CITY COMMISSION MEETING AGENDA

CITY COMMISSION  DAYTON, OHIO  MAY 19, 2021

6:00 P.M.

I. AGENDA SCHEDULE

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

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

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

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

1. Purchase Orders:

   FIRE
   A1. Stryker Medical (one power-load system with the corresponding cot)  $42,772.71
1. (Cont’d):

**FIRE**
A2. *Vogelpohl Fire Equipment, Inc* (fire apparatus parts as needed through 12/31/21)  
$5,000.00

**POLICE**
B1. *Motorola Solutions, Inc.* (twenty Motorola radios and related items)  
$103,264.60

**PUBLIC WORKS**
C1. *Total Tennis, Inc.* (conversion of the tennis court to a pickleball court)  
$16,250.00

**WATER**
D1. *Metropolitan Environmental Services* (industrial cleaning)  
$25,000.00
D2. *Agilent Technologies, Inc.* (four days of on-site training)  
$13,526.10
D3. *Allied Builders, Inc.* (fencing products, related items and services as needed through 12/31/21)  
$30,000.00
D4. *Allied Industrial Technologies* (miscellaneous bearings, belts and related items as needed through 12/31/24)  
$210,000.00
D5. *BDI – Bearing Distributors, Inc.* (miscellaneous bearings, belts and related items as needed through 12/31/24)  
$70,000.00
D6. *Best Equipment Company, Inc.* (one dual engine combination sewer cleaner truck)  
$495,244.00
D7. *Dell Marketing LP* (computers with the required accessories) $11,087.46
-Depts. of Fire, Police, Public Works and Water. **Total:** $1,022,144.87

2. *Accela Inc. – Service Agreement* – first amendment to the maintenance and support agreement. – Department of Water  
$51,134.11  
(Thru 6/25/22)

3. *TargetSolutions Learning LLC. – Contract Modification* – for online training resources for DFD personnel – Department of Fire  
$29,716.16  
(Thru 6/1/22)

**B. Construction Contracts:**

4. *R.B. Jergens Contractors, Inc. – Award of Contract* – for Keowee Street Rehabilitation (10% MBE & 10% SBE Participation Goal/ 12.9% SBE & 14.3% MBE Participation Achieved - Department of Public Works/Civil Engineering  
$950,000.00  
(Thru 11/01/23)
C. Revenue to City:

5. **Host International, Inc. – Contract Modification** – first amendment to amended and restated Master Lease and Concession Agreement – Department of Aviation. $675,750.00 (Revenue) $115,000.00 (Expense) (Thru 12/31/23)

IV. LEGISLATION:

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

6. **No. 31887-21** Authorizing a Community Reinvestment Area Tax Exemption Agreement with Wright Dunbar REH, LLC for Property Located at 1153/1159/1171 W. Third Street in the City of Dayton, Ohio, and Declaring an Emergency.

7. **No. 31888-21** Authorizing a Community Reinvestment Area Tax Exemption Agreement with Wright Dunbar Inc. for Property Located at 1100 W. Third Street in the City of Dayton, Ohio, and Declaring an Emergency.

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

8. **No. 6576-21** Authorizing the City Manager to Accept a Grant Award From the U.S. Department of Housing and Urban Development (“HUD”) for a Total Amount of Two Million Three Hundred Forty-Two Thousand Two Hundred Seventy-Six Dollars and Zero Cents ($2,342,276.00) on Behalf of the City of Dayton and Declaring an Emergency.

**Resolutions – Second Reading**

9. **No. 6574-21** Declaring the Intention of the Commission to vacate Shelby Avenue from Kling Drive to 100 Feet East of Kling Drive.

10. **No. 6575-21** Declaring the Intention of the Commission to Vacate South Orchard Avenue from Home Avenue to US Route 35 Right of Way.
V. PLANNING ACTION

A. PUBLIC HEARING:

The City of Dayton is considering becoming a member of the Sustainable Ohio Public Energy Council of Governments organization. In preparation for taking this action, the City of Dayton City Commission will take comments on SOPEC’s Operations and Governance Plans. If Dayton becomes a member, SOPEC will implement an electric aggregation program for the City, its residents, and businesses. SOPEC will be providing exclusively green electrical energy derived from wind power.

VI. MISCELLANEOUS:

ORDINANCE NO. 31889-21 ADDED!

RESOLUTION NO. 6577-21

IMPROVEMENT RESOLUTION NO. 3599-21

INFORMAL RESOLUTION NO. 988-21 ADDED!

INFORMAL RESOLUTION NO. 989-21 ADDED!
City Manager’s Report

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

2021 Purchase Orders

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

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

Description

FIRE

(A1) P0210869 – STRYKER MEDICAL, CHICAGO, IL
- One (1) power-load system with the corresponding cot.
- These goods are required to mitigate the stress of repeatedly lifting patients into the medics.
- Stryker Medical is the Original Equipment Manufacturer (OEM) of the Stryker Power Load system; therefore, this purchase was negotiated.
- The Department of Fire recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>Capital Equipment (Operating)</td>
<td>40014-6330-1411-71</td>
<td>$42,772.71</td>
</tr>
</tbody>
</table>

Signatures/Approval

Approved by City Commission

Division

Department

City Manager

FORM NO. MS-16

Updated 06/2016
FIRE (CONTINUED)

(A2) P0210619 – VOGELPOHL FIRE EQUIPMENT, INC., ERLANGER, KY
- Fire apparatus parts as needed through 12/31/2021.
- These goods and services are required to repair City owned fire vehicles.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB D21003 with pricing through 12/31/2023.
- This amendment increases the previously authorized amount of $10,000.00 by $5,000.00 for a total not to exceed $15,000.00 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>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>Fire Fleet Management</td>
<td>67000-6330-1301-71</td>
<td>$5,000.00</td>
</tr>
</tbody>
</table>

POLICE

(B1) P0210883 – MOTOROLA SOLUTIONS, INC., Schaumburg, IL
- Twenty (20) Motorola radios and related items.
- These goods are required for standard issue to public safety personnel.
- Rates are in accordance with the State of Ohio Term Schedule #573077-0.
- The Department of Police recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
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<tbody>
<tr>
<td>2021</td>
<td>Public Safety Photo Enforcement</td>
<td>16122-6210-1411-71</td>
<td>$103,264.60</td>
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</tbody>
</table>

PUBLIC WORKS – DIRECTOR’S OFFICE

(C1) P0210905 – TOTAL TENNIS, INC., UPPER ARLINGTON, OH
- Conversion of the tennis court to a pickleball court.
- These goods and services are required to convert the tennis court to a pickleball court located at McKinley Park.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB S18023 with pricing through 3/31/2022.
- 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>2021</td>
<td>2020 Infras Parks Upgrades</td>
<td>49024-6410-1424-54</td>
<td>$16,250.00</td>
</tr>
</tbody>
</table>
WATER – WATER RECLAMATION

(D1) P0210230 – METROPOLITAN ENVIRONMENTAL SERVICES, HILLIARD, OH
- Industrial cleaning.
- This service is required to clean the East Digester Recirculation line piping.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 18018JL with firm pricing through 12/31/2021.
- This amendment increases the previously authorized amount of $30,000.00 by $25,000.00 for a total not to exceed $55,000.00 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>2021</td>
<td>Sanitary Sewer Operating</td>
<td>55000-3460-1159-54</td>
<td>$25,000.00</td>
</tr>
</tbody>
</table>

WATER – WATER SUPPLY AND TREATMENT

(D2) P0210884 – AGILENT TECHNOLOGIES, INC., CHICAGO, IL
- Four days of on-site training.
- These services are required to ensure new personnel is proficiently trained on laboratory equipment and systems in order to maintain required laboratory certifications.
- Agilent Technologies, Inc. is recommended as the OEM and sole source of these services; therefore, this purchase was negotiated.
- The Department of Water recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>Water Operating</td>
<td>53000-3430-1156-54</td>
<td>$13,526.10</td>
</tr>
</tbody>
</table>

(D3) P0210681 – ALLIED BUILDERS, INC., DAYTON, OH
- Fencing products, related items and services as needed through 12/31/2021.
- These goods and services are required to secure City owned properties.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 20010D with pricing through 12/31/2021.
- Allied Builders, Inc. qualifies as a Dayton local entity.
- This amendment increases the previously authorized amount of $63,000.00 by $30,000.00 for a total not to exceed $93,000.00 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>2021</td>
<td>Water Operating</td>
<td>53000-3430-1301-54</td>
<td>$30,000.00</td>
</tr>
</tbody>
</table>
WATER – WATER SUPPLY AND TREATMENT (CONTINUED)

(D4) P0210903 – APPLIED INDUSTRIAL TECHNOLOGIES, HARRISON TOWNSHIP, OH
- Miscellaneous bearings, belts and related items as needed through 12/31/2021.
- These goods are required to maintain Water Supply and Treatment equipment and facilities.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB S21006 with pricing through 3/31/2025.
- This amendment increases the previously authorized amount of $10,000.00 by $45,000.00 for a total not to exceed $55,000.00 and therefore requires City Commission approval.
- The Department of Water requests additional authority of $165,000.00 through 12/31/2024.
- The Department of Water recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<td>2021</td>
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<td>53000-3430-1301-54</td>
<td>$45,000.00</td>
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<tr>
<td>2022</td>
<td>Water Operating</td>
<td>53000-3430-1301-54</td>
<td>$55,000.00</td>
</tr>
<tr>
<td>2023</td>
<td>Water Operating</td>
<td>53000-3430-1301-54</td>
<td>$55,000.00</td>
</tr>
<tr>
<td>2024</td>
<td>Water Operating</td>
<td>53000-3430-1301-54</td>
<td>$55,000.00</td>
</tr>
</tbody>
</table>

(D5) P0210904 – BDI – BEARING DISTRIBUTORS, INC., DAYTON, OH
- Miscellaneous bearings, belts and related items as needed through 12/31/2021.
- These goods are required to maintain Water Supply and Treatment equipment and facilities.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB S21006 with pricing through 3/31/2025.
- BDI - Bearing Distributors, Inc. qualifies as a Dayton local entity.
- This amendment increases the previously authorized amount of $10,000.00 by $10,000.00 for a total not to exceed $20,000.00 and therefore requires City Commission approval.
- The Department of Water requests additional authority of $60,000.00 through 12/31/2024.
- 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>2021</td>
<td>Water Operating</td>
<td>53000-3430-1301-54</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>2022</td>
<td>Water Operating</td>
<td>53000-3430-1301-54</td>
<td>$20,000.00</td>
</tr>
<tr>
<td>2023</td>
<td>Water Operating</td>
<td>53000-3430-1301-54</td>
<td>$20,000.00</td>
</tr>
<tr>
<td>2024</td>
<td>Water Operating</td>
<td>53000-3430-1301-54</td>
<td>$20,000.00</td>
</tr>
</tbody>
</table>
WATER – WATER UTILITY FIELD OPERATIONS

(D6)  P0210889 – BEST EQUIPMENT COMPANY, INC., NORTH ROYALTON, OH

- One (1) dual engine combination sewer cleaner truck.
- This vehicle is required for the daily operations of the Department and will replace Unit #2095 which will be disposed of in the best interest of the City.
- Rates are in accordance with the State of Ohio Term Schedule Contract pricing #800574 and Index #STS670.
- 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>2021</td>
<td>Sanitary Sewer Operating</td>
<td>55000-3445-1412-54</td>
<td>$495,244.00</td>
</tr>
</tbody>
</table>

(D7)  P0210885 – DELL MARKETING LP, ROUND ROCK, TX

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

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<tbody>
<tr>
<td>2021</td>
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<tr>
<td>2021</td>
<td>Sanitary Sewer Operating</td>
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<td>2021</td>
<td>Storm Water Operating</td>
<td>58000-3445-1301-54</td>
<td>$1,645.10</td>
</tr>
</tbody>
</table>

The aforementioned departments recommend approval of these orders.
FIRST AMENDMENT TO THE ACCELA INC. MAINTENANCE AND SUPPORT AGREEMENT

The Department of Information Technology requests permission for a First Amendment with Accela Inc. to amend the term of the Maintenance and Support Agreement to be from June 26, 2021 to June 25, 2022 in the amount of $51,134.11. Accela provides licensing, maintenance and support services for the Accela Land Management System that supports the Departments of Planning and Community Development and Economic Development.

The original Agreement with Accela, Inc. was approved on July 1, 2020 in the amount of $47,788.88. The First Amendment will increase the total Agreement amount to $98,922.99.

Accela Inc. is the sole source provider of support and services for these products to the local government market.

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.
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>Item</th>
<th>New Contract</th>
<th>Renewal Contract</th>
<th>Change Order</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Start Date</td>
<td></td>
<td>06/26/21</td>
<td></td>
</tr>
<tr>
<td>Expiration Date</td>
<td></td>
<td>06/25/22</td>
<td></td>
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<tr>
<td>Original Commission Approval</td>
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<tr>
<td>Initial Encumbrance</td>
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<td></td>
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<tr>
<td>Remaining Commission Approval</td>
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<td>$51,134.11</td>
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<tr>
<td>Original CT/CF</td>
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<td>CT20-2802</td>
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<tr>
<td>Increase Encumbrance</td>
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<td>$51,134.11</td>
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<tr>
<td>Decrease Encumbrance</td>
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<td>$0.00</td>
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<tr>
<td>Required Documentation</td>
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| Amount:                       | $51,134.11   | $51134.11        | |

<p>| Fund Code                     | 10000 - 5560 - 1166 - 65 - XXX - XXXX |</p>
<table>
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<tr>
<th>Fund</th>
<th>Org</th>
<th>Acct</th>
<th>Prog</th>
<th>Act</th>
<th>Loc</th>
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<td>XXXX</td>
<td>XXXX</td>
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</table>

| Amount:                       |                       |                       | |

<p>| Fund Code                     | XXXX - XXXX - XXXX - XXXX |</p>
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</tr>
</tbody>
</table>

 Attach additional pages for more FOAPALs

Vendor Name: Accela Inc.
Vendor Address: 2633 Camino Ramon, Suite 500 San Ramon, CA 94583
Federal ID: 942767678
Commodity Code: 94620
Purpose: First Amendment with Accela Inc. will provide maintenance and support services for Accela's Land Management system utilized by Planning and Community Development and Economic Development from June 26, 2021 through June 25, 2022.
Contact Person: Desa Foster

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: [Date]
CF Prepared by: [Signature]
Date: [Date]

E-SIGNED by Jon Rike on 2021-03-04 18:00:14 GMT

Finance Department
October 18, 2011
FIRST AMENDMENT TO MAINTENANCE AND SUPPORT AGREEMENT FOR
LAND MANAGEMENT AND RELATED SOFTWARE
BETWEEN THE CITY OF DAYTON, OHIO AND ACCELA INC.

