interest in the Product, the Documentation, and any
EXHIBIT B
LICENSE AGREEMENTS

media provided therewith. Except for the license rights expressly granted herein, this Agreement grants no additional express or implied license, right or interest in the Product or in any copyright, patent, trade secret, trademark, invention or other intellectual property rights of Progress, its affiliates or their licensors. Progress reserves all rights not expressly granted to Licensee in this Agreement.

1.3 The term of the license is set forth in Exhibit A or the applicable Order, unless otherwise terminated in accordance with the terms of this Agreement.

1.4 Licensee agrees to pay the applicable fees as set forth in the Order. Licensee further agrees to pay any applicable transportation charges, value-added taxes or other applicable taxes, tariffs or withholding taxes which the relevant authorities require to pay. All fees are exclusive of any such taxes or tariffs unless expressly stated in the Order.

1.5 Shipping terms for Product(s) shipped on physical media is FOB shipping point. For Product(s) shipped via electronic delivery, delivery is deemed complete, FOB shipping point, when the Product(s) is/are made available at the electronic software download (“ESD”) site specified by Progress and Licensee is e-mailed or otherwise issued a password to access and download the Product(s).

2. License Restrictions.

2.1 Licensee’s use of the Product and Documentation is limited to internal use within Licensee’s organization. The Product and Documentation may not be used by affiliated parties of Licensee unless specifically authorized in Exhibit A. Use shall be in accordance with the provisions of and limitations set forth in this Agreement, including Exhibit A hereto, and the additional terms, if any, set forth in any Order or additional agreement executed by Progress and Licensee in connection with this Agreement which specifically states the terms thereof shall be in addition to or in lieu of any of the terms set forth herein (each a “License Addendum” and collectively, the “License Addenda”).

2.2 The license model for the Product is set forth in the Order and described in Exhibit A. Third party rights and any additional licensing restrictions are set forth or referenced in Exhibit A.

2.3 If Licensee receives the Product in conjunction with a software application provided by a third party, the Product may only be used with or as part of such software application.

2.4 Licensee shall not copy (except as provided in Section 5.2 hereof), disassemble, reverse engineer,
decompile, modify or create derivative works of the Product and the Documentation to the extent that such restriction is not prohibited by applicable mandatory law.

2.5 Licensee may not sublicense, sell, rent, encumber, outsource, lease or grant any other rights in the Product and/or the Documentation to others or otherwise allow the Product to be accessed, used or possessed by another party. For these purposes, the term "use" shall include, without limitation, direct or indirect use via thin-client or web-based remote access software which but for the use thereof would have required a copy of the Product to be installed or used locally by that user.

2.6 Licensee shall have no right to use the Product to provide time sharing, outsourced services, or facility management services or to act as or operate a service bureau or provide information, data processing, subscription or hosting services for another party.

2.7 The Product, including technical data, are subject to U.S. export control laws, including, without limitation, the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Licensee shall not directly or indirectly export or re-export the Product, or any direct product thereof, without first obtaining Progress's written approval. Licensee agrees to comply strictly with all regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export or import the Product. The Product may not be downloaded, or otherwise exported or re-exported (i) into, or to a national or resident of any country and/or party to which the U.S. has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals, or the U.S. Commerce Department's Table of Denial Orders as amended from time to time, or any other list distributed by the United States government setting forth individuals or entities to which distribution of the Product would be prohibited by United States law.

2.8 Licensee shall be solely responsible for identifying and complying with all laws of any jurisdiction outside of the United States regarding the use of the Product and any technical data supplied by Progress. Licensee agrees to obtain all licenses, permits or approvals required by any government at Licensee's sole cost and expense. Licensee's obligations under this Section 2.8 shall survive termination for any reason whatsoever.

2.9 If the Product is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), then the U.S. Government's rights in the Product will be only as set forth herein. The Product and related Documentation is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software Documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Product and such Documentation with only those rights set forth herein. Contract/Manufacturer is Progress Software Corporation, 14 Oak Park, Bedford, MA 01730.
2.10 This Agreement is personal to Licensee and Licensee may not transfer, assign or otherwise convey, novate or encumber this Agreement or the Product, in whole or in part, by operation of law, merger or otherwise, to any other party, including any parent, subsidiary or affiliated entity. A Change of Control of Licensee shall constitute an assignment hereunder. A “Change of Control” shall include, but not be limited to, any merger, consolidation, amalgamation, reorganization or sale, transfer or exchange of the capital stock or equity interests of Licensee in a transaction or series of transactions which results in the holders of Licensee’s capital stock or equity interests holding less than 50% of the outstanding capital stock or equity interests immediately following such transaction(s).

3. Limited Warranty.

3.1 Progress warrants that, for a period of ninety (90) days from either the date of the initial shipment or availability for download from a Progress website of the Product whichever occurs first (the “Warranty Period”), (i) the Product will conform in all material respects to the Documentation and (ii) the media, if any, on which the Product is recorded will be free from defects in materials and that the Product is properly recorded on the media. As the sole and exclusive remedy for physically defective media (such as the diskettes, cartridges, CD-ROMs, DVDs or magnetic tapes), Progress will replace it free of charge if claimed during the Warranty Period. As the sole and exclusive remedy for any failure of the Product to materially conform to the Documentation, Progress shall repair or replace the Product if such failure is reported during the Warranty Period or, if Progress, at its discretion, reasonably determines that such remedy is not economically or technically feasible, this Agreement and the licenses granted hereunder will terminate and Progress or its supplier (as applicable) shall provide a full refund of the license fee paid with respect to the particular Product. The above warranties do not cover Updates, generic non-configured solution packs, any Product provided on an evaluation basis, or defects to the Product due to accident, abuse, service, alteration, modification or improper installation or configuration by Licensee, its personnel or any third party.

3.2 Progress does not warrant that the functions of the Product will meet Licensee’s requirements or that operation of the Product will be uninterrupted or error free. Licensee assumes responsibility for selecting the Product to achieve its intended results and for the use and results obtained from the Product.

3.3 THE LIMITED WARRANTY SPECIFIED IN SECTION 3.1 SETS FORTH ALL WARRANTIES AND REPRESENTATIONS PROVIDED TO LICENSEE WITH RESPECT TO THE PRODUCT AND ANY SERVICES AND UPDATES PROVIDED HEREUNDER, AND SUCH LIMITED WARRANTY IS PROVIDED SOLELY BY PROGRESS AND NOT ITS LICENSORS. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, PROGRESS, ITS LICENSORS AND THEIR RESPECTIVE SUPPLIERS MAKE NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, RELATING TO THE PRODUCT, OR ANY SERVICES OR UPDATES PROVIDED UNDER THIS AGREEMENT. ANY UPDATES OR SERVICES DELIVERED HEREUNDER ARE DELIVERED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW ALL OTHER IMPLIED WARRANTIES AND REPRESENTATIONS INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT WITH RESPECT TO THE PRODUCT, OR ANY SERVICES AND
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5.2 Licensee agrees, under penalty of license termination but not exclusive of any other remedies, not to cause or permit the copying of the Product for any purpose other than expressly set forth herein. Licensee may copy the Product only for archival and off-line backup purposes, but not for disaster recovery purposes unless Licensee has purchased the appropriate disaster recovery or replication license. Licensee may copy the Documentation solely for the purpose of facilitating Licensee’s use of the Product in accordance with, and subject to, the terms and conditions of this Agreement. Licensee agrees not to remove any product identification, copyright notices, or other notices or proprietary restrictions from the Product.

5.3 Benchmark results for the Product may not be disclosed or published without the written consent of Progress.

5.4 Licensee acknowledges that in the event of a breach or threat of breach of this Section 5, money damages will not be adequate. Therefore, in addition to any other legal or equitable remedies, Progress shall be entitled to seek injunctive or similar equitable relief against such breach or threat of breach.
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5.5 All notices and requests in connection with this Agreement to be sent to Progress shall be given in writing and shall be sent by hand delivery, overnight courier or certified mail with proof of delivery to the following address: 14 Oak Park Drive, Bedford, MA 01730, Attention: General Counsel. All notices and requests in connection with this Agreement to be sent to Licensee shall be given in writing and shall be sent by hand delivery, overnight courier or certified mail with proof of delivery to the address first set forth in the Order. Either party may change its address for receipt of notices upon written notice to the other party, and notices shall be deemed given on the day of receipt or the date evidenced on the proof of delivery, whichever is earlier.


6.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE LIABILITY OF PROGRESS, IF ANY, FOR DAMAGES RELATING TO ANY PRODUCT, UPDATE AND/OR SERVICES SHALL BE LIMITED TO THE ACTUAL AMOUNTS PAID BY LICENSEE FOR SUCH PRODUCT, UPDATE AND/OR SERVICES. PROGRESS'S LICENSORS AND THEIR SUPPLIERS SHALL HAVE NO LIABILITY TO LICENSEE FOR ANY DAMAGES SUFFERED BY LICENSEE OR ANY THIRD PARTY AS A RESULT OF USING THE PRODUCT, ANY UPDATE, OR ANY PORTION THEREOF, OR AS A RESULT OF ANY SERVICES RELATING THERETO. NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL PROGRESS, ITS LICENSORS, OR ANY OF THEIR RESPECTIVE SUPPLIERS BE LIABLE FOR ANY LOST REVENUE, PROFIT OR DATA, OR FOR INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER, OR FOR ANY COMMERCIAL DAMAGES OR LOSSES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, ARISING OUT OF THE USE OR INABILITY TO USE THE PRODUCT, ANY UPDATE, OR ANY PORTION THEREOF, OR ANY SERVICES, EVEN IF PROGRESS, ITS LICENSORS AND/OR ANY OF THEIR RESPECTIVE SUPPLIERS HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. EACH EXCLUSION OR LIMITATION IS INTENDED TO BE A SEPARATE AND THEREFORE SEVERABLE EXCLUSION.

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8. Termination.
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8.1 Progress may terminate this Agreement by written notice at any time if Licensee defaults in the performance of any provision of this Agreement and fails to cure such default to the satisfaction of Progress within thirty (30) days after such notice. This remedy shall not be exclusive and shall be in addition to any other remedies which Progress may have under this Agreement or otherwise.

8.2 Any purported transfer or assignment of this Agreement or the licenses granted hereunder by Licensee or other action by Licensee in contravention of Section 2.10 above or any purported transfer or assignment of this Agreement or the licenses granted hereunder as a result of Licensee’s bankruptcy, insolvency, or liquidation or as a result of an assignment of Licensee’s assets for the benefit of creditors shall be void and this Agreement and the licenses granted hereunder shall thereupon automatically terminate without further notice or action by Progress.

8.3 Within ten (10) days of the date of expiration or termination of this Agreement and/or any of the licenses granted hereunder, Licensee shall return all copies of the Products, including all Updates, and related Documentation to Progress or, if requested by Progress, destroy such Products, Updates and Documentation and certify in writing to such return or destruction.


9.1 If Progress offers maintenance and support for the Product, and if Licensee orders and pays for such maintenance and support, such maintenance and support shall be provided in accordance with Progress’ then current and applicable maintenance and support policies.

9.2 THIS AGREEMENT, INCLUDING ANY EXHIBITS AND ANY LICENSE ADDENDUM(S), CONSTITUTES THE COMPLETE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE PRODUCT AND SUPERCEDES ANY OTHER AGREEMENT, PROPOSAL, COMMUNICATION OR ADVERTISING, ORAL OR WRITTEN, SIGNED OR UNSIGNED, WITH RESPECT TO THE PRODUCT. To the extent there are any terms and conditions contained in Licensee’s purchase order or other documentation supplied by Licensee such terms and conditions shall be deemed to be stricken and the terms and conditions of this Agreement shall govern. In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect.

9.3 For administrative convenience, Progress invoices may be issued by a local affiliate of Progress.
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9.4 This Agreement has been drawn up in English at the express wish of the parties. Le présent contrat a été rédigé en anglais à la demande expresse des parties.

9.5 Except as otherwise expressly set forth herein, this Agreement is governed by the laws of the Commonwealth of Massachusetts, without regard to its choice of law principles, and without regard to the provisions of any state Uniform Computer Information Transactions Act or similar federal, state, local or foreign laws, regulations or conventions.

9.6 This Agreement may not be modified or amended except in a writing executed by both Progress and Licensee.

9.7 Failure or delay on the part of Progress to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. A waiver of default shall not operate as a waiver of any other default or of the same type of default on future occasions.


9.9 DATA COLLECTION AND USE: THE PRODUCT MAY INCLUDE FEATURE(S) THAT (I) GATHER PRODUCT ACTIVATION, USAGE AND/OR ENVIRONMENT INFORMATION, (II) IDENTIFY TRENDS AND/OR BUGS, (III) COLLECT USAGE STATISTICS, AND/OR (IV) TRACK OTHER DATA RELATED TO YOUR USE OF THE PRODUCT, AS FURTHER DESCRIBED IN THE CURRENT VERSION OF PROGRESS’ PRIVACY POLICY AVAILABLE AT HTTP://WWW.PROGRESS.COM/PRIVACY. BY LICENSEE’S ACCEPTANCE OF THE TERMS OF THIS AGREEMENT AND/OR USE OF THE PRODUCT, LICENSEE AUTHORIZES THE COLLECTION, USE AND DISCLOSURE OF THIS DATA FOR THE PURPOSES PROVIDED FOR IN THIS AGREEMENT AND/OR THE PRIVACY POLICY.
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EXHIBIT A

TERM OF LICENSE:

Perpetual, unless otherwise specified in the applicable Order.

AFFILIATE USE, IF ANY:

None, unless otherwise specified in the applicable Order.

User or user group restrictions also may be set forth in the Order.

ADDITIONAL TERMS, IF ANY:

General Usage Limitations

1. Optional Components. The Product licensed and delivered to Licensee may include on the media or in the electronically delivered files, as applicable, components, features or other Products (which may or may not be referred to as “Blades”) for which a separate license purchase and license key(s) or control code(s) are required. Licensee is permitted to use only the Product(s), and components, features and/or Blades thereof, for which Licensee has ordered and received a valid license key or control code.

2. Use Case and/or User Group Restrictions. If the Order indicates that the Products may be used for specific Use Case(s) (as defined below) or by specific user group(s), the Products may only be used for the Use Cases and/or by the user group(s) listed in the Order.

Product Specific Usage Limitations:

1. ABL Source Code. Licensee may utilize any unencrypted Advanced Business Language (“ABL”) source code contained in the Product for any purpose. The ABL source code may change without notice, and PSC makes no representations regarding the ABL source code with regard to its use outside of the Product, and shall have no responsibility for such outside use by Licensee.

2. Progress® OpenEdge® Business Process Modeler. Progress may, at its discretion, make the Progress® OpenEdge® Business Process Modeler software (“Business Modeler Software”) available to its customers on a no charge “AS IS” basis. If Progress makes Business Modeler Software available to Licensee in accordance with the preceding sentence and Licensee downloads the Business Modeler Software from Progress’ electronic software delivery site or otherwise obtains the Business Modeler Software from Progress or its authorized representative, then Licensee will have a non-exclusive, non-transferable, royalty-free, perpetual, limited license to use the Business Modeler Software without limitation on license model or quantity but subject to all other terms and conditions of this
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3. Progress® OpenEdge® Add On Products.

a. If the Product identified in the Order is (i) Progress® OpenEdge® Transparent Data Encryption, (ii) Progress® OpenEdge® Multi-Tenant Tables, (iii) Progress® OpenEdge® Replication for Enterprise, (iv) Progress® OpenEdge® Replication for Workgroup, (v) Progress® OpenEdge® Replication Plus for Enterprise, (vi) Progress® OpenEdge® Replication Plus for Workgroup, (vii) Progress® OpenEdge® Management, (viii) Progress® OpenEdge® Table Partitioning, or (ix) Change Data Capture (each referred to herein as an "OpenEdge Add On Product"), then Licensee must, as a pre-requisite, have a valid license for a Progress® OpenEdge® database product that allows production use of said database product and the OpenEdge Add On Product license model (as identified in the Order and defined below) and license unit quantity (as also identified in the Order) must be the same as the license model and license unit quantity applicable for said database product. If the OpenEdge Add On Product is Progress® OpenEdge® Replication for Enterprise or Progress® OpenEdge® Replication Plus for Enterprise, then the database product referenced in the preceding sentence must be the Progress® OpenEdge® Enterprise RDBMS product. If the OpenEdge Add On Product is (i) Progress® OpenEdge® Replication for Workgroup or (ii) Progress® OpenEdge® Replication Plus for Workgroup, then the database product referenced in the first sentence must be the Progress® OpenEdge® Workgroup RDBMS product.

b. If the OpenEdge Add On Product identified in the Order is (i) a Progress® OpenEdge® Replication product or (ii) a Progress® OpenEdge® Replication Plus product, then, in addition to the product-specific terms set forth in paragraph 4(a) above, the following applies: the replicated database may be used for Disaster recovery, including failover and standby, and may be used for application recovery in the event a system fails or crashes or the application or database files become corrupt as a result of a Disaster.

c. If the OpenEdge Add On Product identified in the Order is Progress® OpenEdge® Management, then, in addition to the product-specific terms set forth in paragraph 3(a) above, the following applies: Licensee may use the OpenEdge Add On Product and Documentation solely to configure, monitor and manage Licensee's OpenEdge resources, databases, system resources, network resources, file resources, log data, or any other assets or resources in accordance with the Documentation.

d. If the OpenEdge Add On Product identified in the Order is Progress® OpenEdge® Table Partitioning, then, in addition to the product-specific terms set forth in paragraph 3(a) above, the following applies: Licensee must, as a pre-requisite, have a valid license for version 11.4 or higher of Progress® OpenEdge® database product.

e. If the OpenEdge Add On Product identified in the Order is Progress® OpenEdge® Change Data Capture, then, in addition to the product-specific terms set forth in paragraph 3(a) above, the following applies: Licensee must, as a pre-requisite, have a valid license for version 11.7 or higher of Progress® OpenEdge® database product.

4. Progress® Application Server for OpenEdge® - Development. If the Product identified in the Order is Progress® Application Server for OpenEdge® - Development, then Licensee may use such product solely for the purposes of internal development and testing of applications that utilizes Progress® Application Server for OpenEdge® - Development. Licensee may not use Progress® Application Server for OpenEdge® - Development in a production environment.
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5. Progress® OpenEdge® Authentication Gateway.

a. If the Product identified in the Order is Progress® OpenEdge® Authentication Gateway, Licensee may not use Progress® OpenEdge® Authentication Gateway for any purpose other than for authenticating users, including but not limited to use as a general-purpose Web server or application server.

b. If the Product identified in the Order is Progress® Application Server for OpenEdge® - Development, then Licensee may use such product for the purposes of internal development and testing of applications that utilize Progress® OpenEdge® Authentication Gateway. Licensee may not use Progress® OpenEdge® Authentication Gateway capabilities supplied with Progress® Application Server for OpenEdge® - Development in a production environment.

6. Progress® OpenEdge® Pro2™ Products. If the Product identified in the Order belong to the Progress® OpenEdge® Pro2™ line of products ("Pro2 Product"), then Licensee may receive additional Product(s) in conjunction with such Pro2 Product ("Additional Product(s)"). Such Additional Product(s) may only be used with or as part of Pro2 Product and may not be used in any other manner. If the license unit type identified for Pro2 Product in the Order is a "Site" license, then the Pro2 Product and the Additional Product(s) will be subject to the Site License limitations set forth below. Furthermore, the Additional Product(s) may have a unit quantity limitation specified in the Order. Notwithstanding the unit type of "Site" specified in the order, the unit quantity limitation for the Additional Product(s) will be deemed to mean the total number of Client Devices, Non-Human Operated Devices or Processes operating the Additional Product(s) either located at the Site or used by users with a principal business address at the Site.

7. Progress® OpenEdge® Pro Dump/Load-Single Use. If the Product identified in the Order is the Single Use version of the Progress® OpenEdge® Pro Dump/Load, then Licensee may only use the Product for a single iteration of a dump and load of Licensee’s database(s) and any associated databases. Additional use of the Product to repeat the dump and load in the foregoing manner or to perform maintenance tasks requires additional licensing.

8. Technical Preview Features. Product(s) may include features that are identified as a “Technical Preview”, and if included, such features are documented in the Product documentation such as the Product Releases Notes. Progress is not obligated to provide any maintenance, technical or other support for the Technical Preview features, but may, from time to time, provide technical support and/or Updates to the Technical Preview features at Progress’ sole discretion. All such Updates shall be subject to the terms and conditions of this Agreement, including, without limitation, the terms and conditions set forth in this section. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SECTION 3 OF THIS AGREEMENT, TECHNICAL PREVIEW FEATURES, ANY UPDATES THERETO AND ANY RELATED TECHNICAL SUPPORT SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. PROGRESS MAKES NO WARRANTIES WITH RESPECT TO THE TECHNICAL PREVIEW FEATURES, ANY UPDATES THERETO, OR ANY RELATED TECHNICAL SUPPORT SERVICES, WHETHER EXPRESS, IMPLIED, OR ARISING BY CUSTOM OR TRADE USAGE, AND SPECIFICALLY MAKES NO WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT.

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10. Telerik® UI for WinForms. Certain Product(s) may include a trial license to the Telerik UI for WinForms
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located in the "readme.txt" file, the "notices.txt" file, or the "Third Party Software" file accompanying the Product.

11. Telerik® Kendo UI® Professional in Progress® OpenEdge® Business Process Server. If the Product identified
in the Order is Progress OpenEdge Business Process Server, then the Product will include Kendo UI Professional.
Licensee acknowledges that its right to use the Kendo UI Professional product is governed by the terms and
conditions of the Telerik End User License Agreement for Kendo UI Professional located in the "readme.txt" file,
the "notices.txt" file, or the "Third Party Software" file accompanying the Product. Licensee further acknowledges
that its use of the Kendo UI Professional product, all portions thereof, shall be limited to use solely with the Product
and, more specifically, solely within an OpenEdge Business Process Management portal in the Product.

See Order for additional terms, if any.

LICENSE MODELS AND DEFINITIONS:

The product name and applicable license model for the Product(s) purchased is set forth in the Order. The description of the
license model is set forth below. Not all license models described below are available for all Products. The Order will identify the
license model applicable for the Products listed therein.

For purposes of this Exhibit A, the following terms shall have the following definitions:

“Access Agent”: An Access Agent is a user [or Non-Human Operated Device] that (i) cannot be uniquely identified and/or (ii)
can only access the Product or an application which accesses the Product for less than two (2) hours a week.
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"Client Device": A Client Device is any input technology that allows the Licensee to access the Product, including but not limited to a workstation, a personal computer, a PDA device, a cellular phone, a tablet, a laptop or other device that is operated by an individual.

"Core": A Core is a core processor of a CPU as allocated by Licensee made up of an independent processor combined onto a single integrated circuit or silicon chip, in both virtualized and/or non-virtualized environment, and regardless of whether used in a production or non-production (e.g. test, development) environment.

"CPU": A CPU is a computer processing unit, also known as a processor or microprocessor. It can contain multiple cores in both virtualized and/or non-virtualized environment.

"Disaster": Any unplanned event or condition that renders Licensee unable to use an application or database for its intended computer processing and related purposes.

"Non-Human Operated Device": A Non-Human Operated Device is a device that is not operated by an individual including, but not limited to, a temperature device, a production line bar code scanner, an automated system interface or a tracking device.

"Named User": A Named User is a single individual, Non-Human Operated Device or Process.

"Platform": A Platform is the specific combination of the hardware and the operating system, a change to either would constitute a platform change.

"Process" [formerly known as "Server Process"]: A Process is any automated process that is not initiated by a Client Device or a Non-Human Operated Device and includes, without limitation, automated controls and background jobs.

"Server": A logical computer with one or more CPUs on which the Product resides, along with the applications utilizing the Product, and which can be accessed by other computers. The term "Server" includes, but is not limited to, web servers, batch servers and application servers.

"Site": A site is defined as a single building or campus of buildings sharing the same postal address.

"Use Case": A Use Case is a description in the Order of one or more limitation(s) on the manner in which the Product may be used by Licensee. Such limitation(s) may include, but are not limited to, use of the Product only for a specified project, application, line of business, purpose of use or group of users.
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Concurrent Device License [also may be known or referred to as “Concurrent User License”]: A Concurrent Device License grants Licensee the right to install and use the Product, or access and use an application which can access the Product, on a single Core and on a single Platform. A Concurrent Device may be a Client Device, a Non-Human Operated Device or a Process. The Licensee may have in use at any given time a maximum number of Concurrent Devices accessing the Product, or accessing an application which can access the Product, as purchased under the Concurrent Device License. In addition, under this model, a Licensee is required to license the Concurrent Devices per Server, so that there is an associated Concurrent Device License dedicated to each Server that runs the Product including, without limitation, Servers configured for disaster recovery, load balancing, clustering, development, testing and reporting. For example, if Licensee’s Concurrent Device License permits a maximum of 100 Concurrent Devices, and Licensee directs 50 Concurrent Devices to Server A and 50 Concurrent Devices to Server B, Licensee would have to purchase an additional 50 Concurrent Device License for Server B. A concurrent Device License may not be transferred from one Server or Platform to another.

Core License: A Core License grants Licensee the right to run the Product, or an application which can access the Product, on a single Core on a single Server and on a single Platform. The total number of Cores on the Server may not exceed the total number licensed to Licensee. Additional Core License(s) are required for each Core of a Server on which the Product runs, including, without limitation, Servers configured for disaster recovery, load balancing, clustering, development, testing and reporting. A Core License may not be transferred from one Server or Platform to another.

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assignment prohibition set forth in Section 2.10 of the Agreement.

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Site License: A Site License grants Licensee the right to install and use the Product, or an application which can access the Product, in any Server at a single Site and on any device (wherein the device can be a Client Device, a Non-Human Operated Device or a Process) operated by users who share the same principal place of business as the Site location, regardless of whether the Product, or an application which can access the Product is used in the virtualized and/or non-virtualized environment.

Developer License: A Developer License limits Licensee’s access and use of the Product to internal application development and support purposes only. If the license is for components of the Product only, then such right is limited to such components. Licensee shall be further subject to the license terms of the appropriate license model for the Product (e.g., CPU License, Core License, Server/Machine License, etc.) designated in the Order. A Developer License may not be transferred.

Disaster Recovery License: A Disaster Recovery License shall only be used by Licensee for the sole purpose of application recovery in the event a system fails or crashes or the Product or database files become corrupt. In that case, a Disaster Recovery License grants the Licensee the right to use the Product for a period not to exceed ninety (90) days ("D/R Deployment Period"). Licensee shall notify Progress in writing within five (5) business days of the commencement of the D/R Deployment Period. Licensee shall be further subject to the same quantity and license terms of the appropriate license model for the Product (e.g., CPU, License, Core License, Server/Machine License, etc.) designated in the Order. A Disaster Recovery License may be transferred from one Server or CPU to another with prior notice to Progress so long as such change is permitted by the underlying license model. No Disaster Recovery License is required for a switch from a primary Server to secondary Server so long as the primary Server is permanently disabled. However a Disaster Recovery License is required for any other temporary reassignment between the primary Server and any other Server. The foregoing transfer right shall not affect the assignment prohibition set forth in Section 2.10 of this Agreement.

Evaluation License: An Evaluation License grants Licensee the right to use the Product solely for evaluation, demonstration, prototyping, testing, and/or proof of concept purposes, and not in conjunction with the development or deployment of any
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Testing and Staging License:         A Testing and Staging License grants Licensee the right to use the Product for internal quality assurance testing purposes only and Licensee may not deploy the Product in a production environment. Licensee shall be further subject to the license terms of the appropriate license model for the Product (e.g., CPU License, Core License, Server/Machine License, etc.) designated in the Order. A Testing and Staging License may not be transferred.

THIRD PARTY TERMS AND RESTRICTIONS:

The Product may contain or be accompanied by certain third party components which are subject to additional restrictions. These components, if any, are identified in, and subject to, special license terms and conditions set forth in the “readme.txt” file, the “notices.txt” file, or the “Third Party Software” file accompanying the Product (“Special Notices”). The Special Notices include important licensing and warranty information and disclaimers. In the event of conflict between the Special Notices and the other portions of this Agreement, the Special Notices will take precedence (but solely with respect to the third party component(s) to which the Special Notice relates).

PROGRESS MAINTENANCE PLAN (IF ANY):

As indicated in the applicable Order.

EULA Revision Reference: Progress® OpenEdge® version 11.7 (EULA revision 20-March-2017)

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EXHIBIT B
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Progress® OpenEdge® version 10.1C End User License Agreement ("EULA")

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1.4 Licensee agrees to pay the applicable fees as set forth in the Order. Licensee further agrees to pay any applicable transportation charges, value-added taxes or other applicable taxes, tariffs or withholding taxes which the relevant authorities require to pay. The fees are exclusive of any such taxes or tariffs unless expressly stated in the Order.

2. License Restrictions

2.1 Licensee's use of the Product and the Documentation is limited to internal use within Licensee's organization and the Product and Documentation may not be used by affiliated parties of Licensee unless specifically authorized in Exhibit B. Use shall be in accordance with the provisions of and limitations set forth in this Agreement, including Exhibit B hereto, and the additional terms, if any, set forth in any (i) Progress invoice, (ii) Progress order document executed by Licensee or (iii) additional agreement executed by Progress and Licensee in connection with this Agreement which specifically states the terms thereof shall be in addition to or in lieu of any of the terms set forth herein (a "License Addendum").

2.2 The license model for the Product is set forth in the Order and described in Exhibit B.

2.3 Additional restrictions and third party rights are set forth in Exhibit B.

2.4 If Licensee receives the Product in conjunction with a software application provided by a third party, the Product may only be used with or as part of such software application.

2.5 Licensee shall not copy (except as provided in Section 5.2 hereof), disassemble, reverse engineer, decompile, modify or create derivative works of the Product and the Documentation to the extent that such restriction is not prohibited by applicable mandatory law.

2.6 Licensee may not sublicense, sell, rent, encumber, outsource, lease or grant any other rights in the Product and/or the Documentation to others or otherwise allow the Product to be accessed, used or possessed by another party. For these purposes, the term "use" shall include, without limitation, direct or indirect use via thin-client or web-based remote access software which but for the use thereof would have required a copy of the Product to be installed or used locally by that user.
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3.2 Progress does not warrant that the functions of the Product will meet Licensee’s requirements or that operation of the Product will be uninterrupted or error free. Licensee assumes responsibility for selecting the Product to achieve its intended results and for the use and results obtained from the Product.

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8. Termination

8.1 Progress may terminate this Agreement by written notice at any time if Licensee defaults in the performance of any provision of this Agreement and fails to cure such default to the satisfaction of Progress within thirty (30) days after such notice. This remedy shall not be exclusive and shall be in addition to any other remedies which Progress may have under this Agreement or otherwise.

8.2 Any purported transfer or assignment of this Agreement or the licenses granted hereunder by Licensee or other action by Licensee in contravention of Section 2.9 above or any purported transfer or assignment of this Agreement or the licenses granted hereunder as a result of Licensee's bankruptcy, insolvency, or liquidation or as a result of an assignment of Licensee's assets for the benefit of creditors
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shall be void and this Agreement and the licenses granted hereunder shall thereupon automatically terminate without further notice or action by Progress.

8.3 Upon expiration or termination of this Agreement and/or any of the licenses granted hereunder, Licensee agrees to return promptly all copies of the Products and related Documentation to Progress or, if requested by Progress, destroy such Products and Documentation and certify in writing to such return or destruction.

9. Miscellaneous

9.1 If Progress offers maintenance for the Product, and if Licensee orders and pays for such maintenance, such maintenance shall be provided in accordance with Progress' then current and applicable maintenance policies.

9.2 THIS AGREEMENT, INCLUDING ANY EXHIBITS AND ANY LICENSE ADDENDUM(S), CONSTITUTES THE COMPLETE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE PRODUCT AND SUPERCEDES ANY OTHER AGREEMENT, PROPOSAL, COMMUNICATION OR ADVERTISING, ORAL OR WRITTEN, SIGNED OR UNSIGNED, WITH RESPECT TO THE PRODUCT. To the extent there are any terms and conditions contained in Licensee’s purchase order or other documentation supplied by Licensee such terms and conditions shall be deemed to be stricken and the terms and conditions of this Agreement shall govern.

9.3 For administrative convenience, Progress invoices may be issued by a local affiliate of Progress.

9.4 This Agreement has been drawn up in English at the express wish of the parties. Le présent contrat a été rédigé en anglais à la demande expresse des parties.

9.5 Except as otherwise expressly set forth herein, this Agreement is governed by the laws of the Commonwealth of Massachusetts, without regard to its choice of law principles, and without regard to the provisions of any state Uniform Computer Information Transactions Act or similar federal, state, local or foreign laws, regulations or conventions.

9.6 This Agreement may not be modified or amended except in a writing executed by both Progress and Licensee.
9.7 Failure or delay on the part of Progress to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. A waiver of default shall not operate as a waiver of any other default or of the same type of default on future occasions.


9.9 If the Product is acquired outside the United States local law may apply.
EXHIBIT B
LICENSE AGREEMENTS

EXHIBIT A

TERM OF LICENSE:

Perpetual

APPLICABLE FEES:

Any applicable license fees or maintenance fees will be set forth in the Order
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EXHIBIT B

AFFILIATE USE, IF ANY:

None

ADDITIONAL TERMS, IF ANY:

User may utilize any unencrypted Advanced Business Language ("ABL") source code contained in the Product for any purpose. PSC makes no representations regarding the ABL source code with regard to its use outside of the Product, and shall have no responsibility for such outside use by User.

LICENSE MODELS AND DEFINITIONS:

The license model for the Product(s) purchased is set forth in the Order. The description of each Progress license model is set forth below.

For purposes of this Exhibit B, the following terms shall have the following definitions:

"Access Agent": An Access Agent is a process that handles requests through use of the Product or through an application which accesses the Product.

"Client Device": A Client Device is any input technology that allows the Licensee to access the Product, including but not limited to a workstation, a personal computer, a PDA device, a cellular phone, a laptop or other device that is operated by an individual.
EXHIBIT B
LICENSE AGREEMENTS

"Dedicated User": A Dedicated User is a user that (1) can be identified and counted by the Licensee, (2) relies on the Product to fulfill his or her job responsibilities and (3) can access the Product via a secure website or application with restricted access.

"Non-Human Operated Device": A Non-Human Operated Device is a device that is not operated by an individual including, but not limited to, a temperature device, a production line bar code scanner, or a tracking device.

"Platform": A Platform is the specific combination of the hardware and the operating system, a change to either would constitute a platform change.

"Process" [formerly known as "Server Process"]: A Process is any automated process that is not initiated by a Client Device or a Non-Human Operated Device and includes, without limitation, automated controls and background jobs.

"Site": A site is defined as a single building or campus of buildings.

Access Agent License: An Access Agent License grants Licensee the right to install and use the Product, or access and use an application which can access the Product by a user [or Non-Human Operated Device] so long as that user [or Non-Human Operated Device] (i) can not be uniquely identified and/or (ii) the user can only access the Product or the application for less than two hours a week. This Access Agent License should always be purchased in combination with a Concurrent, Named User and/or Registered Client License; except for environments where none of the users or the Non—Human Operated Devices that access the Product or an application that accesses the Product may be identified and/or access the Product or the application for two or more hours per week.

Concurrent Device License [formerly known as "Concurrent User License"]: A Concurrent Device License grants Licensee the right to install and use the Product, or access and use an application which can access the Product, on a single server and on a single Platform. A Concurrent Device may be a Client Device, a Non-Human Operated Device or a Process. The Licensee may have in use at any given time a maximum number of Concurrent Devices accessing the Product, or accessing an application which can access a Product, as purchased under the Concurrent Device License. In addition, under this model, a Licensee is required to license the Devices per server, so that there is an associated Concurrent Client Device license dedicated to
EXHIBIT B
LICENSE AGREEMENTS

each server that runs the Product including, without limitation, servers configured for disaster recovery, load balancing, clustering, development, testing and reporting. For example, if Licensee’s Concurrent Device License permits a maximum of 100 Concurrent Devices, and Licensee directs 50 Devices to Server A and 50 Devices to Server B, Licensee would have to purchase an additional 50 Concurrent Device License for Server B. A Concurrent Device License may not be transferred from one server or one Platform to another.

CPU License: A CPU License grants Licensee the right to run the Product, or an application which can access the Product, on a single core processing unit (“CPU”) on a single server and on a single Platform. Each processor core of a multiple core processor in a server shall count as one (1) CPU. Additional CPU License(s) are required for each CPU that runs the Product, including, without limitation, servers configured for disaster recovery, load balancing, clustering, development, testing and reporting. A CPU License may not be transferred from one CPU or one Platform to another.

Developer License: The Developer License limits Licensee’s access and use of the Product to internal application development and support purposes only. If the license is for components of the Product only, then such right is limited to such components. Licensee shall be further subject to the license terms of the appropriate license model for the Product set forth in this Exhibit B. A Developer License may not be transferred.

Disaster Recovery License: A Disaster Recovery License shall only be used by Licensee for the sole purpose of application recovery in the event a system fails or crashes or the Product or database files become corrupt. Licensee shall be further subject to the license terms of the appropriate license model for the Product set forth in this Exhibit B. A Disaster Recovery License may be transferred from one server or CPU to another with prior notice to Progress so long as such change is permitted by the underlying license model. No Disaster Recovery license is required for a switch from a primary server to secondary server so long as the primary server is permanently disabled. However a Disaster Recovery license is required for any other temporary reassignment between the primary server and any other server. The foregoing transfer right shall not affect the assignment prohibition set forth in Section 2.9 of this Agreement.

Evaluation License: An Evaluation License shall be used by Licensee for the sole purpose of evaluation of the Product and may not be used for or in conjunction with the development or deployment of the Product, which use shall require the purchase of a full license for the Product. The Product is provided without warranty on an “as is” basis. Licensee shall be further subject to the license terms of the appropriate license model for the Product set forth in this Exhibit B. An Evaluation License may not be transferred.

Named User License: A Named User License grants Licensee the right to designate a specific user (a “Named User”) to access and use the Product or access and use an application which can access the Product.
EXHIBIT B
LICENSE AGREEMENTS

Licensee must be able to identify and count each Named User. A Named User can be an individual, a Non-Human Operated Device or a Process. A Named User License is a multi-server license but the Product must be used on a single Platform. A Named User may not be designated concurrently on different computers or devices or shared by multiple users. A Named User does not have to be logged on to the Product to be counted as a Named User. A license right designation may be transferred from one user to another provided that the original user no longer requires and is no longer permitted access to the Product. The foregoing transfer right shall not affect the assignment prohibition set forth in Section 2.9 of this Agreement.

**Registered Device License** [formerly known as “Registered Client License”]: A Registered Device License grants Licensee the right to designate a specific device (a “Registered Device”) to access and use the Product or access and use an application which can access the Product. Licensee must be able to identify and count each Registered Device. A Registered Device may be a Client Device, a Non-Human Operated Device or a Process. The Registered Device License cannot be used to account for, and the Product may not be used by, Unknown Users. A Registered Device License is a multi-server license but the Product must be used on a single Platform and may not be used concurrently on different computers or devices or shared by multiple devices. A Registered Device does not have to be logged on to the Product to be counted as a Registered Device. A license right designation may be transferred from one device to another provided that the original device is no longer permitted access to the Product. The foregoing transfer right shall not affect the assignment prohibition set forth in Section 2.9 of the Agreement.

**Server/Machine License**: A Server or Machine License grants Licensee the right to install and use a Product on a single server and on a single Platform. Additional Server/Machine license(s) are required for each server that runs the Product including, without limitation, servers configured for disaster recovery, load balancing, clustering, development, testing and reporting. A Server or Machine License may not be transferred from one from server or Platform to another.

**Server/Machine Unlimited User License**: A Server or Machine Unlimited User License is no longer a valid license and Licensee is required to relicense under a current licensing model. Under the Server or Machine Unlimited User license a Licensee had the right to install and use a Product on a specific combination of machine/server, vendor operating system and site. If there is a change to any of these elements, the license is no longer valid and a new license needs to be purchased for the Product. Due to the specific grant of this license, a Server or Machine Unlimited User License may not be transferred from one from server or Platform to another.

**Testing and Staging License**: A Testing and Staging License grants Licensee the right to use the Product for internal quality assurance testing purposes only and Licensee may not deploy the Product in a production environment. Licensee shall be further subject to the license terms of the appropriate license model for the Product set forth in this Exhibit B. A Testing and Staging License may not be transferred.
EXHIBIT B
LICENSE AGREEMENTS

THIRD PARTY TERMS AND RESTRICTIONS:

DataDirect Connect for JDBC

User may not modify the Java™ Platform Interface ("JPI"), identified as classes contained within the "java" package or any subpackages of the "java" package, by creating additional classes within the JPI or otherwise causing the addition to or modification of the classes in the JPI. In the event that User creates an additional class and associated API(s) which (i) extends the functionality of the Java Platform, and (ii) is exposed to third party software developers for the purpose of developing additional software which invokes such additional API, User must promptly publish broadly an accurate specification for such API for free use by all developers. User may not create, or authorize User’s licensees to create additional classes, interfaces, or subpackages that are in any way identified as "java", "javax", "sun" or similar convention as specified by Sun in any naming convention designation. Java software technology is not designed or intended for use in on-line control of aircraft, air traffic, aircraft navigation or aircraft communications; or in the design, construction, operation or maintenance of any nuclear facility.

Licensee will not use or, if applicable, redistribute the Java software technology for such purposes. PSC and its licensors expressly disclaim any liabilities, representations or warranties (either express or implied) for such use.

Products licensed for the Microsoft SQL Server database.

If the Product licensed to User includes a DataDirect driver for the Microsoft SQL Server database, then the following shall apply: The DataDirect driver contains a licensed implementation of the Microsoft TDS Protocol. User may only use the DataDirect driver to communicate data to and from Microsoft SQL Servers. Additionally, User must separately obtain from Microsoft or its channel partner any applicable Microsoft product licenses in order to use the DataDirect driver to communicate with Microsoft SQL Servers.

For Products that contain technology of RSA Security, Inc., the following provisions apply:

Licensee agrees not to remove, alter or destroy any proprietary, trademark or copyright notices placed upon or contained within the RSA software, user manuals or any related materials or documentation. Licensee acquires no rights of any kind in or to any RSA trademark, trade name, logo or product designation under which the RSA software was or is marketed and shall not make any use of the same for any reason.

DataDirect Connect for ODBC.

DataDirect has licensed, and has rights to sub-license certain third party software that is part of the ODBC SDK components and which is usable for certain non-Windows platforms – Mac OS, OS/2, HP-UX, AIX, Linux, Solaris, and other non-Windows operating systems. This section sets forth the conditions that govern User’s permitted use of the various non-Windows SDK components: User is not licensed to use the ODBC Core Components (hereinafter defined) other than with DataDirect Connect for ODBC drivers. Use of the ODBC Core Components with any ODBC drivers other than those licensed from DataDirect is expressly prohibited. User may not embed in any products, or otherwise sub-license the ODBC Core Components, without a separate license agreement. For the purposes hereof, the term “ODBC Core Components” shall mean the ODBC Driver Manager and support files for non-Windows operating systems. A separate license must be obtained from DataDirect if User wants to embed and sub-license the ODBC Header Files (hereinafter defined) with any software product. For the purposes hereof, the term “ODBC Header Files” shall mean the text files for compilation and development of software.
EXHIBIT B
LICENSE AGREEMENTS

If one or more of the Products contain any files including a notice stating that the contents of such files are subject to the terms and conditions of the POSSENET Public License, such files, to the extent that they are supplied as part of the Products, shall be disregarded and this Agreement shall apply in relation thereto.

If the Product you license contains MSDN Sample Code, Licensee shall not redistribute the MS Samples.

The Product contains GNU Jcalendar, IBM Bean Scripting Framework and IBM Web Services Description Language for Java ("WSDL4J"), IBM Universal Description, Discovery and Integration for Java ("UDDI4J"), Eclipse, Eclipse Graphical Editor Framework (GEF) SDK, Eclipse Modeling Framework (EMF), Eclipse Web Standard Tools (WST), Java EMF Model (JEM) SDK, XSD Run-time, XSD Standalone, and SQL Explorer. Each of these third party technologies is licensed to PSC and User subject to the terms of a third party license, a copy of which is included with the Product in the installation directory. PSC will, at Licensee’s request, provide a copy of the source code for these third party technologies, including modifications, if any, made by PSC. PSC may charge reasonable shipping and handling charges for such distribution. Licensee may also obtain the source code for these third party technologies through www.pudn.com by following the instructions set forth therein. Notwithstanding anything to the contrary, to the extent that any of the terms and conditions of this Agreement conflict, vary or are in addition to the terms and conditions of the aforementioned third party licenses for these technologies, such terms and conditions are offered by PSC alone and not by any other party.
City Manager's Report

From 2600 - Economic Development
Supplier, Vendor, Company, Individual
Turn-Key Environmental Consultants, Inc.
Address 714 E. Monument Avenue
Dayton Ohio 45402

Date May 13, 2020
Expense Type Service Agreement
Total Amount $50,000.00 thru 12-31-2022

Fund Source(s) Fund Code(s) Fund Amount(s)
Real Estate Fund 16304-2600-1159-41 $50,000.00

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

Description

Professional Services Agreement

The Department of Economic Development requests approval to enter into a Professional Services Agreement with Turn-Key Environmental Consultants, Inc. (Consultant) in the amount of $50,000.00. The Consultant will undertake and provide the City with environmental consulting and testing services on an “as-needed” basis in order to facilitate development projects as opportunities may arise.

Such services shall include, but are not limited to project management, field services, groundwater sampling, data analysis, remedial action plans, and providing technical assistance for grant applications or other projects. The services may also include, but not be limited to, inspections, assessments, reports, and cost estimates related to environmental contamination and hazardous materials.

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

The Agreement is effective as of the date of execution and will expire on December 31, 2022.

A Certificate of Funds for $25,000.00 is attached.

Signatures/Approval

Division

Department

City Manager

FORM NO. MS-16

Approved by City Commission

Clerk

Date

Updated 8/2016
April 16, 2020

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

LaShea Lofton, Director  
Finance Department

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

SUBJECT: Request for Approval – Professional Services Agreement with Turn-Key Environmental Consultants, Inc.

Attached for City Commission approval is a Professional Services Agreement with Turn-Key Environmental Consultants, Inc. (Consultant) in the amount of $50,000.00. The Consultant will undertake and provide the City with environmental consulting and testing services on an “as-needed” basis in order to facilitate development projects as opportunities may arise.

This is a mission critical service as it relates to essential infrastructure and governmental functions under the Ohio Department of Health emergency orders. The consultant was selected through a competitive procurement process in collaboration with the Division of Procurement.

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

FPW/kek
# CERTIFICATE OF FUNDS

## SECTION I - to be completed by User Department

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

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</table>

**Attach additional pages for more FOAPALS**

- **Vendor Name:** Turn-Key Environmental Consultants, Inc.
- **Vendor Address:** 714 E. Monument Ave. Dayton OH 45402
- **Federal ID:** 01-0585010
- **Commodity Code:** 90665
- **Purpose:** Professional Services Agreement for as-needed environmental consulting and testing services.

**Contact Person:** Jill Bramini

**Economic Development Department/Division:** 4/27/2020

**Originating Department Director's Signature:** [Signature]

## SECTION II - to be completed by the Finance Department

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

**Finance Director Signature:** [Signature]

**CF Prepared by:** [Signature]

**Date:** 05/04/2020

**CF/CT Number:** [Number]

---

Finance Department

October 18, 2011
PROFESSIONAL SERVICES AGREEMENT
Environmental Consultant

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into between the City of Dayton, Ohio (hereinafter the "City"), a municipal corporation in and of the State of Ohio, and Turn-Key Environment Consultants, Inc., an Ohio corporation with offices for the transaction of business at 714 E. Monument Avenue, Dayton Ohio 45402 (hereinafter the "Consultant").

WITNESSETH:

WHEREAS, on May 5, 1999, the Commission of the City of Dayton adopted its strategic plan, CitiPlan Dayton: The 20/20 Vision ("CitiPlan 20/20"), of which land redevelopment, reuse, and revitalization are key components; and,

WHEREAS, the City requires certain professional services related to the environmental assessment, remediation, and redevelopment of various properties; and,

WHEREAS, the Department of Economic Development has selected the Consultant as the best qualified to provide the services through a competitive Request for Proposal (RFP) process; and,

WHEREAS, the Consultant is willing to perform the professional services and represents that its staff is fully qualified and available to perform the services.

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

ARTICLE 1. SERVICES TO BE PERFORMED BY THE CONSULTANT
The Consultant will undertake and provide the City with environmental consulting and testing services on an "as-needed" basis. Such services shall include, but are not limited to project management, field services, groundwater sampling, data analysis, remedial action plans, and providing technical assistance for grant applications or other projects. The services may also include, but not be limited to, inspections, assessments, reports, and cost estimates related to environmental contamination and hazardous materials.

Because time is of the essence in performance of the services herein, the Consultant shall begin work as soon as possible upon written notice by the City. All services performed by the Consultant will comply with applicable Environmental Review standards under the National Environmental Policy Act ("NEPA") and all other applicable federal, state, and local laws, regulations, and policies.

ARTICLE 2. TERM AND TERMINATION
This Agreement is effective upon execution by the City and will expire December 31, 2022, unless extended or terminated by mutual agreement of the parties.

In the event of substantial failure by the Consultant in performance of this Agreement, or for the City's convenience, the City may terminate this Agreement upon providing written notice to the Consultant. If substantial failure is the basis for termination, then the Consultant will have fifteen (15) calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the City. If a plan for cure is not accepted, then this Agreement will terminate immediately and the City shall pay the Consultant for those services accepted by the City. If termination is for the City's convenience, the City shall pay the Consultant for all accepted services performed prior to termination. In either event, the Consultant shall terminate the services according to a schedule acceptable to the City.
ARTICLE 3. COMPENSATION

Total remuneration in this Agreement shall not exceed Fifty Thousand Dollars and Zero Cents ($50,000.00) for the services provided. The City shall request cost estimates for any necessary work. The City shall pay the Consultant according to the cost schedule in Exhibit A, which is incorporated herein by reference. Any subcontractor mark-up, where applicable, shall not exceed nine (9%) percent.

The Consultant will submit, not more frequently than monthly, invoices for payment of the Services provided. The invoices shall specify the invoice period, state the total amount requested, detail the work and services performed and hours dedicated to performance of same, and be accompanied by supporting information and records that substantiate the invoice amount. The City shall pay the invoices within thirty (30) days from receipt thereof, unless disputed.

ARTICLE 4. PROFESSIONAL QUALIFICATIONS, SERVICES AND STANDARDS

The Consultant represents that it is qualified and permitted by law to perform the services required hereunder and that it has, and will maintain, adequate facilities and sufficient personnel to perform the services. The Consultant represents and warrants that all personnel engaged in the performance of the services to be provided are qualified and permitted to do the work assigned. The Consultant shall furnish the City with a certified statement setting forth the technical qualifications and the general and specific experience in the area of environmental assessment and remediation, together with other substantiating information as to the Consultant and its agents’ and employees’ qualifications and experience.

The services to be performed under this Agreement, including reports, surveys, drawings and professional renderings, shall be in compliance with all applicable federal, state, and local laws, regulations or orders, and agency association standards or other standards governing the performance of the professional services to be provided hereunder. The Consultant and its employees, agents, and/or contractors performing the services under this Agreement shall exercise the same degree of care, skill, and diligence in the performance of the services as is ordinarily possessed and exercised by a professional under like or similar circumstances.

All memorandums shall be submitted to the City in draft form. The City reserves the right to request changes and/or modifications to the draft memorandums before accepting any final memorandums.

All work is to be completed in accordance with applicable local, state, or federal regulations. All “field” personnel must comply with OSHA Health and Safety Training requirements per 29 CFR 1910.120, if applicable. A Health and Safety Plan shall be completed before commencing work, if applicable.

ARTICLE 5. LIABILITY AND INDEMNIFICATION

The Consultant shall indemnify, and hold harmless the City, and its elected officials, employees, and agents from and against all judgments, losses, damages, and expenses for bodily injury, death, and physical damage to real or tangible personal property, to the extent such judgments, losses, damages, or expenses are caused by the Consultant’s acts, errors, or omissions arising out of its performance herein.