THIS FIRST AMENDMENT TO THE MAINTENANCE AND SUPPORT
AGREEMENT FOR THE LAND MANAGEMENT AND RELATED SOFTWARE
("Agreement"), is entered into this __ day of ________, 2021 between the City of Dayton,
Ohio, a municipal corporation in and of the State of Ohio, (hereinafter referred to as "City") and
Accela Inc. (hereinafter referred to as "Accela").

WITNESSETH THAT:

WHEREAS, the City and Licensor entered into an Agreement on July 23, 2020 for
maintenance and services; and,

WHEREAS, the City and the Licensor agree to amend the Agreement to extend the
term;

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

1. Section 2. COMPENSATION FOR SOFTWARE MAINTENANCE AND
SUPPORT A. MAINTENANCE AND SUPPORT FEES article is hereby deleted in its
entirely and replaced with the following:

MAINTENANCE AND SUPPORT FEES

Total remuneration in this Agreement shall not exceed FIFTY-ONE
THOUSAND ONE HUNDRED THIRTY-FOUR DOLLARS AND ELEVEN
CENTS ($51,134.11) for the corresponding maintenance and support renewal
services 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Page 1 of 5
2. **Exhibit A - Accela Order Form Q -19315** is hereby deleted in its entirety and replaced with the following:

Accela

2833 Camino Ramon, Suite 500
San Ramon, CA, 94583
Contact Phone: 212.430.4767

---

### Renewal Order Form

#### Address Information

**Bill To:**
City of Dayton, OH
101 W. Third Street
Dayton, Ohio 45402
United States

Billing Name:
Billing Phone:
Billing Email:

**Ship To:**
City of Dayton, OH
101 W. Third St.
Dayton, Ohio 45402
United States

#### Services

<table>
<thead>
<tr>
<th>Services</th>
<th>Year</th>
<th>Start Date</th>
<th>End Date</th>
<th>Term (Mths)</th>
<th>Price</th>
<th>Qty</th>
<th>Net Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accela Land Management (Server &amp; Users)</td>
<td>Year 1</td>
<td>6/26/2021</td>
<td>6/25/2022</td>
<td>12</td>
<td>$352.13</td>
<td>80</td>
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<tr>
<td>Accela Citizen Access</td>
<td>Year 1</td>
<td>6/26/2021</td>
<td>6/25/2022</td>
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<td>$0.03</td>
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<tr>
<td>Accela GIS (Server &amp; Users)</td>
<td>Year 1</td>
<td>6/26/2021</td>
<td>6/25/2022</td>
<td>12</td>
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<td>&lt; Support &gt;</td>
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<td>1</td>
<td>$0.00</td>
</tr>
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**TOTAL:** $51,134.11

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Page 1 of 3
# General Information

| Governing Agreement(s) | This Order Form will be governed by the terms and conditions contained in the Maintenance and Support Agreement dated July 23, 2020, and the First Amendment to that Agreement. If those terms and conditions are non-existent, have expired or have otherwise been terminated, the following terms at [https://www.accela.com/terms/](https://www.accela.com/terms/) will govern as applicable, based on the Customer's purchase. |

## Order Terms

### Order Start Date

Unless otherwise specified in the Special Order Terms:

- Hosting and Support start on Accela’s delivery of the software hosted and/or supported.

### Order Duration

Unless otherwise specified in the Special Order Terms:

- Hosting and Support continue until the End Date listed in the Renewal Order Form listed above.
- Any Software Licenses or Hardware are one-time, non-refundable purchases.
- Professional Services continue for the duration as outlined in the applicable Statement of Work, Exhibit or the Governing Agreement, as applicable.

### Special Order Terms

This Order Form replaces all previous order forms for the terms listed above and will govern the Maintenance and Services listed on the Renewal Order Form.

- In the event of an inconsistency between the Order Form, any governing agreement, purchase order, or invoice, the Maintenance and Support Agreement shall govern as it pertains to this transaction.

## Payment Terms

<table>
<thead>
<tr>
<th>Currency</th>
<th>USD</th>
</tr>
</thead>
</table>

| Invoice Date | Unless otherwise stated in the Special Payment Terms, Invoice for the Grand Total $ above will be issued on the Order Start Date. |
| Payment Due Date | Unless otherwise stated in the Special Payment Terms or the Governing Agreement(s), all payments are due on the Invoice Date and payable **net 30 days**. |
| Special Payment Terms | None unless otherwise specified in this section. |

| Purchase Order | If Customer requires PO number on invoices, it must be provided to the right and Customer must provide a copy of the PO prior to Invoice issuance. If no PO number provided prior to invoice issuance date, invoices issued on this Order Form will be valid without a PO reference. | PO# |

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Page 2 of 3

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Page 3 of 5
3. Except as so amended, all other provisions of the Agreement shall remain unchanged.
IN WITNESS WHEREOF, the City and Consultant, each by a duly authorized representative, have executed this Amendment as of the day and date first set forth above.

THE CITY OF DAYTON, OHIO

City Manager

ACCELA, INC.

By: [Signature]

Print: Aaron Haggarty

Its: Chief Legal Officer

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]

City Attorney

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

[Signature], 2021

Min. Bk. _____ Pg. _____

Clerk of the Commission
April 22, 2021

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

FROM: Dave Johnson, IT Systems Supervisor  
      Department of Information Technology  

SUBJECT: First Amendment to the Maintenance and Support Agreement for Accela LLC

Attached please find the first amendment to the maintenance and support agreement between the City of Dayton and Accela, LLC for licensing, maintenance and support services of the Accela Land Management System that supports the Departments of Planning and Community Development and Economic Development.

The current term of the agreement will expire June 25, 2021. The term of the original agreement will be amended to be June 26, 2021 through June 25, 2022 in the amount of $51,134.11.

If you have any questions, please feel free to call me at extension 6323.

APPROVED:

E-SIGNED by Jon Rike  
on 2021-04-30 15:54:31 GMT
Jon Rike, CIO  
Department of Information Technology

Attachments
JULY 13, 2020

TO: City Commission Office
   City Manager’s Office
   Finance Department

FROM: Kenneth R. Couch, Interim Director
      Department of Information Technology

SUBJECT: Request for Signature

Please sign the attached service agreement with Accela, Inc. for the licensing, maintenance and support services for the Accela Land Management System. Authorization for execution of this agreement was granted by the City Commission on July 1, 2020 by City Manager’s Report, Calendar Item Number 2.

This agreement has been reviewed by this office and is ready for your execution.

After all the signatures are on the agreement, please return the original signed agreements to Desa Foster, I.T. Manager, in the Department of Information Technology.

KRC/cdg

Attachments

signed copies released to the Finance Department.
City Manager's Report

From: 5560 - Information Technology

Supplier, Vendor, Company, Individual

Name: Accela Inc.
Address: 2633 Camino Ramon, Suite 500
San Ramon, CA 94583

Date: July 1, 2020
Expense Type: Service Agreement
Total Amount: $47,788.88 (Thru 06/25/2021)

Fund Source(s) | Fund Code(s) | Fund Amount(s)
--- | --- | ---
General Fund | 10000-5660-1166-65 | $47,788.88

Includes Revenue to the City: [ ] Yes [X] No
Affirmative Action Program: [X] Yes [ ] No [ ] N/A

Description

ACCELA INC. MAINTENANCE AND SUPPORT AGREEMENT

The Department of Information Technology requests permission to enter into a Service Agreement with Accela Inc. in the amount of $47,788.88. Accela provides licensing, maintenance and support services for the Accela Land Management System that supports the Departments of Planning and Community Development and Economic Development. The total amount of this agreement is $47,788.88.

Accela Inc. is the sole source provider of support and services for these products to the local government market.

This Agreement shall commence upon execution and it shall terminate on June 25, 2021.

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.

[Signatures/Approval]

Approved by City Commission

[Signatures/Approval]

Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

X New Contract

Renewal Contract

Change Order

Contract Start Date

Expiry Date

Original Commission Approval

Initial Encumbrance

Remaining Commission Approval

Original CT/CIF

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: $ 47,788.88

Fund Code 10000 - 5560 - 1168 - 65 - XXXX - XXXX

Loc

Fund

Org

Acct

Prog

Act

Amount:

Fund Code XXXXXX - XXXX - XXXX - XXXX - XXXX - XXXX - XXXX

Loc

Fund

Org

Acct

Prog

Act

Attach additional pages for more FOAPALs

Vendor Name: Accela Inc.

Vendor Address: 2633 Camino Ramon, Suite 500 San Ramon, CA 94583

Street

City

State

Zipcode + 4

Federal ID: 942767878

Commodity Code: 94620

Purpose: Accela Inc. will provide maintenance and support services for the Accela's Land Management system utilized by Planning and Community Development and Economic Development upon execution of the agreement through June 25, 2021.

Contact Person: Desa Foster

Information Technology Department/Division 6/9/2020 Date

Originating Department Director's Signature: 

SECTION II - to be completed by the Finance Department

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

CF Prepared by:

Finance Department

October 18, 2011
MAINTENANCE AND SUPPORT AGREEMENT
for
LAND MANAGEMENT AND RELATED SOFTWARE

THIS MAINTENANCE AND SUPPORT AGREEMENT ("Agreement") is made and entered into on this 23rd day of June, 2020, between the City of Dayton, Ohio ("City" or "Customer"), a municipal corporation in and of the State of Ohio, and Accela Inc. ("Accela" or "Licenser"), with its principal office at 2633 Camino Ramon, Suite 500, San Ramon, CA 94583.

WITNESSETH THAT:

WHEREAS, The Licenser has since 2014 licensed its Land Management software ("Software") to the City and provides maintenance and support services related to that software on a recurring basis; and,

WHEREAS, the City wishes to have Licenser continue to provide maintenance and support services;

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

SECTION 1. MAINTENANCE AND SUPPORT

The Licenser shall purchase the Software maintenance and support services for the listed products set forth in Exhibit "A", titled "Accela Order Form Q-19315", which is attached hereto and incorporated herein by reference ("Maintenance and Support").

The specific support policy applicable to the services provided are described within Exhibit "B", titled "Accela Software Support Policy (On-Premise)" which is attached hereto and incorporated herein.

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

SECTION 2. COMPENSATION FOR SOFTWARE MAINTENANCE AND SUPPORT

A. MAINTENANCE AND SUPPORT FEES

Total remuneration in this Agreement shall not exceed FORTY-SEVEN THOUSAND SEVEN HUNDRED EIGHTY-EIGHT DOLLARS AND EIGHTY-EIGHT CENTS ($47,788.88) for the corresponding Maintenance and Support 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 Licenser upon execution of this Agreement.

B. BILLING FREQUENCY

Licenser 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 thirty (30) 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 a court of competent jurisdiction, in accordance with the GOVERNING LAW AND VENUE section below.

SECTION 3. TERM

The term of this Maintenance and Support Agreement is twelve (12) months as set forth in Exhibit “B” (“Term”). Subsequent renewals of this Agreement may be subject to the process referenced within Section 9(J), 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 Maintenance and Support 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).

Customer will solely responsible for (i) minimum systems requirements as set forth in the Documentation, (ii) for meeting, at a minimum, all industry standard and legal security requirements to prevent unauthorized access to the Software and Customer Data; (iii) Authorized Users’ compliance with this Agreement and for any other activity (whether or not authorized by Customer); (iii) the accuracy, quality, integrity and legality of Customer Data and External Users use of the Software interface, and (v) use of the Software, Support and Maintenance only in accordance with the applicable Documentation, laws and government regulations.

Accela retains all Intellectual Property Rights, including all rights, title and license to the Maintenance and Support, any related work product of the foregoing and all derivative works thereof by whomever produced. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Maintenance and Support.

SECTION 5. STANDARD OF CARE

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

EXCEPT AS EXPRESSLY PROVIDED HEREIN, ACCELA MAKES NO ANY
WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, SECURITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

SECTION 6. CONFIDENTIALITY

As used herein, "Confidential Information" means all confidential information disclosed by a one party to this Agreement to the other party of this Agreement whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. However, Confidential Information will not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the disclosing party, (ii) was known to the receiving party prior to its disclosure without breach of any obligation owed to the disclosing party, (iii) is received without restriction from a third party without breach of any obligation owed to the disclosing party, or (iv) was independently developed by the receiving party. Each party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information except as permitted herein, and (ii) will limit access to Confidential Information to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who are bound to protect such Confidential Information consistent with this Agreement. The receiving party may disclose Confidential Information if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's request and cost, to contest, limit, or protect the disclosure.

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

INDEMNIFICATION

Accela will indemnify, defend, save, and hold harmless (or at Accela's option, settle) any third-party claim, suit or action brought against Customer to the extent that it is based upon a claim that the Maintenance and Support, as furnished by Accela hereunder, infringes or misappropriates the Intellectual Property Rights of any third-party, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are finally awarded against Customer, provided that Customer provides (a) Accela notice of such claim as soon as practical and in no event later than would reasonably permit Accela to respond to such claim, (b) reasonable cooperation to Accela, at Accela's expense, in the defense and/or settlement of such claim, and (c) Accela the sole and exclusive control of the defense, litigation and settlement of such claim. In the event that Accela
reasonably believes, in its sole discretion, that such claim may prevail or that the usage of the Maintenance and Support may be enjoined, Accela may seek to (a) modify the Accela Maintenance and Support such that it will be non-infringing (provided such modification does not materially reduce the functionality or performance of Customer's installed instance), (b) replace the applicable Maintenance and Support so that it is non-fringing that provides substantially similar functionality and performance, or, if the first two options are not commercially practicable, (c) terminate the remainder of the Maintenance and Support, and refund any pre-paid, unused fees. Accela will have no liability under this Section 7 for any claims arising from (i) any combination of the Accela Maintenance and Support with products, services, methods of a third party; (ii) a modification of the Accela Maintenance and Support that were either implemented by anyone other than Accela or implemented by Accela in accordance with Customer specifications; (iii) any use of the Maintenance and Support in a manner that violates this Agreement or the instructions given to Customer by Accela; (iv) a version of the Maintenance and Support other than the current, fully patched version, provided such updated version would have avoided the infringement (does not absolve Accela of liability for an earlier version of the Maintenance and Support sold to and used by the City when current); (v) Customer's breach of this Agreement. THIS SECTION 7 STATES THE ENTIRE OBLIGATION OF ACCELA AND ITS LICENSORS WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS RELATED TO THIS AGREEMENT.

LIMITATION OF LIABILITY

EXCEPT FOR LIABILITY ARISING OUT OF EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY OR THIRD-PARTY CLAIM FOR INFRINGEMENT RELATED TO THE USAGE OF THE MAINTENANCE AND SUPPORT, NEITHER PARTY'S AGGREGATE LIABILITY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE MAINTENANCE AND SUPPORT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, SHALL EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE INCIDENT.

EXCEPT FOR A THIRD PARTY CLAIM FOR INFRINGEMENT OR EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY, IN NO EVENT SHALL EITHER PARTY OR ANY OTHER PERSON OR ENTITY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE MAINTENANCE AND SUPPORT BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR LOSS OF GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE MAINTENANCE AND SUPPORT, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY. THE FOREGOING EXCLUSIONS APPLY WHETHER OR NOT A PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, AND EVEN IF A LIMITED
REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, ACCELAR'S TOTAL LIABILITY UNDER THIS AGREEMENT FOR ANY THIRD-PARTY CLAIM FOR INFRINGEMENT SHALL NOT EXCEED $1,000,000.

SECTION 8. TERMINATION

A party may terminate this Agreement for cause upon thirty (30) days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such thirty (30) day period. Either party may terminate immediately if the other party files for bankruptcy or becomes insolvent. Should Customer terminate this Agreement for cause, Accela will refund a pro-rata portion of unused, pre-paid fees.

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, accessions, or services required to be provided by either the City or Licensor under this Agreement, provided the aforementioned circumstances are not due to the negligence or fault of the asserting party or any of its agents, employees, consultants, sub-consultants and/or representatives.

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

B. GOVERNING LAW AND VENUE

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

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

Licensor:
Accela Inc.
2633 Camino Ramon, Suite 500
San Ramon, CA 94583
Attn: Brad Leahy, V.P. Revenue Operations

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

D. EQUAL EMPLOYMENT OPPORTUNITY

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

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

E. WAIVER

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

F. SEVERABILITY

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

G. INDEPENDENT CONTRACTOR

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

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

H. ASSIGNMENT

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.

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 Licensor.

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. Notwithstanding any language to the contrary therein,
no additional or conflicting terms or conditions stated in any of Customer’s purchase order
documentation will be incorporated into or form any part of this Agreement, and all such terms or
conditions shall be null and void.

K. POLITICAL CONTRIBUTIONS

Licensor 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 Licensor with
respect to the specific subject matter of Maintenance and Support. This Agreement supersedes all
prior and contemporaneous communications, representations, and agreements, whether oral or
written, relating to Maintenance and Support.

SECTION 10. DEFINITIONS
“Order” means Accela Order Form Q-19315 or an Accela order form or other mutually acceptable document fully executed between Customer and Accela that incorporates this Agreement.

“Customer Data” means the content, materials, and data that Customer, Authorized Users, and External Users enter in conjunction of their use of the Software. Customer Data does not include any component of the Software or material provided by or on behalf of Accela.

“Authorized User” means one named employee (identified by a unique email address), contractor or agent of Customer for whom Customer has purchased a license to the Software and who is authorized by Customer to access and use the Software under the rights granted to Customer pursuant to this Agreement.

“External Users” means third party users of the Software that access the public facing interfaces of the Software to submit queries and requests to facilitate communications between such third party and Customer.

“Documentation” means the then-current technical and functional user documentation made generally available by Accela for Software.

“Intellectual Property Rights” means patent rights (including, without limitation, patent applications and disclosures), copyrights, trade secrets, know-how, and any other intellectual property rights recognized in any country or jurisdiction in the world.

“Support Services” means those technical and help services provided by Accela in accordance with the Support Services Policy located at Exhibit B.

[REMAINDER OF PAGE INTENTIONALLY LEFT 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

[Signature]
City Manager

ACCELA INC.

By: [Signature]
Print: ROBERT WILSON
Its: CFO

APPROVED AS TO FORM AND CORRECTNESS

[Signature]
City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO

[Signature]
July 1, 2020

Min./Bk. I-14 Pg.

[Signature]
Clerk of Commission
Exhibit A
Accela Order Form Q-19315

Proposed by: Kristine Nelson
Contact Phone: 212.430.4767
Contact Email: knelson@acela.com
Quote ID: Q-19315
Valid Through: 07/10/2020
Currency: USD

2633 Camino Ramon, Suite 500
San Ramon, CA 94583

ORDER FORM
Address Information

Bill To:
City of Dayton, OH
101 W. Third Street
Dayton, Ohio 45402
United States

Ship To:
City of Dayton, OH
101 W. Third St.
Dayton, Ohio 45402
United States

Billing Contact: De Vora Jones
Billing Phone: 937.333.6320
Billing Email: devora.jones@daytonohio.gov

Services

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<th>Services</th>
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<th>End Date</th>
<th>Term (Mths)</th>
<th>Unit Price</th>
<th>Quantity</th>
<th>Total Price</th>
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<tbody>
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<td>06/26/2020</td>
<td>06/25/2021</td>
<td>12</td>
<td>$0.02</td>
<td>141,527.00</td>
<td>$3,498.41</td>
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<tr>
<td>Accela Mobile Office (Server &amp; Users)</td>
<td>06/26/2020</td>
<td>06/25/2021</td>
<td>12</td>
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<td>35.00</td>
<td>$12,177.69</td>
</tr>
<tr>
<td>Accela GIS (Server &amp; Users)</td>
<td>06/26/2020</td>
<td>06/25/2021</td>
<td>12</td>
<td>$89.00</td>
<td>65.00</td>
<td>$5,785.08</td>
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<tr>
<td>Accela Land Management (Server &amp; Users)</td>
<td>06/26/2020</td>
<td>06/25/2021</td>
<td>12</td>
<td>$329.10</td>
<td>80.00</td>
<td>$26,327.70</td>
</tr>
</tbody>
</table>

Total $47,788.88

Terms / Information
### Exhibit A
Accela Order Form Q-19315

#### General Information

**Governing Agreement(s):** This Order Form will be governed by the terms and conditions contained in the Maintenance and Support Agreement to which this Exhibit A is attached. If those terms and conditions are non-existent, have expired, do not apply (as with software), or have otherwise been terminated, the following terms will govern as applicable, based on the Customer’s purchase: www.accela.com/terms.

#### Order Terms

**Order Start Date:** Unless otherwise specified in the Special Order Terms:
- Hosting and Support start on Accela’s delivery of the software hosted and/or supported.

**Order Duration:** Unless otherwise specified in the Special Order Terms:
- Any Software Licenses or Hardware are one-time, non-refundable purchases.
- Hosting and Support continue from the Order Start Date through the number of months listed in this Order Form (or if not listed, twelve (12) months).
- Professional Services continue for the duration as outlined in the applicable Statement of Work, Exhibit or the Governing Agreement, as applicable.

**Special Order Terms:** This Order Form replaces all previous order forms for the terms listed above and will govern the Software, Maintenance, and/or Services items listed on this Order Form.
- In the event of an inconsistency between this Order Form, any governing agreement, purchase order, or invoice, the Maintenance and Support Agreement shall govern as it pertains to this transaction.

#### Payment Terms

**Currency:** USD

**Invoice Date:** Unless otherwise stated in the Special Payment Terms, Invoice for the Grand Total $ above will be issued on the Order Start Date.

**Payment Due Date:** Unless otherwise stated in the Special Payment Terms or the Governing Agreement(s), all payments are due on the Invoice Date and payable net 30 days.

**Special Payment Terms:** None unless otherwise specified in this section.

**Purchase Order:** If Customer requires PO number on invoices, it must be provided to the right and Customer must provide copy of the PO prior to invoice issuance. If no PO number provided prior to invoice issuance date, invoices issued on this Order Form will be valid without a PO reference.
### Exhibit A
Accela Order Form Q-19315

<table>
<thead>
<tr>
<th>Accela</th>
<th>Customer</th>
</tr>
</thead>
<tbody>
<tr>
<td>By: Robert Wilson</td>
<td>By: Joseph D. Parlette</td>
</tr>
<tr>
<td>(Signature)</td>
<td>(Signature)</td>
</tr>
<tr>
<td>ROBERT WILSON</td>
<td>Joseph D. Parlette</td>
</tr>
<tr>
<td>(Print Name)</td>
<td>(Print Name)</td>
</tr>
<tr>
<td>Its: CFO</td>
<td>Its: Deputy City Manager</td>
</tr>
<tr>
<td>(Title)</td>
<td>(Title)</td>
</tr>
<tr>
<td>Dated: 6/15/2020</td>
<td>Dated: July 23, 2020</td>
</tr>
<tr>
<td>(Month, Day, Year)</td>
<td>(Month, Day, Year)</td>
</tr>
</tbody>
</table>
Exhibit B
Accela Software Support Policy (On-Premise)

ACCELA SOFTWARE SUPPORT POLICY
Dated: August 21, 2019
(ON-PREMISE)

(1) Legacy Releases: Accela provides Support Services for each version of the Software for a period of twelve (12) months after the generally available release of the next major version of the Software (a major release is a change in the first number to the right of the decimal point). For example, if version 6.1 is released on January 1, 2017, then Accela will provide Support Services for version 6.0 until January 1, 2018. Accela does not provide Support Services for any customized Software (or components thereof).

(2) General Requirements and Hours of Operation
a. Ticketing Support: Accela will provide access to a ticketing system, which will be available twenty-four (24) hours per day, seven (7) days per week. A qualified support specialist shall use commercially reasonable efforts to answer questions and resolve problems regarding the Subscription Service from 4:00 A.M. until 6:00 P.M. Pacific Standard Time Monday through Friday, excluding Accela’s observed holidays.

b. Telephone Support: Accela’s Customer Support Department, a live technical support facility, will be available to Customer from 4:00 A.M. until 6:00 P.M. Pacific Standard Time Monday through Friday, excluding Accela’s observed holidays.

c. Online Support Material: Available twenty-four (24) hours, seven (7) days a week, Accela will make available to Customer certain archived software updates and other technical information in Accela’s online support databases.

(3) Agency Contacts: “Agency Contacts” are the individuals who will be the primary users of the Support Plan. You may designate up to two (2) Agency Contacts and agree to let Accela know if they change. Your Agency Contacts will be responsible for overseeing your Agency’s support case activity, developing and deploying troubleshooting processes within your Agency’s organization.

Agency will ensure Agency Contacts:
Have completed the Administrator Training offered as part of Accela’s implementation and adoption programs. Are knowledgeable about the Agency’s configured solution in order to assist Accela in analyzing and resolving technical issues. Have a basic understanding of any problem that is the subject of a case, and the ability to reproduce the problem in order to assist Accela in diagnosing and triaging the problem.

(4) Submitting a Case: Agency Contacts may submit cases via: the online support portal by logging into the Accela Success Community at https://success.acella.com and selecting Get Support > Submit a case or a telephone call to Customer Support as described below (For Severity Level 1 and Severity Level 2 issues, Agency must call Customer Support)

(5) Upgrade/Downgrade of Severity Level. If, during the Support Request process, the issue either warrants assignment of a higher severity level than currently assigned or no longer warrants the severity level currently assigned based on its current impact on the production operation of the SaaS offering, then the severity level will be upgraded or downgraded accordingly to the severity level that most appropriately reflects its current impact.

(6) Customer Obligations. As required, Customer will provide Accela or its authorized partner with appropriate access to Customer’s facilities, data systems, and other resources. If security restrictions impair such access, Customer acknowledges that some Support Services hereunder may not be provided to Customer. It is Customer’s sole responsibility to maintain current backup copies of its data and of its implementation of the Software. If Customer’s failure to create proper backups substantially increases the difficulties of any remedial actions by Accela hereunder, Accela reserves the right to charge Customer for any extra work reasonably attributable to such increased difficulty, as calculated at Accela’s then-current time-and-materials rates.

(7) Third Party Product Support. If any third-party software is supplied by Accela, Accela disclaims all support obligations for such third-party software, unless expressly specified by Accela in Customer’s Agreement.
Exhibit B
Accela Software Support Policy (On-Premise)

(8) Product Updates
Updates may address security fixes, critical patches, general maintenance functionality, and documentation and shall be made available at Accela’s discretion. Accela is under no obligation to develop any future functionality or enhancements unless otherwise specified in the Agreement. If an update is released it will be made available for general availability for on-premise customers on the Accela FTP site.

(9) Exclusions. The following Support Exclusions are not covered by this Support Policy, however, they may be separately available at rates and on terms which may vary from those described herein:

a. Services required due to misuse of the Accela-maintained Software;
b. Services required due to Software data loss by fault of Customer or corrections, customizations, or modifications not developed or authorized by Accela;
c. Services required by Customer to be performed by Accela outside of Accela’s usual working hours;
d. Services required due to external factors including, but not necessarily limited to, Customer’s use of software or hardware not authorized by Accela;
e. Services required due to the operation of interfaces between the Accela-maintained Software and other software products or systems, even where such interfaces were provided or implemented by Accela;
f. Services required to resolve or work-around conditions which cannot be reproduced in Accela’s support environment;
g. Services which relate to tasks other than maintenance and support of Customer’s existing implementation and configuration of the Accela-maintained software products including, but not necessarily limited to, enhancing or adapting such products for specific operating environments;
h. Services requested by Customer to implement software updates provided by Accela pursuant to this Agreement; and
i. New or additional applications, modules, or functionality released by Accela during the term of this Agreement.