The parties hereto specifically agree, notwithstanding any other provision in this Agreement to the contrary, that the City will not, under any circumstances, be liable or responsible for any acts, errors, or omissions of the Consultant, nor will the City, under any circumstances as a result of meetings and consultations and decisions resulting therefrom, be liable or responsible for any damages or additional costs incurred by the failure of the Consultant to perform its duties as set forth in this Agreement; nor will the City, by participating in meetings and consultations with the Consultant and the decisions resulting therefrom be, in any degree or to any extent, liable for technical decisions of any kind or nature, or be liable for decisions relative to design, environmental remediation, assessments, or specifications, such responsibility remains that of the Consultant.
Regardless of completion of the services, obligations, and duties provided for in this Agreement, or if this Agreement is terminated for any reason, the terms and conditions of this Article will survive.

ARTICLE 6. INSURANCE

During the performance of the services under this Agreement, the Consultant shall maintain with an insurance company authorized to conduct business in the State of Ohio and having at least an “A” rating from A.M. Best, no less than the following insurance:

1. Commercial general liability insurance, with a combined single limit of One Million Dollars and Zero Cents ($1,000,000.00) per occurrence and One Million Dollars and Zero Cents ($1,000,000.00) aggregate.
2. Automobile liability insurance, with a combined single limit of One Million Dollars and Zero Cents ($1,000,000.00) per person and One Million Dollars and Zero Cents ($1,000,000.00) per accident.
3. Workers’ compensation Insurance in such amount as required by law, and employers’ liability insurance, with a limit of Five Hundred Thousand Dollars and Zero Cents ($500,000.00) per occurrence.
4. Professional liability insurance with a limit of One Million Dollars and Zero Cents ($1,000,000.00) per claim and Two Million Dollars and Zero Cents ($2,000,000.00) aggregate.
5. Contractor’s pollution liability insurance, with a limit of One Million Dollars and Zero Cents ($1,000,000.00) per claim and Two Million Dollars and Zero Cents ($2,000,000.00) aggregate.

The Consultant shall name the City, and its elected officials, officers, employees, and agents, as an additional insured on all insurance policies furnished and maintained pursuant to items (1) and (2) above. The Consultant shall provide the City with a certificate of insurance before commencing work. The Consultant must maintain the policies in good standing for the duration of this Agreement. The Consultant shall provide the City certificates of insurance that include a provision that such insurance will not be canceled without at least thirty (30) days written notice to the City, demonstrating compliance with this Article. The City’s examination of, or failure to request or demand, any evidence of insurance hereunder, will not constitute a waiver of any requirement of this Article, and the existence of any insurance will not limit the Consultant’s obligations under provisions hereof.

All project contractors and subcontractors are required to include the City and the Consultant as additional insureds on their commercial liability insurance policies, and are required to defend, indemnify, and hold harmless the City and the Consultant from the contractor’s negligence.

ARTICLE 7. OWNERSHIP OF WORK PRODUCT

All documents, including without limitation, all writings, drawings, blueprints, pictures, recordings, notes, data reports, computer or machine-readable data (including ground water modeling information) and all copies or reproductions thereof, or other information received or generated in the performance of this Agreement will be considered work made for hire and the sole and exclusive property of the City. The Consultant shall not use the documents now or in the future for any purpose without the prior written permission of an authorized City employee.

The Consultant shall deliver the documents to the City and shall maintain the documents as strictly confidential. The Consultant shall not disclose the documents to others, including individuals, corporations, or government agencies, either before or after the termination of this Agreement, except as expressly authorized in writing by the City or compelled by law.
ARTICLE 8. EQUAL EMPLOYMENT OPPORTUNITY

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

It is expressly agreed and understood that Section 35.14 of the Revised Code of General Ordinances of the City of Dayton constitutes a material condition of this contract as fully as if specifically rewritten herein and that failure to comply therewith will constitute a breach hereof.

ARTICLE 9. INDEPENDENT CONTRACTOR

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

Consultant, its employees and any approved subcontractor performing the duties and responsibilities under this Agreement are not City employees, and therefore, such persons shall not be entitled to, nor will they make a claim for, any of the emoluments of employment with the City. Further, Consultant shall be responsible to withhold and pay, or cause such agents and subcontractors to withhold and pay, all applicable local, state and federal taxes.

Consultant acknowledges its employees are not public employees for purposes of Ohio Public Employees Retirement System (“OPERS”) membership.

ARTICLE 10. MISCELLANEOUS CONDITIONS AND OBLIGATIONS

All work that does not conform to all applicable local, state, or federal regulations will not be accepted. Unacceptable work, whether the result of poor workmanship, use of defective materials, damage through carelessness, or any other cause found to exist prior to final acceptance of the work, shall be corrected or removed immediately and completed or replaced in an acceptable manner at the Consultant’s expense. If contractors are involved in any part of the services provided hereunder, a representative of the Consultant must be onsite to ensure compliance with the provisions in this Agreement. The Consultant is also responsible for any work completed that is not authorized in writing by the City.

The Consultant shall apply for and obtain all necessary permits and manifests, and file any other necessary paperwork. If applicable, the Consultant will be required to field locate all existing utilities prior to the start of work at the project site. The Consultant will contact the Ohio Utilities Protection Service (“OUPS”) at least seventy-two (72) hours (3 work days) prior to the start of work. The Consultant shall notify all other entities that might have underground utilities in the area and are non-members of OUPS.

ARTICLE 11. SITE RESPONSIBILITY

The City hereby provides a temporary Right-of-Entry for the site to the Consultant and their subcontractor(s) for the purpose of this Agreement. The presence of the Consultant’s representative will not relieve any such contractor, other professional, or consultant of its responsibility to perform its work and services in accordance with its contractual and legal obligations and in conformity with the plans and specifications for the project.
ARTICLE 12. SITE OPERATIONS
The Consultant shall only be responsible for damage or loss due to undisclosed or unknown surface or subsurface conditions on the property owned or leased by the City or third parties to the extent such damage or loss is a result of the Consultant’s negligence.

ARTICLE 13. SAMPLES AND WASTES
Samples are generally consumed or altered during testing and are disposed of immediately upon completion of the tests. If the samples or wastes resulting from the services or any soils or materials contain asbestos, molds, fungi, bacteria, viruses, or any other hazardous, radioactive or toxic substances, pollutants, or their constituents, the Consultant, at the City’s direction and expense, will transport such samples, wastes, soils, or materials to an appropriate location for final disposal.

ARTICLE 14. UNANTICIPATED CONDITIONS
The City will inform the Consultant in writing of all known asbestos, molds, fungi, bacteria, viruses, or any other hazardous, radioactive, or toxic substances, pollutants, or their constituents and conditions existing on or near a project site that present a potential danger to health, the environment, or the Consultant’s equipment or personnel prior to commencement of the services. If the Consultant encounters such conditions that were not reasonably anticipated or that increase the risk or cost, or both, involved in the Consultant’s performance of the services, upon notice to the City, the Consultant, in its sole discretion, may (i) suspend the performance of the services and submit a change order request to be signed by the City prior to proceeding or (ii) discontinue the performance of the services and terminate this Agreement. If the unanticipated condition presents an immediate or potential threat to health, safety, the environment, or the Consultant’s equipment or personnel, the Consultant will immediately inform the City, so that the City can notify the appropriate government authorities.

ARTICLE 15. COUNTERPARTS
This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and such counterparts shall constitute one and the same instrument.

ARTICLE 16. GENERAL PROVISIONS
A. Conflict of Interest. Consultant covenants that it has no interest and shall not acquire any interest, direct or indirect, that would cause conflict in any manner or degree with the performance of this Agreement or completion of the project.

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

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

D. Amendment. The parties may amend this Agreement, provided that no such amendment shall be effective unless it is reduced to a writing, which makes specific reference to this Agreement, is executed by a duly authorized representative of each party to this Agreement and, if required or applicable, is approved by the Commission of the City of Dayton, Ohio.
E. **Waiver.** A waiver by City of any breach of this Agreement shall be in writing. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it is given and shall not affect City’s rights with respect to any other or further breach.

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

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

   **Consultant:** Linda Treasure, President
   Turn-Key Environmental Consultants, Inc.
   714 E. Monument Avenue
   Dayton Ohio 45402

   **The City:** Department of Economic Development
   City of Dayton, Ohio
   101 W. Third St.
   Dayton, Ohio 45402

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

ARTICLE 17. POLITICAL CONTRIBUTIONS

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

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]
IN WITNESS WHEREOF, the City and the Consultant, each by a duly authorized representative, have executed this Agreement as of the date set forth below.

WITNESSED BY:

William Treasure

TURN-KEY ENVIRONMENTAL CONSULTANTS, INC.

By: Lena Treasure

Its: President

CITY OF DAYTON, OHIO

City Manager

Date:

APPROVED AS TO FORM AND CORRECTNESS:

City Attorney

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

Min. / Bk. _____ Pg. _____

2020

Clerk of the Commission
Exhibit A
Pricing Structure

The TKEC/Burgess & Niple Team offers a variety of contract types to cater to the client and the project scope itself. The following hourly rate sheet includes subcontractor multiplier and other reimbursables. Cost ranges depend on size and scope of each project. However, in general, a Phase I ESA for a small gas station can be $2,500 to $4,000 while a Phase I ESA on a larger, more complex site such as Hollywood Gaming at Dayton Raceway may range from $6,000 to >$8,000. Phase II Property Assessments may range from <$10,000 to >$50,000, depending on the scope of services and complexity of the site. Phase I ESAs tend to be charged as a lump sum, however, Phase II ESAs tend to be charged out as a time and materials basis, primarily due to the unknown status of the subsurface impacts. B&N has been known to enter into a contractual agreement with our clients to address Phase II ESAs, Remedial Action Plans, and No Further Action Letters, on a lump sum basis, given a known subsurface impact.

<table>
<thead>
<tr>
<th>Turn-Key Environmental Consultants Price List</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Program Manager</td>
<td>$125</td>
</tr>
<tr>
<td>Sr. Project Manager</td>
<td>$115</td>
</tr>
<tr>
<td>Sr. Environmental Scientist</td>
<td>$90</td>
</tr>
<tr>
<td>Environmental Scientist</td>
<td>$85</td>
</tr>
<tr>
<td>Project Scientist</td>
<td>$80</td>
</tr>
<tr>
<td>Sr. Hydrologist/Geologist</td>
<td>$100</td>
</tr>
<tr>
<td>Certified Asbestos Inspector</td>
<td>$55</td>
</tr>
<tr>
<td>Sr. Certified Asbestos Inspector</td>
<td>$65</td>
</tr>
<tr>
<td>Sr. Certified Asbestos Project Designer</td>
<td>$75</td>
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<tr>
<td>Sr. Certified Lead Risk Assessor</td>
<td>$75</td>
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<tr>
<td>S. Certified Lead Inspector</td>
<td>$85</td>
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<tr>
<td>Environmental Technician</td>
<td>$50</td>
</tr>
<tr>
<td>Ohio Certified Wetlands Delineator</td>
<td>$85</td>
</tr>
<tr>
<td>Certified Microbial Remediation Supervisor</td>
<td>$90</td>
</tr>
<tr>
<td>Training Specialist</td>
<td>$125</td>
</tr>
<tr>
<td>Health and Safety Officer</td>
<td>$65</td>
</tr>
<tr>
<td>Administrative Assistant</td>
<td>$55</td>
</tr>
<tr>
<td>Financial Manager</td>
<td>$120</td>
</tr>
</tbody>
</table>


### BURGESS & NIPLE, INC. 
##### HOURLY RATES

<table>
<thead>
<tr>
<th>Position</th>
<th>Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Director-Sr. Project Director</td>
<td>$150-$190</td>
</tr>
<tr>
<td>Civil Engineer-Sr. Civil Engineer</td>
<td>$125-$175</td>
</tr>
<tr>
<td>Environmental Engineer-Sr. Environmental Engineer</td>
<td>$150-$175</td>
</tr>
<tr>
<td>Environmental Scientist-Sr. Environmental Scientist</td>
<td>$90-$145</td>
</tr>
<tr>
<td>Hydrogeologist-Sr. Hydrogeologist</td>
<td>$135-$175</td>
</tr>
<tr>
<td>Geologist-Sr. Geologist</td>
<td>$85-$145</td>
</tr>
<tr>
<td>Administrative Aide-Sr. Administrative Aide</td>
<td>$75-$85</td>
</tr>
<tr>
<td>Designer-Sr. Designer</td>
<td>$85-$155</td>
</tr>
<tr>
<td>Drafter-Sr. Drafter</td>
<td>$95-$165</td>
</tr>
</tbody>
</table>

Ranges are provided due to personnel availability at the time of project initiation and site complexity.

### 2019 REIMBURSABLE COSTS

1. Local travel (auto)  58¢ per mile or approved IRS rate
2. Other Owner-authorized travel including meals & lodging  At cost
3. Technology charges will be billed as follows:  $4.75 per labor hour
4. Owner-authorized subcontracted work  Cost plus markup
5. Other reimbursable expenses  At cost
City Manager’s Report

From: 2600 - Economic Development

Supplier, Vendor, Company, Individual:
Wood Environment & Infrastructure Solutions, Inc.

Address: 521 Byers Road, Suite 204
Miamisburg, Ohio 45342

Date: May 13, 2020
Expense Type: Service Agreement
Total Amount: $50,000.00 thru 12-31-2022

Fund Source(s):
Real Estate Fund

Fund Code(s):
16304-2600-1159-41

Fund Amount(s):
$50,000.00

Includes Revenue to the City: ☑ No
Affirmative Action Program: ☑ Yes

Description:

Professional Services Agreement

The Department of Economic Development requests approval to enter into a Professional Services Agreement with Wood Environment & Infrastructure Solutions, Inc. (Consultant) in the amount of $50,000.00. The Consultant will undertake and provide the City with environmental consulting and testing services on an “as-needed” basis in order to facilitate development projects as opportunities may arise.

Such services shall include, but are not limited to project management, field services, groundwater sampling, data analysis, remedial action plans, and providing technical assistance for grant applications or other projects. The services may also include, but not be limited to, inspections, assessments, reports, and cost estimates related to environmental contamination and hazardous materials.

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

The Agreement is effective as of the date of execution and will expire on December 31, 2022.

A Certificate of Funds for $25,000.00 is attached.

Signatures/Approval

Approved by City Commission

Division

Department

City Manager

FORM NO. MS-16

Updated 8/2016
April 16, 2020

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

       LaShea Lofton, Director  
       Finance Department  

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

SUBJECT: Request for Approval – Professional Services Agreement with Wood Environment & Infrastructure Solutions, Inc.

Attached for City Commission approval is a Professional Services Agreement with Wood Environment & Infrastructure Solutions, Inc. (Consultant) in the amount of $50,000.00. The Consultant will undertake and provide environmental consulting and testing services on an “as-needed” basis in order to facilitate development projects as opportunities may arise.

This is a mission critical service as it relates to essential infrastructure and governmental functions under the Ohio Department of Health emergency orders. The consultant was selected through a competitive procurement process in collaboration with the Division of Procurement.

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

FPW/kek
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

- X New Contract
- Renewal Contract
- Change Order

Contract Start Date: Upon execution
Expiration Date: 12/31/2022

Original Commission Approval: $50,000.00
Initial Encumbrance: $25,000.00
Remaining Commission Approval: $25,000.00

Original CT/CF Increase Encumbrance
Decrease Encumbrance
Remaining Commission Approval

NO DRAFT DOCUMENTS PERMITTED

Required Documentation
- X Initial City Manager's Report
- X Initial Certificate of Funds
- X Initial Agreement/Contract

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

Amount: $25,000.00

Fund Code: 16304 - 2600 - 1159 - 41 - 
Fund Org Acct Prog Act Loc

Attach additional pages for more FOAPALS

Vendor Name: Wood Environment & Infrastructure, Inc.
Vendor Address: 521 Byers Rd., Ste. 204
Miamisburg, OH 45342

Federal ID: 91-1641772
Commodity Code: 90665
Purpose: Professional Services Agreement for as-needed environmental consulting and testing services.

Contact Person: Jill Bramini
Economic Development Department/Division 4/27/2020 Date

Originating Department Director's Signature: [Signature]

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: [Signature]
Date: 05/04/2020

CF Prepared by: [Signature]
Date: 05/04/2020
CF/CT Number: [Number]
PROFESSIONAL SERVICES AGREEMENT
Environmental Consultant

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into between the City of Dayton, Ohio ("City"), a municipal corporation in and of the State of Ohio, and Wood Environment & Infrastructure Solutions, Inc., a Nevada corporation with offices for the transaction of business at 521 Byers Road, Suite 204, Miamisburg, Ohio 45342 ("Consultant").

WITNESSETH:

WHEREAS, On May 5, 1999, the Commission of the City of Dayton adopted its strategic plan, CitiPlan Dayton: The 20/20 Vision ("CitiPlan 20/20"), of which land redevelopment, reuse, and revitalization are key components; and,

WHEREAS, The City requires certain professional services related to the environmental assessment, remediation, and redevelopment of various properties; and,

WHEREAS, The Department of Economic Development has selected the Consultant as the best qualified to provide the services through a competitive Request for Proposal (RFP) process; and,

WHEREAS, The Consultant is willing to perform the professional services and represents that its staff is fully qualified and available to perform the services.

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

ARTICLE 1. SERVICES TO BE PERFORMED BY THE CONSULTANT

The Consultant will undertake and provide the City with environmental consulting and testing services on an "as-needed" basis. Such services shall include, but are not limited to project management, field services, groundwater sampling, data analysis, remedial action plans, and providing technical assistance for grant applications or other projects. The services may also include, but not be limited to, inspections, assessments, reports, and cost estimates related to environmental contamination and hazardous materials.

Because time is of the essence in performance of the services herein, the Consultant shall begin work as soon as possible upon written notice by the City. All services performed by the Consultant will comply with applicable Environmental Review standards under the National Environmental Policy Act ("NEPA") and all other applicable federal, state, and local laws, regulations, and policies.

ARTICLE 2. TERM AND TERMINATION

This Agreement is effective upon execution by the City and will expire December 31, 2022, unless extended or terminated by mutual agreement of the parties.

In the event of substantial failure by the Consultant in performance of this Agreement, or for the City's convenience, the City may terminate this Agreement upon providing written notice to the Consultant. If substantial failure is the basis for termination, then the Consultant will have fifteen (15) calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the City. If a plan for cure is not accepted, then this Agreement will terminate immediately and the City shall pay the Consultant for those services accepted by the City. If termination is for the City's convenience, the City shall pay the Consultant for all accepted services performed prior to termination. In either event, the Consultant shall terminate the services according to a schedule acceptable to the City.
ARTICLE 3. COMPENSATION

Total remuneration in this Agreement shall not exceed Fifty Thousand Dollars and Zero Cents ($50,000.00) for the services provided. The City shall request cost estimates for any necessary work. The City shall pay the Consultant according to the cost schedule in Exhibit A, which is incorporated herein by reference.

The Consultant will submit, not more frequently than monthly, invoices for payment of the services provided. The invoices shall specify the invoice period, state the total amount requested, detail the work and services performed and hours dedicated to performance of same, and be accompanied by supporting information and records that substantiate the invoice amount. The City shall pay the invoices within thirty (30) days from receipt thereof, unless disputed.

ARTICLE 4. PROFESSIONAL QUALIFICATIONS, SERVICES, AND STANDARDS

The Consultant represents that it is qualified and permitted by law to perform the services required hereunder and that it has, and will maintain, adequate facilities and sufficient personnel to perform the services. The Consultant represents and warrants that all personnel engaged in the performance of the services to be provided are qualified and permitted to do the work assigned. The Consultant shall furnish the City with a certified statement setting forth the technical qualifications and the general and specific experience in the area of environmental assessment and remediation, together with other substantiating information as to the Consultant and its agents' and employees' qualifications and experience.

The services to be performed under this Agreement, including reports, surveys, drawings and professional renderings, shall be in compliance with all applicable federal, state, and local laws, regulations or orders, and agency association standards or other standards governing the performance of the professional services to be provided hereunder. The Consultant and its employees, agents, and/or contractors performing the services under this Agreement shall exercise the same degree of care, skill, and diligence in the performance of the services as is ordinarily possessed and exercised by a professional under like or similar circumstances.

All memorandums shall be submitted to the City in draft form. The City reserves the right to request changes and/or modifications to the draft memorandums before accepting any final memorandums.

All work is to be completed in accordance with applicable local, state, or federal regulations. All “field” personnel must comply with OSHA Health and Safety Training requirements per 29 CFR 1910.120, if applicable. A Health and Safety Plan shall be completed before commencing work, if applicable.

ARTICLE 5. LIABILITY AND INDEMNIFICATION

The Consultant shall indemnify, and hold harmless the City, and its elected officials, employees, and agents from and against all judgments, losses, damages, and expenses for bodily injury, death, and physical damage to real or tangible personal property, to the extent such judgments, losses, damages, or expenses are caused by the Consultant’s acts, errors, or omissions arising out of its performance herein.

The parties hereto specifically agree, notwithstanding any other provision in this Agreement to the contrary, that the City will not, under any circumstances, be liable or responsible for any acts, errors, or omissions of the Consultant, nor will the City, under any circumstances as a result of meetings and consultations and decisions resulting therefrom, be liable or responsible for any damages or additional costs incurred by the failure of the Consultant to perform its duties as set forth in this Agreement; nor will the City, by participating in meetings and consultations with the Consultant and the decisions resulting therefrom be, in any degree or to any extent, liable for technical decisions of any kind or nature, or be liable for decisions relative to design, environmental remediation, assessments, or specifications, such responsibility remains that of the Consultant.
Regardless of completion of the services, obligations, and duties provided for in this Agreement, or if this Agreement is terminated for any reason, the terms and conditions of this Article will survive.

ARTICLE 6. INSURANCE

During the performance of the services under this Agreement, the Consultant shall maintain with an insurance company authorized to conduct business in the State of Ohio and having at least an “A” rating from A.M. Best, no less than the following insurance:

1. Commercial general liability insurance, with a combined single limit of One Million Dollars and Zero Cents ($1,000,000.00) per occurrence and One Million Dollars and Zero Cents ($1,000,000.00) aggregate.
2. Automobile liability insurance, with a combined single limit of One Million Dollars and Zero Cents ($1,000,000.00) per person and One Million Dollars and Zero Cents ($1,000,000.00) per accident.
3. Workers’ compensation Insurance in such amount as required by law, and employers’ liability insurance, with a limit of Five Hundred Thousand Dollars and Zero Cents ($500,000.00) per occurrence.
4. Professional liability insurance with a limit of One Million Dollars and Zero Cents ($1,000,000.00) per claim and Two Million Dollars and Zero Cents ($2,000,000.00) aggregate.
5. Contractor’s pollution liability insurance, with a limit of One Million Dollars and Zero Cents ($1,000,000.00) per claim and Two Million Dollars and Zero Cents ($2,000,000.00) aggregate.

The Consultant shall name the City, and its elected officials, officers, employees, and agents, as an additional insured on all insurance policies furnished and maintained pursuant to items (1) and (2) above. The Consultant shall provide the City with a certificate of insurance before commencing work. The Consultant must maintain the policies in good standing for the duration of the Agreement. The Consultant shall provide the City certificates of insurance that include a provision that such insurance will not be canceled without at least thirty (30) days written notice to the City, demonstrating compliance with this Article. The City’s examination of, or failure to request or demand, any evidence of insurance hereunder, will not constitute a waiver of any requirement of this Article, and the existence of any insurance will not limit the Consultant’s obligations under provisions hereof.

All contractors and subcontractors are required to include the City and the Consultant as additional insureds on their commercial liability insurance policies, and are required to defend, indemnify, and hold harmless the City and the Consultant from the contractor’s negligence.

ARTICLE 7. OWNERSHIP OF WORK PRODUCT

All documents, including without limitation, all writings, drawings, blueprints, pictures, recordings, notes, data reports, computer or machine-readable data (including ground water modeling information) and all copies or reproductions thereof, or other information received or generated in the performance of this Agreement will be considered work made for hire and the sole and exclusive property of the City. The Consultant shall not use the documents now or in the future for any purpose without the prior written permission of an authorized City employee.

The Consultant shall deliver the documents to the City and shall maintain the documents as strictly confidential. The Consultant shall not disclose the documents to others, including individuals, corporations, or government agencies, either before or after the termination of this Agreement, except as expressly authorized in writing by the City or compelled by law.
ARTICLE 8. EQUAL EMPLOYMENT OPPORTUNITY

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

It is expressly agreed and understood that Section 35.14 of the Revised Code of General Ordinances of the City of Dayton constitutes a material condition of this contract as fully as if specifically rewritten herein and that failure to comply therewith will constitute a breach hereof.

ARTICLE 9. INDEPENDENT CONTRACTOR

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

Consultant, its employees and any approved subcontractor performing the duties and responsibilities under this Agreement are not City employees, and therefore, such persons shall not be entitled to, nor will they make a claim for, any of the emoluments of employment with the City. Further, Consultant shall be responsible to withhold and pay, or cause such agents and subcontractors to withhold and pay, all applicable local, state and federal taxes.

Consultant acknowledges its employees are not public employees for purposes of Ohio Public Employees Retirement System (“OPERS”) membership.

ARTICLE 10. MISCELLANEOUS CONDITIONS AND OBLIGATIONS

All work that does not conform to all applicable local, state, or federal regulations will not be accepted. Unacceptable work, whether the result of poor workmanship, use of defective materials, damage through carelessness, or any other cause found to exist prior to final acceptance of the work, shall be corrected or removed immediately and completed or replaced in an acceptable manner at the Consultant’s expense. If contractors are involved in any part of the services provided hereunder, a representative of the Consultant must be onsite to ensure compliance with the provisions in this Agreement. The Consultant is also responsible for any work completed that is not authorized in writing by the City.

The Consultant shall apply for and obtain all necessary permits and manifests, and file any other necessary paperwork. If applicable, the Consultant will be required to field locate all existing utilities prior to the start of work at the Project site. The Consultant will contact the Ohio Utilities Protection Service (“OUPS”) at least seventy-two (72) hours (3 work days) prior to the start of work. The Consultant shall notify all other entities that might have underground utilities in the area and are non-members of OUPS.

ARTICLE 11. SITE RESPONSIBILITY

The City hereby provides a temporary Right-of-Entry for the site to the Consultant and their subcontractor(s) for the purpose of this Agreement. The presence of the Consultant’s representative will not relieve any such contractor, other professional, or consultant of its responsibility to perform its work and services in accordance with its contractual and legal obligations and in conformity with the plans and specifications for the project.
ARTICLE 12. SITE OPERATIONS

The Consultant shall only be responsible for damage or loss due to undisclosed or unknown surface or subsurface conditions on the property owned or leased by the City or third parties to the extent such damage or loss is a result of the Consultant’s negligence.

ARTICLE 13. SAMPLES AND WASTES

Samples are generally consumed or altered during testing and are disposed of immediately upon completion of the tests. If the samples or wastes resulting from the services or any soils or materials contain asbestos, molds, fungi, bacteria, viruses, or any other hazardous, radioactive or toxic substances, pollutants, or their constituents, the Consultant, at the City’s direction and expense, will transport such samples, wastes, soils, or materials to an appropriate location for final disposal.

ARTICLE 14. UNANTICIPATED CONDITIONS

The City will inform the Consultant in writing of all known asbestos, molds, fungi, bacteria, viruses, or any other hazardous, radioactive, or toxic substances, pollutants, or their constituents and conditions existing on or near a project site that present a potential danger to health, the environment, or the Consultant’s equipment or personnel prior to commencement of the services. If the Consultant encounters such conditions that were not reasonably anticipated or that increase the risk or cost, or both, involved in the Consultant’s performance of the services, upon notice to the City, the Consultant, in its sole discretion, may (i) suspend the performance of the services and submit a change order request to be signed by the City prior to proceeding or (ii) discontinue the performance of the services and terminate this Agreement. If the unanticipated condition presents an immediate or potential threat to health, safety, the environment, or the Consultant’s equipment or personnel, the Consultant will immediately inform the City, so that the City can notify the appropriate government authorities.

ARTICLE 15. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and such counterparts shall constitute one and the same instrument.

ARTICLE 16. GENERAL PROVISIONS

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

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

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

D. Amendment. The parties may amend this Agreement, provided that no such amendment shall be effective unless it is reduced to a writing, which makes specific reference to this Agreement and, if required or applicable, is approved by the Commission of the City of Dayton, Ohio.
E. Waiver. A waiver by City of any breach of this Agreement shall be in writing. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it is given and shall not affect City’s rights with respect to any other or further breach.

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

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

Consultant: Bradley Rodgers, Branch Manager
Wood Environment & Infrastructure Solutions, Inc.
521 Byers Road, Suite 204
Miamisburg, Ohio 45342

The City: Department of Economic Development
City of Dayton, Ohio
101 W. Third St.
Dayton, Ohio 45402

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

ARTICLE 17. POLITICAL CONTRIBUTIONS

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

[Remainder of Page Left Intentionally Blank]
IN WITNESS WHEREOF, the City and the Consultant, each by a duly authorized representative, have executed this Agreement as of the date set forth below.

WITNESSED BY:

WOOD ENVIRONMENT & INFRASTRUCTURE SOLUTIONS, INC.

By: ______________________________
Its: ______________________________

CITY OF DAYTON, OHIO

City Manager

Date: ______________________________

APPROVED AS TO FORM AND CORRECTNESS:

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

______________________________, 2020

Min. / Bk. _______ Pg. _______

Clerk of the Commission
Exhibit A
Proposal response

Wood has the experience, accomplished professionals, and performance record to help you successfully navigate complex regulatory and legal processes.

Wood is a leading provider of environmental consulting services helping revitalize properties, particularly in our urban cores. We understand the importance of brownfield redevelopment to our communities' economic, health, and social interests. Wood will assist the City of Dayton in pursuing funding sources, assessing environmental conditions, and making decisions based on site-specific risks.

1. Costs

Wood will provide the City of Dayton with cost-effective solutions to address your environmental needs. Our Phase I property assessment services are often provided for a lump sum fee, which is indicated below. This section also provides our customary rates and charges for personnel, equipment, and other reimbursable expenses provided on a time-and-materials basis.

Phase I ESA lump sum fee

Wood proposes to provide our Phase I ESA services for a lump sum fee of $4,000, provided the property and its improvements are moderately-sized and the City of Dayton (or designee) fulfills the chain-of-title search and ASTM-defined "user" requirements. Wood will provide a site-specific cost proposal for properties considered expansive.

Wood fee schedule

Wood's labor fee schedule for services provided on a time-and-materials basis is provided below. This rate schedule will remain in effect for the three-year term of the contract, but personnel categorization may be adjusted if warranted by increases in qualifications and experience. Current project team personnel categorization is identified in parentheses. Court appearances, depositions, and other similar litigation support will be charged at 1.5 times the standard rate.

<table>
<thead>
<tr>
<th>Wood personnel</th>
<th>($) /hour</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal Scientist / Principal Engineer (Stork, Iden)</td>
<td>$155.00</td>
</tr>
<tr>
<td>Senior Project Manager / Senior Scientist II (Funk)</td>
<td>$140.00</td>
</tr>
<tr>
<td>Assistant Project Manager / Senior Scientist I (Dornbusch, Cherico)</td>
<td>$115.00</td>
</tr>
<tr>
<td>Project Scientist (Carter)</td>
<td>$95.00</td>
</tr>
<tr>
<td>Senior Technician II</td>
<td>$90.00</td>
</tr>
<tr>
<td>Staff II Scientist</td>
<td>$85.00</td>
</tr>
<tr>
<td>Senior Technician I</td>
<td>$80.00</td>
</tr>
<tr>
<td>Staff I Scientist (Hicks)</td>
<td>$75.00</td>
</tr>
<tr>
<td>CADD/Draftsperson</td>
<td>$65.00</td>
</tr>
<tr>
<td>Technician II (Schoenberger)</td>
<td>$65.00</td>
</tr>
<tr>
<td>Project Administrator</td>
<td>$60.00</td>
</tr>
<tr>
<td>Technician I</td>
<td>$55.00</td>
</tr>
<tr>
<td>Clerical</td>
<td>$45.00</td>
</tr>
</tbody>
</table>
m.a.c.Paran fee schedule

The small business enterprise (SBE) participation goal is 15%. Wood proposes to subcontract asbestos and lead-based paint inspection services to m.a.c.Paran Consulting Services, Inc. (m.a.c.Paran) to meet this goal and provide value-added expertise. Wood and m.a.c.Paran have worked together on several Ohio projects. m.a.c.Paran is identified in CityBOTS™ as a PEP-certified women's business enterprise (WBE) and SBE. By subcontracting m.a.c.Paran, Wood expects to meet the SBE participation goal so long as more than 15% of the mix of work required under the contract is for asbestos and/or lead-inspection services.

The table below presents m.a.c.Paran's labor rate schedule for services associated with asbestos and lead inspection and testing. Wood will invoice m.a.c.Paran labor, equipment, and travel fees at m.a.c.Paran's rates shown below plus a 10% mark-up.

<table>
<thead>
<tr>
<th>Staff</th>
<th>($/hour)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Project Manager (Principal / Indoor Air Quality Inspector)</td>
<td>$150</td>
</tr>
<tr>
<td>Project Manager (Asbestos / Lead Inspector)</td>
<td>$105</td>
</tr>
<tr>
<td>Field Technician</td>
<td>$95</td>
</tr>
<tr>
<td>CADD Support</td>
<td>$75</td>
</tr>
<tr>
<td>Administrative</td>
<td>$35</td>
</tr>
</tbody>
</table>

m.a.c.Paran will provide the following equipment, as needed, in support of their inspection services: x-ray fluorescence (XRF) instrument ($125/day), thermal imaging camera ($100/day), air sampling pumps – low, high, spore trap ($5/day), moisture meter ($15/day), indoor air quality monitors (Q-Trac) ($90/day), miscellaneous field equipment (cost + 15%). m.a.c.Paran will charge $100/day for per diem and $0.56/mile for mileage.

Laboratory fee schedules

Wood proposes to subcontract ALS, an Ohio VAP certified laboratory, for analytical services. Through competitive procurement, Wood selected ALS as the best and lowest bid for reasonably-anticipated analytical needs. ALS laboratory's quoted unit costs per analysis, based on Level II data packages and standard turn-around time, are shown in the table below. Wood will select another suitable VAP-certified laboratory in the event ALS cannot meet project requirements. Analytical fees will be invoiced at the laboratory's unit costs plus a 10% mark-up.
### ALS laboratory unit costs

<table>
<thead>
<tr>
<th>Analysis</th>
<th>ALS unit costs per sample</th>
</tr>
</thead>
<tbody>
<tr>
<td>VOC (8260)</td>
<td>$60</td>
</tr>
<tr>
<td>VOC (TC13) including summa can and regulator</td>
<td>$195</td>
</tr>
<tr>
<td>SVOC (8270)</td>
<td>$110</td>
</tr>
<tr>
<td>VAP 16 Metals (6010/6020/7470/7471)</td>
<td>$72</td>
</tr>
<tr>
<td>RCRA 8 Metals (6010/6020/7470/7471)</td>
<td>$65</td>
</tr>
<tr>
<td>PCBs (8082)</td>
<td>$50</td>
</tr>
<tr>
<td>TPH-DRO (8015)</td>
<td>$40</td>
</tr>
<tr>
<td>TPH-GRO (8015)</td>
<td>$30</td>
</tr>
<tr>
<td>Terra Core Kit</td>
<td>$10</td>
</tr>
<tr>
<td>TCLP (VOCs, SVOCs, Metals, pest/herb)</td>
<td>$560</td>
</tr>
</tbody>
</table>

**Acronyms:**
- PCB – Polychlorinated biphenyl
- SVOC – Semi-volatile organic compound
- TCLP – Toxicity characteristic leaching procedure
- TPH-DRO – Total petroleum hydrocarbons diesel range organics
- TPH-GRO – Total petroleum hydrocarbons gasoline range organics
- VOC – Volatile organic compound

m.a.c. Paran will coordinate suspect regulated building materials analysis. Assuming standard turnaround time, polarized light microscopy asbestos bulk sample analysis will be provided at a rate of $15 per sample or $30 per sample with point counting, and lead sample analysis (air / bulk / dust) will be provided at a rate of $15 per sample. Asbestos air sample analyses will be provided at $15 per sample for phase contrast microscopy or $75 per sample for transmission electron microscopy. Wood's 10% administrative fee for subcontract services will be applied to m.a.c. Paran's equipment and analytical rates.

### Wood reimbursable expenses

Wood vehicles used to transport field supplies, samples, and equipment during project field activities will be billed at a rate of $90.00/day. Personal vehicle use will be billed at the Internal Revenue Service standard mileage rate (e.g. $0.58) per mile. All other external reimbursable expenses will be charged at actual substance cost plus 10%.

Use of Wood-owned and maintained equipment is not subject to markup. Rental fees for Wood-owned and maintained equipment are shown below:

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate per day</th>
</tr>
</thead>
<tbody>
<tr>
<td>Product probe</td>
<td>$20.00</td>
</tr>
<tr>
<td>Centrifugal pump</td>
<td>$30.00</td>
</tr>
<tr>
<td>Generator - 5,000 watts</td>
<td>$85.00</td>
</tr>
<tr>
<td>Geotech bladder pump</td>
<td>$75.00</td>
</tr>
<tr>
<td>MPSO pump controller</td>
<td>$30.00</td>
</tr>
<tr>
<td>Line locator</td>
<td>$10.00</td>
</tr>
<tr>
<td>Metals filtration system</td>
<td>$20.00</td>
</tr>
<tr>
<td>Peristaltic pump</td>
<td>$40.00</td>
</tr>
<tr>
<td>Concrete impact drill with bits</td>
<td>$50.00</td>
</tr>
<tr>
<td>Mobile laboratory - GC trailer</td>
<td>$750.00</td>
</tr>
<tr>
<td>Hammer drill</td>
<td>$125.00</td>
</tr>
</tbody>
</table>
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<td>$85.00</td>
</tr>
<tr>
<td>Geotech bladder pump</td>
<td>$75.00</td>
</tr>
<tr>
<td>MP50 pump controller</td>
<td>$30.00</td>
</tr>
<tr>
<td>Line locator</td>
<td>$10.00</td>
</tr>
<tr>
<td>Metals filtration system</td>
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</tr>
<tr>
<td>Peristaltic pump</td>
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<td>$750.00</td>
</tr>
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<td>Hammer drill</td>
<td>$125.00</td>
</tr>
</tbody>
</table>
2020 WYOMING STREET 2 RECONSTRUCTION
(10% MBE AND 5% WBE PARTICIPATION GOAL / 10.58% MBE AND 5.08% WBE PARTICIPATION ACHIEVED)
(STATE ISSUE I FUNDS)

This project will reconstruct Wyoming Street from South Main Street to Colby Lane in full depth asphalt. Work includes new sidewalk, curb, storm catch basins, asphalt work, and other work incidental thereto.

Two bids were received for this project. It is recommended that the contract be awarded to the lowest bidder, Brumbaugh Construction, Inc., in the amount of $630,123.00. This amount includes the base bid in the amount of $628,593.00, Alternate No. 1, Tree Root Barrier, in the amount of $1,530.00. The estimated cost for the project was $700,000.00. The time bid for completion is October 30, 2020. This project is being funded using State Issue I Funds.

A Certificate of Funds, Tabulation of Bids, Human Relations Council’s verification letter, Bid Form from the firm recommended for award, and location map are attached.
COPIES TO:

☐ Director - Public Works
☐ Asst. Dir. Admin.
☐ Sec. to Director
☐ Business Office
☐ Pat Jones
☐ Lisa Moell
☐ Lana Hamby
☐ Ronnie Jones
☐ Design Bureau
☐ Dan Whallon
☐ Construction Bureau
☐ Traffic Bureau
☐ Aviation
☐ Building Inspection
☐ Human Resources
☐ City Commission
☐ City Manager
☐ Civil Service
☐ Community Development
☐ Convention Center
☐ Economic Development
☐ Finance
☐ Fire
☐ Human Relations Council
☐ Information Technology
☐ Law
☐ Management & Budget
☐ Recreation & Youth Services
☐ Planning
☐ Police
☐ Purchasing
☐ Water
☐ Zoning

☐ Approval
☐ Checking
☐ Comment
☐ Compliance
☐ Correction
☐ Filing
☐ For Your Information
☐ Investigate
☐ Note and route
☐ Recommendation
☐ Reply
☐ Report
☐ Required Action
☐ Retention
☐ Return
☐ Signature / s
☐ Initial / s

☐ Remarks:

Please email
to Pat Jones

[Signature]
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>X</th>
<th>New Contract</th>
<th>Renewal Contract</th>
<th>Change Order</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Start Date</td>
<td>Upon Execution</td>
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<td></td>
</tr>
<tr>
<td>Expiration Date</td>
<td>08/30/22</td>
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<td></td>
</tr>
<tr>
<td>Original Commission Approval</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Initial Encumbrance</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$ 630,123.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td></td>
<td></td>
<td></td>
</tr>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Original CT/CF</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Increase Encumbrance</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Decrease Encumbrance</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Required Documentation**

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

<table>
<thead>
<tr>
<th>Amount:</th>
<th>$ 455,123.00</th>
<th>Amount:</th>
<th>$ 175,000.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund Code</td>
<td>41232 - 6450 - 1424 - 54 -</td>
<td>Fund Code</td>
<td>49030 - 6450 - 1424 - 54 -</td>
</tr>
<tr>
<td>Fund</td>
<td>Org</td>
<td>Acct</td>
<td>Prog</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Attatch additional pages for more FOAPALs

Vendor Name: Brumbaugh Construction, Inc

Vendor Address: 3520 State Route 49 PO Box 309 Arcanum Ohio 45304

Street City State Zip code + 4

Federal ID: 34-1045090

Commodity Code: 96896

Purpose: Award of Contract for the 2020 Wyoming Street 2 Reconstruction Project

Contact Person: Keith Steeber, City Engineer

Public Works/Civil Engineering

Department/Division 4/16/2020 Date

Originating Department Director's Signature: Keith Steeber

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

CF Prepared by: 4/23/2020

CF/CT Number: CT20-2564

Finance Department

October 18, 2011
Wyoming Street Phase 2 Reconstruction (#6871138)

Owner: City of Dayton Ohio
Solicitor: Dayton OH, City of

04/02/2020 12:00 PM EDT

Sections shown in this color are not included in the Base Bid Total - Mandatory completion
Sections shown in this color are not included in the Base Bid Total - Optional completion
Sections shown in this color are fixed and cannot be edited by the bidder

<table>
<thead>
<tr>
<th>Line Item</th>
<th>Item Code</th>
<th>Item Description</th>
<th>Unit of Measure</th>
<th>Quantity</th>
<th>Unit Price</th>
<th>Extension</th>
<th>Accepted</th>
<th>Accepted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base Bid Section</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$567,593.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alternate No. 1:</td>
<td></td>
<td>Tree Root Barrier</td>
<td></td>
<td></td>
<td>$1,530.00</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Brumbaugh Construction Inc.</th>
<th>Double Jay Construction Inc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>ONLINE</td>
<td>ONLINE</td>
</tr>
<tr>
<td>Docs</td>
<td>Docs</td>
</tr>
<tr>
<td>Accepted</td>
<td>Accepted</td>
</tr>
</tbody>
</table>

Joe Weinel
April 16, 2020

TO: Andrew Marks P.E., Senior Engineer
Department of Public Works,
Division of Civil Engineering

FROM: Chrisondra Goodwine, Contract Compliance Officer
Human Relations Council (HRC)

SUBJECT: 2020 Wyoming Street 2 Reconstruction (10% MBE & 5% WBE Participation Goal) (State Issue I Funds)

The apparent low bidder, Brumbaugh Construction, submitted a bid utilizing four (4) PEP-certified contractor to meet the project’s participation goal. The HRC’s contract compliance analysis has verified that Brumbaugh Construction is an approved bidder in the City of Dayton’s Affirmative Action Assurance program and that the company’s authorized representative signed the Contractor’s Certification to indicate fair hiring practices.

The recommended company to receive the above-mentioned construction award is as follows:

<table>
<thead>
<tr>
<th>PRIME CONTRACTOR</th>
<th>AMOUNT OF BASE BID</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brumbaugh Construction</td>
<td>$628,593.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CERTIFIED BUSINESS PARTICIPATION</th>
<th>COMMITTED DOLLAR AMT</th>
<th>% TOWARD GOAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>A to Z Property Maintenance</td>
<td>$66,555.00</td>
<td>10.58% MBE</td>
</tr>
<tr>
<td>Landview Services</td>
<td>$4,000.00</td>
<td>.63% WBE</td>
</tr>
<tr>
<td>First Star Safety LLC</td>
<td>$8,247.00</td>
<td>1.31% WBE</td>
</tr>
<tr>
<td>JLM Trucking Inc.</td>
<td>$19,753.00</td>
<td>3.14% WBE</td>
</tr>
</tbody>
</table>

| TOTAL COMMITTED PARTICIPATION    | 10.58% MBE           |
| TOTAL COMMITTED                  | 5.08% WBE            |

The attached participation forms should be included with the contract agreement. Contract compliance will include meeting verified participation and minimal worker utilization goals as stated in the Affirmative Action Program Equal Employment Opportunity form certified in the bid submission. If you have any questions or concerns, please feel free to contact me at (937) 333-1405.

CAG
April 14, 2020
City of Dayton, OH
Human Relations Council
371 West Second Street, Suite 100
Dayton, OH 45402

Subcontractor Verification for Wyoming Street 2 Reconstruction (10% MBE & 5% WBE Goal)

A. Prime Contractor

1. Brumbaugh Construction, Inc.

B. WBE Contractor (1 of 3)

1. JLM Trucking Inc.
   2537 Ontario Ave.
   Dayton, OH 45414

2. JLM will be hired to perform the hauling of excavation, removals, and trench spoils offsite.

3. Details below:
   a. Number of trucks – 2-3 daily average
   b. Types of trucks – Tandem Dump Trucks
   c. Work to be performed – Hauling excavation, removals, and trench spoils offsite
   d. Materials to be obtained - None
   e. Number of Hours - 238
   f. Hourly Rate - $83/hour

4. WBE Contribution for the job: **$19,753.00**

Sincerely,

Gavin Bixler
Project Manager

An Equal Opportunity Employer
JLM Trucking, Inc. is pleased to be listed as a WBE firm with Brumbaugh Construction, Inc.
2020 Wyoming Street 2 Reconstruction
Dayton, OH
We will be providing trucking debris removal from the project.
We/They estimate 238 hours of trucking at $83.00 per hour.
Approximate total value of $19,753.00
We will be providing 2 to 3 Tandem Trucks, intermittently.

Linda S. Murphy, President
JLM Trucking, Inc. DBE/SBE/WBE
EIN: 45-4029764
April 14, 2020
City of Dayton, OH
Human Relations Council
371 West Second Street, Suite 100
Dayton, OH 45402

Subcontractor Verification for Wyoming Street 2 Reconstruction (10% MBE & 5% WBE Goal)

A. Prime Contractor
   1. Brumbaugh Construction, Inc.

B. WBE Contractor (2 of 3)
   1. First Star Safety LLC.
      4 Kovach Dr.
      Cincinnati, OH 45215

   2. First Star Safety will be hired to perform a share of Maintaining Traffic, Signage, and Ground Mounted Support.
      a. Breakdown of materials and labor for each segment to be performed are included on the attachment.
      b. Unit cost and total cost for each segment are included on the attachment.

Sincerely,

[Signature]
Gavin Bixler
Project Manager

An Equal Opportunity Employer
<table>
<thead>
<tr>
<th>Description</th>
<th>Units</th>
<th>Qty</th>
<th>First Star Labor</th>
<th>First Star Material</th>
<th>BCI Labor</th>
<th>BCI Material</th>
<th>Markup</th>
<th>Total Unit</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintaining Traffic</td>
<td>L.S.</td>
<td>1</td>
<td>$4,250.00</td>
<td>$2,965.00</td>
<td>$9,737.00</td>
<td>$6,795.00</td>
<td>$1,266.00</td>
<td>$25,013.00</td>
<td>$25,013.00</td>
</tr>
<tr>
<td>Sign, Flat Sheet, as per plan</td>
<td>S.F.</td>
<td>20</td>
<td>$359.00</td>
<td>$130.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$40.00</td>
<td>$380.00</td>
</tr>
<tr>
<td>Ground Mounted Support, 730.015</td>
<td>L.F.</td>
<td>56</td>
<td>$500.00</td>
<td>$172.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$56.00</td>
<td>$728.00</td>
</tr>
</tbody>
</table>

First Star Contribution $8,247.00  
Total as Bid on Proposal $26,121.00
April 9, 2020

Chrisondra Goodwine
Contract Compliance Officer
City of Dayton-Human Relations Council
E-Mail: bta@daytonohio.gov

Please let us know if you have any questions about the information provided below, or if you need anything further. Thank you.

1. Project: City of Dayton’s 2020 Wyoming Street 2 Reconstruction (10% MBP and 5% WBE) Project
2. Sub-Contractor: Please note correct address
   First Star Safety, LLC
   310 S. Cooper Avenue
   Cincinnati, OH 45215
3. Scope of Work:
   Set up and removal of traffic control items, items 614 (incidental to contract and distributed through line items), Installation of permanent signage, items 630 (incidental to contract and distributed through line items).
4. Unit Cost: 614 items $7,215.00 and 630 items $1,032.00 = $8,247.00
5. Material vs. Labor: No break down
6. Material Suppliers Only: N/A
7. Trucking: No trucking for this contract

"At First Star Safety, LLC, your safety is our first priority!"
April 14, 2020
City of Dayton, OH
Human Relations Council
371 West Second Street, Suite 100
Dayton, OH 45402

RE: Subcontractor Verification for Wyoming Street 2 Reconstruction (10% MBE & 5% WBE Goal)

A. Prime Contractor
   1. Brumbaugh Construction, Inc.

B. MBE Subcontractor (1 of 1)
   1. A to Z Property Maintenance
      1382 Sussex Rd.
      Troy, OH 45337

   2. A to Z will be hired to perform the concrete items to obtain the MBE goal participation.
      a. Breakdown of materials and labor for each segment to be performed are included on the attachment.
      b. Unit cost and total cost for each segment are included on the attachment.

Sincerely,

[Signature]

Gavin Bixler
Project Manager

An Equal Opportunity Employer
## A to Z Property Maintenance Contribution for Wyoming Street 2 Reconstruction

<table>
<thead>
<tr>
<th>Description</th>
<th>Units</th>
<th>Qty</th>
<th>A to Z Labor</th>
<th>A to Z Material</th>
<th>BCI Labor</th>
<th>BCI Material</th>
<th>Markup</th>
<th>Total Unit</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plain Concrete, Alley Mouth, ODOT MS</td>
<td>S.Y.</td>
<td>25</td>
<td>$1,592.50</td>
<td>$857.50</td>
<td>$272.00</td>
<td>$125.03</td>
<td>$152.07</td>
<td>$120.00</td>
<td>$3,000.00</td>
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<tr>
<td>Plain Concrete, Alley Pavement, ODOT MS</td>
<td>S.Y.</td>
<td>65</td>
<td>$4,140.50</td>
<td>$2,229.50</td>
<td>$773.00</td>
<td>$377.07</td>
<td>$394.92</td>
<td>$121.00</td>
<td>$7,865.00</td>
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<tr>
<td>Concrete Driveway, ODOT MS</td>
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<td>1580</td>
<td>$10,285.00</td>
<td>$5,565.00</td>
<td>$2,615.00</td>
<td>$888.09</td>
<td>$1,769.91</td>
<td>$13.00</td>
<td>$20,670.00</td>
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<tr>
<td>Concrete Walk, 4&quot;</td>
<td>S.F.</td>
<td>1850</td>
<td>$9,620.00</td>
<td>$5,180.00</td>
<td>$2,067.00</td>
<td>$1,034.55</td>
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<td>$20,350.00</td>
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<tr>
<td>Barrier Curb, 20&quot;</td>
<td>L.F.</td>
<td>795</td>
<td>$16,536.00</td>
<td>$8,904.00</td>
<td>$2,480.00</td>
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<td>$29,415.00</td>
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<tr>
<td>Wall Curb</td>
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<td>$1,036.75</td>
<td>$558.25</td>
<td>$215.00</td>
<td>$0.00</td>
<td>$115.00</td>
<td>$175.00</td>
<td>$1,925.00</td>
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</tbody>
</table>

### A to Z MBE Contribution $66,555.00

### Total as Bid on Proposal $83,225.00
A to Z Property Maintenance
1382 Sussex Rd Troy, Ohio 45373

A to Z Property Maintenance LLC.
1382 Sussex Rd.
Troy, Oh 45373

Ph. 937-830-2022
Fax 937-335-5388
kblock@wgh.rr.com

City Of Dayton, Ohio
Human Relations Council
371 West Second Street
Suite 100
Dayton, Ohio 45402
Phone 937-333-1403
Fax 937-222-4589

Date 4/11/2020

Re: Subcontract for Concrete Repairs on 2020 Wyoming Street 2 Reconstruction
Brumbaugh Construction, Inc
3520 St. Rt. P.O. Box
Arcanum, Oh 45304

A to Z Property Maintenance propose to provide the equipment, labor and materials for replacement of the following concrete items as a MBE subcontractor

1 Year warranty on workmanship

452 Alley S.Y. 25 Unit Cost $98 Total Cost $2450 Labor $1,592.50 Materials $857.50
452 Alley Pav. SY 65 Unit Cost $98 Total Cost $6370 Labor $4,140.50 Mat. $2,229.50
453 Driveway SF 1590 U. Cost $10 Total Cost $15,900 Labor $10,335 Mat. $5,565.00
608 4” Walk SF 1850 Unit Cost $8.00 Total Cost $14,800 Labor $9,620 Mat. $5,180.00
609 Barrier Curb LF 700 U. Cost $32 Total Cost $25,440 Labor $16,536 Mat. $8,904.00
609 Wall Curb LF 11 U. Cost $145.00 Total Cost $1595 Labor $1,036.75 Mat. $558.25
April 14, 2020
City of Dayton, OH
Human Relations Council
371 West Second Street, Suite 100
Dayton, OH 45402

Subcontractor Verification for Wyoming Street 2 Reconstruction (10% MBE & 5% WBE Goal)

A. Prime Contractor

1. Brumbaugh Construction, Inc.

B. WBE Contractor (3 of 3)

1. Landview Services, LLC.
   5381 Princeton Rd.
   Liberty Twp., OH 45011

2. Landview Services will be hired to perform Hydroseeding.
   a. Breakdown of materials and labor for each segment to be performed are included on the attachment.
   b. Unit cost and total cost for each segment are included on the attachment.