(10) Error Classification
Functional Definitions: For the purposes of error classification, essential or major functions include data capture features, SLA and alarming features, performance management features and application performance problem resolution features.

<table>
<thead>
<tr>
<th>Severity</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Critical Severity Issue (Priority 1)</td>
<td>Supported Product is non-functional or seriously affected and there is no reasonable workaround available (e.g. business is halted).</td>
</tr>
<tr>
<td>High Severity Issue (Priority 2)</td>
<td>Supported Product is affected and there is no workaround available or the workaround is impractical (e.g. Supported Product response is very slow, day to day operations continue but are impacted by the work around).</td>
</tr>
<tr>
<td>Medium Severity Issue (Priority 3)</td>
<td>Support Product is non-functional however a convenient workaround exists (e.g. non-critical feature is unavailable or requires additional user intervention).</td>
</tr>
<tr>
<td>Low Severity Issue (Priority 4)</td>
<td>Supported Product works, but there is a minor problem (e.g. incorrect label, or cosmetic defect).</td>
</tr>
</tbody>
</table>
City Manager's Report

From 6340 - Fire/Strategic Prog & Safety
Supplier, Vendor, Company, Individual
Name TargetSolutions Learning LLC
Address 4890 W. Kennedy, Suite 300
Tampa, FL 33609

Date May 19, 2021
Expense Type Contract Modification
Total Amount $ 29,716.16 (thru 6/1/2022)

Fund Source(s) Fund Code(s) Fund Amount(s)
General Fund - Fire 10000-6340-1301-71 29,716.16

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

Description

Professional Services Agreement

Target Solutions Learning LLC

The Department of Fire (DFD) requests permission to enter into a Second Amendment with TargetSolutions Learning LLC (TargetSolutions) in the amount of $29,716.16 for on-line training resources for DFD personnel.

TargetSolutions will provide the department employees with access to an extensive library of on-line fire, EMS and fire safety inspection classes. TargetSolutions provides the classes needed to meet CEU requirements for state and locally mandated certifications; tracks CEU requirements and progress, and sends certification renewal notifications.

The original Agreement was approved May 22, 2019 in the amount of $28,386.28. The First Amendment was approved June 10, 2021 in the amount of $28,863.54 and increased the agreement amount to $57,249.82. The Second Amendment will increase the agreement amount to $86,965.98 and will expire June 1, 2022.

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

Thomas M Rice  
Digitally signed by Thomas M Rice  
Date: 2021.06.07 19:48:02 -04'00'

Lykins, Jeff  
Digitally signed by Lykins, Jeff  
Date: 2021.06.07 19:49:04 -04'00'

City Manager
FORM NO. MS-16

Signatures/Approval  
Approved by City Commission

Clerk

Date

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

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

<table>
<thead>
<tr>
<th>New Contract</th>
<th>X</th>
<th>Renewal Contract</th>
<th>Change Order</th>
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<tbody>
<tr>
<td>Contract Start Date</td>
<td>06/01/19</td>
<td>Expiration Date</td>
<td>06/01/22</td>
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<tr>
<td>Original Commission Approval</td>
<td>$ 88,685.98</td>
<td>Initial Encumbrance</td>
<td>$ 57,249.62</td>
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<tr>
<td>Remaining Commission Approval</td>
<td>$ 29,716.16</td>
<td>Required Documentation</td>
<td></td>
</tr>
<tr>
<td>Original CT/CF</td>
<td>CT19-2292</td>
<td>Initial City Manager's Report</td>
<td>X</td>
</tr>
<tr>
<td>Increase Encumbrance</td>
<td>$ 29,716.16</td>
<td>Initial Certificate of Funds</td>
<td>X</td>
</tr>
<tr>
<td>Decrease Encumbrance</td>
<td>$ (0.00)</td>
<td>Initial Agreement/Contract</td>
<td>X</td>
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<tr>
<td>Remaining Commission Approval</td>
<td>$ (0.00)</td>
<td>Copy of City Manager's Report</td>
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### Amount:

<table>
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<tr>
<th>Fund Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>10000 - 6340 - 1301 - 71</td>
<td>$ 29,716.16</td>
</tr>
</tbody>
</table>

### Vendor Information:

- **Vendor Name:** TargetSolutions Learning LLC
- **Vendor Address:** 4890 Kennedy Blvd, Suite 300 Tampa FL 33609
- **Federal ID:** 26-3827779
- **Commodity Code:** 91838
- **Purpose:** Payment for online Firefighter and EMS training

### Contact Person:

- **Contact Person:** Assistant Chief Thomas Rice
- **Date:** 5/5/2021

### Originating Department Director's Signature:

- **Signature:** [Signature]
- **Date:** 5/5/2021

### SECTION II - to be completed by the Finance Department

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

- **Finance Director Signature:** [Signature]
- **Date:** 5/12/2021

- **CF Prepared by:** [Signature]
- **Date:** 5/10/21

---

**Finance Department**

October 18, 21
SECOND RENEWAL TO THE SERVICE AGREEMENT

THIS SECOND RENEWAL TO SERVICE AGREEMENT ("Second Renewal"), entered into this ___ day of _______________, 2021, is between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio, ("City") and TargetSolutions Learning, LLC., located at 4890 W. Kennedy Blvd., Suite 300 Tampa, FL 33609 ("Company").

WITNESSETH THAT:

WHEREAS, City and Company entered into the Service Agreement on the 22nd day of May, 2019 ("Agreement"); and,

WHEREAS, City and Company entered into the First Renewal to Service Agreement on the 29th day of July 2020 ("First Renewal"); and,

WHEREAS, Article 2 of the Agreement provides the City and Company the right to extend or renew the Agreement by a mutual written agreement; and,

WHEREAS, City and Company desire to renew the terms of the Agreement and Company is willing to provide the services in accordance with the terms of the Agreement.

NOW, THEREFORE, the City and Company hereby agree as follows:

Section 1. Pursuant to Article 2 of the Agreement, the City and Company agree to renew the Agreement for an additional one (1) year term. This renewal term shall commence on June 1, 2021, and shall terminate on June 1, 2022 ("Renewal Term"), unless earlier terminated or renewed pursuant to the terms of the Agreement, as detailed in the Renewal Notice, which is attached hereto and incorporated herein as Exhibit A.

Section 2. As a result of this Renewal, the total remuneration under the Agreement shall not exceed EIGHTY-SIX THOUSAND NINE HUNDRED SIXTY-FIVE DOLLARS AND NINETY-EIGHT CENTS ($86,965.98). Further, the City’s total remuneration for the Services under this Second Renewal shall not exceed TWENTY-NINE THOUSAND SEVEN HUNDRED SIXTEEN DOLLARS AND SIXTEEN CENTS ($29,716.16).

Section 3. Except as modified by this Second Renewal and any other prior amendments or renewals, the Agreement between the City and Company remains unchanged and in full force and effect.

[THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF the City and Company, each by a duly authorized representative, have executed this Second Renewal as of the day and date first set forth above.

THE CITY OF DAYTON, OHIO

City Manager

TARGETSOLUTIONS LEARNING, LLC.

By: 

Print: Brandi Howe

Title: Sr. Director Acc. Management

APPROVED AS TO FORM AND CORRECTNESS:

City Attorney

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

, 2021

Min. / Bk. Pg.

Clerk of the Commission
Exhibit A
## Contract Information

<table>
<thead>
<tr>
<th>Contract Name</th>
<th>Account Manager</th>
<th>Billing Frequency</th>
<th>Renewal Start Date</th>
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</thead>
<tbody>
<tr>
<td>Dayton Fire Department (OH)</td>
<td>Brittany Adams</td>
<td>Annual</td>
<td>06-01-2021</td>
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## Product Summary

<table>
<thead>
<tr>
<th>Quantity</th>
<th>Product Description</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
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<tbody>
<tr>
<td>334</td>
<td>Fire and EMS Online Course Catalogs</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>1</td>
<td>Maintenance Fee</td>
<td>$395.00</td>
<td>$395.00</td>
</tr>
<tr>
<td>334</td>
<td>TargetSolutions Premier Membership Platform</td>
<td>$86.32</td>
<td>$28,830.88</td>
</tr>
<tr>
<td>14</td>
<td>TargetSolutions Online Training Platform Reseller</td>
<td>$35.02</td>
<td>$490.28</td>
</tr>
</tbody>
</table>

**Grand Total:** $29,716.16

As a convenience to our customers, we are changing our billing policy effective December 1st, 2019 to send out bills 30 days in advance of your renewal.

This does not change the billing due date or the payment terms of your agreement.

Upon expiration of the Initial or any Renewal Term of your Client Agreement, access to the Services may remain active for thirty (30) days solely for purpose of Company’s record keeping (the “Expiration Period”). Unless otherwise provided in your Client Agreement, any access to or usage of the Services following the Expiration Period shall be deemed Client’s renewal of the Agreement under the same terms and conditions.
FIRST RENEWAL TO THE SERVICE AGREEMENT

This FIRST RENEWAL TO SERVICE AGREEMENT ("Renewal"), entered into this 21st day of July, 2020, is between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio, ("City") and TargetSolutions Learning, LLC., located at 4890 W. Kennedy Blvd., Suite 300 Tampa, FL 33609 ("Company").

WITNESSETH THAT:

WHEREAS, City and Company entered into the Service Agreement on the 22nd day of May, 2019 ("Agreement"); and,

WHEREAS, Article 2 of the Agreement provides the City and Company the right to extend or renew the Agreement by a mutual written agreement; and,

WHEREAS, City and Company desire to renew the terms of the Agreement and Company is willing to provide the services in accordance with the terms of the Agreement.

NOW, THEREFORE, the City and Company hereby agree as follows:

Section 1. Pursuant to Article 2 of the Agreement, the City and Company agree to renew the Agreement for an additional one (1) year term. This renewal term shall commence on June 1, 2020, and shall terminate on June 1, 2021 ("Renewal Term"), unless earlier terminated or renewed pursuant to the terms of the Agreement, as detailed in the Renewal Notice, which is attached hereto and incorporated herein as Exhibit A.

Section 2. As a result of this Renewal, the total remuneration under the Agreement shall not exceed FIFTY-SEVEN THOUSAND TWO HUNDRED FORTY-NINE DOLLARS AND EIGHTY-TWO CENTS ($57,249.82). Further, the City’s total remuneration for the Services shall not exceed TWENTY-EIGHT THOUSAND EIGHT HUNDRED SIXTY THREE DOLLARS AND FIFTY-FOUR CENTS ($28,863.54).

Section 3. Except as modified by this Renewal and any other prior amendments or renewals, the Agreement between the City and Company remains unchanged and in full force and effect.

[THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.]
IN WITNESS WHEREOF the City and Company, each by a duly authorized representative, have executed this Renewal as of the day and date first set forth above.

THE CITY OF DAYTON, OHIO

[Signature]

City Manager

TARGETSOLUTIONS LEARNING, LLC.

By: [Signature]

Print: [Print Name]

Title: Director of Account Management

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]

City Attorney

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

[Signature]

Clerk of the Commission

June 10, 2020

Min. / Bk. I-14 Pg. D203
Renewal Notice

Date: 04-03-2020

<table>
<thead>
<tr>
<th>Contract Name</th>
<th>Account Manager</th>
<th>Billing Frequency</th>
<th>Renewal Start Date</th>
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<tbody>
<tr>
<td>Dayton Fire Department (OH)</td>
<td>Rachel Seymour</td>
<td>Annual</td>
<td>06-01-2020</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Quantity</th>
<th>Product</th>
<th>Description</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>334</td>
<td>TargetSolutions Premier Membership Platform</td>
<td>$83.81</td>
<td>$27,992.54</td>
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<tr>
<td>334</td>
<td>Fire and EMS Online Course Catalogs</td>
<td>$0.00</td>
<td>$0.00</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Maintenance Fee</td>
<td>$395.00</td>
<td>$395.00</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>TargetSolutions Online Training Platform</td>
<td>Support Staff; Includes HR Course Catalog</td>
<td>$34.00</td>
<td>$476.00</td>
</tr>
</tbody>
</table>

Grand Total: $28,863.54

As a convenience to our customers, we are changing our billing policy effective December 1st, 2019 to send out bills 30 days in advance of your renewal.

This does not change the billing due date or the payment terms of your agreement.

Upon expiration of the Initial or any Renewal Term of your Client Agreement, access to the Services may remain active for thirty (30) days solely for purpose of Company’s record keeping (the “Expiration Period”). Unless otherwise provided in your Client Agreement, any access to or usage of the Services following the Expiration Period shall be deemed Client’s renewal of the Agreement under the same terms and conditions.
June 7, 2019

TargetSolutions Learning, LLC
c/o Brandi Howe
10805 Rancho Bernardo Road
San Diego, CA 92127

RE: Service Agreement for Online Training Resources

Dear Ms. Howe:

Please find enclosed an executed copy of the Services Agreement with the City of Dayton, Ohio for online training resources.

If you have any questions, please contact Kevin Kuntz at 937-333-4508.

Respectfully,

Marilyn Wyatt
Executive Secretary
City of Dayton Fire Department

KK/mw

Enclosure

c: K. Kuntz
Services Agreement

This Services Agreement ("Agreement") is made and entered into by TargetSolutions Learning, LLC. ("Company"), located at 4890 W. Kennedy Blvd, Suite 300 Tampa, FL 33609, and the City of Dayton ("City"), a municipal corporation in and of the State of Ohio, on this ____ Day of May, 2019.

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

1. The City shall pay the Company a sum not to exceed TWENTY-EIGHT THOUSAND THREE HUNDRED EIGHTY-SIX DOLLARS AND TWENTY-EIGHT CENTS ($28,386.28) for the services required by the Client Agreement, which is attached hereto and incorporated herein by reference.

2. This Agreement shall terminate upon the completion of the twelve-month license term, as described in Schedule A, which is attached hereto and incorporated herein by reference, or on May 31, 2020. However, this Agreement may be extended or renewed by a mutual written agreement executed by authorized agents of both parties, and if necessary approved by the Commission of the City of Dayton.