Sincerely,

Gavin Bixler
Project Manager

An Equal Opportunity Employer
Landview Services, LLC. Contribution for Wyoming Street 2 Reconstruction

<table>
<thead>
<tr>
<th>Description</th>
<th>Units</th>
<th>Qty.</th>
<th>Landview Labor</th>
<th>Landview Material</th>
<th>BCI Labor</th>
<th>BCI Material</th>
<th>Markup</th>
<th>Total Unit</th>
<th>Total</th>
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<tbody>
<tr>
<td>Hydroseeding</td>
<td>S.Y.</td>
<td>850</td>
<td>$1,400.00</td>
<td>$2,600.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$5.00</td>
<td>$4,250.00</td>
<td>$4,250.00</td>
</tr>
</tbody>
</table>

Landview WBE Contribution: $4,000.00

Total as Bid on Proposal: $4,250.00
The name of the project is 2020 Wyoming Street 2 Reconstruction
The contractors name is Brumbaugh Construction Inc., their address is 3520 St. Rt. 49, PO Box 309
The scope of work being used is Hydro-seeding.
The unit cost is .63 and total cost is $4,000 for each segment

Material vs Labor Breakdown:

<table>
<thead>
<tr>
<th>Total $ Amount Towards Goal</th>
<th>% towards goal</th>
<th>Amount paid to PEP</th>
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</thead>
<tbody>
<tr>
<td>Total Bid</td>
<td>$4,200</td>
<td>.63</td>
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<tr>
<td>Materials</td>
<td>$2,600</td>
<td>.41</td>
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<tr>
<td>Labor</td>
<td>$1,400</td>
<td>.22</td>
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</tbody>
</table>

Thank you,

Tracey Denning

President, Landview Services LLC
CITY OF DAYTON, OHIO
DEPARTMENT OF PUBLIC WORKS

Bid
2020 Wyoming Street 2 Reconstruction
(10% MBE & 5% WBE Participation Goal)
(State Issue 1 Funds)

Includes Addenda as follows:
Addendum #1 dated March 18, 2020
Addendum #2 dated March 24, 2020
Addendum #3 dated March 27, 2020

Bidder
Brumbaugh Construction, Inc.
3520 St. Rt. 49, PO Box 309
Arcanum, OH 45304
<table>
<thead>
<tr>
<th>Item Code</th>
<th>Item Description</th>
<th>UofM</th>
<th>Quantity</th>
<th>Unit Price</th>
<th>Extension</th>
</tr>
</thead>
<tbody>
<tr>
<td>201</td>
<td>Clearing and Grubbing</td>
<td>LUMP</td>
<td>1</td>
<td>$10,000.00</td>
<td>$10,000.00</td>
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<tr>
<td>201</td>
<td>Tree, 6'-18&quot;, removed</td>
<td>EACH</td>
<td>9</td>
<td>$300.00</td>
<td>$2,700.00</td>
</tr>
<tr>
<td>201</td>
<td>Stump Removed</td>
<td>EACH</td>
<td>2</td>
<td>$300.00</td>
<td>$600.00</td>
</tr>
<tr>
<td>202</td>
<td>Alley Mouth Removed</td>
<td>S.Y.</td>
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<td>$14.00</td>
<td>$350.00</td>
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<tr>
<td>202</td>
<td>Alley Pavement Removed</td>
<td>S.Y.</td>
<td>65</td>
<td>$14.00</td>
<td>$910.00</td>
</tr>
<tr>
<td>202</td>
<td>Sidewalk Removed</td>
<td>S.F.</td>
<td>1670</td>
<td>$1.60</td>
<td>$2,672.00</td>
</tr>
<tr>
<td>202</td>
<td>Catch Basin Removed</td>
<td>EACH</td>
<td>9</td>
<td>$325.00</td>
<td>$2,925.00</td>
</tr>
<tr>
<td>202</td>
<td>Curb Removed</td>
<td>L.F.</td>
<td>132</td>
<td>$22.00</td>
<td>$2,904.00</td>
</tr>
<tr>
<td>202</td>
<td>Wall Curb Removed</td>
<td>L.F.</td>
<td>11</td>
<td>$30.00</td>
<td>$330.00</td>
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<tr>
<td>202</td>
<td>Driveway Removed</td>
<td>S.F.</td>
<td>2310</td>
<td>$1.50</td>
<td>$3,465.00</td>
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<tr>
<td>202</td>
<td>Pipe Removed</td>
<td>L.F.</td>
<td>9</td>
<td>$37.00</td>
<td>$333.00</td>
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<tr>
<td>202</td>
<td>Pavement Removed (Concrete)</td>
<td>S.Y.</td>
<td>3440</td>
<td>$8.00</td>
<td>$27,520.00</td>
</tr>
<tr>
<td>202</td>
<td>Lightpole Removed</td>
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<td>11</td>
<td>$600.00</td>
<td>$6,600.00</td>
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<tr>
<td>202</td>
<td>Grind Existing Pavement</td>
<td>S.Y.</td>
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<td>Embankment</td>
<td>C.Y.</td>
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<td>203</td>
<td>Excavation, including Embankment</td>
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<td>Excavation, not including Embankment</td>
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<td>Curb Inlet Protection</td>
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<td>$2,700.00</td>
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<tr>
<td>ODOT 302</td>
<td>6&quot; Base Asphalt Concrete</td>
<td>C.Y.</td>
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<tr>
<td>304</td>
<td>6&quot; Aggregate Base</td>
<td>C.Y.</td>
<td>620</td>
<td>$49.00</td>
<td>$30,380.00</td>
</tr>
<tr>
<td>407</td>
<td>Tack Coat (0.1 GAL/ SYS)</td>
<td>GAL</td>
<td>350</td>
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<td>$1,750.00</td>
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<tr>
<td>442</td>
<td>1.5&quot; Asphalt Concrete, Surface Course, 12.5 mm, Type TONS</td>
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<tr>
<td>442</td>
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<td>$3,000.00</td>
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<tr>
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<td>Plain Concrete, Alley Pavement, ODOT MS</td>
<td>S.Y.</td>
<td>65</td>
<td>$121.00</td>
<td>$7,865.00</td>
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<tr>
<td>453</td>
<td>Concrete Driveway, ODOT MS</td>
<td>S.F.</td>
<td>1590</td>
<td>$13.00</td>
<td>$20,670.00</td>
</tr>
<tr>
<td>608</td>
<td>Concrete Walk, 4&quot;</td>
<td>S.F.</td>
<td>1850</td>
<td>$11.00</td>
<td>$20,350.00</td>
</tr>
<tr>
<td>609</td>
<td>Barrier Curb, 20&quot;</td>
<td>L.F.</td>
<td>795</td>
<td>$37.00</td>
<td>$29,415.00</td>
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<tr>
<td>609</td>
<td>Wall Curb</td>
<td>L.F.</td>
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<td>$175.00</td>
<td>$1,925.00</td>
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<tr>
<td>614</td>
<td>Maintaining Traffic</td>
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<td>623</td>
<td>Construction Layout Stakes</td>
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<td>$8,383.00</td>
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<tr>
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<td>1-3&quot; PVC Conduit, Concrete Encased</td>
<td>L.F.</td>
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<td>$9.00</td>
<td>$900.00</td>
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<tr>
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<td>625</td>
<td>Trench</td>
<td>L.F.</td>
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<tr>
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<td>625</td>
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<tr>
<td>625</td>
<td>Luminaire, As Per Plan</td>
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<td>$2,000.00</td>
<td>$22,000.00</td>
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<tr>
<td>625</td>
<td>Luminaire Arm, 12&quot;, As Per Plan</td>
<td>EACH</td>
<td>11</td>
<td>$2,000.00</td>
<td>$22,000.00</td>
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<td>625</td>
<td>Cable Connector Kit (Fused)</td>
<td>EACH</td>
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<td>$95.00</td>
<td>$2,090.00</td>
</tr>
<tr>
<td>625</td>
<td>Cable Connector Kit (Unfused)</td>
<td>EACH</td>
<td>22</td>
<td>$95.00</td>
<td>$2,090.00</td>
</tr>
<tr>
<td>625</td>
<td>Pole, Type IV</td>
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<td>11</td>
<td>$5,000.00</td>
<td>$55,000.00</td>
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<td>625</td>
<td>No. 10 Light Pole and Bracket Cable</td>
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<td>1650</td>
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<td>$1,650.00</td>
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<tr>
<td>630</td>
<td>Sign, Flat Sheet, As Per Plan</td>
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<td>20</td>
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<td>$380.00</td>
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<tr>
<td>630</td>
<td>Ground Mounted Support, 730.015 U Channel Post</td>
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<td>56</td>
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<td>$728.00</td>
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<tr>
<td>632</td>
<td>Detector Loop (6' x 20' Powerhead)</td>
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<td>2</td>
<td>$1,700.00</td>
<td>$3,400.00</td>
</tr>
<tr>
<td>644</td>
<td>Channelizing Line (8&quot;), White, As Per Plan</td>
<td>L.F.</td>
<td>150</td>
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<td>644</td>
<td>Center Line, Yellow, As Per Plan</td>
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<td>875</td>
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<td>28</td>
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<td>$644.00</td>
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<td>L.F.</td>
<td>115</td>
<td>$12.00</td>
<td>$1,380.00</td>
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</tbody>
</table>
### Wyoming Street Reconstruction Phase 2
4/2/2020

<table>
<thead>
<tr>
<th>Item Code</th>
<th>Item Description</th>
<th>UofM</th>
<th>Quantity</th>
<th>Unit Price</th>
<th>Extension</th>
</tr>
</thead>
<tbody>
<tr>
<td>653</td>
<td>Topsoil Furnished and Placed, (4&quot;)</td>
<td>C.Y.</td>
<td>70</td>
<td>$87.00</td>
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<tr>
<td>659</td>
<td>Hydoseeding</td>
<td>S.Y.</td>
<td>850</td>
<td>$5.00</td>
<td>$4,250.00</td>
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<tr>
<td>810</td>
<td>Excavation and backfill for 12&quot; Pipe</td>
<td>L.F.</td>
<td>42</td>
<td>$70.00</td>
<td>$2,940.00</td>
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<td>811</td>
<td>Excavation and backfill for 15&quot; Pipe</td>
<td>L.F.</td>
<td>8</td>
<td>$105.00</td>
<td>$840.00</td>
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<tr>
<td>821</td>
<td>Reinforced Concrete Pipe, 12&quot; Storm</td>
<td>L.F.</td>
<td>42</td>
<td>$16.00</td>
<td>$672.00</td>
</tr>
<tr>
<td>822</td>
<td>Reinforced Concrete Pipe, 15&quot; Storm</td>
<td>L.F.</td>
<td>8</td>
<td>$19.00</td>
<td>$152.00</td>
</tr>
<tr>
<td>831</td>
<td>Catch Basin, 3</td>
<td>EACH</td>
<td>9</td>
<td>$2,500.00</td>
<td>$22,500.00</td>
</tr>
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<td>831</td>
<td>Catch Basin Lid, E</td>
<td>EACH</td>
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<td>$1,100.00</td>
<td>$1,100.00</td>
</tr>
<tr>
<td>834</td>
<td>Connection, 12&quot; Storm</td>
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<td>$500.00</td>
<td>$4,500.00</td>
</tr>
<tr>
<td>836</td>
<td>Manhole Adjusted to Grade</td>
<td>EACH</td>
<td>8</td>
<td>$600.00</td>
<td>$4,800.00</td>
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<tr>
<td>836</td>
<td>Valve Adjusted to Grade</td>
<td>EACH</td>
<td>5</td>
<td>$300.00</td>
<td>$1,500.00</td>
</tr>
<tr>
<td>836</td>
<td>Valve Box Adjusted to Grade</td>
<td>EACH</td>
<td>11</td>
<td>$300.00</td>
<td>$3,300.00</td>
</tr>
<tr>
<td>SPL-1</td>
<td>Banner Pole and Bracket Set, Furnish and Install</td>
<td>EACH</td>
<td>11</td>
<td>$800.00</td>
<td>$8,800.00</td>
</tr>
<tr>
<td>ALL-1</td>
<td>Irrigation System Fix</td>
<td>LUMP</td>
<td>1</td>
<td>$2,000.00</td>
<td>$2,000.00</td>
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<tr>
<td>SPL-2</td>
<td>Contingency</td>
<td>LUMP</td>
<td>1</td>
<td>$59,000.00</td>
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</table>

**Base Bid Total**  $628,593.00

Alternate No. 1

| SPL-3     | Tree Root Barrier                                   | Each | 18       | $85.00     | $1,530.00 |
DISCLOSURE OF LITIGATION

Disclosure of Litigation: Have you or any person, group, partnership, company, or corporation affiliated with you been engaged in the past three (3) years in litigation, mediation or any form of contractual dispute resolution with any state government or any political subdivision thereof including, without limitation, the State of Ohio, the City of Dayton, Ohio, or Montgomery County, Ohio? For the purpose of your response, “affiliated” means directly or indirectly controlling, controlled by, or under common control, with “control” meaning legally or operationally in a position to exercise restraint or direction over the other.

RESPONSE: YES ☐ NO ☑

If your response is “YES” please separately identify each lawsuit, mediation or dispute resolution process in which you or your affiliate have been engaged during the past three (3) years. Identify the nature of the dispute, the parties involved, and the current status of the dispute. Attach or include any information you believe pertinent to a full understanding of the disputed matters.
Bidder is
An Individual
Firm Name

Business Address

Telephone

Partnership
Firm Name

Members of Firm and
Their Business Address

Telephone

Corporation
Name
BRUMBAUGH CONSTRUCTION, INC.

State of Incorporation
State of OHIO

Name and Title of
Officers with Authority
to Sign Contract
Joseph J. Raterman, Vice President

Home Office Address
3520 St. Rt. 49, PO Box 309, Arcanum, OH 45304

Local Address
3520 St. Rt. 49, PO Box 309, Arcanum, OH 45304

Telephone 937-692-5107 Fax 937-692-5678

E-mail joe@brumbaughconstruction.com

Federal I.D.# 34-1045090

Dated this 2nd day of April, 2020

Bidder: BRUMBAUGH CONSTRUCTION, INC.
(Person, Firm, or Corporation)

By: 

Joseph J. Raterman
Vice President
CITY OF DAYTON, OHIO
Department of Public Works

Responsible Contractor Bidding Requirements
( Form 1 of 3 )

In accordance with Ordinance No. 31487-16 of the City of Dayton, Ohio Revised Code of General Ordinances,

I, ________________ Joseph J. Raterman, Vice President ___________________________ (print name – an Officer of the company)

__________________________ BRUMBAUGH CONSTRUCTION, INC. ___________ (company)

meets the following Contractor requirements relating to this City of Dayton construction project

Check All That Apply:

☑ Comply with all City of Dayton income tax obligations and requirements

☑ Maintain worker’s compensation insurance for all employees as required by the State of Ohio

☑ Comply with State or Federal prevailing wage rate laws, as applicable and required by the funding of this project

☑ Comply with the State of Ohio Bureau of Worker’s Compensation Drug Free Workplace Policy

☑ Maintain an unemployment compensation insurance policy registered with the State of Ohio Department of Job and Family Services

☑ Made a good faith effort to contract with one or more qualified minority business enterprises to perform work required by this project, in accordance with bid documents, ordinances, and applicable Federal and State law

BRUMBAUGH CONSTRUCTION, INC.

By: ____________________________

Joseph J. Raterman
Vice President

Date: ________________

April 2, 2020

[Stamp with corporate seal]
Bond Number: SOH20671588

Contractor Information
Principal: Brumbaugh Construction Inc 937-692-5107
Address: 3520 State Route 49 POB 309 Arcanum Ohio 45304 United States
Contractor's State Vendor ID Number: 6611415

Owner/Obligee Information
Bond Form: Bid Bond in accordance with Contract Specifications
Owner / Obligee: City of Dayton
Address: 101 W Third St Dayton Ohio 45402 United States

Bond Information
Surety: The Ohio Casualty Insurance Company
Rider Present: Click here to view
Amount of Bid Security: 10%
Contract ID Number: 6871138
Description of Job: Wyoming Street Phase 2 Reconstruction Project # 6871138

Primary Agency:
Littman Thomas Agency Inc
Power of Attorney Limited to: 10000000
Executed
Executed By:
Phone: 937-548-2131
Email: askiles@littmanthomas.com

Know all men by these presents that The Ohio Casualty Insurance Company, a Corporation duly organized under the laws of the State of New Hampshire, are held and firmly bound unto the above owner/obligee by this transmission. The surety agrees to waive the Statute of Fraud defense and further agrees that the owner/obligee is a third party beneficiary of the waiver for the purposes of enforcing this bid bond.
Ohio Department of Insurance
Mike DeWine - Governor
Jillian Froment - Director

Certificate of Compliance

Issued 03/20/2020
Effective 04/02/2020
Expires 04/01/2021

I, Jillian Froment, hereby certify that I am the Director of Insurance in the State of Ohio and have supervision of insurance business in said State and as such I hereby certify that

OHIO CASUALTY INSURANCE COMPANY

of New Hampshire is duly organized under the laws of this State and is authorized to transact the business of insurance under the following section(s) of the Ohio Revised Code:

Section 3929.01 (A)

Accident & Health
Allied Lines
Boiler & Machinery
Burglary & Theft
Commercial Auto - Liability
Commercial Auto - No Fault
Commercial Auto - Physical Damage
Earthquake
Fidelity
Fire
Glass
Group Accident & Health
Guaranteed Renewable A & H
Inland Marine
Medical Malpractice
Multiple Peril - Commercial
Multiple Peril - Farmowners

Multiple Peril - Homeowners
Ocean Marine
Other Accident only
Other Liability
Private Passenger Auto - Liability
Private Passenger Auto - No Fault
Private Passenger Auto - Physical Damage
Surety
Workers Compensation

OHIO CASUALTY INSURANCE COMPANY certified in its annual statement to this Department as of December 31, 2019 that it has admitted assets in the amount of $6,906,099,097, liabilities in the amount of $4,923,366,664, and surplus of at least $1,982,732,434.

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused my seal to be affixed at Columbus, Ohio, this day and date.
<table>
<thead>
<tr>
<th>Assets</th>
<th>Liabilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and Bank Deposits</td>
<td>Unearned Premiums</td>
</tr>
<tr>
<td></td>
<td>Reserve for Claims and Claims</td>
</tr>
<tr>
<td></td>
<td>Expense</td>
</tr>
<tr>
<td></td>
<td>Funds Held Under Reinsurance</td>
</tr>
<tr>
<td></td>
<td>Treaties</td>
</tr>
<tr>
<td>*Bonds — U.S Government</td>
<td>Reserve for Dividends to</td>
</tr>
<tr>
<td></td>
<td>Policyholders</td>
</tr>
<tr>
<td>*Other Bonds</td>
<td>Additional Statutory Reserve</td>
</tr>
<tr>
<td>*Stocks</td>
<td>Reserve for Commissions, Taxes</td>
</tr>
<tr>
<td></td>
<td>and Other Liabilities</td>
</tr>
<tr>
<td>Real Estate</td>
<td>Total</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Agents' Balances or Uncollected Premiums</td>
<td>5,817,927,234</td>
</tr>
<tr>
<td>Accrued Interest and Rents</td>
<td>Special Surplus Funds</td>
</tr>
<tr>
<td>Other Admitted Assets</td>
<td>Capital Stock</td>
</tr>
<tr>
<td></td>
<td>Paid in Surplus</td>
</tr>
<tr>
<td></td>
<td>Unassigned Surplus</td>
</tr>
<tr>
<td>Total Admitted Assets</td>
<td>Surplus to Policyholders</td>
</tr>
<tr>
<td></td>
<td>Total Liabilities and Surplus</td>
</tr>
</tbody>
</table>

* Bonds are stated at amortized or investment value; Stocks at Association Market Values.

The foregoing financial information is taken from Liberty Mutual Insurance Company’s financial statement filed with the state of Massachusetts Department of Insurance.

I, TIM MIKOLAJEWSKI, Assistant Secretary of Liberty Mutual Insurance Company, do hereby certify that the foregoing is a true, and correct statement of the Assets and Liabilities of said Corporation, as of December 31, 2018, to the best of my knowledge and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation at Seattle, Washington, this 22nd day of March, 2019.

Tim Mikolaiewski
Assistant Secretary
CITY OF DAYTON, OHIO
Department of Public Works

Responsible Contractor Bidding Requirements
(Form 2 of 3)

A. Please provide a complete listing of the fringe benefits provided to employees, including but not limited to health insurance and retirement benefits.

<table>
<thead>
<tr>
<th>Health Insurance</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
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<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

B. Please identify any “bona fide apprentice training program” in which this company participates in accordance with the Ohio Bureau of Apprenticeship Training and the U. S. Department of Labor.

<table>
<thead>
<tr>
<th>Ohio Valley Construction Education Foundation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

C. Please provide a list of subcontractors whose quotes or information are included or used in the bid submitted for this project.

<table>
<thead>
<tr>
<th>Reese Electric</th>
<th>Aero Mark</th>
</tr>
</thead>
<tbody>
<tr>
<td>A to Z Property Maintenance</td>
<td>JLM Trucking</td>
</tr>
<tr>
<td>John R. Jurgensen Company</td>
<td>Landview Services</td>
</tr>
<tr>
<td>First Star Safety</td>
<td></td>
</tr>
</tbody>
</table>


D. Please provide a list of all minority business enterprises contacted for the purpose of obtaining quotes to perform work for this project.

W. C. Jones Asphalt Paving
Oakley Blacktop
Griscom Construction
A to Z Property Maintenance
Landview Services
First Star Safety
JLM Trucking
Tall View Palladium
KES Harris Trucking
Countryside Gardens

E. Provide a complete listing of any determinations of the bidder’s violations of federal, state, or local laws, including a list of all citations, orders, or recommendations issued to or against the bidder within the previous 3 years.

NONE
CERTIFICATION
OF COMPLIANCE WITH OHIO REVISED CODE SECTION 3517.13
FOR CONTRACTS IN EXCESS OF FIVE HUNDRED DOLLARS ($500.00)

STATE OF OHIO,
COUNTY OF DARKE, ss:

_________________________ being duly sworn, deposes and states as follows:

1. I am duly authorized to make the statements contained herein on behalf of
   Brumbaugh Construction, Inc. ("the Contracting Party").

2. The Contracting Party is a/an (select one):
   □ Individual, partnership, or other unincorporated business association (including without
     limitation, a professional association organized under Ohio Revised Code Chapter
     1785), estate, or trust.
   ☑ Corporation organized and existing under the laws of the State of OHIO.
   □ Labor organization.

3. I hereby affirm that the Contracting Party and each of the individuals specified in R.C.
   3517.93(I)(3) (with respect to non-corporate entities and labor organizations) or R.C.
   3517.93(J)(3) (with respect to corporations) are in full compliance with the political
   contributions limitations set forth in R.C. 3517.93(I) and (J), as applicable. I understand
   that a false representation on this certification constitutes a felony of the fifth degree pursuant
   to R.C. 3517.93(AA) and 3517.992(R)(3). Any contract that contains a falsified certification
   shall be rescinded.

BRUMBAUGH CONSTRUCTION, INC.

By: ____________________________
   Joseph J. Raterman
   Title: Vice President
CITY OF DAYTON
CONTRACTOR NON-COLLUSION AFFIDAVIT

STATE OF OHIO }  
COUNTY OF DARKE }  SS:

Joseph J. Raterman, being first duly sworn deposes and states that:

(1) He/She is Vice President of
(owner, partner, officer, representative, or agent)
BRUMBAUGH CONSTRUCTION, INC.
(business or organization name)

(2) He/She is fully informed respecting the preparation and contents of the attached Bid and all pertinent circumstances respecting such Bid.

(3) Such offering is genuine and is not a collusive or sham offering

(4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly with any other Bidder, firm or person to submit a sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from offering in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Dayton, its employees, or citizens.

(5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest including the affiant.

BRUMBAUGH CONSTRUCTION, INC.

[Signature]

SIGNED Joseph J. Raterman
Vice President
TITLE
AFFIDAVIT

The undersigned hereby affirms, upon personal knowledge, that the good faith efforts indicated above were performed by the bidder prior to the submission of the bid. The undersigned acknowledges that it is required to maintain documentary evidence, including subcontractor contact information, of all good faith efforts and agrees to provide documentary evidence of the good faith efforts completed no later than two (2) business days after a request for documentation. Failure to do so will result in a denial of the requested waiver.

Date: ________________
April 2, 2020
Name of Bidder: BRUMBAUGH CONSTRUCTION, INC.
Signature: ________________________
Joseph J. Rateman
Title: Vice President

State of OHIO, County of DARKE

Subscribed and Sworn before me this 2nd day of April, 2020.

Notary Public
Geraldine Hurd
My Commission Expires: June 28, 2020
Contract Number: 6871138
Contractor ID: 6611415
Bond ID: SOH20671588
BondType: 0001
BondForm: Bid Bond in accordance with Contract Specifications
BidDate: 4-2-2020
JobDescription: Wyoming Street Phase 2 Reconstruction Project # 6871138
BidSecurity: 10%
BidSecurityPercent: 10
BidSecurityMaximum:
I, Jillian Froment, hereby certify that I am the Director of Insurance in the State of Ohio and have supervision of insurance business in said State and as such I hereby certify that

OHIO CASUALTY INSURANCE COMPANY
of New Hampshire is duly organized under the laws of this State and is authorized to transact the business of insurance under the following section(s) of the Ohio Revised Code:

Section 3929.01 (A)

Accident & Health
Allied Lines
Boiler & Machinery
Burglary & Theft
Commercial Auto - Liability
Commercial Auto - No Fault
Commercial Auto - Physical Damage
Earthquake
Fidelity
Fire
Glass
Group Accident & Health
Guaranteed Renewable A & H
Inland Marine
Medical Malpractice
Multiple Peril - Commercial
Multiple Peril - Farmowners
Multiple Peril - Homeowners
Ocean Marine
Other Accident only
Other Liability
Private Passenger Auto - Liability
Private Passenger Auto - No Fault
Private Passenger Auto - Physical Damage
Surety
Workers Compensation

OHIO CASUALTY INSURANCE COMPANY certified in its annual statement to this Department as of December 31, 2019 that it has admitted assets in the amount of $6,906,099,097, liabilities in the amount of $4,923,366,664, and surplus of at least $1,982,732,434.

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused my seal to be affixed at Columbus, Ohio, this day and date.
### Liberty Mutual Insurance Company
**Financial Statement — December 31, 2018**

<table>
<thead>
<tr>
<th>Assets</th>
<th>Liabilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and Bank Deposits</td>
<td>$464,341,712</td>
</tr>
<tr>
<td>*Bonds — U.S Government</td>
<td>$7,851,429,449</td>
</tr>
<tr>
<td>*Other Bonds</td>
<td>2,259,714,810</td>
</tr>
<tr>
<td>*Stocks</td>
<td>20,165,209,300</td>
</tr>
<tr>
<td>Real Estate</td>
<td>11,894,776,740</td>
</tr>
<tr>
<td>Agents' Balances or Uncollected Premiums</td>
<td>384,795,327</td>
</tr>
<tr>
<td>Accrued Interest and Rents</td>
<td>5,817,927,234</td>
</tr>
<tr>
<td>Other Admitted Assets</td>
<td>Reserve for Dividends to Policyholders</td>
</tr>
<tr>
<td></td>
<td>Additional Statutory Reserve</td>
</tr>
<tr>
<td></td>
<td>Reserve for Commissions, Taxes and</td>
</tr>
<tr>
<td></td>
<td>Other Liabilities</td>
</tr>
<tr>
<td>Total Admitted Assets</td>
<td>$532,465,234,407</td>
</tr>
<tr>
<td>Total Liabilities and Surplus</td>
<td>$48,830,564,856</td>
</tr>
</tbody>
</table>

* Bonds are stated at amortized or investment value; Stocks at Association Market Values.

The foregoing financial information is taken from Liberty Mutual Insurance Company's financial statement filed with the state of Massachusetts Department of Insurance.

I, TIM MIKOLAJEWSKI, Assistant Secretary of Liberty Mutual Insurance Company, do hereby certify that the foregoing is a true, and correct statement of the Assets and Liabilities of said Corporation, as of December 31, 2018, to the best of my knowledge and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation at Seattle, Washington, this 22nd day of March, 2019.

\[Signature\]

Assistant Secretary
AFFIRMATIVE ACTION PROGRAM
EQUAL EMPLOYMENT OPPORTUNITY

PROJECT: 2020 Wyoming Street 2 Reconstruction (10% MBE & 5% WBE Participation Goal)
NAME
LOCATION (State Issue I Funds)

During the performance of this contract:

Brumbaugh Construction, Inc. 3520 St. Rt. 49, PO Box 309 ARCANUM, OH 45304
CONTRACTOR ADDRESS PH: 937-692-5107

being the general contractor, assumes the responsibility and obligation to institute an Affirmative Action Program
which complies with revised City Ordinances 24059 and 26090 and Executive Order 11246 on any city, federal
or federally-assisted construction project, to insure Equal Employment Opportunity regardless of race, color,
religion, sex, national origin, ancestry, place of birth, age, or marital status.

The successful contractor using one or more trades of construction employees must comply with Part I
of these Affirmative Actions Program conditions to each such trade.

Part I: Requirements. To be eligible for award of a contract under this Invitation to Bid, contractors must
certify as prescribed in Paragraph 1a, of the certification specified in Part II hereof that it adopts the
minimum goals and timetables of minority and female worker utilization, and specific Affirmative Action
steps set forth in Sections 1 and 2 of this Part I.

1.) Goals & Timetables. The goals of minority and female worker utilization required of the contractor are
applicable to each trade which will be used on any project in Greene, Miami, Montgomery, and Preble
Counties, OH (hereinafter the Economic Area).

The required goals and timetables are as follows:

<table>
<thead>
<tr>
<th>Period</th>
<th>Goals of Minority Worker Utilization Expressed in Percentage Terms</th>
</tr>
</thead>
<tbody>
<tr>
<td>From 1/1/2000 to Present</td>
<td>11.5%</td>
</tr>
<tr>
<td>From 4/1/80 to Present</td>
<td>6.9%</td>
</tr>
</tbody>
</table>

Goals of Female Worker Utilization Expressed in Percentage Terms

6.9%
The percentage goals of minority and female worker utilization are expressed in terms of working hours of training and employment as a proportion of the total working hours to be worked by the contractor's entire work force in that trade on all projects (both federal and non-federal) in the Economic Area during the performance of this contract. The working hours for minority and female work and training must be uniform throughout the length of this contract, on all projects and for each of the trades. Further, the transfer of minority and/or female or trainee from employer-to-employer or from project-to-project for the sole purpose of meeting the contractor's goals shall be a violation of this Affirmative Action Program.

In reaching the goals for minority and female utilization, every effort shall be made to find and employ qualified journey-persons. Provided, however, and pursuant to the requirements of the Department of Labor Regulations, 29 CFR 5a.3, twenty-five percent (25%) of apprentices or trainees shall be employed on all projects and shall be in their first year of training, where feasible.

In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and/or trainees at the completion of the training subject to the availability of employment opportunities. Apprentices and trainees must be trained pursuant to programs which have been approved by The U.S. Department of Labor and/or The State of Ohio.

A contractor shall be deemed to be in compliance with the terms and requirements of this Part I by the employment and training of minorities and females in the appropriate percentage of the contractor's aggregate work force in the Economic Area for each trade for which it is committed to the goals under Part I.

However, no contractor shall be found to be in noncompliance solely on account of the contractor's failure to meet the goals and timetables, but such contractor shall be given the opportunity to demonstrate that all of the specific Affirmative Action steps specified in Part I have been instituted and has made every "good faith" effort to make these steps work towards the attainment of the goals and timetables.

2.) **Specific Affirmative Action Steps.** A contractor subject to Part I, must engage in Affirmative Action directed at increasing minority and female utilization, which is at least as extensive and as specific as the following steps:

a) The contractor shall notify community organizations that the contractor has employment opportunities available and shall maintain records of the organizations' responses.

b) The contractor shall maintain a file of the names and addresses of each minority and female referred and what action was taken with respect to each referred worker. If the worker was not employed, the reason therefor. If the worker was not sent to the union hiring hall for referral, the contractor's file shall document this and the reasons therefore.

c) The contractor shall promptly notify the Dayton Human Relations Council (HRC) when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority and/or female, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

d) The contractor should participate in training programs in the area; especially those approved by the U.S. Department of Labor and/or the State of Ohio.
e) The contractor shall disseminate the EEO Policy within the organization by including it in any policy manual, by publicizing it in company newspapers, annual reports, etc.; by conducting staff, employee and union representatives' meetings to explain and discuss the policy; by posting of the policy; and by specific review of the policy with minority and female employees.

f) The contractor shall ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to all projects (both federal and non-federal) in the Economic Area during the performance of its contract or subcontract.

g) The contractor shall make specific and constant personal (both written and oral) recruitment efforts directed at all minority and female organizations, schools, minority and female recruitment training organizations with the Dayton Economic Area.

h) The contractor shall make specific efforts to encourage present minority and female employees to recruit other minorities and females.

i) The contractor shall validate all tests and other selection requirements.

j) The contractor should develop on-the-job training opportunities; participate and assist in any association or employer-group training programs relevant to the contractor's employees needs consistent with its obligations under Part I.

k) The contractor shall evaluate all minority and female personnel for promotional opportunities and encourage employees to seek such opportunities.

l) The contractor shall ensure that seniority practices, job classifications, etc., do not have a discriminatory effect.

m) The contractor shall make certain that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

n) The contractor will monitor all personnel activities to ensure that its EEO Policy is being carried out.

o) The successful contractor shall solicit bids for work to be performed on this project under a subcontract from minority and female contractors and other business associations.

3.) Nothing herein is intended to relieve any contractor during the term of this project from compliance with any other local bid requirements. Further, it shall be the responsibility of each contractor to comply with all terms, conditions, and provisions of the Affirmative Action Programs.
Part II: Contractor's Certification. A contractor will not be eligible for award of a contract under this Invitation to Bid, unless such contractor has submitted as a part of the bid the following certification, which will be deemed a part of the resulting contract:

CONTRACTOR'S CERTIFICATION

BRUMBAUGH CONSTRUCTION, INC.

(Contractor) certifies that:

1. The following listed construction trades will be used in performance of this project.

   Supervisor

   Laborer

   Operating Engineer

   

   

a) as to those trades set forth in the preceding paragraph one hereof, it adopts the minimum minority and female utilization goals and the specific Affirmative Action steps contained in this Affirmative Action Program. Compliance is measured in each trade of the contractor's aggregate work force for all construction work (both federal and non-federal) in the four Counties (Greene, Miami, Montgomery and Preble) subject to this Affirmative Action Program; and

b) the successful contractor will obtain from each subcontractor and submit to the contracting or administering agency prior to the award of any subcontract under this contract, the subcontractor certification required by the Affirmative Action Program.

BRUMBAUGH CONSTRUCTION, INC.

SIGN: ____________________________

(Signature of Authorized Representative of Bidder)

Joseph J. Waterman, Vice President

FAILURE TO SIGN AND SUBMIT THIS DOCUMENT WITH YOUR BID WILL RESULT IN YOUR BID NOT BEING READ
PEP-CERTIFIED MBE (SELECT ONE) PARTICIPATION FORM

Instructions for Bidders / Proposers: Submit one executed copy of this form for each Procurement Enhancement Plan (PEP)-Certified Firm whose participation you plan to count toward the project/contract's participation goal(s). This form must be included with your Bid. To split a PEP-Certified Firm's participation among more than one goal, submit a separate form for each goal (i.e., SBE, MBE, WBE, or DBE).

SECTION 1: BIDDER / PROPOSER INFORMATION

Name of Bidder / Proposer's Firm: Brumbaugh Construction, Inc.

Address: 3520 St. Rt. 49, P0 Box 309

City: Arcanum State: OH ZIP: 45304

Telephone: 937-692-5107 Email: gavin@brumbaughconstruction.com

Primes Base Bid $ 630,123

Name of Project: Wyoming Street Phase 2 Reconstruction

SECTION 2: PEP-CERTIFIED BUSINESS & PARTICIPATION INFORMATION

Name of PEP-Certified Firm: A to Z Property Maintenance

PEP-Certified Firm's Tax ID#: 20-0431498

Scope of Work to Be Performed by Certified Firm: Concrete Items

<table>
<thead>
<tr>
<th>Total Dollar Amount Towards Goal</th>
<th>Percentage Towards Goal</th>
<th>Amount to Be Paid to This PEP Firm for the Work Described:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Bid $ 66,555</td>
<td>10.56</td>
<td>$ 66,555</td>
</tr>
<tr>
<td>Materials $ 23,294.25</td>
<td>3.7</td>
<td>$ 23,294.25</td>
</tr>
<tr>
<td>Labor $ 43,260.75</td>
<td>6.86</td>
<td>$ 43,260.75</td>
</tr>
</tbody>
</table>

SECTION 3: AFFIRMATIONS

The above-named Bidder / Proposer affirms, under penalty of perjury, that it has negotiated in good faith with the above-named PEP-Certified Firm and will utilize the above-named PEP-Certified Firm for the type(s) of work and for the dollar amount(s) described above.

Joseph J. Rateman
Vice President

(Printed Name of Bidder/Proposer's Authorized Agent) 4-2-2020

(Signature of Bidder/Proposer's Authorized Agent)

IF THE BIDDER/OFFEROR IS NOT AWARDED A CONTRACT, OR IF THE HRC DOES NOT APPROVE OF THE TERMS AS STATED ABOVE, THEN ANY AND ALL REPRESENTATIONS ON THIS PARTICIPATION FORM SHALL BE NULL AND VOID.
PEP-CERTIFIED WBE (SELECT ONE) PARTICIPATION FORM

Instructions for Bidders / Proposers: Submit one executed copy of this form for each Procurement Enhancement Plan (PEP)-Certified Firm whose participation you plan to count toward the project/contract's participation goal(s). This form must be included with your Bid. To split a PEP-Certified Firm's participation among more than one goal, submit a separate form for each goal (i.e., SBE, MBE, WBE or DLSB).

SECTION 1: BIDDER / PROPOSER INFORMATION

Name of Bidder / Proposer's Firm: Brumbaugh Construction, Inc.
Address: 3520 St. Rt. 49, PO Box 309
City: Arcanum State: OH ZIP: 45304
Telephone: 937-692-5107 Email: gavin@brumbaughconstruction.com
Primes Base Bid $ 630,133
Name of Project: Wyoming Street Phase 2 Reconstruction

SECTION 2: PEP-CERTIFIED BUSINESS & PARTICIPATION INFORMATION

Name of PEP-Certified Firm: JLM Trucking Inc.
PEP-Certified Firm's Tax ID#: 45-4029764
Scope of Work to Be Performed by Certified Firm: Truck Hauling Off Site Debris Removal

<table>
<thead>
<tr>
<th>Total Dollar Amount Towards Goal</th>
<th>Percentage Towards Goal</th>
<th>Amount to Be Paid to This PEP Firm for the Work Described</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Bid</td>
<td>$ 19,753</td>
<td>$ 19,753</td>
</tr>
<tr>
<td>Materials</td>
<td>$</td>
<td>$ 19,753</td>
</tr>
<tr>
<td>Labor</td>
<td>$ 19,753</td>
<td>$ 19,753</td>
</tr>
</tbody>
</table>

SECTION 3: AFFIRMATIONS

The above-named Bidder / Proposer affirms, under penalty of perjury, that it has negotiated in good faith with the above-named PEP-Certified Firm and will utilize the above-named PEP-Certified Firm for the type(s) of work and for the dollar amount(s) described above.

(Signature of Bidder/Proposer's Authorized Agent) 

JOSEPH J RAPPELMAN (Printed Name of Bidder/Proposer's Authorized Agent) 

Vice President (Title of Bidder/Proposer's Authorized Agent) 4-2-2020 (Date)

IF THE BIDDER/OFFEROR IS NOT AWARDED A CONTRACT, OR IF THE HRC DOES NOT APPROVE OF THE TERMS AS STATED ABOVE, THEN ANY AND ALL REPRESENTATIONS ON THIS PARTICIPATION FORM SHALL BE NULL AND VOID.
PEP-CERTIFIED WBE (SELECT ONE) PARTICIPATION FORM

Instructions for Bidders/Proposers: Submit one executed copy of this form for each Procurement Enhancement Plan (PEP)-Certified Firm whose participation you plan to count toward the project/contract's participation goal(s). This form must be included with your Bid. To split a PEP-Certified Firm's participation among more than one goal, submit a separate form for each goal (i.e., SBE, MBE, WBE or DLSS).

SECTION 1: BIDDER/PROPOSER INFORMATION

Name of Bidder/Proposer's Firm: Brumbaugh Construction, Inc.
Address: 3520 St. Rt. 49, PO Box 309
City: Arcanum State: OH ZIP: 45304
Telephone: 937-692-5107 Email: gavin@brumbaughconstruction.com
Primes Base Bid $ 630,123
Name of Project: Wyoming Street Phase 2 Reconstruction

SECTION 2: PEP-CERTIFIED BUSINESS & PARTICIPATION INFORMATION

Name of PEP-Certified Firm: First Star Safety, LLC
PEP-Certified Firm's Tax ID#: 42-1719025
Scope of Work to Be Performed by Certified Firm: Maintenance of Traffic

<table>
<thead>
<tr>
<th>Total Dollar Amount Towards Goal</th>
<th>Percentage Towards Goal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Bid</td>
<td>$ 8,247</td>
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<td>Materials</td>
<td>$ 3,247</td>
</tr>
<tr>
<td>Labor</td>
<td>$ 5,000</td>
</tr>
</tbody>
</table>

Amount to Be Paid to This PEP Firm for the Work Described:

| Total Bid                      | $ 8,247 |
| Materials                      | $ 3,247 |
| Labor                          | $ 5,000 |

SECTION 3: AFFIRMATIONS

The above-named Bidder/Proposer affirms, under penalty of perjury, that it has negotiated in good faith with the above-named PEP-Certified Firm and will utilize the above-named PEP-Certified Firm for the type(s) of work and for the dollar amount(s) described above.

(Signature of Bidder/Proposer’s Authorized Agent)

JOSEPH J. RODERMAN
(Printed Name of Bidder/Proposer’s Authorized Agent)

Vice President

(Date)

If the Bidder/Offeree is not awarded a contract, or if the HRC does not approve of the terms as stated above, then any and all representations on this participation form shall be null and void.
PEP-CERTIFIED  WBE  (SELECT ONE) PARTICIPATION FORM

Instructions for Bidders / Proposers: Submit one executed copy of this form for each Procurement Enhancement Plan (PEP)-Certified Firm whose participation you plan to count toward the project/contract’s participation goal(s). This form must be included with your Bid. To split a PEP-Certified Firm’s participation among more than one goal, submit a separate form for each goal (i.e., SBE, MBE (WBE or DLSB)).

SECTION 1: BIDDER / PROPOSER INFORMATION

Name of Bidder / Proposer’s Firm: Brumbaugh Construction, Inc.
Address: 3520 St. Rt. 49, PO Box 309
City: Arcanum  State: OH  ZIP: 45304
Telephone: 937-692-5107  Email: gavin@brumbaughconstruction.com
Primes Base Bid $ 630,123
Name of Project: Wyoming Street Phase 2 Reconstruction

SECTION 2: PEP-CERTIFIED BUSINESS & PARTICIPATION INFORMATION

Name of PEP-Certified Firm: Landview Services, LLC
PEP-Certified Firm’s Tax ID#: 91-2191890
Scope of Work to Be Performed by Certified Firm: Hydro-Seeding

<table>
<thead>
<tr>
<th>Total Dollar Amount Towards Goal</th>
<th>Percentage Towards Goal</th>
<th>Amount to Be Paid to This PEP Firm for the Work Described</th>
</tr>
</thead>
<tbody>
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<td>Total Bid</td>
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<td>$ 4,000</td>
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<tr>
<td>Labor</td>
<td>$ 1,400</td>
<td>$ 1,400</td>
</tr>
</tbody>
</table>

SECTION 3: AFFIRMATIONS

The above-named Bidder / Proposer affirms, under penalty of perjury, that it has negotiated in good faith with the above-named PEP-Certified Firm and will utilize the above-named PEP-Certified Firm for the type(s) of work and for the dollar amount(s) described above.

(Signature of Bidder/Proposer’s Authorized Agent)

(Printed Name of Bidder/Proposer’s Authorized Agent)

(Vice President)  4-2-2023

(Date)

IF THE BIDDER/OFFEROR IS NOT AWARDED A CONTRACT, OR IF THE HRC DOES NOT APPROVE OF THE TERMS AS STATED ABOVE, THEN ANY AND ALL REPRESENTATIONS ON THIS PARTICIPATION FORM SHALL BE NULL AND VOID.
PEP PARTICIPATION COMMITMENT AND/OR WAIVER REQUEST FORM

Instructions for Bidders/Proposers: Submit one (1) executed copy of this form with your Bid/Proposal.

- If Option 1 is selected, you must also submit one (1) executed PEP-Certified SBE/MBE/WBE/DLSB Participation Form for each PEP-Certified Firm whose participation you plan to count toward the project/contract’s participation goal(s).
- If Option 2 (WAIVER REQUEST) is selected, you must also submit documentation of your Good Faith Efforts to the City of Dayton Human Relations Council (HRC) within two (2) business days of the Bid Opening / Proposal Due Date. Bidders/Proposers will receive no further reminders about this deadline.

The undersigned affirms that the Bidder/Proposer has satisfied the requirements of the Bid/RFP Specification in the following manner: (Check the box for Option 1 and/or Option 2, complete the appropriate spaces, and sign below.)

**Option 1.** The Bidder/Proposer has secured enough commitment(s) from one or more PEP-Certified Firms to meet or exceed the project’s PEP participation goal(s). The Bidder/Proposer is committed to a minimum of:

<table>
<thead>
<tr>
<th>% SBE</th>
<th>10.56</th>
<th>% MBE</th>
<th>5.06</th>
<th>% WBE</th>
<th>% DLSB</th>
</tr>
</thead>
</table>

participation on this contract, as detailed on the executed PEP-Certified SBE/MBE/WBE/DLSB Participation Form(s) submitted with this Bid/Proposal.

**Option 2 (WAIVER REQUEST).** The Bidder/Proposer is unable to meet the project’s PEP participation goal(s) and requests that the following goal(s) be waived: (Check all that apply.)

- [ ] SBE
- [ ] MBE
- [ ] WBE
- [ ] DLSB

The Bidder/Proposer’s documentation of Good Faith Efforts to meet the participation goal(s) checked above must be submitted to the HRC within two (2) business days of the Bid Opening / Proposal Due Date. The Bidder/Proposer will receive no further reminders about this deadline.

A waiver will be granted based on a Bidder/Proposer’s documented Good Faith Efforts, and only when the HRC determines that the Bidder/Proposer has completed all of the following activities:

1. **Solicited the interest of all PEP-Certified Firms having the capability to perform the work of the contract.** The Bidder/Proposer must solicit this interest at least ten (10) business days before the Bid Opening / Proposal Due Date in order to allow the PEP-Certified Firm sufficient time to respond to the solicitation. Electronic communication will not be deemed as sufficient Good Faith Efforts, if it is the sole method of communication used.

2. **Divided contract work items into economically feasible units to facilitate PEP participation,** even when the Bidder/Proposer might otherwise prefer to perform these work items with its own forces.

3. **Negotiated in good faith with PEP-Certified Firms,** and considered the firms’ prices and capabilities as well as the contract goals. Rejected PEP-Certified Firms as being unqualified only for reasons based on a diligent investigation of their capabilities. The Bidder/Proposer’s standing within its industry; membership in specific groups, organizations, or associations; and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes to reject or not solicit bids from particular PEP-Certified Firms.

4. **Provided interested PEP-Certified Firms with plans and specifications at no cost,** or directed them to the Greater Dayton Minority Business Assistance Center (Dayton MBAC) for information about the project’s plans, specifications, and requirements at least ten (10) business days prior to the Bid Opening / Proposal Due Date in order to assist them in responding to a solicitation.

5. **Sought the Dayton MBAC’s assistance** or used the services of community organizations; contractors’ groups; local, state or federal business assistance offices; or similar organizations to find PEP-Certified Firms. Contacting the HRC for a list of certified companies will not be deemed as sufficient Good Faith Efforts.

**NOTE:** In determining whether a Bidder/Proposer has made Good Faith Efforts, the HRC may take into account the performance of other Bidders/Proposers in meeting the goal(s). For example, when the apparent low bidder fails to meet a participation goal but others meet it, the HRC may reasonably raise the question of whether, with additional reasonable efforts, the apparent low bidder could have met the goal.

(Signature of Bidder/Proposer’s Authorized Agent)  
(Printed Name of Bidder/Proposer’s Authorized Agent)  
(Name of Bidder/Proposer’s Firm)  
(Vice President)  
(Date)

4-2-2020
AFFIRMATIVE ACTION PROGRAM
EQUAL EMPLOYMENT OPPORTUNITY

PROJECT: 2020 Wyoming Street 2 Reconstruction (10% MBE & 5% WBE Participation Goal)
NAME

During the performance of this contract:
3520 St. Rt. 49, PO Box 309
Brumbaugh Construction, Inc.
Arcanum, OH 45304
PH: 937-692-5107
FX: 937-692-5678

being the general contractor, assumes the responsibility and obligation to institute an Affirmative Action Program
which complies with revised City Ordinances 24059 and 26090 and Executive Order 11246 on any city, federal
or federally-assisted construction project, to insure Equal Employment Opportunity regardless of race, color,
religion, sex, national origin, ancestry, place of birth, age, or marital status.

The successful contractor using one or more trades of construction employees must comply with Part I
of these Affirmative Actions Program conditions to each such trade.

Part I: Requirements. To be eligible for award of a contract under this Invitation to Bid, contractors must
certify as prescribed in Paragraph 1a, of the certification specified in Part II hereof that it adopts the
minimum goals and timetables of minority and female worker utilization, and specific Affirmative Action
steps set forth in Sections 1 and 2 of this Part I.

1.) Goals & Timetables. The goals of minority and female worker utilization required of the contractor are
applicable to each trade which will be used on any project in Greene, Miami, Montgomery, and Preble
Counties, OH (hereinafter the Economic Area).

The required goals and timetables are as follows:

Goals of Minority Worker
Utilization Expressed in
Percentage Terms

From 1/1/2000 to Present
11.5%

Goals of Female Worker
Utilization Expressed in
Percentage Terms

From 4/1/80 to Present
6.9%
The percentage goals of minority and female worker utilization are expressed in terms of working hours of training and employment as a proportion of the total working hours to be worked by the contractor's entire work force in that trade on all projects (both federal and non-federal) in the Economic Area during the performance of this contract. The working hours for minority and female work and training must be uniform throughout the length of this contract, on all projects and for each of the trades. Further, the transfer of minority and/or female or trainee from employer-to-employer or from project-to-project for the sole purpose of meeting the contractor's goals shall be a violation of this Affirmative Action Program.

In reaching the goals for minority and female utilization, every effort shall be made to find and employ qualified journey-persons. Provided, however, and pursuant to the requirements of the Department of Labor Regulations, 29 CFR 5a.3, twenty-five percent (25%) of apprentices or trainees shall be employed on all projects and shall be in their first year of training, where feasible.

In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and/or trainees at the completion of the training subject to the availability of employment opportunities. Apprentices and trainees must be trained pursuant to programs which have been approved by The U.S. Department of Labor and/or The State of Ohio.

A contractor shall be deemed to be in compliance with the terms and requirements of this Part I by the employment and training of minorities and females in the appropriate percentage of the contractor's aggregate work force in the Economic Area for each trade for which it is committed to the goals under Part I.

However, no contractor shall be found to be in noncompliance solely on account of the contractor's failure to meet the goals and timetables, but such contractor shall be given the opportunity to demonstrate that all of the specific Affirmative Action steps specified in Part I have been instituted and has made every "good faith" effort to make these steps work towards the attainment of the goals and timetables.

2.) **Specific Affirmative Action Steps.** A contractor subject to Part I, must engage in Affirmative Action directed at increasing minority and female utilization, which is at least as extensive and as specific as the following steps:

   a) The contractor shall notify community organizations that the contractor has employment opportunities available and shall maintain records of the organizations' responses.

   b) The contractor shall maintain a file of the names and addresses of each minority and female referred and what action was taken with respect to each referred worker. If the worker was not employed, the reason therefor. If the worker was not sent to the union hiring hall for referral, the contractor's file shall document this and the reasons therefore.

   c) The contractor shall promptly notify the Dayton Human Relations Council (HRC) when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority and/or female, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

   d) The contractor should participate in training programs in the area; especially those approved by the U.S. Department of Labor and/or the State of Ohio.
e) The contractor shall disseminate the EEO Policy within the organization by including it in any policy manual, by publicizing it in company newspapers, annual reports, etc.; by conducting staff, employee and union representatives' meetings to explain and discuss the policy; by posting of the policy; and by specific review of the policy with minority and female employees.

f) The contractor shall ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to all projects (both federal and non-federal) in the Economic Area during the performance of its contract or subcontract.

g) The contractor shall make specific and constant personal (both written and oral) recruitment efforts directed at all minority and female organizations, schools, minority and female recruitment training organizations with the Dayton Economic Area.

h) The contractor shall make specific efforts to encourage present minority and female employees to recruit other minorities and females.

i) The contractor shall validate all tests and other selection requirements.

j) The contractor should develop on-the-job training opportunities; participate and assist in any association or employer-group training programs relevant to the contractor's employees needs consistent with its obligations under Part I.

k) The contractor shall evaluate all minority and female personnel for promotional opportunities and encourage employees to seek such opportunities.

l) The contractor shall ensure that seniority practices, job classifications, etc., do not have a discriminatory effect.

m) The contractor shall make certain that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

n) The contractor will monitor all personnel activities to ensure that its EEO Policy is being carried out.

o) The successful contractor shall solicit bids for work to be performed on this project under a subcontract from minority and female contractors and other business associations.

3.) Nothing herein is intended to relieve any contractor during the term of this project from compliance with any other local bid requirements. Further, it shall be the responsibility of each contractor to comply with all terms, conditions, and provisions of the Affirmative Action Programs.
Part II: **Contractor's Certification.** A contractor will not be eligible for award of a contract under this Invitation to Bid, unless such contractor has submitted as a part of the bid the following certification, which will be deemed a part of the resulting contract:

**CONTRACTOR'S CERTIFICATION**

BRUMBAUGH CONSTRUCTION, INC. (Contractor) certifies that:

1. The following listed construction trades will be used in performance of this project.
   - Supervisor
   - Laborer
   - Operating Engineer

   a) as to those trades set forth in the preceding paragraph one hereof, it adopts the minimum minority and female utilization goals and the specific Affirmative Action steps contained in this Affirmative Action Program. Compliance is measured in each trade of the contractor's aggregate work force for all construction work (both federal and non-federal) in the four Counties (Greene, Miami, Montgomery and Preble) subject to this Affirmative Action Program; and

   b) the successful contractor will obtain from each subcontractor and submit to the contracting or administering agency prior to the award of any subcontract under this contract, the subcontractor certification required by the Affirmative Action Program.

   **SIGN:**
   
   (Signature of Authorized Representative of Bidder)
   Joseph J. Ratlam, Vice President

**FAILURE TO SIGN AND SUBMIT THIS DOCUMENT WITH YOUR BID WILL RESULT IN YOUR BID NOT BEING READ**
PEP-CERTIFIED MBE (SELECT ONE) PARTICIPATION FORM

Instructions for Bidders / Proposers: Submit one executed copy of this form for each Procurement Enhancement Plan (PEP)-Certified Firm whose participation you plan to count toward the project/contract's participation goal(s). This form must be included with your Bid. To split a PEP-Certified Firm's participation among more than one goal, submit a separate form for each goal (i.e., SBE, MBE, WBE, or DLSB).

SECTION 1: BIDDER / PROPOSER INFORMATION

Name of Bidder / Proposer's Firm: Brumbaugh Construction, Inc.
Address: 3520 St. Rt. 49, PO Box 309
City: Arcanum State: OH ZIP: 45304
Telephone: 937-692-5107 Email: gavin@brumbaughconstruction.com
Primes Base Bid: $630,123
Name of Project: Wyoming Street Phase 2 Reconstruction

SECTION 2: PEP-CERTIFIED BUSINESS & PARTICIPATION INFORMATION

Name of PEP-Certified Firm: A to Z Property Maintenance
PEP-Certified Firm's Tax ID#: 20-0431498
Scope of Work to Be Performed by Certified Firm: Concrete Items

<table>
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<tr>
<th>Total Dollar Amount Towards Goal</th>
<th>Percentage Towards Goal</th>
<th>Amount to Be Paid to This PEP Firm for the Work Described:</th>
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<td>Materials</td>
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</tr>
<tr>
<td>Labor</td>
<td>$43,260.75</td>
<td>$43,260.75</td>
</tr>
</tbody>
</table>

SECTION 3: AFFIRMATIONS

The above-named Bidder / Proposer affirms, under penalty of perjury, that it has negotiated in good faith with the above-named PEP-Certified Firm and will utilize the above-named PEP-Certified Firm for the type(s) of work and for the dollar amount(s) described above.

(Signature of Bidder/Proposer's Authorized Agent)

Joseph J. Baterman
(Printed Name of Bidder/Proposer's Authorized Agent)

Vice President 4-2-2020
(Title of Bidder/Proposer's Authorized Agent)

IF THE BIDDER/PROPOSER IS NOT AWARDED A CONTRACT OR IF THE HRC DOES NOT APPROVE OF THE TERMS AS STATED ABOVE, THEN ANY AND ALL REPRESENTATIONS ON THIS PARTICIPATION FORM SHALL BE NULL AND VOID.
PEP-CERTIFIED WBE (SELECT ONE) PARTICIPATION FORM

**Instructions for Bidders / Proposers:** Submit one executed copy of this form for each Procurement Enhancement Plan (PEP)-Certified Firm whose participation you plan to count toward the project/contract's participation goal(s). This form must be included with your Bid. To split a PEP-Certified Firm's participation among more than one goal, submit a separate form for each goal (i.e., SBE, MBE, WBE or DLSB).

**SECTION 1: BIDDER/PROPOSER INFORMATION**

Name of Bidder / Proposer's Firm: Brumbaugh Construction, Inc.

Address: 3520 St. Rt. 49, PO Box 309

City: Arcanum State: OH ZIP: 45304

Telephone: 937-692-5107 Email: gavin@brumbaughconstruction.com

Primes Base Bid $ 630,123

Name of Project: Wyoming Street Phase 2 Reconstruction

**SECTION 2: PEP-CERTIFIED BUSINESS & PARTICIPATION INFORMATION**

Name of PEP-Certified Firm: JLM Trucking Inc.

PEP-Certified Firm's Tax ID#: 45-4089764

Scope of Work to Be Performed by Certified Firm: **Debris Removal**

<table>
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<tr>
<th>Total Dollar Amount Towards Goal</th>
<th>Percentage Towards Goal</th>
<th>Amount to Be Paid to This PEP Firm for the Work Described</th>
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<td>Total Bid $ 19,753</td>
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<td>$ 19,753</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Labor $ 19,753</td>
<td>3.13%</td>
<td>$ 19,753</td>
</tr>
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**SECTION 3: AFFIRMATIONS**

The above-named Bidder / Proposer affirms, under penalty of perjury, that it has negotiated in good faith with the above-named PEP-Certified Firm and will utilize the above-named PEP-Certified Firm for the type(s) of work and for the dollar amount(s) described above.

(Signature of Bidder/Proposer's Authorized Agent)

JOSEPH J RAFFERTY

(Printed Name of Bidder/Proposer's Authorized Agent)

Vice President

(Date)

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PEP-CERTIFIED WBE (SELECT ONE) PARTICIPATION FORM

Instructions for Bidders / Proposers: Submit one executed copy of this form for each Procurement Enhancement Plan (PEP)-Certified Firm whose participation you plan to count toward the project/contract's participation goal(s). This form must be included with your Bid. To split a PEP-Certified Firm's participation among more than one goal, submit a separate form for each goal (i.e., SBE, MBE/WBE, or DLSB).

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Primes Base Bid $ 630,123
Name of Project: Wyoming Street Phase 2 Reconstruction

SECTION 2: PEP-CERTIFIED BUSINESS & PARTICIPATION INFORMATION

Name of PEP-Certified Firm: First Star Safety, LLC
PEP-Certified Firm’s Tax ID#: 42-1719025
Scope of Work to Be Performed by Certified Firm: Maintenance of Traffic

<table>
<thead>
<tr>
<th>Total Dollar Amount Towards Goal</th>
<th>Percentage Towards Goal</th>
<th>Amount to Be Paid to This PEP Firm for the Work Described</th>
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</thead>
<tbody>
<tr>
<td>Total Bid $ 8,247</td>
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<tr>
<td>Materials $ 3,247</td>
<td>% .51</td>
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</tr>
<tr>
<td>Labor $ 5,000</td>
<td>% .79</td>
<td>$ 5,000</td>
</tr>
</tbody>
</table>

SECTION 3: AFFIRMATIONS

The above-named Bidder / Proposer affirms, under penalty of perjury, that it has negotiated in good faith with the above-named PEP-Certified Firm and will utilize the above-named PEP-Certified Firm for the type(s) of work and for the dollar amount(s) described above.

(Signature of Bidder/Proposer's Authorized Agent)  
Joseph J. Ratzenma
(Printed Name of Bidder/Proposer's Authorized Agent)  
Vice President
(Title of Bidder/Proposer's Authorized Agent)  
4-2-2020  (Date)

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PEP-CERTIFIED

WBE

(SELECT ONE) PARTICIPATION FORM

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SECTION 1: BIDDER/PROPOSER INFORMATION

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Address: 3520 St. Rt. 49, PO Box 309

City: Arcanum State: OH ZIP: 45304

Telephone: 937-692-5107 Email: gavin@brumbaughconstruction.com

Prime Base Bid $ 630,123

Name of Project: Wyoming Street Phase 2 Reconstruction

SECTION 2: PEP-CERTIFIED BUSINESS & PARTICIPATION INFORMATION

Name of PEP-Certified Firm: Landview Services, LLC

PEP-Certified Firm's Tax ID#: 91-2191890

Scope of Work to Be Performed by Certified Firm: Hydro-Seeding

<table>
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<tr>
<th>Total Dollar Amount Towards Goal</th>
<th>Percentage Towards Goal</th>
<th>Amount to Be Paid to This PEP Firm for the Work Described:</th>
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<tr>
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<td>Labor</td>
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SECTION 3: AFFIRMATIONS

The above-named Bidder/Proposer affirms, under penalty of perjury, that it has negotiated in good faith with the above-named PEP-Certified Firm and will utilize the above-named PEP-Certified Firm for the type(s) of work and for the dollar amount(s) described above.

(Signature of Bidder/Proposer's Authorized Agent)

JOSEPH J. RATERMAN
(Printed Name of Bidder/Proposer's Authorized Agent)

Vice President 4-2-2020

(Date)

IF THE BIDDER/OFFEROR IS NOT AWARDED A CONTRACT, OR IF THE HRC DOES NOT APPROVE OF THE TERMS AS STATED ABOVE, THEN ANY AND ALL REPRESENTATIONS ON THIS PARTICIPATION FORM SHALL BE NULL AND VOID.
PEP PARTICIPATION COMMITMENT AND/OR WAIVER REQUEST FORM

Instructions for Bidders/Proposers: Submit one (1) executed copy of this form with your Bid/Proposal.

- If Option 1 is selected, you must also submit one (1) executed PEP-Certified SBE/MBE/WBE/DLSB Participation Form for each PEP-Certified Firm whose participation you plan to count toward the project/contract's participation goal(s).
- If Option 2 (WAIVER REQUEST) is selected, you must also submit documentation of your Good Faith Efforts to the City of Dayton Human Relations Council (HRC) within two (2) business days of the Bid Opening / Proposal Due Date. Bidders/Proposers will receive no further reminders about this deadline.

The undersigned affirms that the Bidder/Proposer has satisfied the requirements of the Bid/RFP Specification in the following manner: (Check the box for Option 1 and/or Option 2, complete the appropriate spaces, and sign below.)

Option 1. The Bidder/Proposer has secured enough commitment(s) from one or more PEP-Certified Firms to meet or exceed the project's PEP participation goal(s). The Bidder/Proposer is committed to a minimum of:

| % SBE  | 10.56 | % MBE  | 5.06 | % WBE  | % DLSB |

participation on this contract, as detailed on the executed PEP-Certified SBE/MBE/WBE/DLSB Participation Form(s) submitted with this Bid/Proposal.

Option 2 (WAIVER REQUEST). The Bidder/Proposer is unable to meet the project’s PEP participation goal(s) and requests that the following goal(s) be waived: (Check all that apply.)

☐ SBE  ☐ MBE  ☐ WBE  ☐ DLSB

The Bidder/Proposer's documentation of Good Faith Efforts to meet the participation goal(s) checked above must be submitted to the HRC within two (2) business days of the Bid Opening / Proposal Due Date. The Bidder/Proposer will receive no further reminders about this deadline.

A waiver will be granted based on a Bidder/Proposer's documented Good Faith Efforts, and only when the HRC determines that the Bidder/Proposer has completed all of the following activities:

1. Solicited the interest of all PEP-Certified Firms having the capability to perform the work of the contract. The Bidder/Proposer must solicit this interest at least ten (10) business days before the Bid Opening / Proposal Due Date in order to allow the PEP-Certified Firm sufficient time to respond to the solicitation. Electronic communication will not be deemed as sufficient Good Faith Efforts, if it is the sole method of communication used.

2. Divided contract work items into economically feasible units to facilitate PEP participation, even when the Bidder/Proposer might otherwise prefer to perform these work items with its own forces.

3. Negotiated in good faith with PEP-Certified Firms, and considered the firms' prices and capabilities as well as the contract goals. Rejected PEP-Certified Firms as being unqualified only for reasons based on a diligent investigation of their capabilities. The Bidder/Proposer's standing within its industry, membership in specific groups, organizations, or associations; and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes to reject or not solicit bids from particular PEP-Certified Firms.

4. Provided interested PEP-Certified Firms with plans and specifications at no cost, or directed them to the Greater Dayton Minority Business Assistance Center (Dayton MBAC) for information about the project's plans, specifications, and requirements at least ten (10) business days prior to the Bid Opening / Proposal Due Date in order to assist them in responding to a solicitation.

5. Sought the Dayton MBAC's assistance or used the services of community organizations; contractors' groups; local, state or federal business assistance offices; or similar organizations to find PEP-Certified Firms. Contacting the HRC for a list of certified companies will not be deemed as sufficient Good Faith Efforts.

NOTE: In determining whether a Bidder/Proposer has made Good Faith Efforts, the HRC may take into account the performance of other Bidders/Proposers in meeting the goal(s). For example, when the apparent low bidder fails to meet a participation goal but others meet it, the HRC may reasonably raise the question of whether, with additional reasonable efforts, the apparent low bidder could have met the goal.

[Signatures and printed names]

(Signature of Bidder/Proposer’s Authorized Agent)  (Name of Bidder/Proposer’s Firm)

(Printed Name of Bidder/Proposer’s Authorized Agent)  (Title of Bidder/Proposer’s Authorized Agent)  (Date)
Wyoming Street Reconstruction Phase 2

Disclaimer: Map and parcel data are believed to be accurate, but accuracy is not guaranteed. This is not a legal document and should not be substituted for a legal description.

Navarre, OH

BACK
City Manager’s Report

From 6450 - PW/Civil Engineering

Date May 13, 2020

Expense Type Award of Contract

Total Amount $1,646,636.80 thru 8/30/2022

Supplier, Vendor, Company, Individual
Double Jay Construction, Inc.

Address
25 Harrisburg Dr.
Englewood OH 45322

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<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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Includes Revenue to the City Yes ☐ No ☑
Affirmative Action Program ☑ Yes ☐ No ☑ N/A

Description

SPRINGFIELD STREET RECONSTRUCTION & WATER MAIN REPLACEMENT PHASE III
(8% DBE PARTICIPATION GOAL / 12.4% DBE PARTICIPATION ACHIEVED)
(FEDERAL CONSTRUCTION FUNDS)

This project will reconstruct Springfield Street from McFadden Avenue to North Smithville Road. This work will reconstruct Springfield Street with new asphalt pavement including new curbs, sidewalks, driveways, street lighting, storm sewer catch basins, replacing the water main and performing other work incidental thereto.

Four bids were received for this project. It is recommended that the contract be awarded to the lowest bidder, Double Jay Construction, Inc., in the amount of $1,646,636.80. This amount includes the base bid in the amount of $1,569,688.00, Alternate No. 1, Asphalt Rejuvenating Agent, in the amount of $6,808.80 and Alternate No. 2, Asphalt Concrete with Fibers, in the amount of $70,140.00. The estimated cost for the project was $1,988,565.00. The time bid for completion is November 20, 2020.

This project is being funded using Federal Construction Funds.

A Certificate of Funds, Tabulation of Bids, ODOT DBE Affirmation, Bid Form from the firm recommended for award, and location map are attached.

Signatures/Approval

Approved by City Commission

Clerk

Date

FORM NO. MS-16

Updated 06/2016
# CERTIFICATE OF FUNDS

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

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</tr>
<tr>
<td>Fund</td>
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<td>Acct</td>
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</tbody>
</table>

**Attach additional pages for more FOAPALs**

**Vendor Name:** Double Jay Construction, Inc.

**Vendor Address:**

25 Harrisburg Dr.  Englewood  Ohio  45322

**Street**  **City**  **State**  **Zip code + 4**

**Federal ID:** 34-1184875

**Commodity Code:** 91831

**Purpose:** Award of Contract for Springfield Street Reconstruction & Water Main Replacement Phase III

**Contact Person:** Keith Steeber, City Engineer

**Public Works/Civil Engineering**

**Date:** 4/15/2020

**Department/Division:**

**Originating Department Director’s Signature:**

**SECTION II - to be completed by the Finance Department**

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

**Finance Director Signature:**

**Date:** 05/04/2020

**CF Prepared by:**

**Date:** 05/04/2020

**CF/CT Number:** 20-2533

**Finance Department:**

**October 18, 2011**
Springfield Street Reconstruction and Water Main Replacement Phase III (#6844448)

Owner: City of Dayton Ohio
Solicitor: Dayton OH, City of

Show Evaluation Options
Evaluation Options

- Show the engineer's estimate
- Do not highlight items
- Highlight items more or less than 10 % of average
- Highlight items more or less than 10 % of engineer's estimate

Sections shown in this color are not included in the Base Bid Total - Mandatory completion
Sections shown in this color are not included in the Base Bid Total - Optional completion
Sections shown in this color are fixed and cannot be edited by the bidder

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<th>Extension</th>
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03/26/2020 12:00 PM EDT
Ron, thanks for getting the update affirmation information so quickly.

The DBE Plan for the subject project is acceptable as follows: Prime Contract Amount $1,646,636.80 x 8% = $131,730.94

The DBE Goal will be met with participation from:

Security Fence Group performing light poles/foundation, luminaires and brackets, conduit, pull boxes, cables, signs and poles in the amount of $221,584.30

Please remember that the DBE Goal is a percentage of the overall contract. If the project increases or decreases the dollar amount of the DBE Goal may change accordingly. Please let the district CCO and myself know if you should have any changes to the DBE Plan for the subject project.

As far as DBE goal is concerned you may now proceed with contract signing. Within 30 days of the prime contract execution (or before the date the DBE sub needs to start work – whichever comes first) the prime needs to have executed sub agreements/purchase orders for all DBEs submitted to the District CCO- (included in this email) for review and acceptance.

Julie,

Per your request, please see the attached, revised DBE Affirmation Form (Security Fence Group, Inc.) for the above referenced Project. As you will see, we included a spreadsheet referencing the Line Items of work tasks that Security Fence Group will be performing.

Please feel free to contact me if you have any questions or need any additional information.

Please confirm receipt of this email and attachment.

Thank you,
Ron Blair
Double Jay Construction, Inc.
25 Harrisburg Dr.
Englewood, OH  45322
(937) 832-3123    phone
(937) 832-2596    fax
Email:  ron@doublejayinc.com

From:  DOT.ContractsLettingMgr@dot.ohio.gov  [mailto:DOT.ContractsLettingMgr@dot.ohio.gov]
Sent:  Wednesday, April 01, 2020 3:30 PM
To:  Ron Blair;  DOT.ContractsLettingMgr@dot.ohio.gov
Cc:  Joe.Weinel@daytonohio.gov;  Weinandy, Dave;  Barb Brewer;  Lee Overturf
Subject:  RE: DBE Affirmation Form;  MOT Springfield Street Reconstruction Phase 3 (Dayton, OH) PID 100467
Importance:  High

Ron,
Thanks for submitting this in time.  I am just getting to review it.  There is no specific work tasks listed, only reference numbers.
Could you have them please write in the work in words.  If anyone else ever looks at this we need to know they can pull up the form and know right away what work is being done.

Thank you!
Julie Dick

From:  Ron Blair <ron@doublejayinc.com>
Sent:  Monday, March 30, 2020 4:29 PM
To:  DOT Contracts Letting Mgr <DOT.ContractsLettingMgr@dot.ohio.gov>
Cc:  Joe.Weinel@daytonohio.gov;  Weinandy, Dave <Dave.Weinandy@daytonohio.gov>;  Barb Brewer <barb@doublejayinc.com>;  Lee Overturf <lee@doublejayinc.com>
Subject:  DBE Affirmation Form;  MOT Springfield Street Reconstruction Phase 3 (Dayton, OH) PID 100467

As a follow up requirement to the above referenced Project that bid to the City of Dayton on 03/26/2020, please see the attached DBE Affirmation Form of the following proposed DBE Firm:

- Security Fence Group, Inc.

Please confirm receipt of this email, and please feel free to contact me if you have any questions, concerns, or need any additional information.

Thank you,

Ron Blair
Double Jay Construction, Inc.
25 Harrisburg Dr.
Englewood, OH  45322
(937) 832-3123    phone
(937) 832-2596    fax
Email:  ron@doublejayinc.com
CITY OF DAYTON, OHIO
DEPARTMENT OF PUBLIC WORKS

Bid
Springfield Street Reconstruction &
Water Main Replacement Phase III
(8% DBE Participation Goal)
(Federal Construction Funds)

Bidder
Double Jay Construction, Inc
25 Harrisburg Dr
Englewood, Oh 45322
Ph/Fax (937)832-3123/832-2596
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<td>625</td>
<td>GROUND ROD</td>
<td>EACH</td>
<td>12</td>
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<td>625</td>
<td>NO. 10 LIGHT POLE BRACKET C/E L.F.</td>
<td>1620</td>
<td>$1.95</td>
<td>$3,159.00</td>
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<td>35</td>
<td>625</td>
<td>PULLBOX, 725.09, 17&quot; x 30&quot; x 36&quot; EACH</td>
<td>4</td>
<td>$962.00</td>
<td>$3,848.00</td>
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<tr>
<td></td>
<td>36</td>
<td>625</td>
<td>PULLBOX, 725.09, 24&quot; x 36&quot; x 48&quot; EACH</td>
<td>4</td>
<td>$1,444.00</td>
<td>$5,776.00</td>
</tr>
<tr>
<td></td>
<td>37</td>
<td>625</td>
<td>TRENCH</td>
<td>L.F.</td>
<td>2375</td>
<td>$10.04</td>
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<tr>
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<td>38</td>
<td>625</td>
<td>2&quot; CONDUIT BORED UNDER LILLY L.F.</td>
<td>785</td>
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<td></td>
<td>39</td>
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<td>SIGN, FLAT SHEET, APP</td>
<td>S.F.</td>
<td>81</td>
<td>$24.95</td>
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<td></td>
<td>40</td>
<td>630</td>
<td>SIGN, DOUBLE FACED STREET NA EACH</td>
<td>2</td>
<td>$116.00</td>
<td>$232.00</td>
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<td>630</td>
<td>GROUND MOUNTED SUPPORT, N.L.F.</td>
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<td>$870.00</td>
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<td>27</td>
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<td>43</td>
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<td>REMOVAL OF POLE MOUNTED SI EACH</td>
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<td>$405.00</td>
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</tr>
<tr>
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<td>----------</td>
<td>-----------</td>
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<td></td>
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<tr>
<td>45</td>
<td>INTERCONNECT MISC.: FIBER OP' EACH</td>
<td>3</td>
<td></td>
<td>$211.00</td>
<td>$633.00</td>
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<td>CENTER LINE (DOUBLE YELLOW) L.F.</td>
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<td>2500</td>
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<tr>
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<td>PAVEMENT ARROW, WHITE EACH</td>
<td>2</td>
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<td>$444.00</td>
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<tr>
<td>50</td>
<td>BIKE SYMBOL (WHITE) EACH</td>
<td>4</td>
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<td>$435.00</td>
<td>$1,740.00</td>
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<td>51</td>
<td>BIKE ARROW (WHITE) EACH</td>
<td>4</td>
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<td>$204.00</td>
<td>$816.00</td>
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<td>52</td>
<td>TOPSOIL FURNISHED AND PLACE C.Y.</td>
<td>60</td>
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<td>HYDRO SEEDING, INCLUDING MLS.Y.</td>
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<td></td>
<td>$6.20</td>
<td>$3,286.00</td>
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<td>54</td>
<td>EXCAVATION AND BACKFILL, 12&quot; L.F.</td>
<td>65</td>
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<td>MANHOLE, TYPE &quot;A&quot; EACH</td>
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<td>57</td>
<td>CATCH BASIN, ODOT TYPE &quot;3&quot; EACH</td>
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<td>$2,874.00</td>
<td>$11,496.00</td>
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<td>58</td>
<td>CATCH BASIN, ODOT TYPE &quot;3A&quot; EACH</td>
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<td>$2,280.00</td>
<td>$9,120.00</td>
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<td>$2,738.00</td>
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<tr>
<td>60</td>
<td>ODOT STORM WATER POLLUTION PREV LUMP</td>
<td>1</td>
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<td>$4,194.00</td>
<td>$4,194.00</td>
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<tr>
<td>61</td>
<td>MANHOLE ADJUSTED TO GRADE EACH</td>
<td>14</td>
<td></td>
<td>$342.00</td>
<td>$4,788.00</td>
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<td>62</td>
<td>VALVE BOX ADJUSTED TO GRADE EACH</td>
<td>10</td>
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<td>$172.00</td>
<td>$1,720.00</td>
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<td>63</td>
<td>NO. 2 STONE, STONE CHANNEL A.C.Y.</td>
<td>25</td>
<td></td>
<td>$72.35</td>
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<td>64</td>
<td>CATCH BASIN TYPE &quot;E&quot; RETROFIT EACH</td>
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<td>$2,326.00</td>
<td>$9,304.00</td>
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**Springfield Street Water Main**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Quantity</th>
<th>Unit Cost</th>
<th>Total Cost</th>
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<tbody>
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<td>65</td>
<td>LOW STRENGTH MORTAR C.Y.</td>
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<td>EXCAVATION AND BACKFILL, 4&quot; L.F.</td>
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<td>67</td>
<td>EXCAVATION AND BACKFILL, 6&quot; L.F.</td>
<td>260</td>
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<tr>
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<td>EXCAVATION AND BACKFILL, 10&quot; L.F.</td>
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<tr>
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<td>$109.75</td>
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<tr>
<td>70</td>
<td>EXCAVATION AND BACKFILL, 16&quot; L.F.</td>
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<tr>
<td>71</td>
<td>4&quot; DUCTILE IRON WATER PIPE &amp; L.F.</td>
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<td>$31.05</td>
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<tr>
<td>72</td>
<td>6&quot; DUCTILE IRON WATER PIPE &amp; L.F.</td>
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<td>$22.10</td>
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<tr>
<td>73</td>
<td>10&quot; DUCTILE IRON WATER PIPE &amp; L.F.</td>
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<td>$170.00</td>
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<tr>
<td>75</td>
<td>16&quot; DUCTILE IRON WATER PIPE &amp; L.F.</td>
<td>1200</td>
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<td>$82.75</td>
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<tr>
<td>76</td>
<td>ABANDONED, SPECIAL (WATER V EA.)</td>
<td>6</td>
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<td>$355.00</td>
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<tr>
<td>77</td>
<td>4&quot; GATE VALVE AND APPURTENA EA.</td>
<td>3</td>
<td></td>
<td>$659.00</td>
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<tr>
<td>78</td>
<td>6&quot; GATE VALVE AND APPURTENA EA.</td>
<td>6</td>
<td></td>
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<tr>
<td>79</td>
<td>10&quot; GATE VALVE AND APPURTENA EA.</td>
<td>1</td>
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<td>$1,828.50</td>
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<tr>
<td>80</td>
<td>12&quot; GATE VALVE AND APPURTEN EA.</td>
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<td>81</td>
<td>16&quot; GATE VALVE AND APPURTEN EA.</td>
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<tr>
<td>82</td>
<td>FIRE HYDRANT, INSTALLED EA.</td>
<td>4</td>
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<tr>
<td>83</td>
<td>FIRE HYDRANT, REMOVAL EA.</td>
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<td></td>
<td>$644.00</td>
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<tr>
<td>84</td>
<td>12&quot;X12&quot; WATER MAIN TAP EA.</td>
<td>3</td>
<td></td>
<td>$2,364.00</td>
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<tr>
<td>85</td>
<td>SERVICE REPLACEMENT, METHOL L.F.</td>
<td>100</td>
<td></td>
<td>$52.80</td>
</tr>
<tr>
<td>86</td>
<td>CURB STOP</td>
<td>4</td>
<td></td>
<td>$114.00</td>
</tr>
<tr>
<td>87</td>
<td>CURB BOX</td>
<td>4</td>
<td></td>
<td>$61.00</td>
</tr>
<tr>
<td>88</td>
<td>CUT &amp; PLUG, 4&quot; WATER LINE EA.</td>
<td>2</td>
<td></td>
<td>$594.00</td>
</tr>
<tr>
<td>89</td>
<td>CUT &amp; PLUG, 6&quot; WATER LINE EA.</td>
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<td></td>
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<td>CUT &amp; PLUG, 10&quot; WATER LINE EA.</td>
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<td>CUT &amp; PLUG, 12&quot; WATER LINE EA.</td>
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<td>92</td>
<td>WATER CONTINGENCY LUMP</td>
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<td>$34,202.00</td>
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**Fixed Pricing**

- ODOT TEMPORARY EROSION CONTROL EACH: $8,470.00
- TEMPORARY STREET LIGHTING A LUMP: $15,730.00

Total: $201,700.00
<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Quantity</th>
<th>Unit Price</th>
<th>Total</th>
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<td>95 SPL</td>
<td>ROAD CONTINGENCY ALLOWANCE LUMP</td>
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<td>$177,500.00</td>
<td>$177,500.00</td>
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<tr>
<td></td>
<td>Alternate No. 1 Asphalt Rejuvenating Agent</td>
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<td>96 SPL</td>
<td>ASPHALT REJUVENATING AGENT S.Y.</td>
<td>5674</td>
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<td>$6,808.80</td>
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<td>Alternate No. 2 Asphalt Concrete with Fibers</td>
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<td>$70,140.00</td>
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<tr>
<td>97 ODOT 826</td>
<td>ASPHALT CONCRETE SURFACE CONCRETE</td>
<td>600</td>
<td>$116.90</td>
<td>$70,140.00</td>
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<td></td>
<td>TONS</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Base Bid Total:</td>
<td></td>
<td></td>
<td>$1,569,688.00</td>
</tr>
</tbody>
</table>
Bidder is
An Individual
Firm Name

Business Address

Telephone

Partnership
Firm Name

Members of Firm and
Their Business Address

Telephone

Corporation
Name

State of Incorporation

Name and Title of
Officers with Authority
to Sign Contract

Ron Blari, President  Randy Blair, VP
Lee Overturf, Asst VP  Kelly Long, Asst VP
25 Harrisburg Dr  Englewood, OH 45322
25 Harrisburg Dr  Englewood, OH 45322
Telephone  (937) 832-3123  Fax  (937) 832-2596

E-mail  ron@doublejayinc.com

Federal I.D.#  34-1184875

Dated this 26 day of March, 20

Bidder: Double Jay Construction, Inc
(Person, Firm, or Corporation)

By:  Ron Blair President

Title:  President
Contract Number: 6844448
Contractor ID: 6614873
Bond ID: SOH20559472
BondType: 0001
BondForm: Bid Bond in accordance with Contract Specifications
BidDate: 3 26 2020
JobDescription: Springfield Street Reconstruction and Water Main Replacement Phase III
BidSecurity: Ten Percent of Total Amount Bid (10\%)
BidSecurityPercent: 10
BidSecurityMaximum:
6. **FEDERALLY REQUIRED EEO CERTIFICATION FORM**

The bidder hereby certifies that he has ☑, participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that he has ☑, filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements. **The Bidder must select the appropriate “has or has not” above.**
CITY OF DAYTON, OHIO
Department of Public Works

Responsible Contractor Bidding Requirements
(Form 1 of 2)

In accordance with Ordinance No. 31487-16 of the City of Dayton, Ohio Revised Code of General Ordinances,

I, ____________________________________________ hereby certify that
(print name – an Officer of the company)

Double Jay Construction Inc
__________________________ meets the following Contractor requirements
(company)
relating to this City of Dayton construction project.

Check All That Apply:

☐ Comply with all City of Dayton income tax obligations and requirements

☐ Maintain worker’s compensation insurance for all employees as required by the State of Ohio

☐ Comply with State or Federal prevailing wage rate laws, as applicable and required by the funding of this project

☐ Comply with the State of Ohio Bureau of Worker’s Compensation Drug Free Workplace Policy

By: ____________________________________________
(signature)

Title: Ron Blair, President

Date: 3/26/2020
CITY OF DAYTON, OHIO  
Department of Public Works  

Responsible Contractor Bidding Requirements  
(Form 2 of 2)

A. Please provide a complete listing of the fringe benefits provided to employees expected to be utilized at the project site, including, but not limited, to health insurance and retirement benefits. {Reference to benefits traditionally provided on past, similar projects can be made.}

Health Insurance

Life Insurance

Pension

Vacation


B. Please identify any "bona fide apprentice training program" in which this company participates in accordance with the Ohio Bureau of Apprenticeship Training and the U. S. Department of Labor.

N/A


C. Please provide a list of subcontractors whose quotes or information are included or used in the bid submitted for this project.

Security Fence Group  
Barrett Paving  
First Star Safety  
Aero-Mark  
Oglesby Construction  
Coyle SWPPP
CERTIFICATION
OF COMPLIANCE WITH OHIO REVISED CODE SECTION 3517.13
FOR CONTRACTS IN EXCESS OF FIVE HUNDRED DOLLARS ($500.00)

STATE OF OHIO,
COUNTY OF Montgomery ss:

Ron Blair ____________________________ being duly sworn, deposes and states as follows:

1. I am duly authorized to make the statements contained herein on behalf of
   Double Jay Construction Inc _____________________ ("the Contracting Party").

2. The Contracting Party is a/an (select one):
   □ Individual, partnership, or other unincorporated business association (including without
     limitation, a professional association organized under Ohio Revised Code Chapter
     1785), estate, or trust.
   ✑ Corporation organized and existing under the laws of the State of OHIO ________.
   □ Labor organization.

3. I hereby affirm that the Contracting Party and each of the individuals specified in R.C.
   3517.93(I)(3) (with respect to non-corporate entities and labor organizations) or R.C.
   3517.93(J)(3) (with respect to corporations) are in full compliance with the political
   contributions limitations set forth in R.C. 3517.93(I) and (J), as applicable. I understand
   that a false representation on this certification constitutes a felony of the fifth degree pursuant to
   R.C. 3517.93(AA) and 3517.992(R)(3). Any contract that contains a falsified certification
   shall be rescinded.

By: ____________

Title: Ron Blair, President
CITY OF DAYTON
CONTRACTOR NON-COLLUSION AFFIDAVIT
TO BE SUBMITTED WITH THE BID

STATE OF __________________________) SS:

COUNTY OF ________________________) SS:

Ron Blair __________________________________________, being first duly sworn deposes and
states that:

(1) He/she is President __________________________ of
    __________________________
    (owner, partner, officer, representative, or agent)

    Double Jay Construction Inc
    __________________________
    (business or organization name)

(2) He/She is fully informed respecting the preparation and contents of the attached Bid
    and all pertinent circumstances respecting such Bid.

(3) Such offering is genuine and is not a collusive or sham offering

(4) Neither the said Bidder nor any of its officers, partners, owners, agents,
    representatives, employees or parties in interest, including this affiant, has in any way
    colluded, conspired, connived, or agreed, directly or indirectly with any other Bidder, firm
    or person to submit a sham Bid in connection with the Contract for which the attached Bid
    has been submitted or to refrain from offering in connection with such contract, or has in
    any manner, directly or indirectly, sought by agreement or collusion or communication or
    conference with any other Bidder, or to secure through collusion, conspiracy, connivance
    or unlawful agreement any advantage against the City of Dayton, its employees, or
    citizens.

(5) The price or prices quoted in the attached Bid are fair and proper and are not tainted
    by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder
    or any of its agents, representatives, owners, employees, or parties in interest including
    the affiant.

SIGNED

Ron Blair, President

TITLE

[Signature]
Contractor Qualifications

Contractor is prequalified with Ohio Department of Transportation to perform work? Yes [X] No []

Prime contractor will perform 55% percent of base bid. Prime contractor is required to perform no less than 30 percent of the total contract price.
During the performance of this contract:

Double Jay Construction Inc
25 Harrisburg Dr Englewood, OH 45322
(937)832-3123/832-2596

being the general contractor, assumes the responsibility and obligation to institute an Affirmative Action Program which complies with revised City Ordinances 24059 and 26090 and Executive Order 11246 on any city, federal or federally-assisted construction project, to insure Equal Employment Opportunity regardless of race, color, religion, sex, national origin, ancestry, place of birth, age, or marital status.

The successful contractor using one or more trades of construction employees must comply with Part I of these Affirmative Actions Program conditions to each such trade.

**Part I: Requirements.** To be eligible for award of a contract under this Invitation to Bid, contractors must certify as prescribed in Paragraph 1a, of the certification specified in Part II hereof that it adopts the minimum goals and timetables of minority and female worker utilization, and specific Affirmative Action steps set forth in Sections 1 and 2 of this Part I.

1.) **Goals & Timetables.** The goals of minority and female worker utilization required of the contractor are applicable to each trade which will be used on any project in Greene, Miami, Montgomery, and Preble Counties, OH (hereinafter the Economic Area).

The required goals and timetables are as follows:

<table>
<thead>
<tr>
<th>Period</th>
<th>Goals of Minority Worker Utilization Expressed in Percentage Terms</th>
</tr>
</thead>
<tbody>
<tr>
<td>From 1/1/2000 to Present</td>
<td>11.5%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Period</th>
<th>Goals of Female Worker Utilization Expressed in Percentage Terms</th>
</tr>
</thead>
<tbody>
<tr>
<td>From 4/1/80 to Present</td>
<td>6.9%</td>
</tr>
</tbody>
</table>
The percentage goals of minority and female worker utilization are expressed in terms of working hours of training and employment as a proportion of the total working hours to be worked by the contractor's entire work force in that trade on all projects (both federal and non-federal) in the Economic Area during the performance of this contract. The working hours for minority and female work and training must be uniform throughout the length of this contract, on all projects and for each of the trades. Further, the transfer of minority and/or female or trainee from employer-to-employer or from project-to-project for the sole purpose of meeting the contractor's goals shall be a violation of this Affirmative Action Program.

In reaching the goals for minority and female utilization, every effort shall be made to find and employ qualified journey-persons. Provided, however, and pursuant to the requirements of the Department of Labor Regulations, 29 CFR 5a.3, twenty-five percent (25%) of apprentices or trainees shall be employed on all projects and shall be in their first year of training, where feasible.

In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and/or trainees at the completion of the training subject to the availability of employment opportunities. Apprentices and trainees must be trained pursuant to programs which have been approved by The U.S. Department of Labor and/or The State of Ohio.

A contractor shall be deemed to be in compliance with the terms and requirements of this Part I by the employment and training of minorities and females in the appropriate percentage of the contractor's aggregate work force in the Economic Area for each trade for which it is committed to the goals under Part I.

However, no contractor shall be found to be in noncompliance solely on account of the contractor's failure to meet the goals and timetables, but such contractor shall be given the opportunity to demonstrate that all of the specific Affirmative Action steps specified in Part I have been instituted and has made every "good faith" effort to make these steps work towards the attainment of the goals and timetables.

2.) Specific Affirmative Action Steps. A contractor subject to Part I, must engage in Affirmative Action directed at increasing minority and female utilization, which is at least as extensive and as specific as the following steps:

   a) The contractor shall notify community organizations that the contractor has employment opportunities available and shall maintain records of the organizations' responses.

   b) The contractor shall maintain a file of the names and addresses of each minority and female referred and what action was taken with respect to each referred worker. If the worker was not employed, the reason therefor. If the worker was not sent to the union hiring hall for referral, the contractor's file shall document this and the reasons therefore.

   c) The contractor shall promptly notify the Dayton Human Relations Council (HRC) when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority and/or female, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

   d) The contractor should participate in training programs in the area; especially those approved by the U.S. Department of Labor and/or the State of Ohio.
e) The contractor shall disseminate the EEO Policy within the organization by including it in any policy manual, by publicizing it in company newspapers, annual reports, etc.; by conducting staff, employee and union representatives' meetings to explain and discuss the policy; by posting of the policy; and by specific review of the policy with minority and female employees.

f) The contractor shall ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to all projects (both federal and non-federal) in the Economic Area during the performance of its contract or subcontract.

g) The contractor shall make specific and constant personal (both written and oral) recruitment efforts directed at all minority and female organizations, schools, minority and female recruitment training organizations with the Dayton Economic Area.

h) The contractor shall make specific efforts to encourage present minority and female employees to recruit other minorities and females.

i) The contractor shall validate all tests and other selection requirements.

j) The contractor should develop on-the-job training opportunities; participate and assist in any association or employer-group training programs relevant to the contractor's employees needs consistent with its obligations under Part I.

k) The contractor shall evaluate all minority and female personnel for promotional opportunities and encourage employees to seek such opportunities.

l) The contractor shall ensure that seniority practices, job classifications, etc., do not have a discriminatory effect.

m) The contractor shall make certain that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

n) The contractor will monitor all personnel activities to ensure that its EEO Policy is being carried out.

o) The successful contractor shall solicit bids for work to be performed on this project under a subcontract from minority and female contractors and other business associations.

3.) Nothing herein is intended to relieve any contractor during the term of this project from compliance with any other local bid requirements. Further, it shall be the responsibility of each contractor to comply with all terms, conditions, and provisions of the Affirmative Action Programs.
Part II: **Contractor's Certification.** A contractor will not be eligible for award of a contract under this Invitation to Bid, unless such contractor has submitted as a part of the bid the following certification, which will be deemed a part of the resulting contract:

---

**CONTRACTOR'S CERTIFICATION**

Double Jay Construction Inc (Contractor) certifies that:

1. The following listed construction trades will be used in performance of this project.

   - Laborer
   - Operator
   - Truck Driver
   - Concrete Finisher
   - Pipe Layer
   - Electrician

   a) as to those trades set forth in the preceding paragraph one hereof, it adopts the minimum minority and female utilization goals and the specific Affirmative Action steps contained in this Affirmative Action Program. Compliance is measured in each trade of the contractor's aggregate work force for all construction work (both federal and non-federal) in the four Counties (Greene, Miami, Montgomery and Preble) subject to this Affirmative Action Program; and

   b) the successful contractor will obtain from each subcontractor and submit to the contracting or administering agency prior to the award of any subcontract under this contract, the subcontractor certification required by the Affirmative Action Program.

SIGN: 

(Signature of Authorized Representative of Bidder)

FAILURE TO SIGN AND SUBMIT THIS DOCUMENT WITH YOUR BID WILL RESULT IN YOUR BID NOT BEING READ
OHIO DEPARTMENT OF TRANSPORTATION

LPA DBE Utilization Form

NOTE: Please use your 'MOUSE' or 'TAB' key to advance to the next field. Hitting the "ENTER" key will move you to the next page. If not finished, please use the 'PREVIOUS' key to navigate back to the Vendor Information Page.

Contractor and Project Information

Form Submission Version

- [ ] Original
- [ ] Updated

Contractor*

DOUBLE JAY CONSTRUCTION INC 070415002
Phone
(937) 832-3123

Email*
ron@doublejayinc.com

100467

Project ID (PID)

Total Project Bid
$ 1569688.00

DBE Vendor Information

Firm (#1)
Security Fence Group, Inc.

Firm(#1) Used As:
Subcontractor

Bid Quote
$ 221584.30

Firm (#2)
$ 221584.30

DBE Percentage Met

14.12%

The Ohio Department of Transportation
1980 West Broad Street, Columbus Ohio 43223
Mike DeWine, Governor | Jack Marchbanks, Ph.D., ODOT Director | Feedback | Ohio.gov
Confirmation Page

Please Confirm that you are ready to submit the DBE Use List Form.

PID: 100467

Total Project Bid Amount: $1569688.00

DBE Commitment Total: $221584.30

DBE Percentage Met: $14.12

Select the Submit DBE Bid Form button to proceed or the Previous Button to continue editing the document.

Submit DBE Bid Form
Thank You
The form was submitted successfully.
Thank you for your Submission to the DBE Project Use List.
Disclaimer: Map and parcel data are believed to be accurate, but accuracy is not guaranteed. This is not a legal document and should not be substituted for a title search, appraisal, survey, or for zoning verification.

Map Scale
1 inch = 200 feet
2/6/2017
City Manager's Report

From: 6450 - PW/Civil Engineering  
Supplier, Vendor, Company, Individual: John R. Jurgensen Company  
Address: 1780 Enon Road  
Springfield, Ohio 45502  

Date: May 13, 2020  
Expense Type: Award of Contract  
Total Amount: $2,310,180.96 thru 8/14/22

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issue 9 Residential Resurfacing</td>
<td>40030-6450-1428-54</td>
<td>$1,099,502.00</td>
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<tr>
<td>Residential Road Resurfacing</td>
<td>49025-6450-1428-54</td>
<td>$450,000.00</td>
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<td>Street Maintenance Ohio Gas Tax</td>
<td>21200-6450-1424-54</td>
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<tr>
<td>Storm Capital Funds</td>
<td>58002-3420-1424-54-ST1001</td>
<td>$19,821.48</td>
</tr>
<tr>
<td>Sanitary Capital Funds</td>
<td>55004-3420-1424-54-SF1001</td>
<td>$19,821.48</td>
</tr>
<tr>
<td>Water Distribution Funds</td>
<td>53003-3420-1424-54-WF1004</td>
<td>$15,540.00</td>
</tr>
</tbody>
</table>

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

2020 RESIDENTIAL ASPHALT RESURFACING II  
(5% SBE AND 15% MBE PARTICIPATION GOAL)  
(5.03% SBE AND 15.19% MBE PARTICIPATION ACHIEVED)

This project consists of the asphalt resurfacing of various streets throughout the city of Dayton. Work includes the grinding of existing asphalt, application of tack coat, asphalt, and performing other work incidental thereto.

Two bids were received for this project. It is recommended that the contract be awarded to the lowest bidder, John R. Jurgensen Company, in the amount of $2,310,180.96. This amount includes the base bid in the amount of $2,205,282.66, and Alternate No. 1, Contingency Allowance, in the amount of $104,898.30. The estimated cost for the project was $2,344,073.25. The time bid for completion is August 14, 2020.

This project is being funded using General Capital funds and Water Capital funds.

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

Signatures/Approval  
Approved by City Commission

Division

Department

City Manager

FORM NO. MS-16

Clerk

Date

Updated 06/2016
### SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>Contract Start Date</th>
<th>May 13, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expiration Date</td>
<td>August 14, 2022</td>
</tr>
<tr>
<td>Original Commission Approval</td>
<td>$2,310,180.96</td>
</tr>
<tr>
<td>Initial Encumbrance</td>
<td>$2,310,180.96</td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td></td>
</tr>
</tbody>
</table>

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

**Copy of City Manager's Report**
- Copy of Original Certificate of Funds

### 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: 05/04/2020

---

Vendor Name: John R. Jurgensen Company  
Vendor Address: 1780 Enon Road, Springfield, OH 45502  
Federal ID: 31-0578656  
Commodity Code: 91831  
Purpose: 2020 Residential Asphalt Resurfacing II  
(5% SBE & 15% MBE Participation Goal)
SECTION I - to be completed by User Department

X NEW CONTRACT

<table>
<thead>
<tr>
<th>Contract Start Date</th>
<th>May 13, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expiration Date</td>
<td>August 14, 2022</td>
</tr>
<tr>
<td>Original Commission Approval</td>
<td>$2,310,180.96</td>
</tr>
<tr>
<td>Initial Encumbrance</td>
<td>$2,310,180.96</td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td></td>
</tr>
</tbody>
</table>

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

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

Amount: $19,821.48

Fund Code 55004 3420 1424 54 - SF1001 -

Amount: $15,540.00

Fund Code 53003 3420 1424 54 - WF1004 -

Vendor Name: John R. Jurgensen Company  (937) 882-6233

Vendor Address: 1780 Enon Road Springfield OH 45502

Federal ID: 31-0578656

Commodity Code: 91831

Purpose: 2020 Residential Asphalt Resurfacing II
(5% SBE & 15% MBE Participation Goal)

Contact Person: Keith Steeber, City Engineer

Public Works/Civil Eng. Department/Division (937) 333-3838 Phone Number

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 05/04/2020

Finance Department

October 18, 2011
## Dayton, Ohio
Department of Public Works
Division of Civil Engineering

Proposal Tabulation For: 2020 Residential Asphalt Resurfacing II (5% SBE & 15% MBE Participation Goal)

<table>
<thead>
<tr>
<th>Bid Opening Date:</th>
<th>Cost Estimate:</th>
<th>Estimated Time Of Completion:</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 5, 2020</td>
<td>$2,345,073.25</td>
<td>August 14, 2020</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bidders</th>
<th>Actual Amount Of Bid</th>
<th>Adjustment For Work Days</th>
<th>Adjustment For Comparison Purposes Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>*JR Jurgensen</td>
<td>$2,205,282.66</td>
<td>-0-</td>
<td>$2,205,282.66</td>
</tr>
<tr>
<td></td>
<td></td>
<td>August 14, 2020</td>
<td></td>
</tr>
<tr>
<td>Barrett Paving Materials, Inc.</td>
<td>$2,787,980.70</td>
<td>-0-</td>
<td>$2,787,980.70</td>
</tr>
<tr>
<td></td>
<td></td>
<td>August 14, 2020</td>
<td></td>
</tr>
</tbody>
</table>

*Awarded
Revised 9/14/98
March 27, 2020

TO:       David Escobar, Senior Engineer
          Public Works,
          Civil Engineering

FROM:     Chrisondra Goodwine, Contract Compliance Officer
          Human Relations Council (HRC)

SUBJECT:  2020 Residential Resurfacing II
          (5% SBE % 15% MBE Participation Goal)

The apparent low bidder, John R. Jurgensen Co., submitted a bid utilizing one (1) PEP-certified contractor to meet the project’s participation goal. The HRC’s contract compliance analysis has verified that John R. Jurgensen Co. is an approved bidder in the City of Dayton’s Affirmative Action Assurance program and that the company’s authorized representative signed the Contractor’s Certification to indicate fair hiring practices.