3. The parties agree that the Client Agreement and Schedule A are material to this Agreement and all covenants are binding.

4. The terms of the Client Agreement are binding upon both parties. All terms and provisions contained in the Client Agreement and Schedule A are effective upon the parties and are in addition to the terms and provision contained herein. The Company shall perform all obligations, duties, covenants, and/or promises contained within the Client Agreement.

5. In the event of a conflict or inconsistency between the Client Agreement, Schedule A, and this Agreement, this Agreement shall control and govern the rights and obligations of the parties.

6. 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.
comply therewith shall constitute a breach thereof entitling City to terminate this Agreement, at its option.

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

8. 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 other legal matter regarding this Agreement or performance by either party must be brought in a court of competent jurisdiction in Montgomery County, Ohio.

9. 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.

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

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

CITY OF DAYTON, OHIO

[Signature]
City Manager

TargetSolutions Learning, LLC.

By: [Signature]
Its: Director of Account Management

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]
City Attorney

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

May 22, 2019

Min. / Bk. I-15 Pg.

[Rashella Lomender]
Clerk of the Commission
(Schedule A)
TargetSolutions Together with CentreLearn

4890 W. KENNEDY BLVD, SUITE 300
TAMPA, FL 33609
877.944.6372 - TOLL FREE
858.592.6880 - DIRECT

Account Manager: Amy Akczinski
Email: amy.akczinski@vectorsolutions.com
Phone: 941-800-2087

### Online Training Platform License 6/1/19 - 5/31/20

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>UNIT PRICE PER USER</th>
<th>QUANTITY (# of Users)</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>TargetSolutions Premier Platform</td>
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<td>344</td>
<td>$27,991.28</td>
</tr>
<tr>
<td>Annual Maintenance Fee</td>
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<td>1</td>
<td>$395.00</td>
</tr>
<tr>
<td><strong>TOTAL DUE ANNUALLY</strong></td>
<td></td>
<td></td>
<td><strong>$28,386.28</strong></td>
</tr>
</tbody>
</table>

TargetSolutions Learning, LLC business proposal pricing is good for 90 days from Date of Submission listed above.
TARGETSOLUTIONS
Client Agreement

This Client Agreement (the "Agreement"), dated as of the date noted in the attached Schedule A (the "Effective Date"), is by and between TargetSolutions Learning, LLC ("TSL"), a Delaware limited liability company, and the undersigned client ("Client"), and governs the purchase and ongoing use of the Services described in this Agreement (the "Services").

1. Services. TSL shall provide the following services:

1.1. Access. TSL will provide Client a non-exclusive, non-transferable, revocable, limited license to remotely access and use the Services hereunder, and, unless prohibited by law, will provide access to any person designated by Client ("Users").

1.2. Availability. TSL shall use commercially reasonable efforts to display its content and coursework for access and use by Client's Users twenty-four (24) hours a day, seven (7) days a week, subject to scheduled downtime for routine maintenance, emergency maintenance, system outages and other outages beyond TSL's control.

1.3. Help Desk. TSL will assist Users as needed on issues relating to usage via e-mail, and a toll-free Help Desk five (5) days per week at scheduled hours.

2. Client's Obligations.

2.1. Compliance. Client shall be responsible for Users compliance with this Agreement, and use commercially reasonable efforts to prevent unauthorized access to or use of the Services.

2.2. Identity Users. Client shall (i) provide a listing of its designated enrolled Users, (ii) cause each of its Users to complete a profile, (iii) maintain user license remotely adding and removing Users as appropriate.

2.3. Future Functionality. Client agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any public comments regarding future functionality or features.

3. Fees and Payments.

3.1. Fees. Client will pay for the Services in accordance with the fees schedule in Schedule A attached to this Agreement. Fees listed in Schedule A shall be increased by 3% per year both during the term of this Agreement, as well as for any renewal terms.

3.2. Payments. All fees due under this Agreement must be paid in United States dollars. Such charges will be made in advance, according to the frequency stated in Schedule A. TSL will invoice in advance, and such invoices are due net 30 days from the invoice date. All fees collected under this Agreement are fully earned when due and nonrefundable when paid.

3.3. Suspension of Service for Overdue Payments. Any fees unpaid for more than ten (10) days past the due date shall bear interest at 1.5% per month. With fifteen (15) days prior written notice, TSL shall have the right, in addition to all other rights and remedies to which TSL may be entitled, to suspend Client's Users' access to the Services until all overdue payments are paid in full.

3.4. Intellectual Property Rights. Client acknowledges that TSL, alone (and its licensors, where applicable) shall own all rights, title and interest in and to TSL's software, website or technology, the course content, and the Services provided by TSL, as well as any and all suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Client, and this Agreement does not convey to Client any rights of ownership to the same. The TSL name and logo are trademarks of TSL, and no right or license is granted to Client to use them.

4. Exclusion as otherwise agreed in writing, or to the extent necessary for Client to use the Services in accordance with this Agreement, Client shall not: (i) copy the course content in whole or in part; (ii) display, reproduce, create derivative works from, transmit, sell, distribute, rent, lease, sublicense, transfer or in any way exploit the course content in whole or in part; (iii) embed the course content into other products; (iv) use any trademarks, service marks, domain names, logos, or other identifiers of TSL or any of its third party suppliers; or (v) reverse engineer, decompile, disassemble, or access the source code of any TSL software.

5. Term. The term of this Agreement shall commence on the Effective Date, and will remain in full force and effect for the term indicated in Schedule A ("Term"). Upon expiration of the Initial Term, this Agreement shall automatically renew for successive one (1) year periods, except, a "Renewal Term", unless notice is given by either party of its intent to terminate the Agreement, at least thirty (30) days prior to the scheduled termination date. Upon expiration of the Initial or any Renewal Term, access to the Services may remain active for thirty (30) days solely for purpose of Company's record keeping ("Expiration Period"). Any access to or usage of the Services following the Expiration Period shall be deemed Client's renewal of the Agreement under the same terms and conditions.


6.1. Mutual Representations & Warranties. Each party represents and warrants that it has full authority to enter into this Agreement and to fully perform its obligations hereunder.

6.2. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

7. Miscellaneous.

7.1. Limitation on Liability. Except as it relates to claims related to Section 4 or Section 7.2 of this Agreement, (a) in no event shall either party be liable to the other, whether in contract, tort, negligence or otherwise, for special, incidental, indirect or consequential damages, including, but not limited to any damage awarded to the total amount of the fees due to, or already paid to, TSL for the proceeding twelve (12) months.

7.2. Indemnification. TSL shall indemnify and hold Client harmless from any and all claims, damages, losses and expenses, including but not limited to reasonable attorney fees, arising out of or resulting from any third party claim that the Services or any component thereof infringe or otherwise violate any intellectual property right of any person.

7.3. Assignment. Neither party may assign or delegate its rights or obligations pursuant to this Agreement without the prior written consent of the other, provided that such consent shall not be unreasonably withheld. Notwithstanding the foregoing, TSL may freely assign or transfer any all of its rights without Client consent to an affiliate, or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

7.4. Force Majeure. TSL shall have no liability for any failure or delay in performing any of its obligations pursuant to this Agreement due to, or arising out of, any act not within its control, including, without limitation, acts of God, strikes, lockouts, war, riots, lightning, fire, storm, flood, explosion, interruption or delay in power supply, computer virus, governmental laws or regulations.

7.5. No Waiver. No waiver, amendment or modification of this Agreement shall be effective unless in writing and signed by the parties.

7.6. Severability. If any provision of this Agreement is found to be contrary to law by a court of competent jurisdiction, such provision shall be of no force or effect, but the remainder of this Agreement shall continue in full force and effect.

7.7. Entire Agreement. This Agreement and its exhibits represent the entire understanding and agreement between TSL and Client, and supersede all other negotiations, proposals, understandings and representations (written or oral) made by and between TSL and Client.

[Signature Page Immediately Follows]
TargetSolutions Learning LLC

The Department of Fire (DFD) requests permission to enter into an Agreement with TargetSolutions Learning LLC (TargetSolutions) in the amount of $28,386.28 for online training resources for DFD personnel.

TargetSolutions will provide the department employees with access to an extensive library of online fire, EMS and fire safety inspection classes. TargetSolutions provides the classes needed to meet CEU requirements for state and locally mandated certifications; tracks CEU requirements and progress, and sends certification renewal notifications. TargetSolutions will allow DFD to develop its own classes to be added to the library or use classes developed by other departments that already use TargetSolutions (e.g., the Cincinnati and Columbus Fire Departments).

The term of the agreement begins June 1, 2019 and expires May 31, 2020.

The Department of Law has reviewed and approved the agreement as to form and correctness. A Certificate of Funds in the amount of $28,386.28 is attached.
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

X New Contract
Renewal Contract
Change Order

Contract Start Date: 06/01/19
Expiration Date: 06/30/20
Original Commission Approval: $28,386.28
Initial Encumbrance: $28,386.28
Remaining Commission Approval: $-

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

Amount: $28,386.28

Fund Code: 10000 - 6340 - 1301 - 71 -

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

Amount: 

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

Amount:

Vendor Name: TargetSolutions Learning LLC
Vendor Address: 4690 Kennedy Blvd., Suite 300 Tampa, FL 33609
Federal ID: 26-3827779
Commodity Code: 91838
Purpose: Payment for online Firefighter and EMS training

Contact Person: Kevin Kuntz 333-4608

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: 

CF Prepared by

Finance Department

October 18, 2011
May 23, 2019

TO: City Commission Office
    City Manager’s Office
    Department of Finance

FROM: Jeffrey Payne
      Director and Chief
      Fire Department

SUBJECT: Request for Signature – Service Agreement for
          Online Training Resources – TargetSolutions Learning, LLC

Attached please find four (4) copies of the Agreement referenced above with applicable vendor signatures. Authorization for execution of this Agreement was granted by the City Commission on May 22, 2019 by City Manager’s Report #2. This Agreement is ready for City of Dayton signatures.

Please return to Marilyn Wyatt (x4506) in the Dayton Fire Department Headquarters.

JLP/mw

Attachments (4)
KEOWEE STREET REHABILITATION
(10% MBE & 10% SBE PARTICIPATION GOAL/ 12.9% SBE & 14.3% MBE PARTICIPATION ACHIEVED)

The Department of Public Works requests approval to award a contract with R.B. Jergens Contractors, Inc., for the replacement of curbs, sidewalk, pavement including concrete joint repairs and panel replacement, curb ramps and other traffic amenities on Keowee Street from East First Street to East Fourth Street.

Five bids were received for this project. It is recommended that the contract be awarded to the lowest and best bidder, R.B. Jergens Contractors, Inc., in the amount of $950,000.00. This includes the base bid of $856,346.65 and Alternate No.1, Contingency Allowance in the amount of $93,653.35. The estimated cost for the project was $905,000.00. Project completion is November 1, 2021.

This project is being funded using General Capital Funds, which will be reimbursed by an Ohio Public Works Commission grant, approved by the City Commission Resolution No. 6433-19 on August 14, 2019.

A Certificate of Funds, Tabulation of Bids, Human Relations Council’s verification letter, Bid Form from firm recommended for award, and location map are attached.
**SECTION I - to be completed by User Department**

<table>
<thead>
<tr>
<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>
<td>Required Documentation</td>
</tr>
<tr>
<td>Expiration Date</td>
<td>November 1, 2023</td>
<td>X Initial City Manager's Report</td>
</tr>
<tr>
<td>Original Commission Approval</td>
<td>$ 950,000.00</td>
<td>X Initial Certificate of Funds</td>
</tr>
<tr>
<td>Initial Encumbrance</td>
<td>$ 950,000.00</td>
<td>X Initial Agreement/Contract</td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$</td>
<td>Copy of City Manager's Report</td>
</tr>
<tr>
<td>Original CT/CF</td>
<td>-</td>
<td>Copy of Original Certificate of Funds</td>
</tr>
<tr>
<td>Increase Encumbrance</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Decrease Encumbrance</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>-</td>
<td></td>
</tr>
</tbody>
</table>

| Amount:            | $ 950,000.00          |                                |
| Fund Code:        | 41987 6450-1424-54   |                                |
| Fund Org Acct Prog Act Loc |          |                                |

| Amount:            |                                |                                |
| Fund Code:        |                                |                                |
| Fund Org Acct Prog Act Loc |          |                                |

*Attach additional pages for more FOAPALs*

**Vendor Name:** R.B. Jergens Contractors, Inc. (937) 669-9799

**Vendor Address:** 11418 North Dixie Drive Vandalia, Ohio 45377

**Federal ID:** 31-1207982

**Commodity Code:** 91831

**Purpose:** Keowee Street Rehabilitation (10% MBE & 10% SBE Participation Goal)

**Contact Person:** Joseph Weinle, Chief Engineer

**Public Works/Civil Eng.** 937-333-4218

**Date:** 5-6-21

**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:** 05/12/2021

**Finance Department**

October 18, 2021
Bid Tabulation For: Keowee Street Rehabilitation  
(10% MBE & 10% SBE 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>April 15, 2021</td>
<td>$1,135,784.78</td>
<td>November 1, 2021</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bidders</th>
<th>Actual Amount Of Base Bid</th>
<th>Adjustment For Work Days</th>
<th>Adjustment For Comparison Purposes Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>* R.B. Jergens Contractors, Inc.</td>
<td>$856,346.65</td>
<td>0</td>
<td>$856,346.65</td>
</tr>
<tr>
<td>Double Jay Construction, Inc.</td>
<td>$998,808.00</td>
<td></td>
<td>$998,808.00</td>
</tr>
<tr>
<td>L.J. DeWeese Co., Inc.</td>
<td>$1,034,588.55</td>
<td></td>
<td>$1,034,588.55</td>
</tr>
<tr>
<td>Adleta Construction</td>
<td>$1,099,113.46</td>
<td></td>
<td>$1,099,113.46</td>
</tr>
<tr>
<td>Sunesis Construction, Co.</td>
<td>$1,338,769.75</td>
<td></td>
<td>$1,338,769.75</td>
</tr>
</tbody>
</table>

* Awarded
Revised 9/14/98
April 27, 2021

TO: David Escobar, Senior Engineer
    Public Works,
    Civil Engineering

FROM: Chrisondra Goodwine, Interim Business & Technical Assistance Administrator
      Human Relations Council (HRC)

SUBJECT: Keowee Street Rehabilitation
         (10% SBE % 10% MBE Participation Goal)

The apparent low bidder, R.B. Jergens Contractors, Inc., submitted a bid utilizing three (3) PEP-certified contractor to meet the project's participation goal. The HRC's contract compliance analysis has verified that R.B. Jergens Contractors, Inc., 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>R.B. Jergens Contractors, Inc.</td>
<td>$856,346.65</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>First Star Safety</td>
<td>$45,410.00</td>
<td>5.3% SBE</td>
</tr>
<tr>
<td>Security Fence Group</td>
<td>$65,400.00</td>
<td>7.6% SBE</td>
</tr>
<tr>
<td>Ebony Construction Co.</td>
<td>$122,895.00</td>
<td>14.3% MBE</td>
</tr>
</tbody>
</table>

| TOTAL COMMITTED                  |                       | 12.9% SBE     |
| PARTICIPATION                    |                       | 14.3% MBE     |

The attached participation forms should be included with the contract agreement. Contract compliance will include meeting verified participation and minimal worker utilization goals as stated in the Affirmative Action Program Equal Employment Opportunity form certified in the bid submission. If you have any questions or concerns, please feel free to contact me at (937) 333-1405.