The recommended company to receive the above-mentioned construction award is as follows:

<table>
<thead>
<tr>
<th>PRIME CONTRACTOR</th>
<th>AMOUNT OF BASE BID</th>
</tr>
</thead>
<tbody>
<tr>
<td>John R. Jurgensen Co.</td>
<td>$2,205,282.66</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CERTIFIED BUSINESS PARTICIPATION</th>
<th>COMMITTED DOLLAR AMT</th>
<th>% TOWARD GOAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>W.C. Jones Asphalt Paving Co.,</td>
<td>$111,000.00</td>
<td>5.03% SBE</td>
</tr>
<tr>
<td>W.C. Jones Asphalt Paving Co.,</td>
<td>$335,000.00</td>
<td>15.19% MBE</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TOTAL COMMITTED PARTICIPATION</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>5.03% SBE</td>
<td></td>
</tr>
<tr>
<td>15.19% MBE</td>
<td></td>
</tr>
</tbody>
</table>

The attached participation forms should be included with the contract agreement. Contract compliance will include meeting verified participation and minimal worker utilization goals as stated in the Affirmative Action Program Equal Employment Opportunity form certified in the bid submission. If you have any questions or concerns, please feel free to contact me at (937) 333-1405.

CAG
PEP-CERTIFIED

(Selectable Participation Form)

Instructions for Bidders/Proposers: Submit one executed copy of this form for each Procurement Enhancement Plan (PEP)-Certified Firm whose participation you plan to count toward the project/contract's participation goal(s). This form must be included with your Bid. To split a PEP-Certified Firm's participation among more than one goal, submit a separate form for each goal (i.e., SBE, MBE, WBE, or DLSS).

SECTION 1: BIDDER/PROPOSER INFORMATION

Name of Bidder/Proposer's Firm: John R Jurgensen Co
Address: 1780 Enon Road
City: Springfield
State: OH
ZIP: 45502
Telephone: 937-882-6233
Email: andy.shaffer@jrgnet.com
Primes Base Bid $ 220,528.66
Name of Project: 2020 Residential Asphalt Resurfacing II

SECTION 2: PEP-CERTIFIED BUSINESS & PARTICIPATION INFORMATION

Name of PEP-Certified Firm: WC Jones
PEP-Certified Firm's Tax ID#: 30-0955590
Scope of Work to Be Performed by Certified Firm: Asphalt Paving

<table>
<thead>
<tr>
<th>Total Dollar Amount Towards Goal</th>
<th>Percentage Towards Goal</th>
<th>Amount to Be Paid to This PEP Firm for the Work Described:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Bid</td>
<td>$ 111,000.00</td>
<td>$ 111,000.00</td>
</tr>
<tr>
<td>Materials</td>
<td>$ 80,640.00</td>
<td>$ 80,640.00</td>
</tr>
<tr>
<td>Labor</td>
<td>$ 30,360.00</td>
<td>$ 30,360.00</td>
</tr>
</tbody>
</table>

SECTION 3: AFFIRMATIONS

The above-named Bidder/Proposer affirms, under penalty of perjury, that it has negotiated in good faith with the above-named PEP-Certified Firm and will utilize the above-named PEP-Certified Firm for the type(s) of work and for the dollar amount(s) described above.

[Signature of Bidder/Proposer's Authorized Agent]
Peter W. Flora

[Printed Name of Bidder/Proposer's Authorized Agent]
Vice President

[Title of Bidder/Proposer's Authorized Agent]
3/5/2020

IF THE BIDDER/OFFERER IS NOT AWARDED A CONTRACT, OR IF THE HRC DOES NOT APPROVE OF THE TERMS AS STATED ABOVE, THEN ANY AND ALL REPRESENTATIONS ON THIS PARTICIPATION FORM SHALL BE NULL AND VOID.
PEP-CERTIFIED

(SSELECT ONE) PARTICIPATION FORM

Instructions for Bidders / Proposers: Submit one executed copy of this form for each Procurement Enhancement Plan (PEP)-Certified Firm whose participation you plan to count toward the project/contract's participation goal(s). This form must be included with your Bid. To split a PEP-Certified Firm's participation among more than one goal, submit a separate form for each goal (i.e., SBE, MBE, WBE, or DLSB).

SECTION 1: BIDDER / PROPOSER INFORMATION

Name of Bidder / Proposer's Firm: John R Jurgensen Co
Address: 1780 Enon Road
City: Springfield
State: OH
ZIP: 45202
Telephone: 937-882-6233
Email: andy.shaffer@jigac.com
Primes Base Bid $ 2205292.66
Name of Project: 2020 Residential Asphalt Resurfacing II

SECTION 2: PEP-CERTIFIED BUSINESS & PARTICIPATION INFORMATION

Name of PEP-Certified Firm: WC Jones
PEP-Certified Firm's Tax ID#: 30-0955590
Scope of Work to Be Performed by Certified Firm: Asphalt Paving

<table>
<thead>
<tr>
<th>Total Dollar Amount Towards Goal</th>
<th>Percentage Towards Goal</th>
<th>Amount to Be Paid to This PEP Firm for the Work Described:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Bid</td>
<td>$ 335000.00</td>
<td>$ 335000.00</td>
</tr>
<tr>
<td>Materials</td>
<td>$ 243000.00</td>
<td>$ 243000.00</td>
</tr>
<tr>
<td>Labor</td>
<td>$ 92000.00</td>
<td>$ 92000.00</td>
</tr>
</tbody>
</table>

SECTION 3: AFFIRMATIONS

The above-named Bidder / Proposer affirms, under penalty of perjury, that it has negotiated in good faith with the above-named PEP-Certified Firm and will utilize the above-named PEP-Certified Firm for the type(s) of work and for the dollar amount(s) described above.

(Signature of Bidder/Proposer's Authorized Agent)

(Printed Name of Bidder/Proposer's Authorized Agent)

(Vice President) 3/5/2020

(Title of Bidder/Proposer's Authorized Agent)

(IF THE BIDDER/OFFEROR IS NOT AWARDED A CONTRACT, OR IF THE HRC DOES NOT APPROVE OF THE TERMS AS STATED ABOVE, THEN ANY AND ALL REPRESENTATIONS ON THIS PARTICIPATION FORM SHALL BE NULL AND VOID.)
PEP PARTICIPATION COMMITMENT AND/OR WAIVER REQUEST FORM

Instructions for Bidders/Proposers: Submit one (1) executed copy of this form with your Bid/Proposal.

- If Option 1 is selected you must also submit one (1) executed PEP-Certified SBE/MBE/WBE/DLSB Participation Form for each PEP-Certified Firm whose participation you plan to count toward the project/contract’s participation goal(s).
- If Option 2 (WAIVER REQUEST) is selected, you must also submit documentation of your Good Faith Efforts to the City of Dayton Human Relations Council (HRC) within two (2) business days of the Bid Opening / Proposal Due Date. Bidders/Proposers will receive no further reminders about this deadline.

The undersigned affirms that the Bidder/Proposer has satisfied the requirements of the Bid/RFP Specification in the following manner: (Check the box for Option 1 and/or Option 2, complete the appropriate spaces, and sign below.)

**Option 1.** The Bidder/Proposer has secured enough commitment(s) from one or more PEP-Certified Firms to meet or exceed the project’s PEP participation goal(s). The Bidder/Proposer is committed to a minimum of:

<table>
<thead>
<tr>
<th>SBE</th>
<th>MBE</th>
<th>WBE</th>
<th>DLSB</th>
</tr>
</thead>
<tbody>
<tr>
<td>5%</td>
<td>15.1%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

participation on this contract, as detailed on the executed PEP-Certified SBE/MBE/WBE/DLSB Participation Form(s) submitted with this Bid/Proposal.

**Option 2 (WAIVER REQUEST).** The Bidder/Proposer is unable to meet the project’s PEP participation goal(s) and requests that the following goal(s) be waived: (Check all that apply.)

- [ ] SBE
- [ ] MBE
- [ ] WBE
- [ ] DLSB

The Bidder/Proposer’s documentation of Good Faith Efforts to meet the participation goal(s) checked above must be submitted to the HRC within two (2) business days of the Bid Opening / Proposal Due Date. The Bidder/Proposer will receive no further reminders about this deadline.

A waiver will be granted based on a Bidder/Proposer’s documented Good Faith Efforts, and only when the HRC determines that the Bidder/Proposer has completed all of the following activities:

1. **Solicited the interest of all PEP-Certified Firms having the capability to perform the work of the contract.** The Bidder/Proposer must solicit this interest at least ten (10) business days before the Bid Opening / Proposal Due Date in order to allow the PEP-Certified Firm sufficient time to respond to the solicitation. Electronic communication will not be deemed as sufficient Good Faith Efforts, if it is the sole method of communication used.
   
2. **Divided contract work items into economically feasible units to facilitate PEP participation, even when the Bidder/Proposer might otherwise prefer to perform these work items with its own forces.**

3. **Negotiated in good faith with PEP-Certified Firms, and considered the firms’ prices and capabilities as well as the contract goals.** Rejected PEP-Certified Firms as being unqualified only for reasons based on a diligent investigation of their capabilities. The Bidder/Proposer’s standing within its industry; membership in specific groups, organizations, or associations; and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes to reject or not solicit bids from particular PEP-Certified Firms.

4. **Provided interested PEP-Certified Firms with plans and specifications at no cost, or directed them to the Greater Dayton Minority Business Assistance Center (Dayton MBAC) for information about the project’s plans, specifications, and requirements at least ten (10) business days prior to the Bid Opening / Proposal Due Date in order to assist them in responding to a solicitation.**

5. **Sought the Dayton MBAC’s assistance or used the services of community organizations; contractors’ groups; local, state or federal business assistance offices; or similar organizations to find PEP-Certified Firms.** Contacting the HRC for a list of certified companies will not be deemed as sufficient Good Faith Efforts.

NOTE: In determining whether a Bidder/Proposer has made Good Faith Efforts, the HRC may take into account the performance of other Bidders/Proposers in meeting the goal(s). For example, when the apparent low bidder fails to meet a participation goal but others meet it, the HRC may reasonably raise the question of whether, with additional reasonable efforts, the apparent low bidder could have met the goal.

---

(Petition, Vice Pres.)

John R. Jurgensen Co.

(Signature of Bidder/Offerer’s Authorized Agent)

Pete Flore

(Vice President) 3/15/2020

(Printed Name of Bidder/Offerer’s Authorized Agent)

(Title of Bidder/Offerer’s Authorized Agent) (Date)
March 24, 2020

City of Dayton
Human Relations Council
371 West Second Street, Suite 100
Dayton Ohio 45402-1417

REF: 2020 Residential #2 Asphalt Resurfacing (5% SBE Participation and 15% MBE Participation)

Project Name: City of Dayton's 2020 Residential #2 Asphalt Resurfacing

This letter covers the 5% SBE and 15% MBE participation

Name of Subcontractor: WC Jones
905 South Broadway
Dayton Ohio 45408
Ph 937-228-1253

For the 5% SBE participation:

<table>
<thead>
<tr>
<th>Description:</th>
<th>Qty</th>
<th>Units</th>
<th>Labor:</th>
<th>Material:</th>
<th>Total Unit Cost:</th>
<th>Extended Total:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asphalt Paving 12.5MM</td>
<td>1100</td>
<td>Tons</td>
<td>$27.00</td>
<td>$68.00</td>
<td>$95.00</td>
<td>$104500.00</td>
</tr>
<tr>
<td>Tack</td>
<td>1040</td>
<td>GA</td>
<td>$0.64</td>
<td>$5.61</td>
<td>$6.25</td>
<td>$6500.00</td>
</tr>
</tbody>
</table>

Total for SBE participation: $111,000.00

For the 15% MBE participation:

<table>
<thead>
<tr>
<th>Description:</th>
<th>Qty</th>
<th>Units</th>
<th>Labor:</th>
<th>Material:</th>
<th>Total Unit Cost:</th>
<th>Extended Total:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asphalt Paving 12.5MM</td>
<td>3310</td>
<td>Tons</td>
<td>$27.00</td>
<td>$68.00</td>
<td>$95.00</td>
<td>$314450.00</td>
</tr>
<tr>
<td>Tack</td>
<td>3288</td>
<td>GA</td>
<td>$0.80</td>
<td>$5.45</td>
<td>$6.25</td>
<td>$20550.00</td>
</tr>
</tbody>
</table>

Total for MBE participation: $335,000.00

Any further questions, please feel free to contact me

Sincerely,

Peter Forn, Vice President
John R. Jurgensen Co.

1780 Enon Rd. | Springfield, OH 45502 | 937.882.6233 | jrrnet.com | Equal Opportunity Employer
City of Dayton, Ohio  
Human Relation Council  
371 West Second Street, Suite 100  
Dayton, Ohio 45402-1417  

Project: 2020 Residential #2 Asphalt Resurfacing (5% SBE Participation and 15% MBE Participation)  

Prime Contractor:  
John R. Jurgensen  
1780 Enon Road  
Springfield, Ohio 45502  
937-882-6233  

For the 5% SBE participation  
<table>
<thead>
<tr>
<th>Description</th>
<th>Quantity</th>
<th>Units</th>
<th>Labor</th>
<th>Material</th>
<th>Total Unit Cost:</th>
<th>Extended Total</th>
</tr>
</thead>
<tbody>
<tr>
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<td>1,100</td>
<td>Tons</td>
<td>$27.00</td>
<td>$68.00</td>
<td>$95.00</td>
<td>$104,500.00</td>
</tr>
<tr>
<td>Tack</td>
<td>1,040</td>
<td>GA</td>
<td>$0.64</td>
<td>$5.61</td>
<td>$6.25</td>
<td>$6,500.00</td>
</tr>
</tbody>
</table>

Total for SBE Participation: $111,000.00  

For the 15% MBE participation  
<table>
<thead>
<tr>
<th>Description</th>
<th>Quantity</th>
<th>Units</th>
<th>Labor</th>
<th>Material</th>
<th>Total Unit Cost</th>
<th>Extended Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asphalt 12.5mm</td>
<td>3,310</td>
<td>Tons</td>
<td>$27.00</td>
<td>$68.00</td>
<td>$95.00</td>
<td>$314,450.00</td>
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<tr>
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<td>3288</td>
<td>GA</td>
<td>$0.80</td>
<td>$5.45</td>
<td>$6.25</td>
<td>$20,550.00</td>
</tr>
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</table>

Total for MBE participation $335,000.00  

Sincerely,  
Leo C. Lucas  
President
CITY OF DAYTON, OHIO
DEPARTMENT OF PUBLIC WORKS

Bid

2020 Residential Resurfacing II
(5% SBE, and 15% MBE Participation Goal)

Bidder: John R. Jurgensen Co.
1780 Enon Rd.
Springfield, OH 45502
ADDENDUM NO. 1
2020 Residential Asphalt Resurfacing II
(5% SBE & 15% MBE Participation Goal)
February 18, 2020

TO ALL BIDDERS:

This addendum, including all articles and corrections listed below, shall be taken into account in preparing the “Bid” and shall become part of the Contract.

ITEM NO. 1

The Pre-Bid meeting date listed on QuestCDN was February 18, 2020, this date is incorrect and has been updated to the correct date of February 25, 2020

February 18, 2020
Keith Steeber
City Engineer, Division of Civil Engineering
### Item Code | Item Description | UoM | Quantity | Unit Price | Extension
--- | --- | --- | --- | --- | ---
202 | Grinding Existing Pavement | S.Y. | 187,500 | $1.20 | $225,000.00
ODOT 253 | Pavement Repair | S.Y. | 380 | $45.00 | $17,100.00
ODOT 407 | Non-Tracking Tack Coat | Gal | 18,750 | $1.00 | $18,750.00
ODOT 442 | Asphalt Concrete Surface Course, 12.5MM, Type A (448) (2") | Tons | 20,834 | $83.50 | $1,739,639.00
614 | Maintenance of Traffic | S.Y. | 187,500 | $0.44 | $82,500.00
404 | Speed Bump | Each | 8 | $1,285.00 | $10,280.00
404 | Speed Hump | Each | 5 | $3,005.00 | $15,025.00
625 | Loop Detector | Each | 15 | $1,262.50 | $18,937.50
625 | Loop Detector Tie-In | Each | 15 | $65.00 | $975.00
644 | Centerline (4"-4"-4") | LF | 5,986 | $1.12 | $6,704.32
644 | Centerline (4") dashed | LF | 1,670 | $1.12 | $1,870.40
644 | Crosswalk Line (6") | LF | 3,043 | $2.82 | $8,581.26
644 | Channelizing Line (8") | LF | 335 | $1.70 | $569.50
644 | Stop Line (24") | LF | 348 | $5.64 | $1,962.72
644 | Crosswalk Piano Key (2' x 10') | Each | 63 | $35.00 | $2,205.00
836 | Manhole Adjusted | Each | 56 | $207.91 | $11,642.96
836 | Major Manhole Adjustment | Each | 56 | $500.00 | $28,000.00
846 | Water Valve Box Adjusted | Each | 111 | $140.00 | $15,540.00

**TOTAL BASE BID** $2,205,282.66

### ALTERNATE NO. 1 CONTINGENCY ALLOWANCE

| SPL | Contingency Allowance ($200,000) |
--- | --- |
Lump 1 | $200,000.00 | $200,000.00
**TOTAL** | **$200,000.00**

### ALTERNATE NO. 2 ASPHALT REJUVENATING AGENT

| SPL | Asphalt Rejuvenating Agent |
--- | --- |
S.Y. | 63,000 | $1.00 | $63,000.00
**TOTAL** | **$63,000.00**

### ALTERNATE NO. 3 ASPHALT CONCRETE WITH FIBERS

| ODOT 826 | Asphalt Concrete Surface Course, 442 12.5mm, Type A (448), Fiber Type C |
--- | --- |
Tons 7,000 | $93.50 | $654,500.00
**TOTAL** | **$654,500.00**
DISCLOSURE OF LITIGATION

Disclosure of Litigation: Have you or any person, group, partnership, company, or corporation affiliated with you been engaged in the past three (3) years in litigation, mediation or any form of contractual dispute resolution with any state government or any political subdivision thereof including, without limitation, the State of Ohio, the City of Dayton, Ohio, or Montgomery County, Ohio? For the purpose of your response, “affiliated” means directly or indirectly controlling, controlled by, or under common control, with “control” meaning legally or operationally in a position to exercise restraint or direction over the other.

RESPONSE: YES □  NO □

If your response is “YES” please separately identify each lawsuit, mediation or dispute resolution process in which you or your affiliate have been engaged during the past three (3) years. Identify the nature of the dispute, the parties involved, and the current status of the dispute. Attach or include any information you believe pertinent to a full understanding of the disputed matters.
Bidder is
An Individual
Firm Name

Business Address

Telephone

Partnership
Firm Name

Members of Firm and
Their Business Address

Telephone

Corporation
Name

State of Incorporation
Ohio

Name and Title of
Officers with Authority
to Sign Contract
Pete Flora, Vice President

Home Office Address
11641 Mosteller Rd., Cincinnati, OH 45241

Local Address
1780 Enon Rd., Springfield, OH 45502

Telephone (937) 882-6233
Fax (937) 882-6957

E-mail andy.shaffer@jrjnet.com

Federal I.D.# 31-0578656

Dated this 5 day of March, 2020

Bidder: Pete Flora, Vice President, John R. Jurgens Co.
(Person, Firm, or Corporation)

By:
Pete Flora

Title: Vice President
CITY OF DAYTON, OHIO
Department of Public Works

Responsible Contractor Bidding Requirements
(Form 1 of 3)

In accordance with Ordinance No. 31487-16 of the City of Dayton, Ohio Revised Code of General
Ordinances,

I, ___________________________ hereby certify that

(print name – an Officer of the company)

John R. Jurgensen Co. ___________________________ meets the following Contractor requirements relating

(company)
to this City of Dayton construction project

Check All That Apply:

☑ Comply with all City of Dayton income tax obligations and requirements

☑ Maintain worker’s compensation insurance for all employees as required by the State of Ohio

☑ Comply with State or Federal prevailing wage rate laws, as applicable and required by the funding of this project

☑ Comply with the State of Ohio Bureau of Worker’s Compensation Drug Free Workplace Policy

☑ Maintain an unemployment compensation insurance policy registered with the State of Ohio Department of Job and Family Services

☑ Made a good faith effort to contract with one or more qualified minority business enterprises to perform work required by this project, in accordance with bid documents, ordinances, and applicable Federal and State law

By: ___________________________

(signature)

Title: Vice President

Date: 03/05/2020
CITY OF DAYTON, OHIO
Department of Public Works

Responsible Contractor Bidding Requirements
(Form 2 of 3)

A. Please provide a complete listing of the fringe benefits provided to employees, including but not limited to health insurance and retirement benefits.

- Life Insurance
- Vision Insurance
- Dental Insurance
- Short Term Disability
- Group Medical Insurance
- Defined Benefit Contribution Plan

B. Please identify any “bona fide apprentice training program” in which this company participates in accordance with the Ohio Bureau of Apprenticeship Training and the U. S. Department of Labor.

- Ohio Laborers Training Program
- Ohio Operators & Engineer Training & Apprenticeship Program

C. Please provide a list of subcontractors whose quotes or information are included or used in the bid submitted for this project.

- First Star
- Aeromark
- Pavement Technology
- Security Fence
CITY OF DAYTON, OHIO
Department of Public Works

Responsible Contractor Bidding Requirements
(Form 3 of 3)

D. Please provide a list of all minority business enterprises contacted for the purpose of obtaining quotes to perform work for this project.

\[ \text{W.Jones} \]

\[ \text{________________________} \]

\[ \text{________________________} \]

\[ \text{________________________} \]

\[ \text{________________________} \]

\[ \text{________________________} \]

E. Provide a complete listing of any determinations of the bidder’s violations of federal, state, or local laws, including a list of all citations, orders, or recommendations issued to or against the bidder within the previous 3 years.

\[ \text{N/A} \]

\[ \text{________________________} \]

\[ \text{________________________} \]

\[ \text{________________________} \]

\[ \text{________________________} \]
CERTIFICATION
OF COMPLIANCE WITH OHIO REVISED CODE SECTION 3517.13
FOR CONTRACTS IN EXCESS OF FIVE HUNDRED DOLLARS ($500.00)

STATE OF OHIO,
COUNTY OF Ohio ss:

Pete Flora
being duly sworn, deposes and states as follows:

1. I am duly authorized to make the statements contained herein on behalf of
   John R. Jurgensen Co. (“the Contracting Party”).

2. The Contracting Party is a/an (select one):

   [ ] Individual, partnership, or other unincorporated business association (including without
       limitation, a professional association organized under Ohio Revised Code Chapter
       1785), estate, or trust.

   [x] Corporation organized and existing under the laws of the State of Ohio.

   [ ] Labor organization.

3. I hereby affirm that the Contracting Party and each of the individuals specified in R.C.
   3517.93(I)(3) (with respect to non-corporate entities and labor organizations) or R.C.
   3517.93(J)(3) (with respect to corporations) are in full compliance with the political
   contributions limitations set forth in R.C. 3517.93(I) and (J), as applicable. I understand
   that a false representation on this certification constitutes a felony of the fifth degree pursuant to
   R.C. 3517.93(AA) and 3517.992(R)(3). Any contract that contains a falsified certification
   shall be rescinded.

   By: [Signature]

   Title: Vice President

[Stamp and Signature]
CITY OF DAYTON
CONTRACTOR NON-COLLUSION AFFIDAVIT

STATE OF Ohio )
COUNTY OF Clark ) SS:

Pete Flora, being first duly sworn deposes and states that:

(1) He/she is Vice President of
(Owner, partner, officer, representative, or agent)

John R. Jurgensen Co. that
(business or organization name)

(2) He/She is fully informed respecting the preparation and contents of the attached Bid and all pertinent circumstances respecting such Bid.

(3) Such offering is genuine and is not a collusive or sham offering

(4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly with any other Bidder, firm or person to submit a sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from offering in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Dayton, its employees, or citizens.

(5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest including the affiant.

SIGNED
Vice President

TITLE

Brenda E. Hannah

BRENDA E HANNAH
NOTARY PUBLIC - STATE OF OHIO
RECORDED IN MONTGOMERY COUNTY
LICENSE NUMBER: 0162379
COMMISSION EXPIRES APRIL 6, 2023
BID BOND

Amount $ __________________________

Ten Percent (10%)

We, the undersigned, are held and firmly bound unto the City of Dayton, Ohio in the sum

of Ten Percent (10%) of the Bid Amount Dollars, for the payment of which well and truly to be made, we hereby, jointly and

severally, bind ourselves, our heirs, executors, and administrators, firmly by these presents.

The condition of this obligation is such that, if the Bid attached hereto is accepted and the Contract award to the bidder,

John R. Jurgensen Company, 1780 Enon Road, Springfield, OH 45502

named therein, and the said bidder shall within ten (10) days after being notified that said contract has been awarded to

the bidder, enter into a Contract in the form acceptable to the Director and give bond in a form to be furnished by the

Director, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Signed at Dayton, Ohio, this 5th day of March, 2020

__________________________
John R. Jurgensen Company

Bidder

__________________________
Federal Insurance Company

Surety

Phyllis T. Neal, Attorney-in-Fact

Arthur J. Gallagher Risk Management Services, Inc.

Name of Insurance Agency

201 E Fourth Street, Suite 625, Cincinnati, OH 45202

Address of Insurance Agency

Telephone 513-977-3100  FAX 513-977-4653
Power of Attorney

Federal Insurance Company | Vigilant Insurance Company | Pacific Indemnity Company
Westchester Fire Insurance Company | ACE American Insurance Company

Know All by These Presents, that FEDERAL INSURANCE COMPANY, an Indiana corporation, VIGILANT INSURANCE COMPANY, a New York corporation, PACIFIC INDEMNITY COMPANY, a Wisconsin corporation, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY, corporations of the Commonwealth of Pennsylvania, do each hereby constitute and appoint Julie S. Duke, Robert E. Gigax Jr., Shelly M. Martin and Phyllis T. Neal of Cincinnati, Ohio each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY have each executed and attested these presents and affixed their corporate seals on this 23rd day of January, 2020,

Dawn M. Chloros, Assistant Secretary

Stephen M. Haney, Vice President

STATE OF NEW JERSEY
County of Hunterdon

On this 23rd day of January, 2020 before me, a Notary Public of New Jersey, personally came Dawn M. Chloros and Stephen M. Haney, to me known to be Assistant Secretary and Vice President, respectively, of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros and Stephen M. Haney, being by me duly sworn, severally and each for herself and himself did depose and say that they are Assistant Secretary and Vice President, respectively, of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY and know the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies and that their signatures as such officers were duly affixed and subscribed by like authority.

Notarial Seal

KATHERINE J. ADELAAAR
NOTARY PUBLIC OF NEW JERSEY
No. 2319285
Commission Expires July 19, 2024

CERTIFICATION

Resolutions adopted by the Boards of Directors of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY on August 30, 2016; WESTCHESTER FIRE INSURANCE COMPANY on December 11, 2006; and ACE AMERICAN INSURANCE COMPANY on March 20, 2009:

RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a “Written Commitment”):

1. Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company.

2. Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company.

3. Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person as attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company.

RESOLVED, further, that the foregoing Resolutions shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolutions shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested.

I, Dawn M. Chloros, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY (the “Companies”) do hereby certify that:

(i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,

(ii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this 5th day of March, 2020.

Dawn M. Chloros, Assistant Secretary

IN THIS EVENT YOU WISH TO VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT:

Telephone (908) 393-2493 Fax (908) 393-2495 e-mail: surety@chubb.com

Combined: FED.VIG-PI-WFIC-A2IC (rev. 11-19)
Office of Risk Assessment  
50 West Town Street  
Third Floor - Suite 300  
Columbus,Ohio 43215  
(614)644-2658  
Fax(614)644-3256  
www.insurance.ohio.gov

Ohio Department of Insurance  
Mike DeWine - Governor  
Jillian Froment - Director

Certificate of Compliance

Issued 03/20/2019  
Effective 04/02/2019  
Expires 04/01/2020

I, Jillian Froment, hereby certify that I am the Director of Insurance in the State of Ohio and have supervision of insurance business in said State and as such I hereby certify that

FEDERAL INSURANCE COMPANY

of Indiana is duly organized under the laws of this State and is authorized to transact the business of insurance under the following section(s) of the Ohio Revised Code:

Section 3929.01 (A)

Accident & Health  
Aircraft  
Allied Lines  
Boiler & Machinery  
Burglary & Theft  
Commercial Auto - Liability  
Commercial Auto - No Fault  
Commercial Auto - Physical Damage  
Credit  
Earthquake  
Fidelity  
Fire  
Glass  
Group Accident & Health  
Inland Marine  
Multiple Peril - Commercial  
Multiple Peril - Homeowners  
Ocean Marine  
Other Liability  
Private Passenger Auto - Liability  
Private Passenger Auto - No Fault  
Private Passenger Auto - Physical Damage  
Surety  
Workers Compensation

FEDERAL INSURANCE COMPANY certified in its annual statement to this Department as of December 31,2018 that it has admitted assets in the amount of $15,689,631,358, liabilities in the amount of $10,899,789,505, and surplus of at least $4,789,841,853.

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused my seal to be affixed at Columbus, Ohio, this day and date.

Jillian Froment, Director

Accredited by the National Association of Insurance Commissioners (NAIC)
FEDERAL INSURANCE COMPANY

STATEMENT OF ASSETS, LIABILITIES AND SURPLUS TO POLICYHOLDERS

Statutory Basis

DECEMBER 31, 2018

(In thousands)

<table>
<thead>
<tr>
<th>ASSETS</th>
<th>LIABILITIES AND SURPLUS TO POLICYHOLDERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and Short Term Investments: United States Government, State and Municipal Bonds</td>
<td>Outstanding Losses and Loss Expenses:</td>
</tr>
<tr>
<td>$ (360,335)</td>
<td>$ 8,523,452</td>
</tr>
<tr>
<td>Other Bonds</td>
<td>Reinsurance Payable on Losses and Expenses</td>
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<tr>
<td>5,738,426</td>
<td>1,490,481</td>
</tr>
<tr>
<td>Stocks</td>
<td>Unearned Premiums</td>
</tr>
<tr>
<td>3,936,595</td>
<td>1,914,153</td>
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<tr>
<td>Other Invested Assets</td>
<td>Ceded Reinsurance Premiums Payable</td>
</tr>
<tr>
<td>100,774</td>
<td>405,271</td>
</tr>
<tr>
<td>TOTAL INVESTMENTS</td>
<td>Other Liabilities</td>
</tr>
<tr>
<td>13,554,099</td>
<td>565,995</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Investments in Affiliates:</th>
<th>TOTAL LIABILITIES</th>
<th>10,899,769</th>
</tr>
</thead>
<tbody>
<tr>
<td>Great Northern Ins. Co.</td>
<td>Capital Stock</td>
<td>20,980</td>
</tr>
<tr>
<td>384,967</td>
<td>Paid-In Surplus</td>
<td>2,711,474</td>
</tr>
<tr>
<td>Vigilant Ins. Co.</td>
<td>Unassigned Funds</td>
<td>2,057,395</td>
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<tr>
<td>333,743</td>
<td>SURPLUS TO POLICYHOLDERS</td>
<td>4,789,842</td>
</tr>
<tr>
<td>Chubb Indemnity Ins. Co.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>176,202</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chubb National Ins. Co.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>176,647</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chubb European Inv. Holdings, SLP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>130,469</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Affiliates</td>
<td></td>
<td></td>
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<tr>
<td>99,269</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Premiums Receivable:</td>
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<td></td>
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<tr>
<td>1,281,368</td>
<td></td>
<td></td>
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<tr>
<td>Other Assets</td>
<td></td>
<td></td>
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<tr>
<td>2,762,306</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL ADMITTED ASSETS</td>
<td></td>
<td>15,689,631</td>
</tr>
</tbody>
</table>

| TOTAL LIABILITIES AND SURPLUS | 15,689,631 |

Investments are valued in accordance with requirements of the National Association of Insurance Commissioners. At December 31, 2018, Investments with a carrying value of $556,866,856 were deposited with government authorities as required by law.

STATE OF PENNSYLVANIA
COUNTY OF PHILADELPHIA

John Taylor, being duly sworn, says that he is Senior Vice President of Federal Insurance Company and that to the best of his knowledge and belief the foregoing is a true and correct statement of the said Company's financial condition as of the 31st day of December, 2018.

Sworn before me this March 19, 2019

[Signature]
Senior Vice President

Notary Public

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL
Diane Wright, Notary Public
City of Philadelphia, Philadelphia County
My Commission Expires Aug. 8, 2019
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES
AFFIRMATIVE ACTION PROGRAM
EQUAL EMPLOYMENT OPPORTUNITY

PROJECT: 2020 Residential Asphalt Resurfacing II  Dayton, OH

During the performance of this contract:

John R. Jurgensen Co.  1780 Enon Rd., Springfield, OH 45502  (937) 882-6233
CONTRACTOR

being the general contractor, assumes the responsibility and obligation to institute an Affirmative Action Program which complies with revised City Ordinances 24059 and 26090 and Executive Order 11246 on any city, federal or federally-assisted construction project, to insure Equal Employment Opportunity regardless of race, color, religion, sex, national origin, ancestry, place of birth, age, or marital status.

The successful contractor using one or more trades of construction employees must comply with Part I of these Affirmative Actions Program conditions to each such trade.

Part I: Requirements. To be eligible for award of a contract under this Invitation to Bid, contractors must certify as prescribed in Paragraph 1a, of the certification specified in Part II hereof that it adopts the minimum goals and timetables of minority and female worker utilization, and specific Affirmative Action steps set forth in Sections 1 and 2 of this Part I.

1.) Goals & Timetables. The goals of minority and female worker utilization required of the contractor are applicable to each trade which will be used on any project in Greene, Miami, Montgomery, and Preble Counties, OH (hereinafter the Economic Area).

The required goals and timetables are as follows:

<table>
<thead>
<tr>
<th>Period</th>
<th>Goals of Minority Worker Utilization Expressed in Percentage Terms</th>
</tr>
</thead>
<tbody>
<tr>
<td>From 1/1/2000 to Present</td>
<td>11.5%</td>
</tr>
<tr>
<td>From 4/1/80 to Present</td>
<td>6.9%</td>
</tr>
</tbody>
</table>
The percentage goals of minority and female worker utilization are expressed in terms of working hours of training and employment as a proportion of the total working hours to be worked by the contractor's entire work force in that trade on all projects (both federal and non-federal) in the Economic Area during the performance of this contract. The working hours for minority and female work and training must be uniform throughout the length of this contract, on all projects and for each of the trades. Further, the transfer of minority and/or female or trainee from employer-to-employer or from project-to-project for the sole purpose of meeting the contractor's goals shall be a violation of this Affirmative Action Program.

In reaching the goals for minority and female utilization, every effort shall be made to find and employ qualified journey-persons. Provided, however, and pursuant to the requirements of the Department of Labor Regulations, 29 CFR 5a.3, twenty-five percent (25%) of apprentices or trainees shall be employed on all projects and shall be in their first year of training, where feasible.

In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and/or trainees at the completion of the training subject to the availability of employment opportunities. Apprentices and trainees must be trained pursuant to programs which have been approved by The U.S. Department of Labor and/or The State of Ohio.

A contractor shall be deemed to be in compliance with the terms and requirements of this Part I by the employment and training of minorities and females in the appropriate percentage of the contractor's aggregate work force in the Economic Area for each trade for which it is committed to the goals under Part I.

However, no contractor shall be found to be in noncompliance solely on account of the contractor's failure to meet the goals and timetables, but such contractor shall be given the opportunity to demonstrate that all of the specific Affirmative Action steps specified in Part I have been instituted and has made every "good faith" effort to make these steps work towards the attainment of the goals and timetables.

2.) **Specific Affirmative Action Steps.** A contractor subject to Part I, must engage in Affirmative Action directed at increasing minority and female utilization, which is at least as extensive and as specific as the following steps:

a) The contractor shall notify community organizations that the contractor has employment opportunities available and shall maintain records of the organizations' responses.

b) The contractor shall maintain a file of the names and addresses of each minority and female referred and what action was taken with respect to each referred worker. If the worker was not employed, the reason therefor. If the worker was not sent to the union hiring hall for referral, the contractor's file shall document this and the reasons therefore.

c) The contractor shall promptly notify the Dayton Human Relations Council (HRC) when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority and/or female, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

d) The contractor should participate in training programs in the area; especially those approved by the U.S. Department of Labor and/or the State of Ohio.
e) The contractor shall disseminate the EEO Policy within the organization by including it in any policy manual, by publicizing it in company newspapers, annual reports, etc.; by conducting staff, employee and union representatives' meetings to explain and discuss the policy; by posting of the policy; and by specific review of the policy with minority and female employees.

f) The contractor shall ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to all projects (both federal and non-federal) in the Economic Area during the performance of its contract or subcontract.

g) The contractor shall make specific and constant personal (both written and oral) recruitment efforts directed at all minority and female organizations, schools, minority and female recruitment training organizations with the Dayton Economic Area.

h) The contractor shall make specific efforts to encourage present minority and female employees to recruit other minorities and females.

i) The contractor shall validate all tests and other selection requirements.

j) The contractor should develop on-the-job training opportunities; participate and assist in any association or employer-group training programs relevant to the contractor's employees needs consistent with its obligations under Part I.

k) The contractor shall evaluate all minority and female personnel for promotional opportunities and encourage employees to seek such opportunities.

l) The contractor shall ensure that seniority practices, job classifications, etc., do not have a discriminatory effect.

m) The contractor shall make certain that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

n) The contractor will monitor all personnel activities to ensure that its EEO Policy is being carried out.

o) The successful contractor shall solicit bids for work to be performed on this project under a subcontract from minority and female contractors and other business associations.

3.) Nothing herein is intended to relieve any contractor during the term of this project from compliance with any other local bid requirements. Further, it shall be the responsibility of each contractor to comply with all terms, conditions, and provisions of the Affirmative Action Programs.
Part II: Contractor's Certification. A contractor will not be eligible for award of a contract under this Invitation to Bid, unless such contractor has submitted as a part of the bid the following certification, which will be deemed a part of the resulting contract:

CONTRACTOR'S CERTIFICATION

John R. Jurgensen Co. (Contractor) certifies that:

1. The following listed construction trades will be used in performance of this project.

Operators

Laborers


a) as to those trades set forth in the preceding paragraph one hereof, it adopts the minimum minority and female utilization goals and the specific Affirmative Action steps contained in this Affirmative Action Program. Compliance is measured in each trade of the contractor's aggregate work force for all construction work (both federal and non-federal) in the four Counties (Greene, Miami, Montgomery and Preble) subject to this Affirmative Action Program; and

b) the successful contractor will obtain from each subcontractor and submit to the contracting or administering agency prior to the award of any subcontract under this contract, the subcontractor certification required by the Affirmative Action Program.

SIGN: [Signature]

(Signature of Authorized Representative of Bidder)

FAILURE TO SIGN AND SUBMIT THIS DOCUMENT WITH YOUR BID WILL RESULT IN YOUR BID NOT BEING READ
Instructions for Bidders / Proposers: Submit one executed copy of this form for each Procurement Enhancement Plan (PEP)-Certified Firm whose participation you plan to count toward the project/contract's participation goal(s). This form must be included with your Bid. To split a PEP-Certified Firm's participation among more than one goal, submit a separate form for each goal (i.e., SBE, MBE, WBE, or DLSB).

SECTION 1: BIDDER / PROPOSER INFORMATION

Name of Bidder / Proposer's Firm: John R Jurgensen Co
Address: 1780 Enon Road
City: Springfield State: OH ZIP: 45502
Telephone: 937-882-6233 Email: andy.shafter@jrignet.com
Primes Base Bid $ 2205282.66
Name of Project: 2020 Residential Asphalt Resurfacing II

SECTION 2: PEP-CERTIFIED BUSINESS & PARTICIPATION INFORMATION

Name of PEP-Certified Firm: W.C Jones
PEP-Certified Firm's Tax ID#: 30-0955590
Scope of Work to Be Performed by Certified Firm: Asphalt Paving

<table>
<thead>
<tr>
<th>Total Dollar Amount Towards Goal</th>
<th>Percentage Towards Goal</th>
<th>Amount to Be Paid to This PEP Firm for the Work Described</th>
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<tbody>
<tr>
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<td>$ 111000.00</td>
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<td>Materials $ 80640.00</td>
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<tr>
<td>Labor $ 30360.00</td>
<td>% 1.35</td>
<td>$ 30360.00</td>
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SECTION 3: AFFIRMATIONS

The above-named Bidder / Proposer affirms, under penalty of perjury, that it has negotiated in good faith with the above-named PEP-Certified Firm and will utilize the above-named PEP-Certified Firm for the type(s) of work and for the dollar amount(s) described above.

Signature of Bidder/Proposer's Authorized Agent: [Signature]

(Printed Name of Bidder/Proposer's Authorized Agent): Peter W. Flora

(Vice President) 3/5/2020

IF THE BIDDER/OFFEROR IS NOT AWARDED A CONTRACT, OR IF THE HRC DOES NOT APPROVE OF THE TERMS AS STATED ABOVE, THEN ANY AND ALL REPRESENTATIONS ON THIS PARTICIPATION FORM SHALL BE NULL AND VOID.
PEP-CERTIFIED

(Select one) Participation Form

Instructions for Bidders / Proposers: Submit one executed copy of this form for each Procurement Enhancement Plan (PEP)-Certified Firm whose participation you plan to count toward the project/contract’s participation goal(s). This form must be included with your Bid. To split a PEP-Certified Firm’s participation among more than one goal, submit a separate form for each goal (i.e., SBE, MBE, WBE, or DLDB).

SECTION 1: BIDDER / PROPOSER INFORMATION

Name of Bidder / Proposer’s Firm: John R. Jurgensen Co
Address: 1780 Enna Road
City: Springfield
State: OH ZIP: 45202
Telephone: 937-882-6233 Email:andy.shaffer@ijinet.com
Primes Base Bid: $ 2205282.66
Name of Project: 2020 Residential Asphalt Resurfacing II

SECTION 2: PEP-CERTIFIED BUSINESS & PARTICIPATION INFORMATION

Name of PEP-Certified Firm: WC Jones
PEP-Certified Firm’s Tax ID#: 30-0955890
Scope of Work to Be Performed by Certified Firm: Asphalt Paving

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<th>Total Dollar Amount Towards Goal</th>
<th>Percentage Towards Goal</th>
<th>Amount to Be Paid to This PEP Firm for the Work Described</th>
</tr>
</thead>
<tbody>
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<tr>
<td>Materials</td>
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<tr>
<td>Labor</td>
<td>$ 92,000.00</td>
<td>$ 92,000.00</td>
</tr>
</tbody>
</table>

SECTION 3: AFFIRMATIONS

The above-named Bidder / Proposer affirms, under penalty of perjury, that it has negotiated in good faith with the above-named PEP-Certified Firm and will utilize the above-named PEP-Certified Firm for the type(s) of work and for the dollar amount(s) described above.

[Signature and Printed Name: Vice President]

[Signature and Printed Name: Vice President]

[Signature of Bidder/Proposer’s Authorized Agent]

[Signature of Bidder/Proposer’s Authorized Agent]

[Title of Bidder/Proposer’s Authorized Agent]

[Date: 3/5/2020]

If the bidder/offeree is not awarded a contract, or if the HRC does not approve of the terms as stated above, then any and all representations on this participation form shall be null and void.
PEP PARTICIPATION COMMITMENT AND/OR WAIVER REQUEST FORM

Instructions for Bidders/Proposers: Submit one (1) executed copy of this form with your Bid/Proposal.

- If Option 1 is selected, you must also submit one (1) executed PEP-Certified SBE/MBE/WBE/DLSB Participation Form for each PEP-Certified Firm whose participation you plan to count toward the project/contract's participation goal(s).
- If Option 2 (WAIVER REQUEST) is selected, you must also submit documentation of your Good Faith Efforts to the City of Dayton Human Relations Council (HRC) within two (2) business days of the Bid Opening / Proposal Due Date. Bidders/Proposers will receive no further reminders about this deadline.

The undersigned affirms that the Bidder/Proposer has satisfied the requirements of the Bid/RFP Specification in the following manner: (Check the box for Option 1 and/or Option 2, complete the appropriate spaces, and sign below.)

Option 1. The Bidder/Proposer has secured enough commitment(s) from one or more PEP-Certified Firms to meet or exceed the project’s PEP participation goal(s). The Bidder/Proposer is committed to a minimum of:

<table>
<thead>
<tr>
<th>% SBE</th>
<th>% MBE</th>
<th>% WBE</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>15.1</td>
<td></td>
</tr>
</tbody>
</table>

participation on this contract, as detailed on the executed PEP-Certified SBE/MBE/WBE/DLSB Participation Form(s) submitted with this Bid/Proposal.

Option 2 (WAIVER REQUEST). The Bidder/Proposer is unable to meet the project’s PEP participation goal(s) and requests that the following goal(s) be waived: (Check all that apply.)

☐ SBE  ☐ MBE  ☐ WBE  ☐ DLSB

The Bidder/Proposer’s documentation of Good Faith Efforts to meet the participation goal(s) checked above must be submitted to the HRC within two (2) business days of the Bid Opening / Proposal Due Date. The Bidder/Proposer will receive no further reminders about this deadline.

A waiver will be granted based on a Bidder/Proposer’s documented Good Faith Efforts, and only when the HRC determines that the Bidder/Proposer has completed all of the following activities:

1. Solicited the interest of all PEP-Certified Firms having the capability to perform the work of the contract. The Bidder/Proposer must solicit this interest at least ten (10) business days before the Bid Opening / Proposal Due Date in order to allow the PEP-Certified Firm sufficient time to respond to the solicitation. Electronic communication will not be deemed as sufficient Good Faith Efforts, if it is the sole method of communication used.

2. Divided contract work items into economically feasible units to facilitate PEP participation, even when the Bidder/Proposer might otherwise prefer to perform these work items with its own forces.

3. Negotiated in good faith with PEP-Certified Firms, and considered the firms’ prices and capabilities as well as the contract goals. Rejected PEP-Certified Firms as being unqualified only for reasons based on a diligent investigation of their capabilities. The Bidder/Proposer’s standing within its industry; membership in specific groups, organizations, or associations; and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes to reject or not solicit bids from particular PEP-Certified Firms.

4. Provided interested PEP-Certified Firms with plans and specifications at no cost, or directed them to the Greater Dayton Minority Business Assistance Center (Dayton MBAC) for information about the project’s plans, specifications, and requirements at least ten (10) business days prior to the Bid Opening / Proposal Due Date in order to assist them in responding to a solicitation.

5. Sought the Dayton MBAC’s assistance or used the services of community organizations; contractors’ groups; local, state or federal business assistance offices; or similar organizations to find PEP-Certified Firms. Contacting the HRC for a list of certified companies will not be deemed as sufficient Good Faith Efforts.

NOTE: In determining whether a Bidder/Proposer has made Good Faith Efforts, the HRC may take into account the performance of other Bidders/Proposers in meeting the goal(s). For example, when the apparent low bidder fails to meet a participation goal but others meet it, the HRC may reasonably raise the question of whether, with additional reasonable efforts, the apparent low bidder could have met the goal.

[Signature of Bidder/Offeree's Authorized Agent]

[Printed Name of Bidder/Offeree's Authorized Agent]  [Vice President]  [Date]

John R. Jurgensen Co.

[Name of Bidder/Proposer's Firm]

[Title of Bidder/Offeree's Authorized Agent]  [Date]
<table>
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<tr>
<th>NEIGHBORHOOD</th>
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<th>FROM</th>
<th>TO</th>
<th>AREA</th>
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</tbody>
</table>
SPECIAL USE PERMIT TO INSTALL PIPE

Permission is requested for Miami Valley Hospital, being the owner, to install a 12 inch storm pipe beneath Wyoming Street east of the intersection of North Main Street into the public right of way at 1 Wyoming Street.

This application has been reviewed and approved by the Departments of Planning and Community Development, Economic Development, Water, and Public Works-Civil Engineering.

Notice of the proposed permit has been published as required by ordinance, no objections have been received, and it is therefore recommended that the permit be granted.

Copy: Public Works/Business Office
APPLICATION  
For License or Privilege in Public Way of the City of Dayton, Ohio

MAIL PERMIT TO:  
NAME: Miam Valley Hospital  
ADDRESS: 1 Wyoming St  
Dayton, OH 45409  
PHONE NO.: 937-208-3074

The undersigned Miami Valley Hospital being the owner of the following described premises, to wit: Being all or part of Lot No. R72 176270003 on the revised plat of said City. (If only part of a lot, or if unplatted land described same.)

(Said premises abut upon Miami Valley Hospital and are known as Wyoming St.) hereby makes application for permit for installation, maintenance and use of the following license or privilege in said public way, to wit:

Miami Valley Hospital will be installing a 12" storm pipe beneath Wyoming near East of the intersection of Main St. The piping will go from the main hospital to a parking lot owned by Miami Valley hospital on the South East corner of Wyoming and Main St. Complete project drawings have been submitted for the project. The new piping below Wyoming St. will be directional bored and will not require a street shutdown.

Such license or privilege is to be used in connection with said premises as above described.

A plat or print drawn to scale showing the proposed location of said license or privilege in the street, sidewalk, alley, public way or place and the adjacent property in connection with which said license or privilege to be used is hereto attached and made a part hereof.

Deposit in the sum of $200 to cover the fee for permit and legal advertisement is hereby made.

Said owner and lessee for themselves, their heirs, successors, administrators and assigns, hereby agree that the privilege sought if granted, may be revoked at any time hereafter upon order of the City Manager or of the City Commission; that they will obey all laws of the State of Ohio and ordinances of the City of Dayton, pertaining thereto, whether now in force or hereafter enacted, in the installation, maintenance and use of such license or privilege, and that all acts or things to be done in connection therewith shall be subject to the supervision and control of the Director of Public Works of said City; that the public way shall be restored completely and to the entire satisfaction of and at such time as the Director of Public Works may determine without expense to said City; that they will safeguard by the use of barricades and red flags, and such other means as may be necessary for the public safety, any excavation or obstruction placed in said public way during the installation, maintenance, repair or use of same or anything in any way related to such license or privilege, and will at all times save the City of Dayton free and harmless from any and all liability for damages to person, or persons, or property on any way connected with, arising out of or incidental to the installation, maintenance and use of the granting and exercise of said license or privilege; that they will pay all expense for any change in said license or privilege made necessary by any change of grade of said public way and hereby waive all claims for damages or expense in connection therewith; that they will conform to all of the provisions of Sections 95.30 to 95.49, both inclusive, of the Revised Code of General Ordinances as the same now exist or may hereafter be amended, and with such other provisions of other ordinances as may be passed by the Commission, which said existing and future ordinances are made a part of this contract by express reference.

WITNESS our signatures hereto this 6th day of December 2019.

Witnessed in our presence:

__________________________

Owner

__________________________

Lessee

__________________________

Approved by:

Keith Hubbard

Director of Public Works

__________________________

Approved by:

__________________________

City Manager

Min. Bk. Pg.

__________________________

Clerk of the Commission

PERMIT
Notice of the foregoing application having been published as required by Section 95.39 (D), Revised Code of General Ordinances and no cause having been shown to the contrary and the City Commission having approved the same, the privilege prayed for is hereby granted, subject to the terms and conditions set forth in the application.
December 12, 2019

TO:          Fred Stovall, Director
            Department of Public Works

FROM:  Michael Powell, Director
        Department of Water

SUBJECT: Special Privilege Permit No. 940615 – 1 Wyoming St.

The Department of Water has reviewed the above referenced permit application and offers the following comments:

- We have no objection to the directional boring underneath Wyoming Street for the 12" Storm Pipe installation.

If you have any questions, please contact Ben Botkin at 333-2058.
December 31, 2019

TO: Fred Stovall, Director
Public Works Department

FROM: Carl Daugherty, Zoning Administrator
Dept. of Economic Development

SUBJECT: Special Privilege Permit No. 940615
1 Wyoming St., Dayton, Ohio

We raise no objections to the issuance of the above-referenced Special Privilege Permit.

Thanks.

cc: Ford Weber

Attachments
To Whom it may Concern:

The Department of Planning and Community Development has no issues with this Special Privilege request for Miami Valley/Wyoming Street.

Tony Kroeger

---

Hi Tony,

Please resubmit Memo for the attached Special Privilege. It was not attached when I received it.

Thank you,

Patricia Jones
Business Manager
Public Works
Civil Engineering  I  City of Dayton
101 W. Third Street  I  Dayton, Ohio 45402
Office 937.333.3803  I  Fax 937.333.4077  I  patricia.jones@daytonohio.gov
#DaytonCounts 2020CENSUS.GOV
City Manager's Report

From 2600 - Economic Development
Supplier, Vendor, Company, Individual
Name Wright-Dunbar, Inc.
Address 1139 West Third Street
Dayton, OH 45402

Date May 13, 2020
Expense Type Development Agreement
Total Amount $250,000.00 thru 12-31-2021

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<tbody>
<tr>
<td>West Dayton Development</td>
<td>22502-2600-1224-41</td>
<td>$250,000.00</td>
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Includes Revenue to the City: ☑ No
Affirmative Action Program: ☑ No

Description

West Dayton Development Trust Fund Agreement

The Department of Economic Development requests approval to enter into a Development Agreement with Wright-Dunbar, Inc. (WDI). The Agreement will provide $250,000.00 to WDI in the form of a grant to assist with funding the interior and exterior building improvements; electrical, plumbing, and HVAC system upgrades; machinery and equipment; furniture and fixtures; and new signage and lighting activities for their property located at 1100 West Third Street.

WDI plans to redevelop their conference center into an entrepreneurial food hall that will provide leasable spaces for local restaurant owners and a coffee bar that will create a destination location that will also enhance the sense of community among residents and entrepreneurs in the area. This transformative project leverages an additional $1,100,000.00 in new private investment in the Wright-Dunbar/Five Points neighborhood.

The Agreement will commence upon execution and expire on December 31, 2021.

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

A map and a Certificate of Funds is attached.

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 8/2016
April 28, 2020

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

LaShea Lofton, Director  
Finance Department

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

SUBJECT:  Request for Approval – Development Agreement with Wright Dunbar, Inc.

Attached for City Commission approval is a Development Agreement with Wright Dunbar, Inc. (Company) in the amount of $250,000.00. The Company will undertake the redevelopment of their currently vacant conference center located at 1100 West Third Street into an entrepreneurial food hall that will provide leasable spaces for local restaurant owners and a coffee bar that will create a destination location that will also enhance the sense of community among residents and entrepreneurs in the area.

This project is critical to serving as a catalyst for development by adding much needed amenities for businesses to attract employees and developers for market rate housing and continuing the redevelopment momentum in the Wright Dunbar/Wolf Creek geography.

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

FPW/vlm
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

- New Contract
- Renewal Contract
- Change Order

<table>
<thead>
<tr>
<th>Required Documentation</th>
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<tr>
<td>x Initial City Manager's Report</td>
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<tr>
<td>x Initial Certificate of Funds</td>
</tr>
<tr>
<td>x Initial Agreement/Contract</td>
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<tr>
<td>Copy of City Manager's Report</td>
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<tr>
<td>Copy of Original Certificate of Funds</td>
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<th>Contract Start Date</th>
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<tr>
<td>Expiration Date</td>
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<tr>
<td>Original Commission Approval</td>
<td>$250,000.00</td>
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<tr>
<td>Initial Encumbrance</td>
<td>$250,000.00</td>
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| Amount: | $250,000.00 |
| Fund Code | 22502 - 2600 - 1224 - 41 - |
| Fund | Org | Acct | Prog | Act | Loc |

| Amount: | |
| Fund Code | XXXX - XXXX - XXXX - XX - XXXX - XXXX |
| Fund | Org | Acct | Prog | Act | Loc |

Attach additional pages for more FOAPALS

Vendor Name: Wright-Dunbar Inc.
Vendor Address: 1139 West Third Street Dayton Ohio 45402
Federal ID: 31-1700009
Commodity Code: 91849
Purpose: Development agreement to fund interior and exterior building improvements; electrical, plumbing, and HVAC system upgrades; machinery and equipment; furniture and fixtures; and new signage and lighting activities for property at 1100 West Third Street.

Contact Person: Jill Bramini Economic Development 4/27/2020
Originating Department Director's Signature: [Signature]

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: [Signature] Date: 05/05/2020
CF Prepared by: [Signature] Date: 05/04/2020
CF/CT Number: CT20-2571

Finance Department
WEST DAYTON DEVELOPMENT TRUST FUND AGREEMENT
Wright Dunbar, Inc.

This WEST DAYTON DEVELOPMENT TRUST FUND AGREEMENT ("Agreement") is made and entered into between Wright Dunbar, Inc., a not-for-profit corporation organized and existing under the laws of the State of Ohio, currently located at 1139 West Third Street, Dayton, Ohio 45402 ("Company"), and the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio ("City").

WITNESSETH THAT:

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

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

WHEREAS, Company plans to redevelop their conference center located at 1100 West Third Street into an entrepreneurial food hall that will provide leasable spaces for local restaurant owners and a coffee bar that will create a destination location that will also enhance the sense of community among residents and entrepreneurs in the area; and

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

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

ARTICLE 1. DEFINITIONS.
For the purposes this Agreement, the following words and phrases shall have the following meanings ascribed to them respectively, regardless of whether or not the words and phrases are capitalized:

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

Facility. The real property located at 1100 West Third Street, Dayton, Ohio. The Facility is located within the Wright-Dunbar Historic Business District.

Project. Improving and equipping the Facility for use as a food hall including, without limitation, interior and exterior building improvements; electrical, plumbing, and HVAC system upgrades; machinery and equipment; furniture and fixtures; and new signage and lighting.

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

**ARTICLE 2. PROJECT TIMELINE.**

Company shall commence the Project within ninety days of Agreement execution and complete the Project on or before December 31, 2021, unless such time for commencement and/or completion is extended upon mutual written agreement between the parties to this Agreement. As further delineated herein, all construction activities and other work required to complete the Project shall be performed and completed in accordance with all applicable federal, state, and local laws, rules, regulations, and orders, including all applicable building, zoning, well field, and fire code requirements.

**ARTICLE 3. FUNDING.**

City will provide Company a West Dayton Development Trust Fund Grant ("Project Grant") to reimburse Company for Eligible Project Costs in an amount not to exceed the lesser of (i) Two Hundred Fifty Thousand Dollars ($250,000) or (ii) the Grant Cap as defined herein. The parties contemplate that the Project Costs ("Contemplated Project Costs") will be approximately One Million One Hundred Eight-Three Thousand Dollars ($1,183,000). Rounding the decimal point up in favor of the Company, Two Hundred Fifty Thousand Dollars is approximately twenty-one and two-tenths percent (21.2%) (the "Reimbursement Percentage") of the Contemplated Project Costs. Therefore, the Grant Cap shall be twenty-one and two-tenths percent (21.2%) of the Project Costs. (As an example, if the Project Costs are $1,000,000, the grant cap would 21.2% of that amount ($212,000).

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

Company shall submit a Request for Reimbursement of the Project Grant periodically (no more than monthly) utilizing a cover form substantially similar to that attached hereto and incorporated herein as Exhibit A. Each Request for Reimbursement shall state the applicable time frame covered and the total amount requested; detail the work and/or services performed; and contain such records, information, and/or documentation to substantiate the Eligible Project Costs for which reimbursement is sought.

Company shall also provide cancelled checks as evidence of payment of such costs. Expenses incurred as part of the Project Costs for purposes of calculating the Reimbursement Percentage and Grant Cap must be documented in substantially the same manner as Eligible Project Costs. Appropriate City inspection personnel will verify all Project Costs. Unless disputed, City will disburse payment within forty-five (45) days from receipt of the Request for Reimbursement.

**ARTICLE 4. SPECIFIC CONDITIONS.**

A. Company shall comply with all applicable federal, state, and local laws, including applicable rules, regulations, and orders governing receipt and use of municipal and other public funds for the Project. All construction activities and other work required to complete the Project shall be performed and completed in accordance with all applicable federal, state, and local laws, rules, regulations, and orders, including all building, zoning and fire code requirements. Company shall assume full and complete responsibility for any alleged or actual violation of the foregoing, including payment of any penalty imposed and/or repayment of improperly expended funds, if any, and shall defend, indemnify, and hold harmless City and its elected officials, officers, agents, and employees therefrom.

West Dayton Development Trust Fund Agreement – [Wright Dunbar, Inc.] Page 2 of 9
B. Developer agrees that the City’s Procurement Enhancement Plan ("PEP") participation goals for certified Small Business Enterprises ("SBEs"), Minority Business Enterprises ("MBEs"), Women’s Business Enterprises ("WBEs"), and Dayton Local Small Businesses ("DLSBs") apply to the Project. The Developer and any Developer Affiliates have the obligation to require individual company compliance with the PEP. The PEP participation goals are:

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

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

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

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

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

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

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

ARTICLE 5. TERM AND TERMINATION.

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

1. A receiver for Company’s assets is appointed by a court of competent jurisdiction.
2. Company is divested of its rights, powers, and privileges under this Agreement by operation of law.
3. Company’s failure to comply with any term, covenant or condition of this Agreement to be kept, performed and observed by it, and the failure of Company to remedy such failure within thirty (30) days from the date of written notice from City.

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

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

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

ARTICLE 6. INDEMNIFICATION.

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

ARTICLE 7. EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION.

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

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

ARTICLE 8. POLITICAL CONTRIBUTIONS.

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

ARTICLE 9. RECORDS AND RETENTION.

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

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

ARTICLE 10. TAX REPRESENTATION.

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

ARTICLE 11. GENERAL PROVISIONS.

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

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

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

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

West Dayton Development Trust Fund Agreement – [Wright Dunbar, Inc.] Page 5 of 9
E. **Waiver.** A waiver by City of any breach of this Agreement shall be in writing. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it is given and shall not affect City’s rights with respect to any other or further breach.

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

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

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

For Company:  
Harry Seifert, President  
Wright Dunbar, Inc.  
1139 West Third Street  
Dayton, OH 45402

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

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

[Remainder of this page intentionally left blank]
WRIGHT DUNBAR, INC.

By: Harry Seifert

Print name: Harry Seifert

Its: Board President

CITY OF DAYTON, OHIO

City Manager

Date

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

________________________, 2020

Min. / Bk. ________  Pg. ________

Clerk of the Commission

APPROVED AS TO FORM AND
CORRECTNESS:

4/29/2020

X  John Musto for

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

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

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

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

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

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

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

ADDITIONAL INFORMATION:

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

Submitted by:

Signature: ________________________________

Title: ________________________________

Phone: ________________________________

Email: ________________________________

Alternative contact for further information if applicable:

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Map - Aerial Picture
1100 W. Third Street
Community Reinvestment Area (CRA) Income Tax Sharing Payments

The Department of Economic Development is requesting approval to disburse the annual income tax revenue sharing payment to the Vandalia-Butler City Schools Board of Education (“Vandalia-Butler Schools”). This revenue sharing payment relates to income taxes generated within the Airport Community Reinvestment Area (Airport CRA) and is pursuant to an Intergovernmental Revenue Sharing Agreement ("Revenue Sharing Agreement") entered into with Vandalia-Butler Schools on December 26, 2018. The Revenue Sharing Agreement formalizes the process by which the City is complying with Ohio law as described below.

ORC §5709.82 provides that in the event a building situated within the boundaries of a CRA generates more than One Million Dollars and Zero Cents ($1,000,000.00) of payroll from new employees in a year during which it benefits from real property tax exemption, the City is required to share the income tax revenue generated by the amount by which the new payroll exceeds One Million Dollars and Zero Cents ($1,000,000.00) with the affected local school district.

This payment is based on the new employment payroll for the Airport CRA during calendar year 2019. Energizer Holdings Inc. is currently the only company that generated more than One Million Dollars and Zero Cents ($1,000,000.00) of new payroll.

The annual income tax sharing payments shall be made on or before June 30th each year and expires on June 30, 2039.

A Certificate of Funds for $215,430.79 is attached.
# CERTIFICATE OF FUNDS

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

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**Required Documentation**

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

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*Attach additional pages for more FOAPALs*

**Vendor Name:** Vandalia-Butler City School

**Vendor Address:** 500 S. Dixie Drive, Vandalia, OH 45377

**Federal ID:** 31-6000747

**Commodity Code:** 91849

**Purpose:** School payment for 2019 payroll withholdings year 3 of 15. Encumbered with 2020 funds.

**Contact Person:** Jill Bramini

**Economic Development Department/Division:**

**Date:** 4/30/2020

**Originating Department Director's Signature:**

---

**SECTION II - to be completed by the Finance Department**

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

**Finance Director Signature:**

**Date:** 05-05-2020

**CF/CT Number:** C720-2305
April 30, 2020

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

    LaShea Lofton, Director
    Finance Department

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

SUBJECT: Request for Approval – Annual Revenue Payment to Vandalia-Butler Schools for Airport CRA

The Department of Economic Development is requesting approval to disburse the annual income tax revenue sharing payment to the Vandalia-Butler City Schools Board of Education ("Vandalia-Butler Schools"). This revenue sharing payment relates to income taxes generated within the Airport Community Reinvestment Area (Airport CRA) and is pursuant to an Intergovernmental Revenue Sharing Agreement ("Revenue Sharing Agreement") entered into with Vandalia-Butler Schools on December 26, 2018. The Revenue Sharing Agreement formalizes the process by which the City is complying with Ohio law.

This payment is based on the employment at the Energizer Holdings (formerly Spectrum Brands) facility in the Airport CRA during calendar year 2019. Energizer Holdings Inc. is currently the only company that generated more than One Million Dollars and Zero Cents ($1,000,000.00) of new payroll.

The Revenue Sharing Agreement provides that the annual income tax sharing payments shall be made on or before June 30th each year.

If you have any questions, please contact me at extension 3621.

FPW
City Manager's Report

Date June 12, 2019
Expense Type Other, (See Description Below)
Total Amount $216,292.31 thru 12-31-2019

From 2600 - Economic Development
Supplier, Vendor, Company, Individual
Name Vandalia-Butler City Schools
Address 500 S. Dixie Drive
Vandalia, Ohio 45377

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

Fund Source(s) Fund Code(s) Fund Amount(s)
Development Fund 16300-2600-1221-41 $216,292.31

Description
Community Reinvestment Area (CRA) Income Tax Sharing Payments

The Department of Economic Development is requesting approval to disburse the annual income tax revenue sharing payment to the Vandalia-Butler City Schools Board of Education ("Vandalia-Butler Schools"). This revenue sharing payment relates to income taxes generated within the Airport Community Reinvestment Area (Airport CRA) and is pursuant to an Intergovernmental Revenue Sharing Agreement ("Revenue Sharing Agreement") entered into with Vandalia-Butler Schools on December 26, 2018. The Revenue Sharing Agreement formalizes the process by which the City is complying with Ohio law as described below.

ORC §5709.82 provides that in the event a building situated within the boundaries of a CRA generates more than One Million Dollars and Zero Cents ($1,000,000.00) of payroll from new employees in a year during which it benefits from real property tax exemption, the City is required to share the income tax revenue generated by the amount by which the new payroll exceeds One Million Dollars and Zero Cents ($1,000,000.00) with the affected local school district.

This payment is based on the new employment payroll for the Airport CRA during calendar year 2018. Spectrum Brands is currently the only company that generated more than One Million Dollars and Zero Cents ($1,000,000.00) of new payroll.

The annual income tax sharing payments shall be made on or before June 30th each year and expires on June 30, 2039.

A Certificate of Funds for $216,292.31 is attached.

Signatures/Approval

Approved by City Commission

FORM NO. MS-16

Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

X New Contract

Renewal Contract

NO DRAFT DOCUMENTS PERMITTED

Change Order:

Contract Start Date
Expiration Date
Original Commission Approval
Initial Encumbrance
Remaining Commission Approval

Original CT/CF
Increase Encumbrance
Decrease Encumbrance
Remaining Commission Approval

Required Documentation

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

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

Amount: $216,292.31

Fund Code: 16300 2600 1221 41

Amount: __________

Fund Code: XXXX XXXX XXXX XXXX

Fund Code: XXXX XXXX XXXX XXXX

Attach additional pages for more FOAPALs

Vendor Name: Vandalia-Butler City School

Vendor Address: 500 S. Dixie Drive

Vandalia OH 45377

Street City State Zipcode + 4

Federal ID: 31-6000747

Commodity Code: 91849


Contact Person: Ronelle Kinney

Economic Development

5/28/2019

Date

Originating Department Director's Signature: [Signature]

SECTION II - to be completed by the Finance Department

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

Finance Director Signature

Date

CF Prepared by

Date

CTI-2305

October 18, 2011
City Manager's Report

Date December 26, 2018
Expense Type Other, (See Description Below)
Total Amount $142,687.50 thru 3-31-2019

From 2600 - Economic Development

Supplier, Vendor, Company, Individual

Name Vandalia-Butler City Schools Board of Education

Address 500 S. Dixie Drive
Vandalia, Ohio 45377

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

Description
Community Reinvestment Area (CRA) Income Tax Sharing Payments

The Department of Economic Development requests approval to enter into an Intergovernmental Revenue Sharing Agreement with the Vandalia-Butler City Schools Board of Education ("VBS") regarding income tax sharing payments triggered by projects receiving real property tax abatement in the Airport Community Reinvestment Area ("Airport CRA"). ORC §5709.82 provides that in the event a building situated within the boundaries of a CRA generates more than One Million Dollars and Zero Cents ($1,000,000.00) of payroll from new employees in a year during which it benefits from real property tax exemption, the City is required to share the income tax revenue generated by the amount by which the new payroll exceeds One Million Dollars and Zero Cents ($1,000,000.00) with the affected local school district.

This agreement establishes the process for verifying and calculating the amount of such annual income tax sharing payments and provides that such payments shall be made on or before June 30th of the following year. In addition, the agreement provides that a one-time payment in the amount of One Hundred Forty-two Thousand Six Hundred Eighty-seven Dollars and Fifty Cents ($142,687.50) is based on the new payroll generated in 2017 at the Spectrum Brands facility be paid on or before March 31, 2019.

The Agreement will commence upon execution and expires on June 30, 2039.

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

A Certificate of Funds for $142,687.50 is attached.

Signatures/Approval

[Signatures]

Approved by City Commission

[Signature]

Clerk

December 24, 2018

Date

FORM NO. MS-16

Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

X New Contract

Renewal Contract

Change Order

Contract Start Date

upon execution

Expiration Date

03/31/19

Original Commission Approval

$ 142,687.50

Initial Encumbrance

$ 142,687.50

Remaining Commission Approval

Required Documentation

X Initial City Manager's Report

X Initial Certificate of Funds

X Initial Agreement/Contract

Original CT/CF

Increase Encumbrance

Decrease Encumbrance

Remaining Commission Approval

Copy of City Manager's Report

Copy of Original Certificate of Funds

Amount: $ 142,687.50

Fund Code 16300 - 2600 - 1221 - 41 -

Fund Org Acct Prog Act Loc

Amount: __________

Fund Code XXXX0 - XXX0 - XXXX - XX -

Fund Org Acct Prog Act Loc

Fund Code XXXX0 - XXX0 - XXXX - XX - XXXX - XXXX

Fund Org Acct Prog Act Loc

Attach additional pages for more FOAPALs

Vendor Name: Vandalia-Butler City School

Vendor Address: 500 S. Dixie Drive

Vandalia OH 45377

Street City State Zipcode + 4

Federal ID: 31-6000747

Commodity Code: 91849


Contact Person: Jill Brannin x3828

Economic Development Department/Division

12/14/2018 Date

Originating Department Director's Signature: ________________________

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: ________________________ Date: 12-13-18

CF Prepared by: ________________________ Date: 12-18-2018

Finance Department
INTERGOVERNMENTAL REVENUE SHARING AGREEMENT

This INTERGOVERNMENTAL REVENUE SHARING AGREEMENT ("Agreement"), is made and entered into on the later of the dates of execution ("Effective Date") by and between THE CITY OF DAYTON, OHIO ("City"), a municipal corporation, and the VANDALIA-BUTLER CITY SCHOOLS BOARD OF EDUCATION ("VBS"), a public school district. The City and VBS may each be referred to herein as a "Party" and may be referred to collectively as the "Parties."

WHEREAS, City and VBS have encouraged the attraction, retention, and expansion of businesses and the acquisition and development of real property in an area located at Dayton International Airport that has been established as a Community Reinvestment Area ("CRA") under Chapter 3735 of the Ohio Revised Code ("ORC") (such area referred to herein as the "Airport CRA");

WHEREAS, the real property that has been established as the Airport CRA is located within the jurisdiction of VBS;

WHEREAS, City and VBS encourage the creation of new businesses and employment opportunities within the City's municipal boundaries;

WHEREAS, pursuant to ORC §5709.82 in the event the owner of property situated within the boundaries of a CRA generates more than One Million Dollars and Zero Cents ($1,000,000.00) of payroll ("Threshold Amount") from New Employees (as defined in ORC §5709.82(A)(1)) in a year during which it benefits from real property tax exemption, the City is required to share the income tax revenue generated by the amount by which the payroll generated by New Employees exceeds the Threshold Amount with VBS;

WHEREAS, the Spectrum Brands light manufacturing and distribution facility ("Spectrum Building"), located at 2800 Concorde Drive, is located within the boundaries of the Airport CRA, has been granted a real property tax exemption pursuant to its investment in the Airport CRA, and has generated more than the Threshold Amount of annual payroll from New Employees;

WHEREAS, additional improvements to real property, including new commercial facilities, are under construction and the Parties contemplate that additional commercial development will continue to occur within the Airport CRA (all such buildings under construction or constructed in the future are collectively referred to as "Future Commercial Buildings"); and,

WHEREAS, City and VBS wish to specify the manner and process by which any such income tax revenue sharing is calculated, and any such payments are disbursed with the respect to the Spectrum Building and Future Commercial Buildings.
NOW, THEREFORE, in consideration of the foregoing premises and the promises and covenants contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1. VERIFICATION OF NEW ANNUAL PAYROLL AND CALCULATION OF INCOME TAX REVENUE SHARING.

No later than June 30th of each year, during the Term of this Agreement (as defined in Article 4(E)), the City shall perform all of the following acts:

1. Verify the amount of annual payroll generated by New Employees during the preceding tax year that is attributable to the Spectrum Building and to each Future Commercial Building that benefited from real property tax exemption in the preceding tax year ("New Employee Payroll Amount");

2. Calculate the corresponding amount of income tax revenue for each owner of real property located in the Airport CRA that generated more than Threshold Amount in payroll from New Employees and received real property tax exemption in the preceding tax year ("Net New Employee Payroll Amount");

3. Multiply the Net New Employee Payroll Amount by the City income tax rate in effect for the applicable tax year ("Net Municipal Income Tax Withholding");

4. Divide the Net Municipal Income Tax Withholding by two (2) to generate the income tax revenue sharing payment ("Revenue Sharing Payment").

Such Revenue Sharing Payment shall be transmitted by City to VBS by wire transfer or other means as mutually agreed upon by City and VBS. The Parties understand and agree that during any individual tax year in which the payroll generated by New Employees does not equal or exceed the Threshold Amount, the City is not required to make a Revenue Sharing Payment.

ARTICLE 2. SPECTRUM BUILDING SINGLE PAYMENT FOR TAX YEAR 2017.

The following shall serve as an example of the calculation of the Revenue Sharing Payment set forth in Article 1 and apply to the Revenue Sharing Payment pursuant to the Spectrum Building for tax year 2017.

1. City has verified that the New Employee Payroll Amount at the Spectrum Building for calendar year 2017 is Twelve Million Four Hundred Fifteen Thousand Dollars and Zero Cents ($12,415,000.00);

2. Subtracting the first One Million Dollars (constituting the Threshold Amount) of new payroll results in a Net New Employee Payroll Amount of Eleven Million Four Hundred Fifteen Thousand Dollars and Zero Cents ($11,415,000.00);
3. Multiplying the Net New Employee Payroll Amount of Eleven Million Four Hundred Fifteen Thousand Dollars and Zero Cents ($11,415,000.00) by the current City income tax rate of Two and one-half percent (2.5%) produces a Net Municipal Income Tax Withholding of Two Hundred Eighty-five Thousand Three Hundred Seventy-five Dollars and Zero Cents ($285,375.00); and

4. Dividing the Net Municipal Income Tax Withholding by two (2) generates a Revenue Sharing Payment of One Hundred Forty-two Thousand Six Hundred Eighty-seven Dollars and Fifty Cents ($142,687.50), which payment will be transmitted to VBS on or before March 31, 2019.

By accepting the Revenue Sharing Payment of $142,687.50, VBS agrees that this payment is the entire and full Revenue Sharing Payment owed by the City to VBS for tax year 2017.

ARTICLE 3. ONGOING REVENUE SHARING PAYMENTS.

Beginning in tax year 2018 and continuing through December 31, 2038, Revenue Sharing Payments attributable to the Spectrum Building and Future Commercial Buildings, if any, shall be made on or before June 30th of the following year in accordance with the process set forth in this Agreement. For avoidance of doubt, the final Revenue Sharing Payment under this Agreement, for tax year 2038, shall be made on or before June 30, 2039.

ARTICLE 4. LIMITED OBLIGATION

Nothing in this Agreement shall be construed or interpreted to pledge the full faith and credit of the City to make the Revenue Sharing Payment under this Agreement, nor shall the City be obligated to make Revenue Sharing Payment in excess of the amount of the Revenue Sharing Payment.

ARTICLE 5. GENERAL PROVISIONS.

A. Waiver of Notice. VBS hereby waives all notice requirements as set forth in Chapters 3735 and 5709 of the ORC, respectively, for all buildings that receive commercial CRA tax exemption that are subject to the provisions of this Agreement.

B. Amendment. This Agreement may be amended or modified by the Parties hereto only by a writing, executed by a duly authorized representative for each party, and by their respective legislative authorities if necessary.

C. Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Parties as to the subject matter hereof and merges and supersedes all prior discussions, agreements and undertakings of every kind and nature between the Parties with respect to the subject matter of this Agreement.
D. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party to this Agreement may execute this Agreement by signing any such counterpart.

E. **Term.** This Agreement shall commence on the Effective Date and be in effect until the final Revenue Sharing Payment is made pursuant to tax year 2038, unless otherwise extended by mutual agreement of the Parties and execution of an amendment hereto.

F. **Notices.** All certificates and notices which are required to or may be given pursuant to the provisions of this Agreement shall be sent by the United States ordinary mail, postage prepaid, and shall be deemed to have been given or delivered when so mailed to the following addresses:

If to the City: City of Dayton
101 West Third Street
Dayton, Ohio 45401
Attention: City Manager

If to the School District: Vandalia-Butler City School District
500 South Dixie Drive
Vandalia, Ohio 45377
Attention: Treasurer/CFO

G. **Governing Law.** All matters relating to or arising out of this Agreement or the transactions contemplated hereby will be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws. Any litigation or other legal matter regarding this Agreement or performance by either party must be brought in a court of competent jurisdiction in Montgomery County, Ohio.

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

[SIGNATURE PAGE FOLLOWS.]
SIGNATURE PAGE
TO
INTERGOVERNMENTAL REVENUE SHARING AGREEMENT

IN WITNESS WHEREOF, City and VBS, each by a duly authorized representative, have made and entered into this Agreement on the later of the dates of execution by the Parties hereto.

VANDALIA-BUTLER CITY SCHOOL DISTRICT
By: [Signature]
Its: Treasurer

CITY OF DAYTON, OHIO
[Signature]
City Manager

APPROVED AS TO FORM AND CORRECTNESS:
[Signature]
City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:
[Signature]
Clerk of the Commission

December 26, 2018
Min. / Bk. I-15  Pg. 0472
In the Matter of the Vacation of the Alley North of East Third Street from the Alley East of More Avenue to the East Property Line of City Lot #30313.

Pursuant to proper notice being given, the Board of Revision of Assessments reports that it convened its meeting on March 16, 2020 in the Fifth Floor Conference Room of the Department of Public Works for the purpose of considering the above matter.

Attended by
Keith Steeber
Patricia Jones
John Musto
Joe Weinel

AGENDA ITEMS: Two items were on the agenda. There were no interested parties in attendance.

The Board of Revision of Assessments meeting was convened by Mr. John Musto on March 16, 2020 in the Public Works Fifth Floor Conference Room. Mr. John Musto agreed to chair the meeting.

ITEM # 1: Resolution No. 6472-20 In the Matter of the Vacation of the Alley North of East Third Street from the Alley East of More Avenue to the East Property Line of City Lot #30313.

Service was made to four property owners: Ms. Kathy Spears, 3409 East Third Street, Dayton, Ohio 45403; Mr. Jerry Fletcher, 15 North Sperling Avenue, Dayton, Ohio 45403; Ronald Antrican, 3401 East Third Street, Dayton, Ohio 45403; Mr. Leonardo Jose Desouza, 3421 East Third Street, Dayton, Ohio 45403.

Discussion followed as to the reason for the vacation request. Mr. John Musto, stated the conditions established by the City Plan Board meeting on November 12, 2019 as follows:

1. Being all of the 8 foot the alley north of East Third Street from the 16 foot alley east of More Avenue to the east property line of City Lot #30313.

Mr. Musto made a motion to accept the vacation with the conditions from the City Plan Board meeting on November 12, 2019. Mr. Steeber seconded and the vacation passed unanimously.

With no other business to come before the Board, Mr. Musto made motion to close the meeting and Mr. Steeber seconded. All present said “aye” and the motion carried. The meeting was adjourned.

Respectfully submitted,

Patricia N. Jones
Patricia N. Jones, Secretary
to the Board of Revision of Assessments

cc: Board Members
Assessment File
Joe Weinel – Ordinances

BOARD OF REVISION OF ASSESSMENTS

Keith Steeber
City Engineer, Public Works

Jim Mux
Chief Counsel, Department of Law

APPROVED BY THE CITY COMMISSION

City Manager
REPORT AND MINUTES OF THE BOARD OF REVISION OF ASSESSMENTS TO THE CITY COMMISSION OF THE CITY OF DAYTON

In the Matter of the Vacation of the Alley North of West Second Street from North Conover Street to the Railroad Right of Way.

Pursuant to proper notice being given, the Board of Revision of Assessments reports that it convened its meeting on March 16, 2020 in the Fifth Floor Conference Room of the Department of Public Works for the purpose of considering the above matter.

Attended by Keith Steeber Patricia Jones
John Musto Joe Weinel

AGENDA ITEMS: Two items were on the agenda. There were no interested parties in attendance.

The Board of Revision of Assessments meeting was convened by Mr. John Musto on March 16, 2020 in the Public Works Fifth Floor Conference Room. Mr. John Musto agreed to chair the meeting.

ITEM # 1: Resolution No. 6471-20 In the Matter of the Vacation of the Alley North of West Second Street from North Conover Street to the Alley Railroad Right of Way.

Service was made to one property owner: Mr. John Cummiskey, Greater Dayton RTA, 4 South Main Street, Dayton, Ohio 45402.

Discussion followed as to the reason for the vacation request. Mr. John Musto, stated the conditions established by the City Plan Board meeting on November 12, 2019 as follows:

1. Being all of the 16.5 foot the alley north of West Second Street from the 40 foot North Conover Street to the 60 foot Railroad Right of Way.

Mr. Steeber made a motion to accept the vacation with the conditions from the City Plan Board meeting on November 12, 2019. Mr. Musto seconded and the vacation passed unanimously.

With no other business to come before the Board, Mr. Musto made motion to close the meeting and Mr. Steeber seconded. All present said “aye” and the motion carried. The meeting was adjourned.

Respectfully submitted,

Patricia N. Jones, Secretary
to the Board of Revision of Assessments

cc: Board Members
Assessment File
Joe Weinel – Ordinances

BOARD OF REVISION OF ASSESSMENTS

Keith Steeber
City Engineer, Public Works

Joe Weinel
Chief Counsel, Department of Law

APPROVED BY THE CITY COMMISSION

City Manager
AN ORDINANCE

Authorizing the City of Dayton to enter into a Guarantee Agreement with Victoria Theatre Association for a Public Purpose, and Declaring an Emergency.

WHEREAS, Victoria Theatre Association is currently working with the Ohio Facilities Construction Commission (“OFCC”) to obtain grant funding to assist with construction and renovation of the Victoria Theatre Arts Annex (“Annex”); and,

WHEREAS, The OFCC has requested that Victoria Theatre Association enter into a Cultural Project Cooperative Use Agreement (“Project Agreement”); and,

WHEREAS, Victoria Theatre Association is required to have a co-sponsor (“Project Sponsor”) execute the Project Agreement in order to receive the grant funding; and,

WHEREAS, City, as the owner of the property upon which the Annex sits, is willing to execute the Project Agreement with Victoria Theatre Association pursuant to its execution of this Guarantee; and,

WHEREAS, It is necessary for the immediate preservation of the public peace, property, health and safety that this ordinance take effect at the earliest possible time; now, therefore,

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

Section 1. That Victoria Theatre Association shall be solely responsible for all liabilities and costs associated with the Project Agreement.

Section 2. That the City Manager is authorized and directed to execute the Project Agreement, on behalf of the City.

Section 3. That the City Manager is authorized and directed to execute the Guarantee Agreement, on behalf of the City.

Section 4. That for the reasons stated in the preamble hereof, this ordinance is declared to be an emergency measure and shall take effect immediately upon passage.

PASSED BY THE COMMISSION.........................., 2020

SIGNED BY THE MAYOR.........................., 2020

Attest:

Clerk of Commission

Approved as to form:

City Attorney

Mayor of the City of Dayton, Ohio
GUARANTEE AGREEMENT

THIS GUARANTEE AGREEMENT ("Guarantee") is made and entered between the City of Dayton, Ohio ("City"), a municipal corporation in and of the State of Ohio, and Victoria Theater, with an office located at 138 N. Main Street, Dayton, Ohio 45402 ("Company").

WITNESSETH THAT:

WHEREAS, Company is currently working with the Ohio Facilities Construction Commission ("OFCC") to obtain grant funding to assist with construction and renovation of the Victoria Theatre Arts Annex ("Annex"); and,

WHEREAS, The OFCC has requested that Company enter into a Cultural Project Cooperative Use Agreement ("Project Agreement"); and,

WHEREAS, Company is required to have a co-sponsor ("Project Sponsor") execute the Project Agreement in order to receive the grant funding; and,

WHEREAS, The City, as the owner of the property upon which the Annex sits, is willing to execute the Project Agreement with Company pursuant to Company’s execution of this Guarantee; and,

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

SECTION 1. GUARANTEED AMOUNT

Section 3.1 of the Project Agreement, a copy of which is attached hereto and incorporated herein as Exhibit A, states that the grant funding provided to Company shall be in the amount of Three Hundred Fifty Thousand Dollars and Zero Cents ($350,000.00) ("Grant Amount") and Section 9.2(b) states that, in the event Company defaults, the City shall be responsible for reimbursing the OFCC the remaining balance of grant funding not expended at that time. Company and City wish to make it clear that Company shall be solely responsible for all liabilities and costs associated with the Project Agreement.

In the event of Company’s default under the Project Agreement, Company unconditionally and irrevocably guarantees to the City the prompt and complete payment and performance of reimbursement to the OFCC for the then owed Grant Amount. Furthermore, Company warrants and promises that Company currently has the funds available to insure the City of such guarantee herein.

The obligation to reimburse the OFCC shall be reduced at a rate of Thirty Five Thousand Dollars and Zero Cents ($35,000.00) per year of the Term (as defined below) and in accordance with the declining balance depicted in the attached and incorporated Exhibit B.
SECTION 2. BANKRUPTCY

Company understands and acknowledges that, by virtue of this Guarantee, it has specifically assumed any and all risks of a bankruptcy or reorganization case or proceeding with respect to City. Without in any way limiting the generality of the foregoing, bankruptcy shall not affect the obligation of Company to pay and perform in accordance with the original terms herein.

SECTION 3. INDEMNIFICATION

To the full extent permitted by law, Company shall indemnify, defend, and hold harmless the City and its elected officials, officers, agents, and employees from and against all claims, demands, losses, and expenses, including but not limited to reasonable attorneys' fees, to the extent arising out of or resulting in whole or in part from any act or omission relating to, and/or from any failure to perform Company's duties under, this Agreement that is attributable to Company, its employees, agents, and any subcontractors, and any other person or entity for whose conduct Company may be strictly liable under Ohio law. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN OR IN ANY OTHER DOCUMENT RELATED HERETO, COMPANY SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT IT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. COMPANY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED THE LESSER OF THE AMOUNT OF THREE HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS ($350,000.00) OR THE AMOUNT OF THE BALANCE DEPICTED ON EXHIBIT B AS OF THE DATE ANY SUCH CLAIM AROSE.

No impairment of Company shall in any way discharge or release Company from any obligation in this Guarantee.

SECTION 4. ASSIGNMENT AND LIMITATIONS ON SUBCONTRACTING

Company shall not assign or subcontract this Guarantee without the prior written agreement from the City.

SECTION 5. TERMINATION

The City may terminate this Guarantee at any time and without cause upon giving Company thirty (30) days prior written notice. The notice of termination shall be made by mailing written notice to Company by certified mail to its usual place of business.

SECTION 6. TERM

This Guarantee shall commence upon full execution by the City and it shall expire on December 31, 2030, unless earlier terminated or extended by mutual written agreement (“Term”).
SECTION 7. RECORDS

Company shall use Generally Accepted Accounting Principles ("GAAP") in recording and documenting all costs and expenditures related in whole or part to the performance of this Guarantee. Such costs and expenditures shall be supported by time records, invoices, contracts, vouchers, or other accounting documents pertaining in whole or in part to this Guarantee and shall be clearly identified and readily accessible to the City. At any time during normal business hours and as often as the City may deem necessary, Company shall make available to the City and/or its designees all of its records with respect to all matters covered under this Guarantee. Company will permit the City and/or its designees to audit, examine, and make excerpts or transcripts from such records.

If Company performs an independent audit of business financial records, Company shall require the company or auditor to comply with all applicable GAAP standards that have been developed by the American Institute of Certified Public Accountants.

SECTION 8. MISCELLANEOUS

A. Non-Discrimination. Company shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap with respect to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, lay-off, termination, rates of pay or other forms of compensation, or selection for training, including apprenticeship. It is expressly agreed and understood that Section 35.14 of the Revised Code of General Ordinances of the City of Dayton constitutes a material condition of this Guarantee 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 Guarantee at its option.

B. Remedies. The remedies provided in this Guarantee are cumulative. Delay or forbearance in the enforcement of any right under this Guarantee shall not be deemed a waiver of, or estoppel against the exercise of such right.

C. Entire Agreement. This Guarantee, together with all Exhibits referred to herein, represents the entire and integrated agreement between the City and Company and supersedes all prior negotiations, representations, and agreements regarding the subject hereof, whether oral or written.

D. Amendment. This Guarantee may be amended by mutual agreement between the City and Company. Any such amendment shall be reduced to a writing, which makes specific reference to this Guarantee, approved by the Director of Economic Development or designee, executed by a duly authorized representative of each party and, if applicable or required, approved by the Commission of the City of Dayton, Ohio.

E. Applicable Law and Venue. This Guarantee shall be governed and construed under the laws of the State of Ohio. By execution hereof, Company irrevocably submits to the original jurisdiction of the courts located within the County of Montgomery, State of Ohio, with
regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Guarantee.

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

G. Notices. Any notice required under this Guarantee shall be deemed to have been given on the date actually received or forty-eight (48) hours having been deposited in the United States mail, postage prepaid, registered or certified, and addressed to the parties as set forth below, whichever occurs earlier. Either party may change its address from time to time by written notice given in this manner.

If to the City:

City of Dayton, Ohio
Department of Economic Development
ATTN: Amy Walbridge
101 W. Third Street
Dayton, OH 45402

If to Company:

Victoria Theatre Association
Attn: David Schrodi, CFO
138 N. Main Street
Dayton, Ohio 45402

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, the City and Company, each by a duly authorized representative, have executed this Guarantee as of the date first set forth below.

CITY OF DAYTON

_______________________________
City Manager

_______________________________
Date

VICTORIA THEATRE ASSOCIATION

_______________________________
By:

_______________________________
Its: 

APPROVED AS TO FORM
AND CORRECTNESS:

_______________________________
City Attorney

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

_______________________________, 2020

Min./Bk.:_____ Page:____________________

_______________________________
Clerk of the Commission
CULTURAL PROJECT COOPERATIVE USE AGREEMENT

VICTORIA THEATRE ARTS ANNEX

This Cooperative Use Agreement (Agreement) is entered into by and among the Victoria Theatre Association and the City of Dayton, jointly and severally, as the Project Sponsor (Project Sponsor), and the State of Ohio (State), acting by and through the Ohio Facilities Construction Commission (Commission), a state agency organized and operating under Ohio Revised Code (ORC) Chapter 123 (the Commission and the Project Sponsor, collectively, the Parties). This Agreement becomes effective upon the date it is signed by all of the Parties (Effective Date).

REQUITALS

1. Pursuant to ORC Chapter 154, Article VIII Section 2i of the Ohio Constitution, and pursuant to a General Bond Order issued by the Ohio Treasurer of State (Treasurer) on August 31, 2005, bonds (Facility Bonds) were issued for the purpose of providing grant moneys to pay the costs of acquiring, constructing, reconstructing, rehabilitating, renovating, enlarging and otherwise improving, equipping and furnishing capital facilities, which are Ohio cultural facilities, as defined in ORC Section 123.28(J).

2. The Ohio Public Facilities Commission (OPFC) entered into the OPFC Lease pursuant to which the Commission will make lease rental payments, which will be assigned by OPFC to the Treasurer, in connection with Ohio cultural facilities.

3. The Commission is a body corporate and politic, an agency of state government and an instrumentality of the State, performing essential governmental functions of the State, duly created, existing and operating under and by virtue of ORC Chapter 123.

4. In accordance with ORC Section 123.21, the Commission may make and enter into all contracts, commitments and agreements, and execute all instruments, necessary or incidental to the performance of its duties.

5. The Commission has determined that the Cultural Project defined herein meets all requirements of the ORC and, subject to the fulfillment of certain conditions, has approved the expenditure for the project.

6. The Commission, by action of the executive director, authorized the execution of this Agreement and determined that the cooperative use of the Facility, as provided in this Agreement, contributes to the development, performance, and presentation of culture, or making the same available, to the public of this State.
In consideration of the mutual promises and covenants set forth herein, the Parties agree as follows:

1. Identification

1.1 Project Sponsor Information
Victoria Theatre Association
138 North Main Street
Dayton, OH 45402
David Schrodi
Chief Financial Officer
David.schrodi@victoriatheatre.com
937-461-8190

The Project Sponsor identified above represents and warrants that it is and will continue to be:
(a) a 501(c)(3) organization exempt from taxation under 501(a) of the Internal Revenue Code of 1986, as amended;
(b) duly organized and validly existing as a non-profit organization established under the laws of the State;
(c) in good standing with the Ohio Secretary of State; and
(d) in compliance with the laws enforced by, and has made all required filings with, the Charitable Law Section of the Attorney General's Office of the State of Ohio.

City of Dayton
101 West 3rd Street
Dayton, OH 45402
City Manager
937-333-3600

The Project Sponsor identified above represents and warrants that it is and will continue to be a governmental agency as defined in ORC Section 123.28(F).

1.2 Notices for Official Correspondence
All communications required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been properly given if hand delivered or sent by U.S. registered or certified mail, postage prepaid.

(a) with respect to the Commission:

Ohio Facilities Construction Commission
30 West Spring Street, 4th Floor
Columbus, Ohio 43215
Attention: Executive Director
(b) with respect to the Project Sponsor:

Victoria Theatre Association
138 North Main Street
Dayton, OH 45402
Attention: Chief Financial Officer

City of Dayton
101 West 3rd Street
Dayton, OH 45402
Attention: City Manager

The parties designated above shall each have the right from time to time to specify as their respective address for purposes of this Agreement any other address upon the giving of fifteen (15) days’ prior written notice thereof, as provided herein, to the other parties listed above.

2. Project Information

2.1 Project Location
Victoria Theatre Arts Annex, 10 North Ludlow Street, Dayton, OH 45402 (the Facility)

2.2 Project Description
The Project Sponsor plans to use the grant to renovate the Facility into an arts venue. The construction project will be known herein as the Cultural Project for the purposes of this agreement. This project supports culture by the presentation of dramatic arts.

3. Financial Considerations

3.1 Grant Amount
The 132rd General Assembly of the State of Ohio (General Assembly) in H.B. 529 designated $350,000 of the funds appropriated AL1 C230FM to the Commission to finance all or a portion of the capital facilities costs associated with the Cultural Project. The Commission agrees to provide a grant of $350,000 (Grant Amount) to the Project Sponsor.

3.2 Appropriation Intent
The funds under this Agreement shall be used by the Project Sponsor for capital improvements that meet the intent and purpose of the appropriation and the limitations on use set forth in the bill appropriating the funds. To the extent such costs exceed the funds appropriated, the Project Sponsor will be required to pay the difference. Additionally, the funds shall be used only for construction, as defined in ORC Section 123.28(K).

3.3 Fiscal Management of Project
The Project Sponsor is responsible for the financial management of the Cultural Project. The Project Sponsor will comply with, or cause compliance with, all appropriate accounting and budgeting procedures in accordance with generally accepted accounting principles, consistently applied.

3.4 Project Budget
The total cost of the project described above is estimated to be $1,173,580 (Project
Budget), including but not limited to design, construction, land acquisition, environmental assessment and remediation, exhibits, furniture, fixtures, equipment, construction management and other professional service fees, legal fees, marketing, start-up operations, operating endowments, utilities and other start-up costs, insurance, performance or payment bonds, taxes, and permits.

3.5 Local Match
In accordance with ORC Section 123.281(B)(2), the Project Sponsor shall have local contributions amounting to not less than fifty (50) percent of the Grant Amount for the Cultural Project (Local Match).

3.6 Local Share
The Local Share shall be an amount equal to the total costs of the Project Budget less the Grant Amount.

3.7 Full Funding
The Project Sponsor acknowledges that full funding occurs when it can demonstrate, to the satisfaction of the Commission, that funds have been raised to cover the Project Budget set forth in Section 3.4 of this Agreement (Full Funding).

3.8 Disbursement of Grant Funds
The funds to be disbursed under this Agreement shall not exceed the lesser of (A) the amount of the State appropriations or (B) the amount of funds (i) approved by the Commission and (ii) which comply with the conditions set forth in this Agreement. If further appropriations are made by the General Assembly and the expenditure of all or a portion of such funds is approved by the Commission, this Agreement may be amended to reflect any such additional amounts.

Notwithstanding anything set forth above, the state appropriation disbursed under this Agreement shall not exceed the lesser of (i) the aggregate appropriations by the General Assembly for the Cultural Project or (ii) twice the Local Match.

The Project Sponsor expressly acknowledges that no payment of state appropriation funds shall be made until such funds are released by the State Controlling Board.

The Project Sponsor shall submit invoices to the Commission in compliance with Exhibit A, attached hereto and made a part hereof.

3.9 Tax Obligations
The Project Sponsor shall be solely responsible for and shall pay all applicable federal, state, and local tax obligations.

The Project Sponsor affirms that it will take, or cause to be taken, all actions that may be required of the Project Sponsor for the interest on the Facility Bonds to be and remain excluded from gross income for federal income tax purposes and from treatment as an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Internal Revenue Code, and will
not take, or permit to be taken, any actions which would adversely affect such exclusion and such treatment.

4. Real Estate and Construction

4.1 Commencement
The Project Sponsor shall provide all construction services for the Cultural Project. The Project Sponsor shall be responsible for the construction administration of the Cultural Project. By March 1, 2018, the Project Sponsor commenced or caused commencement of construction of the Cultural Project.

4.2 Contracts and Permits
The Project Sponsor shall have the full authority to contract with appropriate persons for the design and construction of the Cultural Project. The Project Sponsor shall secure all necessary permits and/or licenses related to the Cultural Project.

4.3 Completion
The Project Sponsor represents and warrants that it will cause the Cultural Project to be constructed with reasonable speed and dispatch and reasonably adhere to the submitted construction schedule. The expected completion date of the Project is November 1, 2018 (Completion Date).

4.4 Restrictions of Record
The Project Sponsor hereby represents and warrants that there are not now, and there will not be, any restrictions of record with respect to the Facility or the Cultural Project, including without limitation, any encumbrances, liens or other matters, which would interfere with or otherwise impair the use of the Facility as an Ohio cultural facility or the rights and obligations granted hereunder by the Project Sponsor to the Commission. The City of Dayton represents that it is the fee simple owner of the premises on which the Facility is located, as described in Section 2.1 of this Agreement.

5. Operations and Maintenance

5.1 Operations and Maintenance
The Project Sponsor shall be solely responsible for and shall pay all operating and maintenance costs of the Facility over the term of the Facility Bonds.

The Project Sponsor shall maintain and keep the Facility in good order and repair, shall use the Facility for the intended purpose, and shall take all actions reasonably necessary to ensure that the Facility is available for the presentation of culture to the public over the term of the Facility Bonds.

5.2 Schedule of Operation/Control of Content
During the term of this Agreement, the Project Sponsor shall have the exclusive authority to schedule events and functions at the Facility.
5.3 Ownership
Any part of the Cultural Project paid for with proceeds of the Facility Bonds shall be owned by the Project Sponsor.

5.4 Conveyance of Right to Use and Occupy
As security for the performance of the Project Sponsor’s obligations under this Agreement, the Project Sponsor hereby conveys to the Commission the right to use and occupy the Facility upon an Event of Default, as described in Section 9.1 of this Agreement. The Project Sponsor acknowledges and consents to the conveyance by the Commission to the OPFC of such right hereby conveyed to the Commission and acknowledges that the OPFC will lease the Facility to the Commission pursuant to the OPFC Lease. The Commission acknowledges that, absent an Event of Default, it has no right to use or occupy the Facility.

6. Risk Management

6.1 Indemnification
The Victoria Theatre Association shall hold harmless and indemnify the Commission, the OPFC, the Treasurer, and the State from any and all obligations, costs, fees, penalties, expenses (including attorney fees), damages, liabilities, claims, actions or causes of action arising from the Cultural Project or out of the construction, use, operation, repair and maintenance of the Facility.

Project Sponsor shall immediately notify the Commission in writing of Project Sponsor’s receipt of notification of a claim by any third party which would be subject to indemnification hereunder and shall cooperate with the Commission and/or its legal representative in defending such claim.

Notwithstanding any other provision of this Agreement to the contrary, the terms of this Section 6.1 shall survive the expiration or earlier termination of this Agreement.

6.2 Property and Liability Insurance
Unless otherwise stated, the Project Sponsor shall maintain, or cause to be maintained, at no cost to the Commission, commercial general liability insurance and property insurance to insure the OPFC, the Commission, the Treasurer and the State in an amount and type determined by a qualified risk assessor to be sufficient to cover the full replacement costs of improvements funded, in whole or in part, by the State, and the bodily injury, property damage, personal injury, advertising injury and employer’s liability exposures of the Project Sponsor. Unless otherwise stated, such insurance shall remain in force at all times from the date hereof through the term of this Agreement.

7. Term

7.1 Term
This Agreement commences on the Effective Date and, unless otherwise terminated as provided in this Agreement, expires on the later of (a) ten (10) years from the
Completion Date, or (b) the date upon which all Facility Bonds issued to finance or
refinance the grant to the Project Sponsor described in Section 3.1 of this Agreement,
and all obligations of the Treasurer or other issuing authority to financial institutions
related to the Facility Bonds have been paid in full (the Term).

8. Legal Compliance

8.1 General
This Agreement or any actions taken under it are not subject to Chapters 123 or 153 of
the ORC, except for sections 123.20, 123.201, 123.21, 123.28, 123.281, and 153.011 of
the ORC.
The Project Sponsor affirmatively represents and warrants that it shall comply with this
Agreement and with all applicable federal, state, and local laws and regulations,
including, but not limited to:

(a) ORC Chapter 4115 (prevailing wage)
(b) Worker's Compensation laws
(c) Equal Opportunity laws
(d) ORC Section 153.011 (domestic steel)
(e) Americans with Disabilities Act
(f) Environmental laws and regulations
(g) Historical preservation laws and regulations
(h) Drug-free Workplace
(i) ORC Section 9.24 (findings for recovery)
(j) Executive Order 2019-12D, Governing the Expenditure of Public Funds for
   Offshore Services

8.2 Negative Pledge; Prohibition Against Disposition
The Project Sponsor shall not assign, transfer, pledge or otherwise encumber all or any
part of the Facility, including the Cultural Project, with any mortgage, security interest, or
lien, nor shall the Project Sponsor dispose of any part of the Facility, including the
Cultural Project, without replacement or substitution with improvements substantially
similar to those of the Cultural Project provided for herein, without the prior written
consent of the Commission, which consent shall not be unreasonably withheld.

8.3 Reports and Records
The Project Sponsor shall keep and make all reports and records associated with the
Cultural Project and the Facility available to the Commission upon request for a period
of not less than thirteen (13) years after the Completion Date. These reports and
records shall include a description of the Cultural Project, a detailed overview of the
scope of work, and disbursement detail (including amount, date, nature/object of
expenditure, and vendor information).