CAG
PEP-CERTIFIED SBE

(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: R.B. Jergens Contractors, Inc.

Address: 11418 N. Dixie Drive

City: Vandalia State: OH ZIP: 45377

Telephone: (937) 669-9799 Email: ryan.wheeler@rbjergens.com

Primes Base Bid $ 856,346.65

Name of Project: Keowee Street Rehabilitation

SECTION 2: PEP-CERTIFIED BUSINESS & PARTICIPATION INFORMATION

Name of PEP-Certified Firm: First Star Safety

PEP-Certified Firm's Tax ID#: 

Scope of Work to Be Performed by Certified Firm: Maintaining Traffic

<p>|</p>
<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>$ 45,410.00</td>
<td>$ 45,410.00</td>
</tr>
<tr>
<td>Materials</td>
<td>$ ____________________</td>
<td>$ ____________________</td>
</tr>
<tr>
<td>Labor</td>
<td>$ ____________________</td>
<td>$ ____________________</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)

Vic Roberts, P.E.

(Printed Name of Bidder/Proposer's Authorized Agent)

Vice President 04/15/21

(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 SBE**  
(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: R.B. Jergens Contractors, Inc.
Address: 11418 N. Dixie Drive
City: Vandalia
State: OH ZIP: 45377
Telephone: (937) 669-9799 Email: ryan.wheeler@rbjergens.com
Primes Base Bid $856,346.65
Name of Project: Keowee Street Rehabilitation

**SECTION 2: PEP-CERTIFIED BUSINESS & PARTICIPATION INFORMATION**

Name of PEP-Certified Firm: Security Fence Group
PEP-Certified Firm's Tax ID#:
Scope of Work to Be Performed by Certified Firm: Guardrail & Detector Loops

<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>$65,400.00</td>
<td>$65,400.00</td>
</tr>
<tr>
<td>Materials</td>
<td>%</td>
<td></td>
</tr>
<tr>
<td>Labor</td>
<td>%</td>
<td></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)

Vic Roberts, P.E.

(Printed Name of Bidder/Proposer's Authorized Agent)

Vice President 04/15/21 (Date)

If the bidder/offeror is not awarded a contract, or if the HRC does not approve of the terms as stated above, then any and all representations on this participation form shall be null and void.
PEP-CERTIFIED MBE (SELECT ONE) PARTICIPATION FORM

Instructions for Bidders / Proposers: Submit one executed copy of this form for each Procurement Enhancement Plan (PEP)-Certified Firm whose participation you plan to count toward the project/contract's participation goal(s). This form must be included with your Bid. To split a PEP-Certified Firm's participation among more than one goal, submit a separate form for each goal (i.e., SBE, MBE, WBE, or DLSB).

SECTION 1: BIDDER / PROPOSER INFORMATION

Name of Bidder / Proposer's Firm: R.B. Jergens Contractors, Inc.
Address: 11418 N. Dixie Drive
City: Vandalia
State: OH
ZIP: 45377
Telephone: (937) 669-9799
Email: ryan.wheeler@rbjergens.com
Primes Base Bid $ 856,346.65
Name of Project: Keowee Street Rehabilitation

SECTION 2: PEP-CERTIFIED BUSINESS & PARTICIPATION INFORMATION

Name of PEP-Certified Firm: Ebony Construction Co.
PEP-Certified Firm's Tax ID#: ____________________________
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 $122,895.00</td>
<td>% 100.00</td>
<td>$122,895.00</td>
</tr>
<tr>
<td>Materials $</td>
<td>%</td>
<td>$</td>
</tr>
<tr>
<td>Labor</td>
<td>%</td>
<td>$</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)

Vic Roberts, P.E.

(Printed Name of Bidder/Proposer’s Authorized Agent)

Vice President 04/15/21

(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.
CITY OF DAYTON, OHIO
DEPARTMENT OF PUBLIC WORKS

Bid
Keowee Street Rehabilitation
10% MBE Participation
10% SBE Participation

Bidder
R.B. Jergens Contractors, Inc.
11418 North Dixie Drive
Vandalia, Ohio 45377
<table>
<thead>
<tr>
<th>Item Code</th>
<th>Item Description</th>
<th>Unit</th>
<th>Quantity</th>
<th>Unit Price</th>
<th>Extension</th>
</tr>
</thead>
<tbody>
<tr>
<td>202</td>
<td>Concrete Driveway Removed</td>
<td>S.F.</td>
<td>535</td>
<td>$2.16</td>
<td>$1,155.60</td>
</tr>
<tr>
<td>202</td>
<td>Curb Removed</td>
<td>L.F.</td>
<td>1,551</td>
<td>$3.09</td>
<td>$4,792.59</td>
</tr>
<tr>
<td>202</td>
<td>Concrete Pavement Removed</td>
<td>S.Y.</td>
<td>4,001</td>
<td>$10.39</td>
<td>$41,570.39</td>
</tr>
<tr>
<td>202</td>
<td>Grind Existing Asphalt Pavement</td>
<td>S.Y.</td>
<td>6,350</td>
<td>$3.98</td>
<td>$25,273.00</td>
</tr>
<tr>
<td>202</td>
<td>Curb Ramp and Sidewalk Removed</td>
<td>S.F.</td>
<td>9,250</td>
<td>$1.55</td>
<td>$14,337.50</td>
</tr>
<tr>
<td>202</td>
<td>Concrete Median Removed</td>
<td>S.Y.</td>
<td>1,230</td>
<td>$4.92</td>
<td>$6,051.60</td>
</tr>
<tr>
<td>202</td>
<td>Guard Rail Removed</td>
<td>L.F.</td>
<td>770</td>
<td>$6.25</td>
<td>$4,812.50</td>
</tr>
<tr>
<td>202</td>
<td>Wood Pole Removed</td>
<td>EA</td>
<td>1</td>
<td>$568.27</td>
<td>$568.27</td>
</tr>
<tr>
<td>202</td>
<td>Catch Basin Removed</td>
<td>EA</td>
<td>6</td>
<td>$628.20</td>
<td>$3,769.20</td>
</tr>
<tr>
<td>203</td>
<td>Excavation Not Including Embankment</td>
<td>C.Y.</td>
<td>100</td>
<td>$10.08</td>
<td>$1,008.00</td>
</tr>
<tr>
<td>203</td>
<td>Embankment (Using No. 2 Stone)</td>
<td>C.Y.</td>
<td>100</td>
<td>$210.88</td>
<td>$21,088.00</td>
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<tr>
<td>207</td>
<td>Curb Inlet Protection</td>
<td>EA</td>
<td>20</td>
<td>$140.50</td>
<td>$2,810.00</td>
</tr>
<tr>
<td>304</td>
<td>Aggregate Base</td>
<td>C.Y.</td>
<td>140</td>
<td>$76.43</td>
<td>$10,700.20</td>
</tr>
<tr>
<td>ODOT 407</td>
<td>Non Tracking Tack Coat</td>
<td>Gal</td>
<td>580</td>
<td>$2.28</td>
<td>$1,322.40</td>
</tr>
<tr>
<td>ODOT 442</td>
<td>Asphalt Concrete Surface Course, 2 Inches, Type A (448)</td>
<td>Tons</td>
<td>645</td>
<td>$142.31</td>
<td>$91,789.95</td>
</tr>
<tr>
<td>452</td>
<td>Plain Concrete Pavement (9&quot;)</td>
<td>S.Y.</td>
<td>4,001</td>
<td>$56.88</td>
<td>$227,576.88</td>
</tr>
<tr>
<td>453</td>
<td>Concrete Driveway, ODOT Class MS, (7&quot;)</td>
<td>S.F.</td>
<td>535</td>
<td>$8.43</td>
<td>$4,510.05</td>
</tr>
<tr>
<td>606</td>
<td>Guard Rail, Barrier Design, Type MGS</td>
<td>L.F.</td>
<td>550</td>
<td>$60.39</td>
<td>$33,214.50</td>
</tr>
<tr>
<td>606</td>
<td>Guard Rail Impact Attenuator, ODOT Type 1</td>
<td>EA</td>
<td>2</td>
<td>$4,633.33</td>
<td>$9,266.66</td>
</tr>
<tr>
<td>608</td>
<td>Curb Ramps</td>
<td>S.F.</td>
<td>2,102</td>
<td>$10.76</td>
<td>$22,617.52</td>
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<tr>
<td>608</td>
<td>Concrete Walk, 4&quot;</td>
<td>S.F.</td>
<td>9,000</td>
<td>$4.17</td>
<td>$37,530.00</td>
</tr>
<tr>
<td>609</td>
<td>Barrier Curb</td>
<td>L.F.</td>
<td>1,551</td>
<td>$23.19</td>
<td>$35,967.69</td>
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<tr>
<td>612</td>
<td>Concrete Median</td>
<td>S.Y.</td>
<td>1,230</td>
<td>$46.48</td>
<td>$57,170.40</td>
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<tr>
<td>614</td>
<td>Maintaining Traffic</td>
<td>EA</td>
<td>1</td>
<td>$87,652.77</td>
<td>$87,652.77</td>
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<tr>
<td>632</td>
<td>Detector Loop</td>
<td>EA</td>
<td>10</td>
<td>$1,329.61</td>
<td>$13,296.10</td>
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<tr>
<td>632</td>
<td>Detector Loop Tie-In</td>
<td>EA</td>
<td>10</td>
<td>$114.53</td>
<td>$1,145.30</td>
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<tr>
<td>632</td>
<td>Loop Detector Lead-In Cable, 2 Conductor, No. 14 AWG</td>
<td>L.F.</td>
<td>900</td>
<td>$2.60</td>
<td>$2,340.00</td>
</tr>
<tr>
<td>642</td>
<td>Removal of Pavement Markings</td>
<td>L.F.</td>
<td>3,000</td>
<td>$1.44</td>
<td>$4,320.00</td>
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<tr>
<td>ODOT 647</td>
<td>Stop Line, white</td>
<td>L.F.</td>
<td>396</td>
<td>$18.74</td>
<td>$7,421.04</td>
</tr>
<tr>
<td>646</td>
<td>Center Line, Double Yellow</td>
<td>L.F.</td>
<td>970</td>
<td>$2.34</td>
<td>$2,269.80</td>
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<tr>
<td>646</td>
<td>Lane Line, 4&quot;</td>
<td>L.F.</td>
<td>6,453</td>
<td>$0.50</td>
<td>$3,226.50</td>
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<tr>
<td>646</td>
<td>Channel Line, white</td>
<td>L.F.</td>
<td>1,699</td>
<td>$2.03</td>
<td>$3,448.97</td>
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<tr>
<td>ODOT 647</td>
<td>Crosswalk, 8&quot;</td>
<td>L.F.</td>
<td>752</td>
<td>$5.88</td>
<td>$4,421.76</td>
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<tr>
<td>ODOT 647</td>
<td>Transverse Line, 24&quot;, white</td>
<td>L.F.</td>
<td>180</td>
<td>$11.37</td>
<td>$2,046.60</td>
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<tr>
<td>ODOT 647</td>
<td>Lane Arrows, White</td>
<td>EA</td>
<td>3</td>
<td>$376.91</td>
<td>$1,130.73</td>
</tr>
<tr>
<td>653</td>
<td>Topsoil Furnished and Placed, (4&quot;)</td>
<td>C.Y.</td>
<td>50</td>
<td>$27.54</td>
<td>$1,377.00</td>
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<tr>
<td>659</td>
<td>Hydoseeding</td>
<td>S.Y.</td>
<td>100</td>
<td>$20.82</td>
<td>$2,082.00</td>
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<tr>
<td>810</td>
<td>Excavation and Backfill for 12&quot; pipe</td>
<td>L.F.</td>
<td>63</td>
<td>$123.16</td>
<td>$7,759.08</td>
</tr>
</tbody>
</table>
# Keowee Street Rehabilitation (#7689577)
*Owner: City of Dayton Ohio*
*Solicitor: Dayton OH, City of*

04/15/2021 12:00 PM EDT

<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>821</td>
<td>Reinforced Concrete Pipe, 12&quot;</td>
<td>L.F.</td>
<td>63</td>
<td>$22.32</td>
<td>$1,406.16</td>
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<tr>
<td>831</td>
<td>Catch Basin Type 3A</td>
<td>EA</td>
<td>2</td>
<td>$2,042.57</td>
<td>$4,085.14</td>
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<tr>
<td>831</td>
<td>Catch Basin, Type 3</td>
<td>EA</td>
<td>4</td>
<td>$2,626.39</td>
<td>$10,505.56</td>
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<tr>
<td>836</td>
<td>Catch Basin Adjusted</td>
<td>EA</td>
<td>14</td>
<td>$671.37</td>
<td>$9,399.18</td>
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<tr>
<td>886</td>
<td>Major Manhole Adjusted</td>
<td>EA</td>
<td>5</td>
<td>$342.62</td>
<td>$1,713.10</td>
</tr>
<tr>
<td>886</td>
<td>Manhole Adjusted to Grade</td>
<td>EA</td>
<td>15</td>
<td>$342.62</td>
<td>$5,139.30</td>
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<tr>
<td>846</td>
<td>Valve Box Adjusted to Grade</td>
<td>EA</td>
<td>5</td>
<td>$273.58</td>
<td>$1,367.90</td>
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<td>SPL</td>
<td>T Joint Replacement</td>
<td>L.F.</td>
<td>1,344</td>
<td>$9.31</td>
<td>$12,512.64</td>
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<tr>
<td>SPL</td>
<td>Y Joint Replacement</td>
<td>L.F.</td>
<td>1,308</td>
<td>$5.64</td>
<td>$7,377.12</td>
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<tr>
<td><strong>Alternate No. 1 Contingency Allowance</strong></td>
<td></td>
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<td></td>
<td>$100,000.00</td>
<td>$100,000.00</td>
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<tr>
<td><strong>SPL</strong></td>
<td>Contingency Allowance ($100,000)</td>
<td>LUMP</td>
<td>1</td>
<td>$100,000.00</td>
<td>$100,000.00</td>
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<tr>
<td><strong>Alternate No. 2 Additional Concrete Removed and Replaced</strong></td>
<td></td>
<td></td>
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<td>$18,567.00</td>
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<tr>
<td>202</td>
<td>Concrete Pavement Removed</td>
<td>S.Y.</td>
<td>300</td>
<td>$9.08</td>
<td>$2,724.00</td>
</tr>
<tr>
<td>452</td>
<td>Plain Concrete Pavement (9&quot;)</td>
<td>S.Y.</td>
<td>300</td>
<td>$52.81</td>
<td>$15,843.00</td>
</tr>
<tr>
<td><strong>Alternate No. 3 Asphalt Rejuvenating Agent</strong></td>
<td></td>
<td></td>
<td></td>
<td>$6,195.00</td>
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<tr>
<td><strong>SPL</strong></td>
<td>Asphalt Rejuvenating Agent</td>
<td>S.Y.</td>
<td>5,900</td>
<td>$1.05</td>
<td>$6,195.00</td>
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<tr>
<td><strong>Alternate No. 4 Price Increase for Asphalt Concrete with Fibers</strong></td>
<td></td>
<td></td>
<td></td>
<td>$9,546.00</td>
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</tr>
<tr>
<td>ODOT 826</td>
<td>Asphalt Concrete Surface Course, 442, 2&quot;, Type A (448), Fiber Type C</td>
<td>Tons</td>
<td>645</td>
<td>$14.80</td>
<td>$9,546.00</td>
</tr>
<tr>
<td><strong>Base Bid Total:</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>$856,346.65</strong></td>
<td></td>
</tr>
</tbody>
</table>
DISCLOSURE OF LITIGATION AND/OR INVESTIGATION

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.

Disclosure of Investigation or Criminal Proceedings:

Within the past three (3) years have you or any person, group partnership, company, or corporation affiliated with you:

(1) Been the subject of any criminal investigation, whether open or closed, or an indictment for any business-related conduct constituting a crime under local, state or federal law?

RESPONSE: YES □ NO √

(2) Been the subject of:

(i) An indictment, grant of immunity, judgment or conviction (including entering into a plea bargain) for conduct constituting a crime; or

(ii) Any criminal investigation, felony indictment or conviction concerning the formation of any business association with, an allegedly false or fraudulent Minority Business Enterprise, Women-Owned Business Enterprise, or a Disadvantaged Business Enterprise.

RESPONSE: YES □ NO √

If your response is “YES” please separately identify each investigation and/or indictment. Identify the names of the investigating agency, the court caption and case number of any indictment, the nature of the investigation/indictment, the parties involved, the current status, and if completed the final outcome.
Within the past three (3) years has any individual previously identified or any individual currently or formerly having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of the company been:

(1) Sanctioned relative to any business or professional permit and/or license?
RESPONSE: YES [ ] NO [☑]

(2) Suspended, debarred, or disqualified from any government contracting process?
RESPONSE: YES [ ] NO [☑]

(3) The subject of a criminal investigation, whether open or closed, or an indictment for any business related constituting a crime under local, state, or federal law?
RESPONSE: YES [ ] NO [☑]

(4) Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a judgment for:

(i) Any business-related activity, including but not limited to fraud, coercion, extortion, bribe or bribe receiving, giving or accepting unlawful gratuities, immigration or tax fraud, racketeering, mail fraud, wire fraud, price-fixing or collusive bidding; or
(ii) Any crime, whether or not business-related, the underlying conduct of which related to truthfulness, including but not limited to filing of false documents or false sworn statements, perjury or larceny.
RESPONSE: YES [ ] NO [☑]

If your response is “YES” please separately identify each investigation and/or indictment. Identify the names of the investigating agency, the court caption and case number of any indictment, the nature of the investigation/indictment, the parties involved, the current status, and if completed the final outcome.
Bidder is
An Individual  
Firm Name  

Business Address  

Telephone  

Partnership  
Firm Name  

Members of Firm and Their Business Address  

Telephone  

Corporation Name  
R.B. Jergens Contractors, Inc.  

State of Incorporation  
Ohio  

Name and Title of Officers with Authority to Sign Contract  
William Jergens, President  
Kevin Harshberger, Vice President  
Vic Roberts, Vice President  
Robert Dix, Corporate Secretary  

Home Office Address  
11418 North Dixie Drive, Vandalia, Ohio 45377  

Local Address  
11418 North Dixie Drive, Vandalia, Ohio 45377  

Telephone  (937) 669-9799  
Fax  (937) 669-0301  

E-mail  ryan.wheeler@rbjergens.com  

Federal I.D.#  31-1207962  

Dated this 15 day of April, 2021  

Bidder:  
(Person, Firm, or Corporation)  

By:  Vic Roberts, P.E.  

Title: Vice President
Bond Number: SOH21958166

Contractor Information
Principal: R.B. Jergens Contractors Inc
Address: 11418 N Dixie Dr Vandalia Ohio 45377 United States

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: Berkley Insurance Company
Bid Date: 4/15/2021
Estimated Contract Price: $900,000.
Time For Completion: 11/1/2021
Liquidated Damages: $1000/day
Estimated Work On Hand:
Amount of Bid Security: Ten Percent Of Total Bid (10%)---
Contract # or IFB #: 7689577
Description of Job: Keowee Street Bridge Rehabilitation Project, Dayton, Ohio
Job Breakdown:

Electronic Bidding Information
Bid Security Percentage: 10
Bid Security Maximum:
Owner Assigned Contractor Number: 6648407

Primary Agency:
Marsh & McLennan Agency LLC
Power of Attorney Limited to: 50,000,000
Executed
Entered By: Nicholas J. Bertke - 4/12/2021 10:05:17 AM ET
Approved & Executed By:

Nicholas J. Bertke
 Nicholas J. Bertke (Signed: 12-Apr-2021 10:05 AM EDT (UTC-04:00))
Signature Information

Know all men by these presents that Berkley Insurance Company, a Corporation duly organized under the laws of the State of Delaware, 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.
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

BERKLEY INSURANCE COMPANY

of Delaware 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
Collectively Renewable A & H
Commercial Auto - Liability
Commercial Auto - No Fault
Commercial Auto - Physical Damage
Credit
Credit Accident & Health
Earthquake
Fidelity
Fire
Glass
Group Accident & Health
Guaranteed Renewable A & H
Inland Marine
Medical Malpractice
Multiple Peril - Commercial
Multiple Peril - Farmowners
Multiple Peril - Homeowners
Noncancellable A & H
Nonrenew-Stated Reasons (A&H)
Ocean Marine
Other Accident only
Other Liability
Private Passenger Auto - Liability
Private Passenger Auto - No Fault
Private Passenger Auto - Physical Damage
Surety
Workers Compensation

BERKLEY INSURANCE COMPANY certified in its annual statement to this Department as of December 31, 2017 that it has admitted assets in the amount of $18,358,561.611, liabilities in the amount of $12,878,958.730, and surplus of at least $5,479,602.882.

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

INS7230(Rev 6/2017)
BERKLEY INSURANCE COMPANY

STATUTORY BALANCE SHEET
DECEMBER 31, 2017
(AMOUNTS IN THOUSANDS)

Admitted Assets

Bonds $9,172,791
Common & Preferred Stocks 4,004,049
Cash & Short Term Investments 457,917
Premiums Receivable 1,599,047
Other Assets 3,124,758

Total Admitted Assets $18,358,562

Liabilities & Surplus

Loss & LAE Reserves $9,581,063
Unearned Premium Reserves 2,608,502
Other Liabilities 689,393

Total Liabilities $12,878,959

Common Stock $43,000
Preferred Stock 10
Additional Paid In Capital 2,862,717
Unassigned Surplus 2,573,876

Total Policyholders’ Surplus $5,479,603

Total Liabilities & Surplus $18,358,562

Officers:
President: William Robert Berkley, Jr.
Secretary: Ira Seth Lederman
Treasurer: Eugene George Ballard
Asst. Treasurer: Bertman Adam Braud, Jr.
Asst. Treasurer: Ann Marie Collins
Asst. Treasurer: Susan Paula Tingleff

Directors:
William Robert Berkley (Executive Chairman)
William Robert Berkley, Jr.
Ira Seth Lederman
Eugene George Ballard
Richard Mark Baio
Paul James Hancock
Carol Josephine LaPunzina
BID BOND

Amount $99,004.79

Ve, the undersigned, are held and firmly bound unto the City of Dayton, Ohio in the sum

$99,004.79

Dollars, for the payment of which well and truly to be made, we hereby, jointly and

equally, 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,

R.B. Jergens Contractors, Inc.

amed 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.

igned at Dayton, Ohio, this 15th day of April, 2021.

R.B. Jergens Contractors, Inc.

Vic Roberts, P.E., Vice Pres

Berkley Insurance Company

Nicole A. Laber

Surety

Marsh & McLennan Agency LLC

Attorney-In-Fact

Name of Insurance Agency

P.O. Box 37, Dayton, Ohio 45401

Address of Insurance Agency

Telephone (937) 228-4135 FAX (212) 948-6401
I, Judith French, 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

BERKLEY INSURANCE COMPANY

of Delaware 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
Collectively Renewable A & H
Commercial Auto - Liability
Commercial Auto - No Fault
Commercial Auto - Physical Damage
Credit
Credit Accident & Health
Earthquake
Fidelity
Fire
Glass
Group Accident & Health
Guaranteed Renewable A & H

Inland Marine
Medical Malpractice
Multiple Peril - Commercial
Multiple Peril - Farmowners
Multiple Peril - Homeowners
Noncancellable A & H
Nonrenew-Stated Reasons (A&H)
Ocean Marine
Other Accident only
Other Liability
Private Passenger Auto - Liability
Private Passenger Auto - No Fault
Private Passenger Auto - Physical Damage
Surety
Workers Compensation

BERKLEY INSURANCE COMPANY certified in its annual statement to this Department as of December 31, 2020 that it has admitted assets in the amount of $21,499,721,230, liabilities in the amount of $15,311,600,566, and surplus of at least $6,188,120,664.

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused my seal to be affixed at Columbus, Ohio, this day and date.

Judith French, Director
BERKLEY INSURANCE COMPANY

STATUTORY BALANCE SHEET
DECEMBER 31, 2019
(AMOUNTS IN THOUSANDS)

<table>
<thead>
<tr>
<th>Admitted Assets</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Bonds</td>
<td>$ 9,464,380</td>
</tr>
<tr>
<td>Common &amp; Preferred Stocks</td>
<td>4,216,035</td>
</tr>
<tr>
<td>Cash &amp; Short Term Investments</td>
<td>828,890</td>
</tr>
<tr>
<td>Premiums Receivable</td>
<td>1,771,259</td>
</tr>
<tr>
<td>Other Assets</td>
<td>3,613,986</td>
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</table>

| Total Admitted Assets            | $ 19,894,550 |

<table>
<thead>
<tr>
<th>Liabilities &amp; Surplus</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Loss &amp; LAE Reserves</td>
<td>$ 10,255,713</td>
</tr>
<tr>
<td>Unearned Premium Reserves</td>
<td>2,815,353</td>
</tr>
<tr>
<td>Other Liabilities</td>
<td>810,422</td>
</tr>
</tbody>
</table>

| Total Liabilities                | $ 13,881,488 |

| Common Stock                     | $ 43,000 |
| Preferred Stock                  | 10 |
| Additional Paid In Capital       | 2,914,492 |
| Unassigned Surplus               | 3,055,560 |

| Total Policyholders’ Surplus     | $ 6,013,062 |

| Total Liabilities & Surplus      | $ 19,894,550 |

**Officers:**
- President: William Robert Berkley, Jr.
- Secretary: Ira Seth Lederman
- Treasurer: Richard Mark Baio
- Asst. Treasurer: Bertman Adam Braud, Jr.
- Asst. Treasurer: Ann Marie Collins
- Asst. Treasurer: Susan Paula Tingleff

**Directors:**
- William Robert Berkley
  (Executive Chairman)
- William Robert Berkley, Jr.
- Ira Seth Lederman
- Richard Mark Baio
- Paul James Hancock
- Carol Josephine LaPunzina
- James Gerald Shiel
POWER OF ATTORNEY

BERKLEY INSURANCE COMPANY

WILMINGTON, DELAWARE

NOTICE: The warning found elsewhere in this Power of Attorney affects the validity thereof. Please review carefully.