8.4 Reviews and Inspections
The Commission may conduct reviews or inspections of the Facility to determine
whether the uses made thereof are consistent with the Commission's purposes,
including the presentation of culture to the public.
9. Default and Termination

9.1 Events of Default
Each of the following is considered an Event of Default and the Commission may, upon ten (10) days’ prior written notice to the Project Sponsor, terminate this Agreement:

(a) if the Victoria Theatre Association fails to maintain its status as a 501(c)(3) organization exempt from taxation under 501(a) of the Internal Revenue Code of 1986, as amended, and an Ohio nonprofit corporation;

(b) if the Project Sponsor fails to complete the Cultural Project, abandons the Cultural Project or the Facility, or does not provide culture as defined in ORC 123.28;

(c) if the Project Sponsor shall become insolvent, make a general assignment for the benefit of creditors, be generally unable to pay its debts when they are due, or be a debtor in any receivership proceeding or any other proceeding brought under the federal bankruptcy laws and not cause such proceeding to be terminated within thirty (30) days following the commencement thereof;

(d) if the Project Sponsor is found to be in default under any other agreement or commitment secured by an interest in the real or personal property comprising the Cultural Project or the Facility and fails to cure such default within any cure period provided for in such agreement or commitment;

(e) if there is any change in use of the Facility that significantly reduces or eliminates the public purpose;

(f) if any act of the Project Sponsor adversely affects the federal tax exemption of the Facility Bonds; or

(g) if the Project Sponsor fails to remedy any covenant, condition or term in this Agreement, except as provided in subsections (a) – (f), within a period of thirty (30) days after receipt of written notice that the Project Sponsor is not in compliance.

9.2 Remedies Upon Default
Whenever an Event of Default has occurred, the Commission may:

(a) terminate this Agreement upon no less than ten (10) days’ prior written notice; or

(b) take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of the Project Sponsor.
Upon termination of this Agreement after completion of the Cultural Project, for any reason other than at the stated expiration of its term, the Project Sponsor shall repay the Commission the percentage of the Grant Amount described in Section 3.1 of this Agreement equal to the ratio of \((x)\) the number of months from the event triggering the reimbursement to the final scheduled maturity date of the Facility Bonds used to finance the grant to the Project Sponsor over \((y)\) the total number of months that such Facility Bonds are scheduled to be outstanding. Such repayment amount shall be calculated by the OPFC.

Notwithstanding the foregoing, if this Agreement is terminated prior to the Completion Date of the Cultural Project, the Project Sponsor shall immediately repay to the Commission the amount of State funds used to pay costs of the Cultural Project.

The requirements to make payment to the Commission as provided in this Section 9.2 shall survive the termination of this Agreement.


10.1 Binding Effect
All of the covenants, conditions and obligations contained in this Agreement shall be binding upon and inure to the benefit of the respective permitted successors and assigns of the Commission and the Project Sponsor to the same extent as if each such successor and assign were named as a party to this Agreement. This Agreement may not be changed or discharged except by written agreement signed by the Parties hereto. Amendments to the Agreement shall require the approval of the Commission.

10.2 Governing Law
This Agreement shall be governed by and interpreted under the laws of the State, and any action or proceeding arising from this Agreement shall be commenced in a court of competent jurisdiction located in Franklin County, Ohio.

10.3 Severability
Each provision hereof shall be separate and independent and the breach of any provision by either party hereto shall not discharge or relieve the other party from its obligations to perform each and every covenant to be performed by it hereunder. If any provisions hereof shall be deemed invalid or unenforceable by any court of competent jurisdiction, the remaining provisions of this Agreement shall not be affected, and said provisions shall be valid and enforceable to the fullest extent permitted by law.

10.4 Waiver
The waiver by any party of, or the failure of such party to take action with respect to, any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant or condition herein contained, or subsequent breach of the same, or any other term, covenant or condition herein contained.
10.5 Time is of the Essence
Time is of the essence in this Agreement and all provisions herein relating thereto shall be strictly construed.

10.6 Inconsistent Provisions
The Commission and the Project Sponsor each acknowledge that, if any prior agreements exist between the Project Sponsor and the Commission ("Prior Agreements") for so long as the Prior Agreements remain in effect, the provisions of those Prior Agreements shall control and prevail over any inconsistent provisions in this Agreement. Notwithstanding the foregoing, nothing in the Prior Agreements shall be deemed to affect the provisions of the Term of this Agreement.

*Remainder of page left blank. Signatures to follow.*
11. Signatures

The Commission and the Project Sponsor have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

VICTORIA THEATRE ASSOCIATION

Signature

Printed Name

Title

Date

STATE OF OHIO, ACTING BY AND THROUGH THE OHIO FACILITIES
CONSTRUCTION COMMISSION

Signature

Printed Name

Executive Director

Title

Date

CITY OF DAYTON, OHIO

Signature

Printed Name

Title

Date
EXHIBIT A

ADDITIONAL REQUIREMENTS FOR REIMBURSEMENT OF COSTS RELATED TO THE VICTORIA THEATRE ARTS ANNEX CULTURAL PROJECT

The Project Sponsor shall submit invoices to the Commission no less frequently than quarterly. The invoices shall identify the total amount then due and payable, the State's share of the total amount due and payable, the Application and Certificate for Payment (AIA Document G702) or similar Commission approved form, and any appropriate back-up documentation requested by the Commission staff.

Upon receipt of invoices and all appropriate supporting information in the form acceptable to the Commission, the Commission shall use its best efforts to pay the Project Sponsor within thirty (30) days. If the invoice(s) submitted by the Project Sponsor fail to meet all of the requirements set forth in this exhibit, then the Commission shall have the right to withhold disbursement of funds for such invoice(s) until Project Sponsor has complied with all such requirements.

State Appropriations to the credit of the Cultural Project shall be held in the Commission's Cultural and Sports Facilities Building Fund and shall accrue interest in accordance with State law. Interest in the Cultural and Sports Facilities Building Fund shall accrue to the credit of the Commission.

1. Payment by the Commission to the Project Sponsor shall be on a pro rata basis (in amount equal to a fraction of the invoice, with the numerator being the Grant Amount and the denominator being the Project Budget) over the length of the construction of the Cultural Project unless otherwise approved by the Commission staff.

2. Invoices containing charges for work that is more than one (1) year old at the time the invoice is received by the Commission will not be accepted or approved, unless otherwise approved by the Commission staff.

3. Invoices will be organized in the following manner:

   (a) A summary sheet, in the form of Exhibit B, shall be included with each invoice submittal. The summary sheet will include the following information for each contract: the contractor name, the type of work or bid package, the initial contract amount, the total change orders, the total contract amount, the total work completed to date, and the amount to be paid on the invoice.

   (b) Supporting documents will accompany all invoices. These documents include:
       (i) copies of complete contractor pay requests including:
           o cost breakdown including unit/unit cost, amount per unit and total cost;
o approval by the Project Sponsor or Project Sponsor’s representative for payment;
o approval by the architect or construction manager, if applicable;
oc current date;
o invoice number; and
o date of service.
(ii) copies of all approved change orders. Field work orders, construction change directives, or similar charges, shall not be paid until change orders are finalized and approved.

(c) When construction is complete, the following documentation shall be submitted along with the summary sheet and supporting documentation:

(i) A cover letter signed and dated by an appropriate representative of the Project Sponsor with his or her name and title printed thereon, containing the following language:

"By signing below, I certify that the charges being invoiced are for actual work completed on the Victoria Theatre Arts Annex Project, and the charges are true, accurate and appropriate, and that no liens have been filed on the Cultural Project or the Facility. I further certify that all work has been done in compliance with all applicable laws, including but not limited to prevailing wage law."

(ii) A copy of the Certificate of Occupancy (if available) and/or photographs of the completed project.

4. In accordance with the current capital bill, appropriations made for buildings and structures, including remodeling and renovations, are limited to the following:

(a) acquisition of real property or interest in real property;

(b) buildings and structures, which includes construction, demolition, complete heating and cooling, lighting, and lighting fixtures, and all necessary utilities, ventilating, plumbing, sprinkling, water and sewer systems, when such systems are authorized or necessary;

(c) architectural, engineering, and professional services expenses directly related to the project;

(d) machinery that is a part of the structures at the time of initial acquisition or construction;

(e) acquisition, development, and deployment of new computer systems, including the redevelopment or integration of existing and new computer systems, but excluding regular or ongoing maintenance or support agreements; and
(f) equipment that meets all the following criteria:
   (i) the equipment is essential in bringing the facility up to its intended use;
   (ii) the unit cost of the equipment, and not the individual parts of a unit, is about $100 or more;
   (iii) the equipment has a useful life of five (5) years or more; and
   (iv) the equipment is necessary for the functioning of the particular facility or project.

No equipment shall be paid for from these appropriations that is not an integral part of or directly related to the basic purpose or function of a facility or project for which moneys are appropriated. This does not apply to line items appropriated specifically for equipment.

An inventory list shall be kept of all fixtures, furniture and equipment where the cost was reimbursed by the Commission. Items listed on the inventory shall be kept, and shall remain in good repair, for the Term of this Agreement. If an item cannot be repaired, it shall be replaced in kind.
APPLICATION AND CERTIFICATION FOR PAYMENT

For Owner: VICTORIA THEATRE ASSOCIATION
ATTN: TY SUTTON
130 N. MAIN ST.
DAYTON, OH 45402

From Design/Build Contractor: MV Commercial Construction LLC
137 N. Main St., Suite 600
Dayton, OH 45402

Application No.: 160077-07
Application Date: 10/21/2018
Period To: 10/31/2018
Payment Terms: Net 20 Days
Due Date: 11/20/2018
Contract Date: 04/04/2018

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract
Continuation Sheet is attached.

1. Original Contract Sum: $1,112,330.00
2. Net Change By Change Order: $61,250.00
3. Contract Sum To Date: 1,173,580.00
4. Total Completed and Stored To Date: 1,173,580.00
5. Retainage:
   a. 6.00% of Completed Work: $0.00
   b. 0.00% of Stored Material: $0.00
   Total Retainage: $0.00
6. Total Earned Less Retainage: 1,173,580.00
7. Less Previous Certificates For Payments: 1,156,130.00
8. Current Payment Due: $17,450.00
9. Balance To Finish, Plus Retainage: $0.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were Issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: MV Commercial Construction LLC
an Ohio limited liability company

By: ____________________________ Date: 10/30/16
Authorized Signer

Print Name: ____________________________
State of: Ohio
Subscribed and sworn to before me this...
Notary Public
My Commission expires

CHANGE ORDER SUMMARY

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<tr>
<th>Description</th>
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Exhibit B
**CONTINUATION SHEET**

Application and Certification for Payment, containing Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

**Invoice #: 160077-07**

**Contract: 160077- Victoria Theatre Assoc Arts Annex**

<table>
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<th>A ITEM NO.</th>
<th>B DESCRIPTION OF WORK</th>
<th>C SCHEDULED VALUE</th>
<th>D WORK COMPLETED</th>
<th>E</th>
<th>F STORED MATERIALS</th>
<th>G TOTAL COMPLETED AND STORED TO DATE</th>
<th>H % COMPLETE</th>
<th>I BALANCE TO FINISH</th>
<th>J RETAINAGE</th>
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**Grand Totals**

1,173,500.00  1,156,130.00  17,450.00  0.00  1,173,580.00  100.00%  0.00  0.00
### Exhibit B

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April 27, 2020

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

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

SUBJECT: Guarantee Agreement with Victoria Theatre Association

Attached is legislation proposed for the May 13, 2020 City Commission calendar. The Ordinance authorizes the City of Dayton to enter into a Guarantee Agreement with Victoria Theatre Association and empowers the City Manager to execute required documents associated with the Agreement.

Victoria Theatre Association is required by Ohio Facilities Construction Commission to have a co-sponsor in order to receive grant funding via reimbursement for construction and renovation of the Victoria Theatre Arts Annex. The City of Dayton, as the owner of the property upon which the Annex sits, is willing to assist Victoria Theatre Association pursuant to their execution of this Guarantee associated with this Ordinance.

The City of Dayton’s partnership with Victoria Theatre Association is longstanding. Together, we believe growing and strengthening signature downtown arts amenities are paramount priorities as we continue to elevate Dayton as the premier destination for the region.

Time is of the essence. Therefore, we request it be passed as an emergency with two readings at one meeting.

If you have any questions, please contact Amy Walbridge at extension 3813.

FPW/aw
AN ORDINANCE

Authorizing the Submission, Acceptance, Acquisition and Purchase of Two Hundred Sixteen (216) Properties from Montgomery County, Ohio, and the Subsequent Disposition of those Properties in Connection with the Real Estate Acquisition Program ("REAP"), and Declaring an Emergency.

WHEREAS, The City of Dayton ("City") has adopted and implemented procedures under Chapter 5722 of the Ohio Revised Code to facilitate the reutilization of nonproductive lands situated within the City; and

WHEREAS, The City and Montgomery County have jointly established the REAP to facilitate redevelopment within the City through the tax foreclosure process; and

WHEREAS, The City requested that the Montgomery County Treasurer's Office enter certain real estate into REAP; and

WHEREAS, In accordance with Section 5722.03 of the Ohio Revised Code, the County may now sell this real estate directly to the City for the fair market value, which has been determined to be the cost of the County's foreclosure; and

WHEREAS, This real estate is wanted for desirable redevelopment; and

WHEREAS, It is found to be in the best interest of the City to acquire the real estate described below, and subsequently transfer the real estate to appropriate individuals or organizations for redevelopment; and

WHEREAS, In order to comply with the terms of purchase for said real estate, and for the immediate preservation of the public peace, property, health and safety, it is necessary that this ordinance take effect at an early date; now, therefore,

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

Section 1. That the Department of Planning and Community Development shall request that the Montgomery County Treasurer enter the property listed below into REAP.

Section 2. That the City Manager or the designee is authorized to accept Sheriff’s Deeds from Montgomery County conveying the following described real estate to the City, free and clear of all liens and encumbrances:

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<tr>
<th>#</th>
<th>ID</th>
<th>Parcel ID(s)</th>
<th>Parcel Address(es)</th>
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Section 3. That the sum of money set forth below be paid to Montgomery County for said real estate upon the terms and conditions set forth in this ordinance on file in the office of the Clerk of Commission, and said sum of money is hereby appropriated to be paid out of the following account:

REAP/Lot Links Special Revenue Project Fund – Community Development
22129-2390-1159-31
FOUR HUNDRED THIRTY-TWO THOUSAND DOLLARS AND ZERO CENTS
($432,000.00)

Section 4. That the City Manager, or the designee, is authorized to convey the above properties without further Commission action.

Section 5. For the reasons stated in the preamble hereof, the Commission declares this ordinance to be an emergency measure that shall take effect immediately upon its passage.

Passed by the Commission .................................. 2020
Signed by the Mayor ........................................ 2020

Mayor of the City of Dayton, Ohio

Attest:

Clerk of the Commission

Approved as to form:

City Attorney
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

X New Contract

____ Renewal Contract

_____ Change Order

Contract Start Date

Expiration Date

N/A

Original Commission Approval

$ 432,000.00

Initial Encumbrance

$ 432,000.00

Required Documentation

Remaining Commission Approval

$ -

Original CT/CF

$ -

Increase Encumbrance

$ -

Initial City Manager’s Report

Decrease Encumbrance

$ -

Initial Certificate of Funds

Remaining Commission Approval

$ -

Copy of City Manager’s Report

Copy of Original Certificate of Funds

Amount: $432,000.00

Fund Code 22129 - 2390 - 1159 - 31 - xxxx - xxxx

Fund Org Acct Prog Act Loc

Amount:

Fund Code XXXX- XXXX- XXXX - XX - XXXX - XXXX

Fund Org Acct Prog Act Loc

Attach additional pages for more FOAPALs

Vendor Name: Montgomery County

Vendor Address: 451 West Third Street Dayton OH 45422

Street City State Zip code + 4

Federal ID: 31-6000172

Commodity Code: 96164

Purpose: This Certificate of Funds is required to pay the various departments and divisions at Montgomery County Ohio, for the Lot Links Real Estate Acquisition Program (REAP), as set forth in the terms and conditions of the City’s Ordinance.

Contact Person Paula Powers x7379 or Kevin Powell x7776

Planning & Community Development 4/30/2020

Department/Division Date

Originating Department Director’s Signature: Todd M. Vocker

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

CF Prepared by

Date

CF/CT Number

Finance Department

October 18, 2011
April 30, 2020

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

FROM: Erin M. Jeffries, Division Manager – Community Development
Department of Planning and Community Development

SUBJECT: Ordinance Authorizing Acceptance, Acquisition, Purchase of Two Hundred Sixteen Properties and Subsequent Disposition of Two Hundred Sixteen Properties

Attached for your review and placement on the May 13, 2020, City Commission calendar is an Ordinance authorizing the acceptance, acquisition, purchase and subsequent disposition of two hundred sixteen (216) properties from Montgomery County in connection with the Real Estate Acquisition Program (REAP). Due to the timeliness to conclude the REAP process, we are requesting this Ordinance be declared an emergency.

The REAP Program allows the City of Dayton to work with Montgomery County to acquire property for redevelopment through tax foreclosure. Of these 216 properties: 33 are vacant lots (24 to be used as yard expansions, six to build on, and three to build on or for parking); nine are commercial properties (five to be used as rentals, two to operate a business, and two to build on); and 174 are residential lots with structures. Of the 174 residential structures, one will be demolished, 55 will be rehabbed with the intent to serve as the applicant’s personal residence, 101 will be rehabbed for rental income, 10 will be rehabbed with the intent to sell, five will be rented or sold, and two will be rented or serve as the applicant’s personal residence.

If you have any questions, please contact Paula Powers at extension 7379.

APPROVED:

Todd M. Kinskey, Director

EMJ/pgp
Urgent Digital Signature Request: Lot Links Ordinance Packet 20200430 emj

Final Audit Report

Created: 2020-05-01
By: Erin Jeffries (erin.jeffries@daytonohio.gov)
Status: Signed
Transaction ID: CBJCHBCAABAAv9IPjT3PjnwP9acz8v2SgNFKB1xAkzg1

"Urgent Digital Signature Request: Lot Links Ordinance Packet 2 0200430 emj" History

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2020-05-01 - 2:42:23 PM GMT- IP address: 98.29.160.250

Document digitally presigned by Jeffries\, Erin
2020-05-01 - 2:42:44 PM GMT- IP address: 98.29.160.250

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2020-05-01 - 2:43:30 PM GMT- IP address: 98.29.160.250

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2020-05-01 - 2:44:01 PM GMT

Email viewed by Todd M. Kinskey (todd.kinskey@daytonohio.gov)
2020-05-01 - 2:46:50 PM GMT- IP address: 198.30.33.2

Document e-signed by Todd M. Kinskey (todd.kinskey@daytonohio.gov)
Signature Date: 2020-05-01 - 2:56:50 PM GMT - Time Source: server- IP address: 198.30.33.2

Signed document emailed to Todd M. Kinskey (todd.kinskey@daytonohio.gov) and Erin Jeffries (erin.jeffries@daytonohio.gov)
2020-05-01 - 2:58:50 PM GMT
April 30, 2020

TO: Valerie Henderson, Financial Services Supervisor
    Department of Finance

FROM: Erin M. Jeffries, Division Manager – Community Development
      Department of Planning and Community Development

SUBJECT: CF Request for Lot Links Ordinance for $432,000.00

Attached for your review and approval is a Certificate of Funds to encumber funds for
the next Lot Links Ordinance. Attached you will find a copy of the ordinance signed by
the Law Department and Banner printouts showing the amount available for
encumbrance in 22129-2390-1159-31 and proof of the County’s tax exemption status.

Please forward to the City Manager’s Office for placement on the May 13, 2020, City
Commission Calendar. A cover memo for the City Manager is attached.

If you have any questions, please contact Paula Powers at extension 7379.

APPROVED:

Todd M. Kinskey
Todd M. Kinskey, Director

EMJ/pgp
Attachments
By................................. No.................................

A RESOLUTION

Authorizing the Acceptance of Equipment from the Montgomery County Emergency Management Agency on Behalf of the City of Dayton, and Declaring an Emergency.

WHEREAS, The Ohio Department of Public Safety, Emergency Management Agency (State EMA), was the sub-grantor and administrator of State Homeland Security program grants; and

WHEREAS, The Montgomery County Emergency Management Agency (Montgomery County EMA) received funding for Bomb Squad Equipment: X-ray Equipment, RAMAN Analyzer, Remote Firing System, Explosives Transport Trailer Upgrade, and Long Range Acoustic Device; and

WHEREAS, The Montgomery County EMA requested the City of Dayton’s Department of Police, and, specifically, the bomb squad, to accept the equipment awarded to the Montgomery County EMA thru the 2017 State Homeland Security Grant, subject to the City’s acceptance of the equipment; and

WHEREAS, To provide for the timely acceptance and transfer of the equipment 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. That the City Manager is authorized to accept the equipment on behalf of the City of Dayton and is directed to execute any and all documents and agreements on behalf of the City of Dayton which are necessary to accept the equipment from the Montgomery County EMA.
Section 2. That for the reasons set forth in the preamble hereof, the Commission declares this resolution to be an emergency measure which shall take effect immediately after its adoption.

ADOPTED BY THE COMMISSION.........................., 2020

SIGNED BY THE MAYOR................................., 2020

______________________________
MAYOR OF THE CITY OF DAYTON, OHIO

ATTEST:

______________________________
Clerk of Commission

APPROVED AS TO FORM:

______________________________
City Attorney
April 17, 2020

TO: Shelley Dickstejn  
City Manager

FROM: Richard S. Biehl  
Director and Chief of Police

SUBJECT: Acceptance of Equipment – 2017 State Homeland Security Grant

The attached resolution is being submitted for the April 29, 2020 City Commission calendar for the consideration of acceptance of equipment for the City of Dayton and Dayton Bomb Squad. This equipment, valued at $133,000.00, is being purchased by the Montgomery County Office of Emergency Management with fiscal year 2017 State Homeland Security Grant and State Homeland Security Grant LE funds, which were specifically allocated for the Dayton Police Department. The Montgomery County Office of Emergency Management is the fiduciary agent for this grant, and is handling all of the required purchasing paperwork.

This equipment consists of:

FY2017 SHSP
- Remote firing system
- RAMAN chemical detection unit

FY2017 SHSP LE
- X-ray sources and imager
- Explosive transport trailer upgrade
- Long Range Acoustic Device

The Dayton Police Department and Dayton Bomb Squad was selected to receive this equipment based upon being the only Federal Bureau of Investigation certified bomb squad within Ohio Homeland Security Region 3. The counties located within Ohio Homeland Security Region 3 are Clark, Champaign, Darke, Greene, Miami, Montgomery, Preble, and Shelby. The Dayton Police Department will maintain ownership of this equipment and will provide for maintenance.

If you have any questions, please contact Lieutenant Jason Hall at extension 1216.
RSB:jmh

c: Joseph Parlette, Deputy City Manager
   Tammi Clements, Deputy City Manager

Attachment(s): Resolution
   Equipment information
285-0001 SRFI Remote Fire System - Half Size Kit Data Sheet

The SRFI Law Enforcement Remote Firing System incorporates military safety and reliability in a civilian-use-approved federal, state, and local law enforcement device. The SRFI demolition and tactical tool set evolved through federal law enforcement evaluations, feedback, and refinements specific to civilian tactical operations.

Specifications

- 2.5 mile LOS Range in high-noise RF environment
- 0.5 mile Urban Range in high-noise RF
- 10 Joule discharge fires 80 M-6 series detonators
- MD-82 tip fires NONEL and Electric detonators
- Field Configurable - Match devices in field
- Each transmitter can control up to 8 receivers
- Uses standard MIL-qualified CR-123/A batteries
- NVG Operation Mode
- Integrated safety interlocks
- AES Encrypted Two-Way Communication
- Transmitter displays each remote receiver status

Total Half Kit Weight: 5.6 lbs
Transmitter Dims: 8oz 2"L x 5"H x .75"W
Receiver Dims: 12oz 2"L x 6"H x 1"W
-30C +65C electric output
-10C +65C NONEL

Testing

- Qualification Testing (Navy DSRT)
- Hazards of Electromagnetic Radiation to Ordinance (HERO)
- MIL-STD-810G METLABS 2013
  - 500.5 Low Pressure (Altitude)
  - 501.5 High Temperature
  - 502.5 Low Temperature
  - 509.5 Salt Fog
  - 512.5 Immersion
  - 514.6 Vibration (Aircraft, Vehicle, LCargo)
  - 516.6 Shock
- Electromagnetic Environmental Effects (E3) Qualification
- NWC DAHLGREN 2013
  - 300 V/m Immunity
  - 25 kV ESD Immunity
- EMP Immunity
- EC EN 61000-4-2, Electromagnetic compatibility (EMC)
  - Part 4-2: Testing and measurement techniques - Electrostatic Discharge Immunity Test

285-0001 SRFI-HS-KIT CONTENTS

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<td>3mm 1/8 NPT Fire Tip Fitting</td>
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ZEUS REMOTE FIRING DEVICE HALF KIT (IBS KIT)

(No reviews yet) LEAVE A REVIEW

$17,864.55
ADD TO CART

DESCRIPTION

The SRFI Law Enforcement Remote Firing System incorporates military safety and reliability in a civilian-use-approved federal, state, and local law enforcement device. The SRFI demolition and tactical tool set evolved through federal law enforcement evaluations, feedback, and refinements specific to civilian tactical operations.

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- Electromagnetic Environmental Effects (E3) Qualification NWC DAHLGREN 2013 300 V/m Immunity 25 kV ESD Immunity EMP Immunity

- EC EN 61000-4-2, Electromagnetic compatibility (EMC) Part 4-2: Testing and measurement techniques - Electrostatic Discharge Immunity Test

**Kit Contents**

1. Transmitter

5. Receivers

1. Tactical Bag

3. Molle Pouch

1. Battery Bag

1. Straight Antenna

5. Right Angle Antenna

1. Slotted Screwdriver

5. MD-82 Blast Tips

5. 3mm 1/8 NPT Fire Tip Fitting

---

**YOU MAY ALSO LIKE**

https://www.idealblasting.com/zeus-remote-firing-device-half-kit-ibs-kit/ 2/6/2020
ZEUS REMOTE FIRING DEVICE FULL KIT (IBS KIT)
$34,405.80

1673 REMOTE FIRING DEVICE REMOTE
$4,900.00

COMPLETE 1678 REMOTE FIRING DEVICE WITH 1 ELECTRIC AND 1 RSTI
$15,310.58

COMPLETE 1678 REMOTE FIRING SYSTEM WITH 2 ELECTRIC AND 2 RSTI
$23,853.35

SIGN UP FOR NEWS & DEALS

SUBMIT

https://www.idealblasting.com/zeus-remote-firing-device-half-kit-ibs-kit/

2/6/2020
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ResQ CQL

THE ORIGINAL
1064nm RAMAN

FOR CHEMICAL IDENTIFICATION
—REDEFINED

Rigaku
THE ORIGINAL HANDHELD 1064 nm RAMAN TECHNOLOGY — JUST GOT EVEN BETTER!

With the introduction of the handheld ResQ™ CQL analyzer, users can experience the advanced analytical chemical identification of the 1064nm Raman advantage in a new, tactical form factor. The improved ergonomics of ResQ CQL – as well as improved sample presentation – makes it even easier to perform chemical analysis of powders, liquids, gels, and mixtures – even in non-visible amounts!

THE 1064 nm RAMAN ADVANTAGE

The ability to identify colored substances or through colored packaging with reduced fluorescence sample interference common to older generation handheld Raman analyzers.

SMART FEATURES

- LED flashlight
- Quick Scan button
- On-board camera for imaging, colorimetrics analysis, or barcode scanning
- 4C™ Technology precursor monitor
- QuickDetect™ auto colorimetrics for non-visible detect (optional)
- WiFi / Peer-to-Peer / USB connectivity
- Li-PO rechargeable or CR123A disposable batteries
- Tamper-proof reports

---
LIBRARY ENHANCEMENTS
ResQ CQL includes a standard library of over 13,000 Raman-active chemicals with the ability to upgrade, transfer, and translate entries. Included are:

- Narcotics / illegal drugs
- Explosives
- Chemical Warfare Agents (CWAs)
- Toxic Industrial Chemicals (TICs)
- Precursors
- Cutting Agents
- Hazardous Household Chemicals
- Pesticides
- Steroids

APPLICATION ADVANCEMENTS

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<th>Law Enforcement</th>
<th>Military / EOD</th>
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<td>Detect deadly narcotics sooner</td>
<td>Defend against terrorist threats to explosives/chemicals</td>
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<td>Protect from illegal trafficking</td>
<td>Secure transit centers and hubs</td>
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INDUSTRY CERTIFICATIONS / COMPLIANCE

ResQ CQL goes beyond industry standards for traditional handheld Raman analysis. To ensure quality use in the field that is also an acceptable testing method, ResQ CQL has undergone several certifications, including:

- MIL-STD 810-G rugged
- SWGDRUG Category A for presumptive testing
- SWGDRUG Category C for confirmatory testing (with QuickDetect)
- FDA 21 CFR Part 11 traceable reports
- IP-68 decontamination
- ISO 9001:2015 certified manufacturing facility

AVAILABLE ACCESSORIES

For even more convenience, various accessories are available to fit most needs. These will assist when analyzing various forms of a substance, as well keep the user safe from a potentially hazardous material.

- Adjustable nose
- Tablet adaptor
- Vial adaptor
- Peniscope adaptor
- Bottle adaptor
- Sampling test stand
LEADING IN INNOVATION

Rigaku Analytical Devices is part of the Rigaku family of innovative analytical product lines. With over 65 years' experience in the field of complementary technologies, Rigaku is at the forefront of technological development. Our foundation was built upon the Rigaku legacy of being recognized globally for quality, reliability and expertise, resulting in high value to our customers.

UNSURPASSED SUPPORT

ResQ CQL is supported by our global sales and support distribution team offering 24/7 Reachback support, library updates and software upgrades - for the life of the analyzer.

US Department of Homeland Security

Authorized Equipment:
AEL #07ED-01-LASR & 07CD-01-DPRS

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C-02-07/2016

Rigaku Analytical Devices, Inc.
Boston, MA
Toll Free: +1 855.785.1064
Direct: +1 781.328.1024
Email: handhelds@rigaku.com
www.rigaku.com/CQL
CAPABILITY STATEMENT

Founded in 2011 in response to the need for more technically advanced handheld and field-portable material’s identification technologies, Rigaku Analytical Devices is a leading innovator of solutions providing lab-like analysis at any time and in any location.

CORE COMPETENCIES

Chemical Threat Identification/Detection/Classification
- First 1064nm wavelength handheld Raman system
  - Mitigates fluorescence interference in nearly all samples
  - Identifies real world clan-lab synthesized colored and degraded unknown substances
  - Identifies and classifies unknown substances within colored translucent glass and plastic packaging
  - Provides results in under a minute, always
- First dual-technology integrating 1064nm Raman and Automated Colorimetrics device
  - Detects non-visible trace residues on a variety of surfaces.
  - No manual color matching
  - No mixing of hazardous chemicals

Alloy Grade Identification/composition
- First Mil-STD-810G rugged handheld LIBS analyzer
  - Superior light element identification
  - Results in seconds

PAST PERFORMANCE SNAPSHOT

- US Army JPEO Dismounted Reconnaissance Sets, Kits, Outfits (DRSKO)
- US DHS, Customs and Border Protection
- World Customs Organization
- France Customs
- Demonstration: US DHS TSA Innovation Task Force
- Evaluation: Project Thunderstorm
- Evaluation: Edgewood Chemical Biological Center
- Evaluation: NAVSEA Indian Head
- Evaluation: US DHS Transportation Safety Laboratory

Over 1000 Rigaku handheld devices deployed globally.

COMPANY SNAPSHOT

Government Programs POC: Alicia Kimsey
Direct: +1.408.705.6560
Email: alicia.kimsey@rigaku.com
Address: 30 Upton Drive, Suite 2
Wilmington, MA 01887 USA

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Rigaku’s superior customer support package:
- Software updates for the life of the unit and for no additional charge
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- Customer support for the life of the unit and for no additional charge

CONTRACT AVAILABILITY

- GSA Schedule 84
- GSA Schedule 66
- DLA TLS
- JPEO-RDAP
- EXBS

Rigaku proudly partners with small business enterprises.

NAICS

334511 - Search, detection..instrumentation
334513- Measuring, displaying, control instrumentation
334516- Analytical laboratory instrumentation
334519- Other measuring and controlling device
541715- Research and development in engineering

RESQ NSN: 6665-01-6529990
SCANNA

SCANX SCOUT
Digital Image Plate Portable X-ray System

WITHOUT COMPROMISE
Cutting edge screening and detection solutions.
WITHOUT COMPROMISE

Cutting edge screening and detection solutions.
SCANX SCOUT

ScanX Scout ruggedised X-ray system with flexible film

ScanX Scout is a high performance portable digital X-ray system combining high sensitivity flexible film plates, a rugged battery powered image plate reader and a laptop for detailed forensic level X-ray inspection across the full spectrum of defence and security applications.

ScanX Scout image plates are very thin and flexible for easy access into confined areas and for wrapping around objects of interest. The image plates are available in a range of sizes and can be used individually or mounted in multiple combinations to investigate larger objects.

CR X-ray image plates require no cables nor batteries for use and the entire X-ray operation from setting up the scanner, placing the X-ray plate, X-ray acquisition and image plate scanning can be completed in less than 2 minutes.

Plates can be used over 1000 times and can be erased during the scanning process to allow immediate reuse.

The ScanX Scout Image Plate Reader scans the plates either on mains or battery power to produce ultra high resolution X-ray images in as little as 35 seconds. Its ability to reveal fine wire and electronic component detail makes it an invaluable system for those needing to make fast accurate decisions in the field and equally for lab-based forensic and analytical tasks.

Features and Benefits

High Resolution Images
ScanX Scout uses high sensitivity flexible image plates to produce 5 lp/mm, 100 micron images whilst requiring ten times fewer X-ray pulses than polaroid film.

Battery Operation
All the ScanX Scout system components are fully portable and the Image Plate Processor can operate on battery for up to 4 hours without any reliance on mains power.

Fast Set up and X-ray Image Acquisition
Unload and set up the ScanX Scout system, shoot X-rays, process and read the images on screen in less than 2 minutes start to finish.

Reduced Film Costs
Upgrading to Digital Film from Polaroid film means lower consumable costs and the ability to store and manage X-ray images in a database for improved and easier report writing and evidential record keeping.

Range of Image Plate Sizes
ScanX Scout X-ray Image Plates are available in a range of sizes: from compact 18 x 24 cm up to long length 35 x 130 cm. All plates can be used in multiple combinations with the Flexray Mounting Accessory for checking larger objects such as sides of vehicles in a single X-ray shot.

Light and easy-to-handle IPs
ScanX Scout image Plates are easy to handle, carry and deploy and easily pass through the processor with no clips or carousel required. They are lightweight and flexible, need no cables nor battery for operation and are ideal for most Defence and and Security Tasks including /EOD/Search/WIT and Detailed Inspection.

Suitable for tough environments
The ScanX Scout Image Plate Reader is transported in a ruggedised case with integrated lifting handles making it easy to deploy to any task. Tried and tested in tough Police and Military environments.
SCANX SCOUT

Technical Specifications - Image Processor and Image Plates

**Scout Processor**
- **Dimensions:** 39 [w] x 44.5 [l] x 35 [h] cm
- **Weight:** 21 kgs with battery, 19.5 kgs without battery
- **Resolution:** 5 ip/mm
- **Pixel Pitch:** 300-100 microns
- **Laser Class:** 1, compliance with FDA HHS 21 CFR40.10 and IEC 60825-1
- **Data Transfer:** USB
- **Power:** Mains or 4 hour battery [24DC]

NSN: 6350-99-236-1928

**X-ray Image Plates**
- **Standard Sizes:**
  - Standard: 20 x 25 cm [8 x 10"]
  - Medium: 30 x 40 cm [11 x 15”]
  - Large: 35 x 43 cm [14 x 17”]
- **Longer Length:**
  - 35 x 90 cm [14 x 36”]
  - 35 x 130 cm [14 x 51”]
  - Other custom sizes on request

**Plate Accessories:**
- Flexible Cassettes
- Protective Covers
- Rigid Carbon Fibre Cassettes
- FlexRay Cassettes

**Flexray Image Plate Mounting System**
The Flexray Image Plate Mounting system enables the examination of large objects by combining multiple image plates in a variety of configurations. The ability to check large surface areas with a single X-ray shot reduces the time spent in the target area and ultimately time spent on task. Standard size plates can be used to combine from two to nine plates together. Longer length plates can be used in combinations of two or three together enabling over 1m² to be checked using a single X-ray exposure.

Flexray image plate kits include stiffened canvas image plate cassettes, Velcro fastenings, guy line, eyelets, carabiners and suction cups giving you the flexibility to free-stand or hang image plates behind the target or to directly attach them to the area of interest.

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Technical Details subject to change.
SCANX SCOUT

Technical Specifications - Portable X-ray Generators

X-Ray Generator Options

北部

XR200 Standard Generator

Applications: Police, General Security, Postal Blast Investigation
Penetration: 15mm steel
Pulses per charge: 4,000
Dimensions: 31.75 (l) x 11.5 (w) x 19 (h) cm
Weight: 5.5kgs with battery

XR150 Lightweight Generator

Applications: Special Forces, Light Duty Applications
Penetration: 15mm steel
Pulses per charge: 1,500
Dimensions: 10.4 (l) x 8 (w) x 27.3 (h) cm
Weight: 2 kgs with battery

XRS-3 Heavy Duty Generator

Applications: Military, Counter IED, UXO Inspection, TSCM, NDT
Standard Penetration: 26mm steel
Pulses per charge: 4,000
Dimensions: 35.5 (l) x 11.5 (w) x 19 (h) cm
Weight: 5.5kgs with battery

Laptop Options

ScanX Scout Drivers and Scanview Software is supplied with a high performance laptop running Windows 7 Professional 32 bit. Minimum spec: Intel Dual Core Processor, 500 GB Hard Drive, 4 Gb Memory.

Other brand name variants and ruggedised MilSpec models with foreign language and OS options are available.

Cases

Scanview X-ray Imaging Software

Scanview Features:

- Select Scanning Resolution
- Scan Image
- Erase Image Plate
- Reverse Image Plate
- Brightness and Contrast
- Gamma Correction/Stretch
- Pseudo Colour Images
- Inverse (polarity) image
- Edge Enhancement,
- Find Edges
- Smoothing
- Sharpening
- 3D (Emboss)
- Image Rotate,
- Flip and Mirror image
- Sub-image
- Summing
- Clean
- Import/Export Images
- Digital Zoom
- Multiple Zoom including Zoom Thumbnail window
- Zoom to Region of Interest
- Grid Overlay
- Image Stitching and Cropping
- Calibrate measurements
- Measure (multiple units)
- Multiple Undo, Image Restore
- Copy/paste
- Overlay
- Histocontrast
- Histogram Equalisation
- Annotate Images
- Save Annotations
- Select Region
- Shaped Regions
- User login
- Save and export images in windows formats – jpg, bmp, tif
- Query and Sort in database
- Ability to back up database including name, date, category
- Battery Monitor
- Email option
- On Screen Help
- Vocal annotation
- Compact Database
- Foreign language options
- Custom options
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Scanna has a long track record of providing high performance and high quality imaging equipment to the defence and security sectors with a deep insight into the challenges faced by our customers.

Scanna have developed a new range of cameras and systems which provide users with unparalleled technology to meet their stringent requirements. The range includes handheld and compact fixed cameras, with varying degrees of performance and flexibility.

Key Features:
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- 100 microns / Better resolution
- Uncover critical details

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LRAD 450XL

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FEATURES

1. Rugged, military tested construction
2. Low power requirements
3. All-weather use
4. Scalable, lightweight & portable
5. Simple to use – increased coverage with single operator
6. Safer alternative to non-lethal measures
7. HD Camera (optional)

DIRECTIONALITY, POWER EFFICIENCY & RANGE

1. Highly intelligible communication up to 1,700 meters
2. Safely communicates beyond standoff distances to determine intent
3. Variable beam width for extended coverage
4. Clear, long range, directional communication
5. Establishes instant acoustic standoff perimeter

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A RESOLUTION

Ratifying the Acceptance of a Technology Grant Award from the Ohio Supreme Court in the Amount of Fourteen Thousand Eight Hundred Fifty-Eight Dollars and Fifty Cents ($14,858.50), and Declaring an Emergency.

WHEREAS, The Ohio Supreme Court administers a Technology Grant Fund to increase access to justice and remove barriers to the efficient and effective administration of justice for local courts; and

WHEREAS, Pursuant to Section 36.10 of the Revised Code of General Ordinances of the City of Dayton, the City Manager authorized an application for a Technology Grant for the purpose of purchasing equipment and a Zoom business plan to facilitate video-conferencing and remote access in the Dayton Municipal Court due to the emergency need caused by the COVID-19 pandemic (2020 Remote Technology Grant Project); and

WHEREAS, The Ohio Supreme Court awarded an amount of Fourteen Thousand Eight Hundred Fifty-Eight Dollars and Fifty Cents ($14,858.50), for the 2020 Remote Technology Grant Project; and

WHEREAS, Pursuant to the requirements of the Ohio Supreme Court, the Administrative Judge of the Dayton Municipal Court executed a Grant Award Agreement to receive a Technology Grant for the 2020 Remote Technology Grant Project; and

WHEREAS, This Commission finds it in the best interest of the City of Dayton to accept this award of grant funding; and

WHEREAS, For the immediate preservation of the public peace, property, health, and safety and for the usual operation 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 Commission hereby ratifies the acceptance of a Technology Grant from the Ohio Supreme Court for the 2020 Remote Technology Grant Project in the amount of Fourteen Thousand Eight Hundred Fifty-Eight Dollars and Fifty Cents ($14,858.50).

Section 2. That for the reasons stated in the preamble hereof, this Resolution is declared to be an emergency measure and shall take effect immediately upon adoption.

ADOPTED BY THE COMMISSION.........................., 2020

SIGNED BY THE MAYOR................................., 2020

_________________________
MAYOR OF THE CITY OF DAYTON, OHIO

Attest:

_________________________
Clerk of Commission

Approved as to form:

_________________________
City Attorney
Date: May 5, 2020

TO: Shelley Dickstein, City Manager

FROM: Ann Marie Murray, Court Administrator
       Dayton Municipal Court

SUBJECT: 2020 Remote Technology Grant

The Dayton Municipal Court was awarded a Remote Technology Grant in the amount of $14,858.50 from the Supreme Court of Ohio to provide remote access and video conferencing for Judges, Magistrates and Court staff. The purchase of laptops, microphones and Zoom licensing due to COVID-19 will allow the court to continue many hearings, pretrial and other nonessential court proceedings, as well as staff meetings, specialized docket team meetings, probation meetings and foreign language interpretation. The laptops serve both video conferencing and remote access functions and can be used interchangeably in our seven courtrooms or by Court staff working from home.

The Supreme Court of Ohio required an immediate acceptance of the Grant Award Agreement by the Court's Administrator, which required expediting the process. The Court is requesting the City of Dayton to ratify the acceptance of the Remote Technology Grant.

No cash match is required by the City of Dayton.

Attached is a copy of the Grant Award Agreement, and two original Resolutions, which were prepared by the Law Department for acceptance of the Grant Award at the City Commission meeting scheduled for May 13, 2020. The Court is requesting two readings at one meeting.

If you have any questions regarding this Remote Technology Grant, please contact me directly at extension 4341.
The Supreme Court of Ohio

Grant Award Agreement

This Grant Award Agreement ("Agreement") is entered into by the Supreme Court of Ohio ("Court") and Dayton Municipal Court ("Recipient") as follows:

Section 1. Purpose

The purpose of this Agreement is to set out the duties and responsibilities of the parties for the 2020 Remote Technology Grant project ("Project"). The Project shall be implemented pursuant to application number 355 submitted by the Recipient ("Application") in response to the 2020 Remote Technology Grant Opportunity ("Opportunity"). A copy of the Application and Opportunity are attached at Appendices A and B and are incorporated as though fully rewritten herein to the extent they are not inconsistent with this Agreement.

Section 2. Term

This Agreement shall be effective from the date of the last signature below through November 30, 2020.

Section 3. Responsibilities of the Court

The Court agrees to pay the Recipient $14,858.50 for the purpose of completing the Project pursuant to the terms and conditions set forth in this Agreement.

Section 4. Responsibilities of Recipient

A. The Recipient agrees to develop, implement, and maintain the Project pursuant to the terms and conditions set forth in this Agreement.

B. The Recipient agrees to confirm purchases made with Project grant funds by providing proof of final payment to the Court's Grant Administrator at the email address provided below no later than December 31, 2020, or 30 days after receipt of funds, whichever occurs last. The Recipient agrees to provide photographs of the Project, if requested by the Court.

C. The Recipient shall reimburse the Court for Project grant funds received that are spent in violation of applicable law or the provisions of this Agreement, as determined by a qualified auditor.

D. All purchases or upgrades made with Project grant funds shall be completed, installed, operational, and in use by November 30, 2020, unless the Court gives express written consent extending this deadline.
E. The Recipient shall ensure that all equipment, software, or materials purchased for the Project are and remain the property of the Recipient unless the Court is notified and gives express written consent to the sale, donation, or other disposal of the equipment, software, or materials. The Court maintains a right of first refusal. If any equipment, software, or materials purchased for the Project are owned by the Court, at the conclusion of the grant the Court will transfer ownership of it to the Recipient.

F. The Court reserves the right to request the reimbursement of all distributed Project grant funds if Recipient fails to comply with the requirements of this Agreement.

G. The Recipient agrees to participate in on-going monitoring for quality, evaluation, and documentation of the Project by the Court as required by funding restrictions or otherwise deemed necessary by the Court.

H. The Recipient shall maintain adequate supporting records that are consistent with generally accepted accounting practices and the Recipient's purchasing policies and practices.

I. The Recipient shall provide the Court with an audit report conducted in accordance with Government Accounting Standards. The audit report shall be provided within six months following the close of the Recipient's fiscal year during the term of this Agreement. If such audit report is not available for the Recipient through its local governing authority, the Court may require the audit be completed by a certified public accountant. Costs for audit reports performed by a certified public accountant not required by the Recipient’s local governing authority, but that are necessary to provide assurance to the Court that generally accepted accounting principles have been followed, may not be charged to the grant. A copy of the Court’s Guidelines for Audit of Grant Award Funds is attached as Appendix C.

Section 5. Use of Grant Funds

A. The Recipient agrees that there shall be no substantial variance from its use of grant funds as submitted in its Application and approved by the Court, without prior written approval by the Court.

B. Project grant funds shall be expended for only one-time costs, with any resulting maintenance or ongoing support costs being the responsibility of the Recipient.

C. The Recipient agrees to notify the Court if the Recipient encounters difficulties in the performance of or is unable to proceed with the grant activities. Under these conditions, the Court may terminate the grant and require the return of unexpended funds.

D. The Recipient agrees that any grant funds not spent or committed for the grant activities shall be returned to the Court within 60 days of the expiration of this Agreement.

E. Project grant funds shall not be expended to support any political campaign or attempt to affect the political opinion of the general public or any segment thereof or to communicate with any member of the public or employee of the Recipient who may participate in the formulation of
legislation, other than through making available the results of nonpartisan analysis, study, and research.

Section 6. Payment Process

A. The Court will distribute Project grant funds to the Recipient on a one-time payment basis.

B. Project grant funds shall not be made for an expense unless it is specified in this Agreement or has been approved in advance by the Court.

C. Project grant funds shall be disbursed to the Recipient no later than 30 days from the effective date of this Agreement.

Section 7. Entire Agreement

This Agreement and all materials incorporated by reference herein constitute the understanding between the parties. Where there is a conflict between the terms of this Agreement and the incorporated documents, this Agreement shall control.

Section 8. Changes and Modifications

Any changes or modifications to this Agreement that might affect the Project as originally proposed shall be submitted to the Court, in writing, for prior approval. Proposed changes shall be reviewed under the same considerations, policies, and goals as the original Opportunity. All changes and modifications shall be in writing, signed by the parties, and appended to this Agreement.

Section 9. Termination of Agreement

The Recipient shall be in default under this Agreement if the Recipient fails to timely perform or observe any of its obligations under this Agreement or withdraws from the Project and does not remedy the failure or withdrawal within five business days of the receipt of written notice by the Court of such default. If this Agreement is terminated, the Recipient shall reimburse the Court for the entire distributed award amount. If the Court terminates this Agreement, it shall be responsible for reimbursing the Recipient for all expenses incurred by the Recipient prior to the date on which the Recipient receives written notice of termination.

Section 10. Resolution of Disputes

The Court and the Recipient recognize that litigation can be an expensive, resource-consuming process for resolving disputes. Therefore, the Court and the Recipient agree that if any controversy or dispute arises out of or relates to this Agreement or the Project, they shall attempt in good faith to settle the dispute through mediation. The Court and the Recipient shall attempt to mutually agree as to the provider of neutral services and complete mediation within thirty days.
Section 11. Law, Forum, and Venue

This Agreement shall be construed and interpreted, and the rights of the parties shall be determined in accordance with, the laws of the State of Ohio. All actions arising out of this Agreement shall be instituted in a court of competent subject matter jurisdiction in Franklin County, Ohio.

Section 12. Severability

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

Section 13. Responsibility for Claims

The Recipient shall indemnify and hold the Court harmless from liability for any injury or damage to third parties occurring during performance of activities pursuant to this Agreement, to the extent such injury or damage is caused by the Recipient’s negligence or willful misconduct.

Section 14. Certification of Funds

The Court represents that it has adequate funding available to reimburse the Recipient under the provisions of this Agreement. However, the Court may terminate this Agreement should its appropriations or other revenues be reduced or, if applicable, the grant funds used to support the Project are reduced or terminated.

Section 15. Applicable Policies

With respect to activities associated with the Project, the Recipient is subject to the Court’s policies on equal employment opportunity, discrimination and sexual harassment, and drug free workplace. Copies of these policies are attached as Appendix D.

Section 16. Assignment

The Recipient may not assign any rights, duties, or obligations described in this Agreement without the written approval of the Court.

Section 17. Access to Records

The Recipient shall allow the Court and its authorized representatives access to all records kept pursuant to the Project for the purpose of any audit and examination relative to this Agreement.

Section 18. Original Copies of Agreement

This Agreement shall be executed in two originals with each party retaining an original copy.
Section 19. Contacts

The Court’s contact with regard to this Agreement is:

Linda Flickinger, Grant Administrator
The Supreme Court of Ohio
65 South Front Street
Columbus, Ohio 43215
614.387.9522
Linda.Flickinger@sc.ohio.gov

The Recipient’s contact with regard to this Agreement is:

Ann Murray, Court Administrator
Dayton Municipal Court
301 West Third Street, Room 365
Dayton, OH 45402
(937) 333-4338
ann.murray@daytonohio.gov

The parties have executed this Agreement as of the date(s) noted below.

THE SUPREME COURT OF OHIO        Dayton Municipal Court

Stephanie E. Hess, Esq.  04.29.2020
Deputy Administrative Director
Supreme Court of Ohio

Deirdre E. Logan  5-1-2020
Administrative Judge
A RESOLUTION

Authorizing the City Manager to Apply for, Accept, and Enter Into a Water Pollution Control Loan Fund ("WPCLF") Loan Agreement on Behalf of the City of Dayton, Ohio for Design of the Water Reclamation Facility Phase I Anaerobic Digester Project; and 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 Phase I Anaerobic Digester Project which would add additional Anaerobic Digesters and rehabilitate the existing East Digester Complex; and,

WHEREAS, The City of Dayton has entered into a Professional Service Agreement with Hazen & Sawyer for the design of this project; and,

WHEREAS, The City of Dayton intends to apply for a Water Pollution Control Loan Fund ("WPCLF") Loan for the design of the Phase I Anaerobic Digester Project; 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 with the Ohio Environmental Protection Agency and the Ohio Water Development Authority for design of the Phase I Anaerobic Digester Project 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......................, 2020

SIGNED BY THE MAYOR......................, 2020

Mayor of the City of Dayton, Ohio

Attest:

Clerk of Commission

Approved as to form:

City Attorney
May 1, 2020

TO: Shelley Dickstein  
City Manager

FROM: Chris Clark, Division Manager  
Division of Water Reclamation

SUBJECT: Resolution – Submittal of an Ohio EPA Division of Environmental and Financial Assistance Loan Supplement Application for the Phase I Anaerobic Digester Project Design

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 was selected as the design firm and the Professional Service Agreement with H&S for the design and construction administration will be scheduled with City Commission at the same time as the attached funding resolution. The negotiated fees with Hazen & Sawyer for the project design are $4,604,311.

The City of Dayton is applying for an Ohio EPA DEFA Design Loan for this project. The DEFA Design Loan will only finance the Design Fees. The Construction Service Fees will be included in a future Construction Loan Application. One of the first steps in the submittal of a loan application is the adoption of a Resolution that authorizes the City Manager to apply for and receive a design loan from the Ohio EPA.

Attached is a draft of the Resolution. The Resolution must be introduced and passed at the same time that the Professional Service Agreement with Hazen & Sawyer is approved. The resolution has been reviewed and approved by the Law Department as to form and correctness. I am currently working on the Loan Application and once the Resolution passes, I will be routing the loan application to the Law Department, Finance and CMO for final approvals. If you need any additional information, please contact me at x1834.

APPROVED:

Michael Powell, Director  
Department of Water
A RESOLUTION

Approving the Petition and Supplemental Plan for Special Energy Improvement Projects Under Ohio Revised Code Chapter 1710, and Declaring an Emergency.

WHEREAS, As set forth in Ohio Revised Code Chapter 1710, the Ohio General Assembly has authorized property owners to include their properties within energy special improvement districts ("ESIDs") upon a petition to a municipal corporation or township, which ESIDs are voluntary organizations of property owners who undertake special energy improvement projects for their properties and finance such special energy improvement projects by way of voluntary special assessments; and,

WHEREAS, Pursuant to Resolution 6117-15, passed June 24, 2015, this Commission approved the Petition for Creation of Energy Special Improvement District and for Special Assessments for Special Energy Improvement Projects (the "Establishing Petition"), including an initial plan entitled Dayton Regional Energy Special Improvement District Program Plan (the "Program Plan") and Articles of Incorporation of the Dayton Regional Energy Special Improvement District, Inc. (the "Articles"); and,

WHEREAS, Following such approval, the Dayton Regional Energy Special Improvement District ("District"), an energy special improvement district under the laws of the State of Ohio, and the Dayton Regional Energy Special Improvement District, Inc. ("Corporation"), a nonprofit corporation under the laws of the State of Ohio, the board of directors of which governs the District in accordance with Ohio Revised Code Chapters 1702 and 1710, were formed; and,

WHEREAS, Platform III – Third LLC ("Owner"), as the owner of certain real property located within the City of Dayton, Ohio ("City"), has identified certain real property owned by the Owner located at 535 East Third Street in the City ("Project Site"), as an appropriate property for a special energy improvement project pursuant to Ohio Revised Code Chapter 1710; and,

WHEREAS, The Owner has submitted to the District, and the board of directors of the Corporation ("Board"), as the governing body of the District in accordance with Ohio Revised Code Chapter 1710, has approved or will approve a Petition for Special Assessments for Special Energy Improvement Projects ("Project Petition") and a Supplement to Plan for 535 East Third Street, Dayton, Ohio Project ("Supplemental Plan"), which Project Petition and Supplemental Plan request that the Project Site be added to the District and that the City levy special assessments on the Project Site to pay the costs of a special energy improvement project to be provided on the Project Site, all as described more particularly in the Project Petition and the Supplemental Plan ("Project"); and,

WHEREAS, On April 29, 2020, pursuant to Ohio Revised Code Chapter 1710, the Owner submitted the Project Petition and the Supplemental Plan to this Commission
and to the City Manager of the City, and said Project Petition and Supplemental Plan are on file with the Clerk of the Commission; and,

WHEREAS, Said Project Petition and Supplemental Plan are for the purpose of developing and implementing special energy improvement projects in furtherance of the purposes set forth in Section 20 of Article VIII of the Ohio Constitution, including, without limitation, the Project, and further, the Project Petition and the Supplemental Plan identify the amount and length of the special assessments to be imposed with respect to the Project; and,

WHEREAS, Said Project Petition and Supplemental Plan are for the purpose of developing and implementing special energy improvement projects in furtherance of the purposes set forth in Section 20 of Article VIII of the Ohio Constitution, including, without limitation, the Project, and further, the Project Petition and the Supplemental Plan identify the amount and length of the special assessments to be imposed with respect to the Project; and,

WHEREAS, This Commission has determined to approve the Project Petition and Supplemental Plan; and,

WHEREAS, This Commission, pursuant to Ohio Revised Code Section 1710.02(G)(4), has determined that the energy special improvement project to be constructed and implemented on the Project Site is not required to be owned exclusively by the City for its purposes, for uses determined by this Commission, as the legislative authority of the City as those that will promote the welfare of the people of the City; to improve the quality of life and the general and economic well-being of the people of City; to better ensure the public health, safety, and welfare; to protect water and other natural resources; to provide for the conservation and preservation of natural and open areas and farmlands, including by making urban areas more desirable or suitable for development and revitalization; to control, prevent, minimize, clean up, or mediate certain contamination of or pollution from lands in the state and water contamination or pollution; or to provide for safe and natural areas and resources; and,

WHEREAS, It is necessary for the immediate preservation of public peace, property, health and safety, that this Resolution take effect at the earliest possible date in order to allow the Owner to begin work on the Project, and the District to take advantage of financing available to it for a limited time; now, therefore,

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

Section 1. Approval of Project Petition and Supplemental Plan. That this Commission approves the Project Petition and further approves the Supplemental Plan in substantially the forms now on file with the Clerk of the Commission.

Section 2. Transfer of Energy Special Improvement Project. That pursuant to Ohio Revised Code Section 1710.02(G)(4), this Commission determines that the Project is not required to be owned exclusively by the City for its purposes, for uses determined by this Commission, as the legislative authority of the City, as those that will promote the welfare of the people of such participating political subdivision; to improve the quality of life and the general and economic well-being of the people of the City; to better ensure the public health, safety, and welfare; to protect water and other natural resources; to provide for the conservation and preservation of natural and open areas and farmlands, including
by making urban areas more desirable or suitable for development and revitalization; to
control, prevent, minimize, clean up, or mediate certain contamination of or pollution
from lands in the state and water contamination or pollution; or to provide for safe and
natural areas and resources. This Commission accordingly authorizes the Board to act as
its agent to sell, transfer, lease, or convey the Project. The consideration the Board must
obtain from any sale, transfer, lease, or conveyance of the special energy improvement
project on the Project Site is any consideration greater than or equal to One Dollar and
Zero Cents ($1.00).

Section 3. Compliance with Public Meetings Requirements. That this Commission
finds and determines that all formal actions of this Commission concerning and relating to
the passage of this legislative resolution were adopted in an open meeting of this
Commission, and that all deliberations of this Commission and any of its committees that
resulted in such formal action were in meetings open to the public in compliance with all
legal requirements, including Ohio Revised Code Section 121.22.

Section 4. Effective Date. That for the reasons stated in the preamble hereof, this
Resolution is declared to be an emergency measure and shall take effect immediately upon
its adoption.

ADOPTED BY THE COMMISSION.............................. 2020

SIGNED BY THE MAYOR................................. 2020

Mayor of the City of Dayton, Ohio

Attest:
Clerk of Commission

Approved as to form:

City Attorney
CERTIFICATE

The undersigned Clerk of the Commission hereby certifies that the foregoing is a true copy of Resolution No. _______ duly adopted by the Commission of the City of Dayton, Ohio on ______________, 2020.

Clerk of the Commission
City of Dayton, Ohio
A RESOLUTION

Approving the Necessity of Acquiring, Constructing, and Improving Certain Public Improvements in the City of Dayton, Ohio in Cooperation with the Dayton Regional Energy Special Improvement District, and Declaring an Emergency.

WHEREAS, Ohio Revised Code Section 1710.06(C) provides that a political subdivision which has approved a petition for special assessments for public improvements in an energy special improvement district and a plan pursuant to Ohio Revised Code Sections 1710.02(F) and 1710.06 shall levy the requested special assessments pursuant to Ohio Revised Code Chapter 727; and,

WHEREAS, Platform III – Third LLC ("Owner") petitioned to add property owned by it to the Dayton Regional Energy Special Improvement District ("ESID") pursuant to Ohio Revised Code Chapter 1710 in part in order to finance the costs of a special energy improvement project to be constructed on the property; and,

WHEREAS, The Commission ("Commission") of the City of Dayton, Ohio ("City") has, by Resolution No. ______, adopted on ______, 2020, approved a Petition for Special Assessments for Special Energy Improvement Projects ("Project Petition") and a Supplement to Plan for 535 East Third Street, Dayton, Ohio Project ("Supplemental Plan"), in accordance with Ohio Revised Code Section 1710.02; and,

WHEREAS, The Project Petition, a copy of which, together with the Supplemental Plan, is attached to, and incorporated into this Resolution as Exhibit A, has been signed by the Owner, as the owner of one hundred percent (100%) of the real property affected by the Project Petition (as further described in Exhibit A to the Project Petition, the "Property"); and,

WHEREAS, The Project Petition and the Supplemental Plan propose the necessity of the acquisition, construction, installation, improvement, and equipping of energy efficiency improvements, including, without limitation, roof upgrades, HVAC system upgrades, lighting improvements, energy-efficient windows, and related improvements ("Project") and financing the Project through the cooperation of the ESID; and,

WHEREAS, In the Project Petition and the Supplemental Plan, the Owner requests that the Project be paid for by special assessments to be assessed upon the Property ("Special Assessments") in an amount sufficient to pay the costs of the Project, which is estimated to be Two Million Forty-One Thousand Eight Hundred Ninety-Eight Dollars and Eighty Cents ($2,041,898.80), and other related costs of financing the Project, which include, without limitation, the payment of principal of and interest on obligations issued to pay the costs of the Project and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and ESID administrative fees and expenses,
and requests that the Project be undertaken cooperatively by the City, the ESID, and such other parties as the City may deem necessary or appropriate; and,

WHEREAS, It is necessary for the immediate preservation of public peace, property, health and safety, that this Resolution take effect at the earliest possible date in order to allow the Owner to begin work on the special energy improvement project on the Property, and the ESID to take advantage of financing available to it for a limited time; now, therefore,

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

Section 1. Definitions. That each capitalized term not otherwise defined in this Resolution or by reference to another document shall have the meaning assigned to it in the Project Petition.

Section 2. Public Necessity of Special Assessments. That this Commission declares necessary, and a vital and essential public purpose of the City, to improve the Property, which is located at 535 East Third Street in the City, by providing for the implementation of various special energy improvement projects on the Property including, without limitation, the Project, as set forth in the Project Petition and the Supplemental Plan, and providing for the payment of the costs of the project, including any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, surveying, testing, and inspection costs; the amount of any damages resulting from the Authorized Improvements and the interest on such damages; the costs incurred in connection with the preparation, levy and collection of the special assessments; the cost of purchasing and otherwise acquiring any real estate or interests in real estate; expenses of legal services; costs of labor and material; and other financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued to provide a loan to the Owner or otherwise to pay costs of the Project in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued, including any credit enhancement fees, trustee fees, and ESID administrative fees and expenses; together with all other necessary expenditures, all as more fully described in the Project Petition and the Supplemental Plan, profiles, specifications, and estimates of cost of the Project, all of which are on file with the Director of the Department of Finance and open to the inspection of all persons interested.

Section 3. One Project. That this Commission determines that the Project’s elements are so situated in relation to each other that in order to complete the acquisition and improvement of the Project’s elements in the most practical and economical manner, they should be acquired and improved at the same time, with the same kind of materials, and in the same manner; and that the Project’s elements shall be treated as a single improvement, pursuant to Ohio Revised Code Section 727.09, and the Project’s elements shall be treated as a joint improvement to be undertaken cooperatively by the City and the ESID pursuant to Ohio Revised Code Section 9.482 and Ohio Revised Code Chapter 1710.

Section 4. Approval of Plans. That the Plans and Specifications and total cost of the Project now on file in the office of the Clerk of the Commission are approved, subject to changes as permitted by Ohio Revised Code Chapter 727. The Project shall be made in accordance with the plans, specifications, profiles, and estimates for the Project.
Section 5. Public Necessity of Project. That this Commission has previously
determined and by this Resolution ratifies and declares that the Project is an essential and
vital public, governmental purpose of the City as a Special Energy Improvement Project,
as defined in Ohio Revised Code Section 1710.01(1); and that in order to fulfill that
essential and vital public purpose of the City, it is necessary and proper to provide, in
cooperation with the ESID, for the acquisition, construction, and improvement of the
Project in the manner contemplated by the Project Petition and the Supplemental Plan.
This Commission determines and declares that the Project is conducive to the public
peace, health, safety and welfare of the City and the inhabitants of the City.

Section 6. Allocation of Costs of Project Among City and Owner. That pursuant
to and subject to the provisions of a valid Petition signed by the owners of one hundred
percent (100%) of the Property, the entire cost of the Project shall be paid by the Special
Assessments levied against the Property, which is the benefited property. The provisions
of the Project Petition are ratified, adopted, approved and incorporated into this
Resolution as if set forth in full in this Resolution. The portion of the costs of the Project
allocable to the City will be zero percent (0%). The City does not intend to issue
securities in anticipation of the levy or collection of the Special Assessments.

Section 7. Assessment Method. That the method of levying the Special
Assessments shall be in proportion to the benefits received, allocated among the parcels
constituting the Property as set forth in the Project Petition and Supplemental Plan.

Section 8. Property. That the lots or parcels of land to be assessed for the Project
shall be the Property, described in Exhibit A to the Project Petition, all of which lots and
lands are determined to be specially benefited by the Project.

Section 9. Assessment Schedule. That the Special Assessments shall be levied and
paid in forty (40) semi-annual installments pursuant to the list of estimated Special
Assessments set forth in the Project Petition, and the Owner has waived its option to pay
the Special Assessment in cash within thirty (30) days after the passage of the assessing
Resolution.

The aggregate amount of Special Assessments estimated to be necessary to pay the
costs of the Project is Two Million Forty-One Thousand Eight Hundred Ninety-Eight
Dollars and Eighty Cents ($2,041,898.80). Each semi-annual Special Assessment payment
represents payment of a portion of the principal of and interest on obligations issued to
pay the costs of the Project and of administrative expenses. The interest portion of the
Special Assessments, together with amounts used to pay administrative expenses, are
determined to be substantially equivalent to the fair market rate or rates of interest that
would have been borne by securities issued in anticipation of the collection of the Special
Assessments if such securities had been issued by the City. In addition to the Special
Assessments, the Auditor of Montgomery County, Ohio may impose a special assessment
collection fee with respect to each semi-annual payment, which amount will be added to
the Special Assessments by the Auditor of Montgomery County, Ohio.

Section 10. Director of the Department of Finance to File Estimate of Special
Assessments. That the Director of the Department of Finance or the Director of the
Department of Finance’s designee is authorized and directed to prepare and file in the
office of the Clerk of the Commission the estimated Special Assessments for the cost of
the Project in accordance with the method of assessment set forth in the Project Petition,
the Supplemental Plan, and this Resolution, showing the amount of the assessment against each lot or parcel of land to be assessed.

Section 11. Notice to Property Owner. That upon the filing of the estimated Special Assessments with the Clerk of the Commission, notice of the adoption of this Resolution and the filing of the estimated Special Assessments shall be served upon the Owner of the Assessed Property, as provided in Ohio Revised Code Section 727.13. The appropriate officials of the City shall also comply with the applicable procedural requirements of Ohio Revised Code Chapter 727.

Section 12. Collection of Special Assessments. That the Director of the Department of Finance or the Director of the Department of Finance’s designee is authorized, pursuant to Ohio Revised Code Section 727.12, to cause the Special Assessments to be levied and collected at the earliest possible time including, if applicable, prior to the completion of the acquisition and construction of the Project.

Section 13. Appropriation of Special Assessments. That the Special Assessments will be used by the City to provide the Authorized Improvements in cooperation with the ESID in any manner, including assigning the Special Assessments actually received by the City to the ESID or to another party the City deems appropriate, and the Special Assessments are appropriated for such purposes.

Section 14. Acceptance of Waiver of Process. That this Commission accepts and approves the waiver of all further notices, hearings, claims for damages, rights to appeal and other rights of property owners under the law, including but not limited to those specified in the Ohio Constitution, Ohio Revised Code Chapter 727, Ohio Revised Code Chapter 1710, and the Charter of the City of Dayton, Ohio, and consents to the immediate imposition of the Special Assessments upon the Property. This waiver encompasses, but is not limited to, waivers by the Owner of the following rights:

(i) The right to notice of the adoption of the Resolution of Necessity under Ohio Revised Code Sections 727.13 and 727.14;
(ii) The right to limit the amount of the Special Assessments under Ohio Revised Code Sections 727.03 and 727.06;
(iii) The right to file an objection to the Special Assessments under Ohio Revised Code Section 727.15;
(iv) The right to the establishment of, and any proceedings by and any notice from an Assessment Equalization Board under Ohio Revised Code Sections 727.16 and 727.17;
(v) The right to file any claim for damages under Ohio Revised Code Sections 727.18 through 727.22 and Ohio Revised Code Section 727.43;
(vi) The right to notice that bids or quotations for the Project may exceed estimates by fifteen percent (15%);
(vii) The right to seek a deferral of payments of Special Assessments under Ohio Revised Code Section 727.251;
(viii) The right to notice of the passage of the assessing Resolution under Ohio Revised Code Section 727.26; and
(ix) Any and all procedural defects, errors, or omissions in the Special Assessment process.

Section 15. Agreements. That the City is authorized to enter into agreements by and among the City, the ESID, and such other parties as the City may deem necessary or
appropriate in order to provide the Authorized Improvements, and that the City Manager, the Economic Development Director, and the Commission President, or any of them, is authorized to execute, on the City’s behalf, such agreements.

Section 16. Compliance with Open Meetings Requirements. That this Commission finds and determines that all formal actions of this Commission concerning and relating to the passage of this legislative resolution were adopted in an open meeting of this Commission, and that all deliberations of this Commission and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Ohio Revised Code Section 121.22.

Section 17. Effective Date. That for the reasons stated in the preamble hereof, this Resolution is declared to be an emergency measure and shall take effect immediately upon its adoption.

ADOPTED BY THE COMMISSION........................., 2020

SIGNED BY THE MAYOR.............................., 2020

______________________________
Mayor of the City of Dayton, Ohio

Attest:

______________________________
Clerk of Commission

Approved as to form:

______________________________
City Attorney
CERTIFICATE

The undersigned Clerk of the Commission hereby certifies that the foregoing is a true copy of Resolution No. _______ duly adopted by the Commission of the City of Dayton, Ohio on ________________, 2020.

__________________________
Clerk of the Commission
City of Dayton, Ohio
May 5, 2020

TO: Shelley Dickstein, City Manager

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

SUBJECT: Two Emergency Resolutions Approving a Petition to Include 535 East Third Street in the Dayton Special Energy Improvement District (ESID)

The Department of Economic Development is requesting adoption of the attached Resolutions approving the Petition and Supplemental Plan for Special Assessments to the property located at 535 East Third Street.

The Property Owner will finance energy improvements through a Special Assessment to their property taxes. The first Resolution approves the Petition filed by the Property Owner, while the second Resolution approves the Necessity of the Special Assessments. Corresponding Ordinances for this project will be presented at the May 27, 2020 City Commission meeting. The agreement concerning activation of the first floor and related items will be part of that legislation.

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

If you have any questions, please contact me at extension 3621.

FPW
AN ORDINANCE

To Vacate the Alley North of East Third Street from the Alley East of More Avenue to the East Property Line of City Lot #30313.

WHEREAS, The City Commission did on the 29th day of January, 2020, by Resolution No. 6472-20, declare its intention to vacate the alley north of East Third Street from the alley east of More Avenue to the east property line of City Lot #30313; and

WHEREAS, The Board of Revision of Assessments, after a hearing regularly held for the purpose of consideration of objections to said proposed vacation, as provided by the Charter of the City of Dayton, has recommended that the alley north of East Third Street from the alley east of More Avenue to the east property line of City Lot #30313 be vacated; and

WHEREAS, The City Plan Board has approved said vacation; and

WHEREAS, The vacation of the alley north of East Third Street from the alley east of More Avenue to the east property line of City Lot #30313 described herein will enable the abutting property to safeguard this property; and

WHEREAS, The Commission is satisfied that there is good cause for said vacation and that it will serve the public interest and welfare and should be made; now, therefore,

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

Section 1. That the alley north of East Third Street from the alley east of More Avenue to the east property line of City Lot #30313; being more particularly bounded and described in as follows:

Being all of the 8 foot the alley north of East Third Street from the 16 foot alley east of More Avenue to the east property line of City Lot #30313

is hereby vacated.

Passed by the Commission .........................., 2020

Signed by the Mayor .........................., 2020

Mayor of the City of Dayton, Ohio

Attest:

________________________________________
Clerk of the Commission

Approved as to form:

[Signature]
City Attorney
April 30, 2020

TO: Shelley Dickstein  
City Manager

FROM: Keith Steeber, City Engineer  
Division of Civil Engineering

SUBJECT: The Vacation of the Alley North of East Third Street from the Alley East of More Avenue to the East Property Line of City Lot #30313

Attached is the ordinance to vacate the subject property. Please present this legislation to the City Commission for their action.

Petition No. 21456 requesting the vacation was received from Jerry Fletcher on December 13, 2019. Resolution No. 6472-20 declaring the Commission’s intention to vacate was adopted on January 29, 2020. The Board of Revision of Assessments recommended the vacation on March 16, 2020. The vacation will enable the abutting property owners to safeguard this property.

If you have any additional questions, please contact Joe Weinel at extension 4218.

JRW

Attachments

cc: Ms. Clements  
Mr. Parlette  
Department of Planning  
Department of Law  
Clerk of Commission  
Secretary / Board of Revision of Assessments
AN ORDINANCE

To Vacate the Alley North of West Second Street from North Conover Street to the Railroad Right of Way.

WHEREAS, The City Commission did on the 29th day of January, 2020, by Resolution No. 6471-20, declare its intention to vacate the alley north of West Second Street from North Conover Street to the Railroad Right of Way; and

WHEREAS, The Board of Revision of Assessments, after a hearing regularly held for the purpose of consideration of objections to said proposed vacation, as provided by the Charter of the City of Dayton, has recommended that the alley north of West Second Street from North Conover Street to the Railroad Right of Way be vacated; and

WHEREAS, The City Plan Board has approved said vacation; and

WHEREAS, The vacation of the alley north of West Second Street from North Conover Street to the Railroad Right of Way; described herein will enable the abutting property to safeguard this property; and

WHEREAS, The Commission is satisfied that there is good cause for said vacation and that it will serve the public interest and welfare and should be made; now, therefore,

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

Section 1. That the alley north of West Second Street from North Conover Street to the Railroad Right of Way; being more particularly bounded and described in as follows:

Being all of the 16.5 foot the alley north of West Second Street from the 40 foot North Conover Street to the 60 foot Railroad Right of Way

is hereby vacated.

Passed by the Commission ..........................................., 2020

Signed by the Mayor ..................................................., 2020

Mayor of the City of Dayton, Ohio

Attest:

Clerk of the Commission

Approved as to form:

City Attorney
April 30, 2020

TO: Shelley Dickstein  
   City Manager

FROM: Keith Steeber, City Engineer  
   Division of Civil Engineering

SUBJECT: The Vacation of Alley North of West Second Street from North Conover Street to the Railroad Right of Way

Attached is the ordinance to vacate the subject property. Please present this legislation to the City Commission for their action.

Petition No. 21457 requesting the vacation was received from Greater Dayton Regional Transit Authority on December 13, 2019. Resolution No. 6471-20 declaring the Commission’s intention to vacate was adopted on January 29, 2020. The Board of Revision of Assessments recommended the vacation on March 16, 2020. The vacation will enable the abutting property owner to safeguard this property.

If you have any additional questions, please contact Joe Weinel at extension 4218.

JRW

Attachments

cc: Ms. Clements  
   Mr. Parlette  
   Department of Planning  
   Department of Law  
   Clerk of Commission  
   Secretary / Board of Revision of Assessments
ALLEY NORTH OF W SECOND ST, WEST OF N CONOVER ST
PUBLIC RIGHT-OF-WAY VACATION
By.............................................. No..............................................

AN ORDINANCE

Consenting to the Painting Bridges of U. S. State Route 35
Within the City of Dayton, and Agreeing to Cooperate in
Matters Incidental Thereunto, Including the Execution of
Agreements Necessary to Implement this Ordinance.

WHEREAS, The State of Ohio Department of Transportation ("ODOT")
has identified the need for painting bridges of U. S. State Route 35, identified by ODOT
as DO7 BP FY22; and

WHEREAS, The City of Dayton intends to cooperate with the State of Ohio
Director of Transportation in the planning, design, and construction of said improvement;
now, therefore,

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

Section 1. That the Commission hereby gives consent to the Director of
Transportation to paint bridges of U. S. State Route 35, said project being in the public
interest and identified by ODOT as DO7 BP FY22 ("Project").

Section 2. That the City shall cooperate with the Director of Transportation in the
Project as follows:

A. The City will assume and bear all costs of the Project, less the amount
of Federal-Aid set aside by the Director of Transportation for
financing the Project from funds allocated by the Federal Highway
Administration, U.S. Department of Transportation.

B. In addition, the City also agrees to assume and bear One Hundred
Percent (100%) of the cost of any construction items requested by the
City for the Project which are not necessary for the Project, as
determined by the State and Federal Highway Administration.

Section 3. That the City agrees that all right-of-way required for the Project will
be acquired and/or made available in accordance with current State and Federal
regulations. The City also understands that right-of-way costs include eligible utility
costs. The City agrees that all utility accommodation, relocation, and reimbursement will
comply with the current provisions of 23 CFR 645 and the ODOT Utilities Manual.
Section 4. That upon completion of the Project, and unless otherwise agreed, the City shall: (1) provide adequate maintenance of the Project in accordance with all applicable State and Federal law, including, but not limited to, Title 23, U.S.C. Section 116; (2) provide ample financial provisions, as necessary, for such maintenance of the Project; (3) maintain the right-of-way, keeping it free of obstructions; and (4) hold said right-of-way inviolate for public highway purposes.

Section 5. That the City Manager is hereby authorized on behalf of the City to enter into contracts with the Director of Transportation to complete the Project.

Passed by the Commission............................................., 2020

Signed by the Mayor....................................................., 2020

Mayor of the City of Dayton, Ohio

Attest:

__________________________
Clerk of the Commission

Approved as to form:

__________________________
City Attorney
April 27, 2020

TO: Shelley Dickstein
City Manager

FROM: Keith Steeber, City Engineer
Division of Civil Engineering

SUBJECT: Painting U. S. State Route 35 Bridges
D07 BP FY22, PID 105404
Preliminary Legislation

Attached is legislation between the City of Dayton and the Ohio Department of Transportation for a project that paints bridges on U. S. State Route 35. The project will be 100% funded from ODOT funds and will be performed through ODOT’s District 7 Office. Work is expected to begin in the spring of 2022.

Please present the attached Ordinance to the City Commission at its May 13, 2020 meeting. The Department of Law has approved the document as to form, and a copy of ODOT’s request for consent legislation is attached.

If you have any questions, please contact me at 3838.

KGS

Attachments

Cc: Mr. Parlette
Ms. Clements
Mr. Stovall
Good Afternoon,

Attached please find a template for preliminary consent legislation for the project known as PID 105404 - D07 BP FY22 currently in the ODOT District 7 Fiscal Year 2022 Work Plan. This project will paint the structural steel on various bridges throughout the district in Montgomery and Montgomery counties to include Structure File Numbers 5702070 - MOT-US-35-16.20, 5703654 - MOT-US-35-16.20 and 5702100 - MOT-US-35-16.21, in the City of Dayton.

The attached is only a template. The City can use this template or use legislation format of their own. Original signatures are no longer required and when complete, the enacted and signed legislation can be scanned and returned to me or it can be sent via US Mail to my attention at the address below. If for any reason the City would like me to pick up the legislation, I will be happy to do so.

A little about the project, PID 105404 - D07 BP FY22 is currently scheduled to sale in state fiscal year 2022 - quarter 3. Maps and general information can be found on the ODOT TIMS website at the link here: https://gis.dot.state.oh.us/tims/projects. Schedule and funding information can be found here: https://ellisproj.dot.state.oh.us/.

In order to keep the project on its current schedule we would like to receive the completed legislation no later than Wednesday, July 1, 2020.

If you have any questions or need anything further, please let me know.

Thank you for your cooperation.

Robin A. Castle
Program Administrator 2
ODOT District Seven
1001 St. Mary’s Avenue, Sidney, OH 45365
D7: 937-497-6888 - D8: 513-933-6559
transportation.ohio.gov
A RESOLUTION

Honorary Naming Barnett Street Between Home Avenue and West Fifth Street as Ronald C. Foster Way.

WHEREAS, An application has been made by the Dakota Center to honorarily designate Barnett Street between Home Avenue and West Fifth Street as Ronald C. Foster Way for a two year period due to Mr. Foster’s over forty years of service to the Dakota Center as Program Director and Executive Director; and

WHEREAS, Mr. Foster played an important and integral role in the development of young people; and

WHEREAS, The block of Barnett Street chosen for this honor is the address of the Dakota Center and the street on which Mr. Foster grew up and went to elementary school; and

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

WHEREAS, The City Plan Board, on March 10, 2020 reviewed the proposal, Case PLN2020-00011, and recommended approval of the two-year designation; now, therefore,

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

Section 1. Barnett Street between Home Avenue and West Fifth Street is honorarily designated as Ronald C. Foster Way for a two-year period commencing thirty days after the passage of this resolution.

Section 2. The official name of Barnett Street is unchanged.

Section 3. The City Manager is directed to implement this resolution in a timely manner.

Adopted by the Commission........................................, 2020

Signed by the Mayor....................................................., 2020

Mayor of the City of Dayton, Ohio

Attest:

Clerk of the Commission

Approved as to form:

City Attorney
April 16, 2020

TO: Rashella Lavender, Clerk of Commission

FROM: Ann Schenking, Secretary
City Plan Board

SUBJECT: Two-Year Honorary Designation for “Ronald C. Foster Way” on April 22, 2020 City Commission Calendar, `1234Plan Board Case PLN2020-00011

I am requesting that a resolution be placed on the April 22, 2020 City Commission calendar to establish a two-year honorary designation for Barnett Street between West Fifth Street and Home Avenue as “Ronald C. Foster Way.” The official/legal name of Barnett Street will remain Barnett Street. A second reading and vote on the resolution will be required at the following City Commission meeting. The resolution will be effective 30 days after its approval.

The Dakota Center is requesting the honorary designation for the late Ronald C. Foster. Mr. Foster served as Executive Director and Program Director of the Dakota Center for 46 years. As a mentor and friend to many youth, he dedicated his life to their educational empowerment. He grew up on Barnett Street and attended the former Garfield Elementary School which is the current site of the Dakota Center. The small wood framed house of his childhood still remains on Barnett Street.

In compliance with the requirements of Resolution 5014-99, sufficient support was received from property owners abutting the proposed designation. The City of Dayton Engineer, the Public Works Department, and the Police and Fire Departments have no objections to the designation. City Commissioner Jeffrey Mims, Tabernacle Baptist Church, the Innerwest Community Development Corporation, the West Priority Land Use Board, Jerald Steed, Alicia Foster (Mr. Foster’s daughter), and Wilbur E. Harper provided letters of support for the designation.

By a 6-0 vote the Plan Board recommends City Commission approval of the two year honorary designation. The Plan Board believes the request complies with the requirements outlined in Resolution 5014-99. No public hearing is required on the request so a public hearing will not be held.

Enclosed for distribution to the City Commission is the Plan Board minute record, the Plan Board case report, correspondence received, and the resolution. If you have any questions, please contact me at 3699. Thank you.

c: Ms. Dickstein, Mr. Parlette, Ms. Clements, Mr. Kinskey, Mr. Kroeger, Ms. Walker, Case File
6. PLN2020-00011 – Establish a Two-Year Honorary Designation for One Block of Barnett Street as “Ronald C. Foster Way.”

Applicant: Ms. Sharon Mitchell
Dakota Center
33 Barnett Street
Dayton, OH 45402

Priority Land Use Board: West
Planning District: MacFarlane
Decision: Recommended City Commission Approval

Staff Comments
Ken Marcellus presented the staff report and said staff believed the requirements of Resolution 5014-99 are met and recommended approval.

On behalf of the Dakota Center, Mrs. Sharon B. Mitchell is requesting that an honorary designation is established for a one (1) block portion of Barnett Street which runs in alongside of the Dakota Center where Mr. Foster served and lived across the street. The designation would be “Ronald C. Foster Way.” The official name of Barnett Street would remain Barnett Street.

Mr. Foster served as Executive Director and Program Director of the Dakota Center, Inc. formerly known and the Dakota Street Center, for 38 years. As a mentor and friend to many youth, he dedicated his life to their educational empowerment. He and his family lived at 24 Barnett Street, where he attended the former Garfield Elementary School which is the current site of the Dakota Center. The small wood framed house of his childhood still remains on Barnett Street.

In compliance with the requirements of Resolution 5014-99, sufficient support was received from property owners abutting the proposed designation. The City of Dayton Engineer, the Public Works Department, and the Police and Fire Departments have no objections to the designation. City Commissioner Jeffrey Mims, Tabernacle Baptist Church, the Innerwest Community Development Corporation, the West Priority Land Use Board, Jerald Steed, Alicia Foster (Mr. Foster’s daughter), and Wilbur E. Harper provided letters of support for the designation.

Public Comments
The applicant, Sharon Mitchell, Dakota Center Board of Trustees, 33 Barnett Street, Dayton, OH, spoke in support of the designation. She said Mr. Foster served the Dakota Center for 46 years and played an integral role in developing young people.

Linda Foster, 2404 Appletree Dr., Dayton, OH, said her husband’s life work was the Dakota Center and kids. She described the positive impact her husband had as a father figure to many.

Pastor Eric Kelso, Christ Kingdom Church, 5210 N. Main Street, Dayton, OH, spoke in support of the designation and described the positive impact Mr. Foster had on his life. He said he good naturedly fights with Mr. Foster’s daughter about Mr. Foster being his “father.”

Board Discussion
None.
Board Action
A motion was made by Mr. Payne, seconded by Ms. Pendergast and carried to recommend City Commission approval of the proposal (Case PLN2020-00011) to establish a two-year honorary designation for one Block of Barnett Street between Home Avenue and West Fifth Street as “Ronald C. Foster Way.” The official/legal name of Barnett Street will remain Barnett Street. The Plan Board found the proposal consistent with the requirements found in City Commission Resolution 5014-99 as outlined in the staff report.

Ms. Beverly Pendergast  Yes  Mr. Paul Bradley  Yes
Mr. Richard Wright  Yes  Mr. Matt Sauer  Yes
Ms. Geraldine Pegues  Absent  Mr. Greg Scott  Yes
Mr. Jeff Payne  Yes

Minutes approved by the City Plan Board on April 14, 2020

Ann Schenking, Secretary
City Plan Board
March 10, 2020

CITY PLAN BOARD REPORT
Case: PLN-2020-00005

Establish an Honorary Designation for a one (1) block Portion of Barnett Street (from Home Avenue north to W. Fifth Street) as “Ronald C. Foster Way.” The official name of Barnett Street will remain Barnett Street.

Applicant(s):
Sharon B. Mitchell
Dakota Center

Priority Land Use Board: West Neighborhood: MacFarlane

Request: On behalf of the Dakota Center, Mrs. Sharon B. Mitchell, is requesting that an honorary designation be established for a one (1) block portion of Barnett Street which runs in alongside of the Dakota Center where Mr. Foster served and lived across the street. The designation would be “Ronald C. Foster Way.” The official name of Barnett Street would remain Barnett Street.

Background: Mr. Foster served as Executive Director and Program Director of the Dakota Center, Inc. formerly known and the Dakota Street Center, for 38 years. As a mentor and friend to many youth, he dedicated his life to their educational empowerment. He and his family lived at 24 Barnett Street, where he attended the former Garfield Elementary School which is the current site of the Dakota Center. The small wood framed house of his childhood still remains on Barnett Street.

Board Authority and Requirements:
According to the requirements of Resolution 5014-99, Amended Rules and Procedures for the Naming of Public Rights-of-Way (and Public Facilities), the Plan Board shall review the request and make a recommendation to the City Commission to approve the request or an alternate proposal.

Staff Analysis Regarding Determinations and Findings:
Resolution 5014-99 details the process to be followed when bestowing an honorary designation on a public right-of-way. Staff believes the findings and determinations can be made, and recommends that the Plan Board send the proposal on to City Commission with a recommendation for approval.

Agencies and Groups Contacted:
Abutting property owners, the Innerwest Priority Board, the West Priority Land Use Board, and the City’s Public Works, Police and Fire departments.

Impacts and Comments:
There should be no negative impact by implementing the proposal. This is an honorary designation, not an official renaming of this portion of Midway Avenue. The honorary designation will be recognized by signs posted above the street signs.
Approximately seven (7) property owners abut the portion of Barnett Street (Home Avenue north to W. Fifth Street) which is proposed for the honorary designation. The following represents the detail of the efforts to secure support for this request:

- During the months of October of 2018 and January of 2019 petitions were circulated to the seven (7) identified property owners.
- October 8, 2018, Senior Pastor of the Tabernacle Baptist Church submitted a letter of support along with other letters from friends and family.
- October 18, 2018, Commissioner Jeffrey Mims, Jr. submitted a letter of support.
- January 3, 2019, Innerwest Community Development Corporation submitted a letter of support for the designation.
- October 16, 2019, a letter of support was submitted by the Dakota Center.
- By December of 2019 signed petitions from the four (4) abutting property owners were received.
- January 23, 2020 the West Priority Land Use Board submitted a letter of support for the designation.

Based on that information, staff believes the support received by the remaining property owners meets the intent of the requirement that 51% of abutting property owners support the request.

The City of Dayton Engineer, the Public Works Department, and the Police and Fire Departments have no objections to the designation. The honorary designation is also supported by the West Priority Land Use Board which have provided evidence of support by way of letters of support.

**Determinations and Findings:**
Staff believes that the application meets the rules and guidelines set forth in Resolution Number 5014-99, and therefore recommends approval.

According to the resolution, honorary designations shall meet the following criteria:

a. The designation shall be confined to the right-of-way within the vicinity of the home, business or location associated with the person or event.

The one (1) block segment (from Home Avenue north to W. Fifth Street) of Barnett Street was chosen for this designation because of the time and service to the Dakota Center and surrounding neighborhood of MacFarlane.

b. The designation shall not be an Arterial as listed on the Official Thoroughfare Plan.

Barnett Street is a residential street located within the MacFarlane Planning District; it is not an Arterial.

c. There shall be only one honorary designation per facility or right-of-way.

There is no current designation for this portion of Barnett Street.

d. An important community event, organization or well-known person is:
• A person or entity who has made a sustained contribution, over a long period of time, above and beyond the call of duty and demonstrated leadership relating to governance, human relations and development, or neighborhood development.

• A person who has made specific and sustained contributions to an organization located in or in proximity to the facility.

• An event that is recognized statewide or nationwide.

Mr. Foster served as Executive Director and Program Director of the Dakota Center, Inc. formerly known and the Dakota Street Center, for 38 years. As a mentor and friend to many youth, he dedicated his life their educational empowerment.

e. The important community event, organization, or well-known person shall be directly related to the public facility or the public right-of-way, i.e. lived, worked, went to school, etc. at the location specified. Only one honorary designation shall be permitted for each person or community event. Preference shall be given to intersections and other limited locations.

The requirement is satisfied for a direct relationship between this portion of Barnett Street and the honoree proposed for the honorary designation. Mr. Foster lived across the street from the Dakota Center formerly known as the Dakota Street Center.

Alternatives:
1. Recommend approval of the proposal to give a two year honorary designation (“Ronald C. Foster Way”) to Barnett Street from Home Avenue north to W. Fifth Street because the proposal meets the requirements outlined in City Commission Resolution 5014-99.
2. Recommend an alternate proposal.
3. Recommend disapproval of the designation because the proposal does not meet the requirements outlined in City Commission Resolution 5014-99.

Future Actions:
Approval by the City Commission.
To: Clerk of the City Commission

Applicant Name (Contact Person): Dakota Center, Inc.

Address: 33 Barnett Street

Telephone Numbers: (Day) 937-228-8961 (Evening) ____________

Honoree Information:
Name: Ronald C. Foster
Address: Deceased

Proposed Facility or Right-of-way for Designation: The designation shall be confined to a facility or right-of-way within the vicinity of home, business or location associated with the person or event.

From: Barnett Street To: Ronald C. Foster Way

Summary statement citing the reasons for the designation detailing the significant contributions or significance of the designation and the length of time the designation shall be in effect (Not longer than two years). Attach a detailed resume or reasons for designation.

See attached Summary Statement and Written Request from Dakota Center, Inc. Board of Trustees President, Charles Stutz — Patrick Bronelly.
Honorary Designation Application

Explain why none of the preferred methods listed below cannot be used for proposed honorary designation. Attached documentation supporting the determination.

A. Donations to programs and projects:

n/a

B. Proclamation(s):

n/a

C. Naming of neighborhood and community festival:

See attached documentation regarding this method, the Ronald C. 'Bobo' Foster Memorial 5K Run/Walk

D. Planting trees or other living memorials:

n/a

E. Placement of pieces of art, benches and similar objects in public or private spaces:

n/a

F. Community Awards

Mr. Foster received many community awards as the Executive Director, Program Director, and Senior Coordinator for the Dakota Center, Inc. His last award was in recognition of 30+ years with the Dakota Center, Inc.

Endorsement:

(The designation must be endorsed by the City Manager, a member of the City Commission, the City Plan Board or a Priority Land Use Board.)

A member of the City Commission:  

Commissioner Jeffrey T. Mims

The City Manager:

Priority Board Endorsement/Comment:*  

Innerwest Priority Board CDC Chairperson

Neighborhood Association Comments:*  

No neighborhood assoc., see request from Dakota Center, Inc. Board President

* Submit Minutes or other documentation of official Board Action.

Attachments:

- Map specifying location.
- A petition supporting the designation signed by 51 percent of the abutting property owners.
- Attach detailed resume or reasons for designation.
- Copy of minutes or resolution from the neighborhood association.
- A non-refundable application fee of $500.00 is required with the filing of an application.
Mr. Ronald C. Foster served as the Executive Director and Program Director of the Dakota Center, Inc., aka Dakota Street Center, for 38 years. Mr. Foster was a mentor and friend to many youth, and dedicated his life to their educational empowerment and change for our west Dayton community.

From teaching the fundamentals of basketball to assisting students with their math homework, Mr. Foster was involved in the lives of youth. Before his retirement in 2014, Mr. Foster became engaged with senior citizens at the Dakota Center and encouraged them to exercise and maintain healthy lifestyles.

Mr. Ronald C. Foster, born October 30, 1947. He and his family lived at 24 Barnett Street, Dayton, Ohio. He attended the Garfield Elementary School across the street from his home (currently the Dakota Center, Inc.). Mr. Foster graduated from the Roosevelt High School, attended and graduated from Central State University. He served in the United States Army.

The small wood framed house of Mr. Foster's childhood remains on Barnett Street today. We feel that it would be an honor to rename Barnett Street for the legacy and memory of Mr. Ronald C. Foster.

Mr. Ronald C. Foster, passed on March 16, 2015, from a brief illness. His memory of mentoring youth and community collaboration will remain with the Dakota Center and west Dayton, for years to come.
Reference: Support for the Proposed Right-of-Way for Name Change of Barnett Street to Honor Mr. Ronald C. Foster.

I hereby give my consent. [Signature]

Name: [Signature]

Date: 10-20-18
Reference: Support for the Proposed Right-of-Way for Name Change of Barnett Street to Honor Mr. Ronald C. Foster.

I hereby give my consent ___________________________   ______________  
Name                                          Date

Signature: Charles Averette  1-21-2019
Reference: Support for the Proposed Right-of-Way for Name Change of Barnett Street
To Honor Mr. Ronald C. Foster.

I hereby give my consent  Bradie A. Weeks  3-14-2019

Name  Date
Marcellus, Ken

From: Lykins, Jeff
Sent: Friday, February 14, 2020 11:03 AM
To: Marcellus, Ken
Subject: RE: Honorary Street Designation - Robert C. Foster/Barnett Street

Hi Ken! Fire has no concerns.

Thanks
Jeff

Jeff Lykins
Director and Chief
Department of Fire  I  City of Dayton
300 North Main Street  I  Dayton, Ohio 45402
Office 937.333.4501  Fax 937.234.1611  www.daytonohio.gov
#DaytonCounts 2020CENSUS.GOV

From: Marcellus, Ken
Sent: Friday, February 14, 2020 10:33 AM
To: Stovall, Frederick (Public Works); Steeber, Keith; Lykins, Jeff; Henderson, Eric
Subject: Honorary Street Designation - Robert C. Foster/Barnett Street

Greetings to you all. Please review the attach request for an honorary street designation for a portion of Barnett Street. Let me know if you have any questions or need for more information. Thanks.

Ken Marcellus
Community Development Specialist II
Planning & Community Development
Planning  I  City of Dayton
101 W, Third Street – 6th Floor  I  Dayton, Ohio 45402
#DaytonCounts 2020CENSUS.GOV
Marcellus, Ken

From: Henderson, Eric
Sent: Friday, February 14, 2020 1:10 PM
To: Marcellus, Ken
Subject: RE: Honorary Street Designation - Robert C. Foster/Barnett Street

Ken,

There are no issues from police. Please let us know if/when approved so we can make sure the dispatch center enters this as an alias.

Thanks,

Eric

Lt. Col. Eric Henderson
Assistant Chief of Police – Chief of Operations
Dayton Police Department
335 W. Third Street  I  Dayton, Ohio 45402
Office 937.333.1081 I www.daytonohio.gov
#DaytonCounts 2020CENSUS.GOV

From: Marcellus, Ken <Ken.Marcellus@daytonohio.gov>
Sent: Friday, February 14, 2020 10:33 AM
To: Stovall, Frederick (Public Works) <Frederick.Stovall@daytonohio.gov>; Steeber, Keith <Keith.Steeber@daytonohio.gov>; Lykins, Jeff <Jeff.Lykins@daytonohio.gov>; Henderson, Eric <Eric.Henderson@daytonohio.gov>
Subject: Honorary Street Designation - Robert C. Foster/Barnett Street

Greetings to you all. Please review the attach request for an honorary street designation for a portion of Barnett Street. Let me know if you have any questions or need for more information. Thanks.

Ken Marcellus
Community Development Specialist II
Planning & Community Development
Planning  I  City of Dayton
101 W. Third Street – 6th Floor  I  Dayton, Ohio 45402
#DaytonCounts 2020CENSUS.GOV
October 18, 2018

Department of Public Works

101 W. Third Street

Dayton, OH 45402

Attention: Director of Public Works

City of Dayton Commissioner Jeffrey Mims, Jr. would like to submit this letter of support for the proposed Right-of-Way for Name Change of Barnett Street to honor Mr. Ronald C. Foster.

Mr. Ronald C. Foster served as the Executive Director and Program Director of the Dakota Center, Inc., aka Dakota Street Center, for 38 years. Mr. Foster was a mentor and friend to many youth, and dedicated his life to their educational empowerment. He lived Dakota Center’s mission, ‘Building Character, Connecting Community’ encouraging our youth be the positive change for our west Dayton community.

Please let us know if you have any questions or need more information in support of honoring Mr. Foster.

Sincerely,

Jeffrey Mims, Jr.

Dayton City Commissioner
October 8, 2018

Department of Public Works
City of Dayton
101 W. Third Street
Dayton, OH 45402

Attention: Director of Public Works

The Tabernacle Baptist Church, 380 S. Broadway Street, Dayton, OH would like to submit this letter of support for the proposed Right-of-Way for Name Change of Barnett Street to honor Mr. Ronald C. Foster.

Mr. Ronald C. Foster was a faithful member of the Tabernacle Baptist Church. He served as the Executive Director and Program Director of the Dakota Center, Inc., *aka Dakota Street Center*, for 38 years. Mr. Foster was a mentor and friend to many youth, and dedicated his life to their educational empowerment. He lived Dakota Center’s mission, ‘Building Character, Connecting Community’ encouraging our youth be the positive change for our west Dayton community.

Please let us know if you have questions or need more information in support of honoring Mr. Foster.

Tokunbo Adelekan, Senior Pastor
The Tabernacle Baptist Church
3 January 2019

Mr. Fred Stovall  
Director of Public Works  
City of Dayton  
101 West Third Street  
Dayton, OH 45402

Dear Mr. Stovall,

The Innerwest Community Development Corporation/Innerwest Priority Board is submitting this letter in support of the proposed Right-of-Way Name Change of Barnett Street to honor Mr. Ronald C. Foster.

Mr. Foster served as the Executive Director and Program Director of the Dakota Center, Inc., aka Dakota Street Center, for 38 years. Mr. Foster was a mentor and friend to many youth and dedicated his life to their educational empowerment. He lived the Dakota Center’s mission: ‘Building Character, Connecting Community’ by encouraging our youth to be the positive change for our West Dayton community.

Please advise if you have questions or need more information in support of honoring Mr. Foster.

Yours truly,

Mary M. Ellington  
Executive Director
February 28, 2020

To Whom It May Concern,

This letter is being submitted in support of the honorary street designation of a portion of Barnett Street as "Ronald C. Foster Way" by the West Priority Land Use Board. We wish to acknowledge his legacy as an Educator and community servant. It is always our desire to support and honor those persons who represented this community and as a public servant.

We acknowledge that the official name of Barnett Street will remain Barnett Street.

Sincerely,

Joe Shaw, Jr. Chairperson
West Priority Land Use Board
July 11, 2018

To Whom It May Concern,

I am writing this letter in regard to Mr. Ronald C. Foster. I have known Mr. Foster most of my life, and considered him the best friend a person could have. Mr. Foster is an unsung hero in the City of Dayton and the broader community. He found his calling early in life and graciously accepted it. Ronald served as the Executive Director and held other administrative positions at the Dakota Center for nearly a half of a century. He dedicated his life to serving the youth and elderly in the most respectful manner possible -- always a professional.

After serving his country during the Vietnam War (fighting in the trenches) he went on to obtain a college degree in Education and the rest is history. Mr. Foster implemented numerous programs in our community and still found time to assist seniors. His programmatic efforts and achievements in our community are too abundant to express. When one thinks of community leadership and service Ronald's name appears at the top of the list.

Mr. Foster was a leader, mentor, and servant to countless individuals and families. His integrity was impeccable, and Dayton is a better place because of him. We will never be able to repay him for his efforts, but we can show that we value and appreciate this wonderful human being.

Respectfully submitted,

Jerald L. Steed
Dayton City Commission Office
101 W. Third St.
Dayton, Ohio 45402

To Whom It May Concern,

We are writing this letter in support of the renaming of Barnett St. in honor of Mr. Ronald C. Foster.

Our father was raised his entire childhood at 24 Barnett St. with his parents and three siblings. He went to schools in the area and graduated from Roosevelt High School in 1965. Our grandmother resided in that home on Barnett St. until her death at the age of 95.

Our dad served 41 years at the Dakota Center, Inc., (which is located on Barnett St.) where he mentored, coached and set a great example for hundreds of youth in the inner city. His passion for and commitment to the betterment of the community as a whole, and to the youth in that community was of great importance to him. Family was his first priority. He was very active in raising his four children with his wife of 46 years, and he played a key role in the lives of his nieces and nephews, whom were all involved in programs at the Dakota Center. It is admirable that he had so much love, compassion and commitment for so many people, and dedicated his life to helping young people reach their full potential.

Our family would consider it a great honor and gift to have a street named in his honor, and look forward to the day we can drive down Fifth St. or Home Ave. and see the street sign for Ronald C. Foster St.

We humbly thank you for your consideration of this request to honor our dad.

Sincerely,

Alicia Foster
On behalf of the Foster Family
July 10, 2018

City of Dayton
Commissions Office
Dayton, Ohio

To whom it may concern,

It was 1974 when I first met Ronald Foster the man known all over the world as Bo Bo. He became my basketball coach, my mentor, my father figure and friend from when I was in the 8th grade. As I grew up at Dakota Center he was there he taught me how to communicate, how play basketball, how to display respect and most of all how to tie a tie. I am the hardworking man because of his friendship and influence he had as I grew up at the center. As I came up through the center he encouraged me to give back to the youth so I became a basketball coach for the D-team. I enlisted in the Amy in 1980-83 and I was having a rough time getting through, it was only the advice that he gave that helped to get me through the rough times as well as what he taught me while in his presence.

This man that we lost was a “Giant” in the community where fathers were absent from the home he stepped in. He was our father and we thank God for Mrs. Foster and their kids for sharing him with the community. A great leader, father, husband and friend too many. It would be a great honor to name a street after him, he’s Dakota Center in everything the center represents.

Sincerely,

Wilbur E. Harper

Wilbur E. Harper