KNOW ALL MEN BY THESE PRESENTS, that BERKLEY INSURANCE COMPANY (the “Company”), a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in Greenwich, CT, has made, constituted and appointed, and does by these presents make, constitute and appoint: Jennifer Salm; Nicole A. Lasser; Katherine J. Scoberry; or Amanda L. Brownough of Marsh & McLennan Agency LLC of Dayton, OH its true and lawful Attorney-in-Fact, to sign its name as surely only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of Financial Guaranty Insurance, providing that no single obligation shall exceed One Hundred Million and 00/100 U.S. Dollars (U.S.$100,000,000.00), to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof. This Power of Attorney is granted pursuant to the following resolutions which were duly and validly adopted at a meeting of the Board of Directors of the Company held on January 25, 2010:

RESOLVED, that, with respect to the Surety business written by Berkley Surety, the Chairman of the Board, Chief Executive Officer, President or any Vice President of the Company, in conjunction with the Secretary or any Assistant Secretary are hereby authorized to execute powers of attorney authorizing and qualifying the attorney-in-fact named therein to execute bonds, undertakings, recognizances, or other suretyship obligations on behalf of the Company, and to affix the corporate seal of the Company to powers of attorney executed pursuant hereto; and said officers may remove any such attorney-in-fact and revoke any power of attorney previously granted; and further

RESOLVED, that such power of attorney limits the acts of those named therein to the bonds, undertakings, recognizances, or other suretyship obligations specifically named therein, and they have no authority to bind the Company except in the manner and to the extent therein stated; and further

RESOLVED, that such power of attorney revokes all previous powers issued on behalf of the attorney-in-fact named; and further

RESOLVED, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal herein affixed this 21st day of September, 2020.

(Seal)

By
Ira S. Lederman
Executive Vice President & Secretary

Berkley Insurance Company

By
Jeffrey M. Hoffer
Senior Vice President

WARNING: THIS POWER INVALID IF NOT PRINTED ON BLUE “BERKLEY” SECURITY PAPER.

STATE OF CONNECTICUT)

COUNTY OF FAIRFIELD)

Sworn to before me, a Notary Public in the State of Connecticut, this 21st day of September, 2020, by Ira S. Lederman and Jeffrey M. Hoffer who are sworn to me to be the Executive Vice President and Secretary, and the Senior Vice President, respectively, of Berkley Insurance Company.

MAURICE R. WARDEN
Notary Public, State of Connecticut

APRIL 20, 2020

CERTIFICATE

I, the undersigned, Assistant Secretary of BERKLEY INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a true, correct and complete copy of the original Power of Attorney, that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.

Given under my hand and seal of the Company, this 15th day of

(Seal)

Vincent P. Forte

2021
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)

R.B. Jergens Contractors, 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

By: ______________________________
(signature)

Title: Vic Roberts, P.E., Vice President

Date: 4/15/2021
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.

R.B. Jergens is a union contractor.

All benefits are paid through the union

the employees are a member of.

(Operators, Laborers)


B. Please identify any “bona fide apprentice training program” in which this company participates in accordance with the Ohio Bureau of Apprenticeship Training and the U. S. Department of Labor.

R.B. Jergens is a union contractor.

(Operators, Laborers)

All Apprenticeship Training is through

the union the employee is a member.


C. Please provide a list of subcontractors whose quotes or information are included or used in the bid submitted for this project.

Ebony Construction

Security Fence Group

First Star Safety

Aero-Mark

Pavement Technology
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.

<table>
<thead>
<tr>
<th>Enterprise Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ebony Construction</td>
</tr>
<tr>
<td>Tall View Palladium</td>
</tr>
<tr>
<td>Kes Harris Trucking</td>
</tr>
<tr>
<td>Bansal</td>
</tr>
</tbody>
</table>

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.

<table>
<thead>
<tr>
<th>Violation Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
</tr>
</tbody>
</table>


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:

______________ being duly sworn, deposes and states as follows:

Vic Roberts, P.E.

1. I am duly authorized to make the statements contained herein on behalf of
   R.B. Jergens Contractors, Inc. (“the Contracting Party”).

2. The Contracting Party is 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: [Signature]

Title: Vic Roberts, P.E., Vice President
CITY OF DAYTON
CONTRACTOR NON-COLLUSION AFFIDAVIT

STATE OF ____________  )
COUNTY OF ____________  )

Vic Roberts, P.E._____________, being first duly sworn deposes and
states that:

(1) He/she is _______________ Vice President ____________________________
   (owner, partner, officer, representative, or agent)
   R.B. Jergens Contractors, Inc.____________________ that
   (business or organization name)

(2) He/She is fully informed respecting the preparation and contents of the attached Bid
   and all pertinent circumstances respecting such Bid.

(3) Such offering is genuine and is not a collusive or sham offering

(4) Neither the said Bidder nor any of its officers, partners, owners, agents,
    representatives, employees or parties in interest, including this affiant, has in any way
    colluded, conspired, connived, or agreed, directly or indirectly with any other Bidder, firm
    or person to submit a sham Bid in connection with the Contract for which the attached Bid
    has been submitted or to refrain from offering in connection with such contract, or has in
    any manner, directly or indirectly, sought by agreement or collusion or communication or
    conference with any other Bidder, or to secure through collusion, conspiracy, connivance
    or unlawful agreement any advantage against the City of Dayton, its employees, or
    citizens.

(5) The price or prices quoted in the attached Bid are fair and proper and are not tainted
    by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder
    or any of its agents, representatives, owners, employees, or parties in interest including
    the affiant.

SIGNED

Vic Roberts, P.E., Vice President

TITLE
AFFIRMATIVE ACTION PROGRAM
EQUAL EMPLOYMENT OPPORTUNITY

PROJECT: Keowee Street Rehabilitation, Dayton, Ohio

During the performance of this contract:

R.B. Jergens Contractors, Inc. 11418 N. Dixie Dr., Vandalia, OH 45377 937-669-9799 / 937-669-0301
CONTRACTOR ADDRESS TELEPHONE / FAX

being the general contractor, assumes the responsibility and obligation to institute an Affirmative Action Program which complies with revised City Ordinances 24059 and 26090 and Executive Order 11246 on any city, federal or federally-assisted construction project, to insure Equal Employment Opportunity regardless of race, color, religion, sex, national origin, ancestry, place of birth, age, or marital status.

The successful contractor using one or more trades of construction employees must comply with Part I of these Affirmative Actions Program conditions to each such trade.

Part I: Requirements. To be eligible for award of a contract under this Invitation to Bid, contractors must certify as prescribed in Paragraph 1a, of the certification specified in Part II hereof that it adopts the minimum goals and timetables of minority and female worker utilization, and specific Affirmative Action steps set forth in Sections 1 and 2 of this Part I.

1.) Goals & Timetables. The goals of minority and female worker utilization required of the contractor are applicable to each trade which will be used on any project in Greene, Miami, Montgomery, and Preble Counties, OH (hereinafter the Economic Area).

The required goals and timetables are as follows:

| Goals of Minority Worker Utilization Expressed in Percentage Terms |
| From 1/1/2000 to Present | 11.5% |

| Goals of Female Worker Utilization Expressed in Percentage Terms |
| From 4/1/80 to Present | 6.9% |
The percentage goals of minority and female worker utilization are expressed in terms of working hours of training and employment as a proportion of the total working hours to be worked by the contractor's entire work force in that trade on all projects (both federal and non-federal) in the Economic Area during the performance of this contract. The working hours for minority and female work and training must be uniform throughout the length of this contract, on all projects and for each of the trades. Further, the transfer of minority and/or female or trainee from employer-to-employer or from project-to-project for the sole purpose of meeting the contractor's goals shall be a violation of this Affirmative Action Program.

In reaching the goals for minority and female utilization, every effort shall be made to find and employ qualified journey-persons. Provided, however, and pursuant to the requirements of the Department of Labor Regulations, 29 CFR 5a.3, twenty-five percent (25%) of apprentices or trainees shall be employed on all projects and shall be in their first year of training, where feasible.

In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and/or trainees at the completion of the training subject to the availability of employment opportunities. Apprentices and trainees must be trained pursuant to programs which have been approved by The U.S. Department of Labor and/or The State of Ohio.

A contractor shall be deemed to be in compliance with the terms and requirements of this Part I by the employment and training of minorities and females in the appropriate percentage of the contractor's aggregate work force in the 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

R.B. Jergens Contractors, Inc. (Contractor) certifies

that:

1. The following listed construction trades will be used in performance of this project.
   Operators
   Laborers

   a) as to those trades set forth in the preceding paragraph one hereof, it adopts the
   minimum minority and female utilization goals and the specific Affirmative Action steps
   contained in this Affirmative Action Program. Compliance is measured in each trade of
   the contractor's aggregate work force for all construction work (both federal and non-
   federal) in the four Counties (Greene, Miami, Montgomery and Preble) subject to this
   Affirmative Action Program; and

   b) the successful contractor will obtain from each subcontractor and submit to the
   contracting or administering agency prior to the award of any subcontract under this
   contract, the subcontractor certification required by the Affirmative Action Program.

SIGN:

(Signature of Authorized Representative of Bidder)  Vic Roberts, P.E., Vice President

FAILURE TO SIGN AND SUBMIT THIS DOCUMENT WITH YOUR BID
WILL RESULT IN YOUR BID NOT BEING READ
PEP-CERTIFIED  SBE  (SELECT ONE) PARTICIPATION FORM

Instructions for Bidders / Proposalers: 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: R.B. Jergens Contractors, Inc.

Address:  
11418 N. Dixie Drive

City: Vandalia  
State: OH  
ZIP: 45377

Telephone: (937) 669-9799  
Email: ryan.wheeler@rbjergens.com

Primes Base Bid $856,346.65

Name of Project: Keowee Street Rehabilitation

SECTION 2: PEP-CERTIFIED BUSINESS & PARTICIPATION INFORMATION

Name of PEP-Certified Firm: First Star Safety

PEP-Certified Firm’s Tax ID#:  

Scope of Work to Be Performed by Certified Firm: Maintaining 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 $45,410.00</td>
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<td></td>
</tr>
<tr>
<td>Labor</td>
<td></td>
<td></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)  
Vic Roberts, P.E.

(Printed Name of Bidder/Proposer’s Authorized Agent)  
Vice President  
04/15/21

(Title of Bidder/Proposer’s Authorized Agent)  
(Date)

IF THE BIDDER/OFFEROR IS NOT AWARDED A CONTRACT, OR IF THE HRC DOES NOT APPROVE OF THE TERMS AS STATED ABOVE, THEN ANY AND ALL REPRESENTATIONS ON THIS PARTICIPATION FORM SHALL BE NULL AND VOID.
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: R.B. Jergens Contractors, Inc.
Address: 11418 N. Dixie Drive
City: Vandalia
State: OH
ZIP: 45377
Telephone: (937) 669-9799
Email: ryan.wheeler@rbjergens.com
Primes Base Bid: $856,346.65
Name of Project: Keowee Street Rehabilitation

SECTION 2: PEP-CERTIFIED BUSINESS & PARTICIPATION INFORMATION

Name of PEP-Certified Firm: Security Fence Group
PEP-Certified Firm's Tax ID#:
Scope of Work to Be Performed by Certified Firm: Guardrail & Detector Loops

<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>
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<td>Materials $</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Labor $</td>
<td></td>
<td></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)
Vic Roberts, P.E.

(Printed Name of Bidder/Proposer's Authorized Agent)
Vice President 04/15/21

(Date)

IF THE BIDDER/OFFEROR IS NOT AWARDED A CONTRACT, OR IF THE HRC DOES NOT APPROVE OF THE TERMS AS STATED ABOVE, THEN ANY AND ALL REPRESENTATIONS ON THIS PARTICIPATION FORM SHALL BE NULL AND VOID.
**PEP-CERTIFIED MBE**

**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: | R.B. Jergens Contractors, Inc. |
| Address: | 11418 N. Dixie Drive |
| City: | Vandalia |
| State: | OH |
| ZIP: | 45377 |
| Telephone: | (937) 669-9799 |
| Email: | ryan.wheeler@rbjergens.com |
| Primes Base Bid: | $856,346.65 |
| Name of Project: | Keowee Street Rehabilitation |

**SECTION 2: PEP-CERTIFIED BUSINESS & PARTICIPATION INFORMATION**

| Name of PEP-Certified Firm: | Ebony Construction Co. |
| PEP-Certified Firm's Tax ID#: | |
| 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>
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<td>$122,895.00</td>
<td>% 100.00</td>
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<tr>
<td>Materials</td>
<td>$</td>
<td>%</td>
</tr>
<tr>
<td>Labor</td>
<td>$</td>
<td>%</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)

Vic Roberts, P.E.

(Printed Name of Bidder/Proposer's Authorized Agent)

Vice President 04/15/21

(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.*
City Manager's Report

Date: May 19, 2021
Expense Type: Contract Modification
Total Amount: $675,750.00

From: 3210 - Aviation/AP Admin & Finance
Address: 6905 Rockledge Dr.
Bethesda, MD 20817

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aviation Operating</td>
<td>51000-3212-23351-43</td>
<td>$675,750.00</td>
</tr>
<tr>
<td>Aviation Expense</td>
<td>51000-3210-1425-43</td>
<td>$115,000.00</td>
</tr>
</tbody>
</table>

Includes Revenue to the City: Yes
Affirmative Action Program: N/A

Description:

FIRST AMENDMENT TO AMENDED AND RESTATLED MASTER LEASE AND CONCESSION AGREEMENT WITH HOST INTERNATIONAL, INC.

The Department of Aviation (Aviation) requests permission to amend the Amended and Restated Master Lease and Concession Agreement (Agreement) with Host International, Inc. (Host).

The original agreement covering the Operation of a Food/Beverage Concession at the Dayton International Airport was for a period of twelve (12) years, commencing January 1, 2001 and expiring December 31, 2013. The City approved the Amended and Restated Master Lease and Concession Agreement (Agreement) on October 9, 2008, and amended the Agreement on May 15, 2013, with a final termination date of December 31, 2020. The Agreement is currently on month-to-month as approved in the Agreement. An RFP was planned to be administered for all concession operations at the airport in 2020, however, due to the current economic climate, that was unattainable.

This First Amendment will extend the Agreement for a period of three (3) years, and, will coincide with the agreement of the other Master Concessionaire, Paradies-Dayton, Inc., therefore having a new expiration date of December 31, 2023. The minimum annual guarantee ("MAG") is abated and Host will continue to pay Periodic Rent as defined in this Amendment. This First Amendment will allow for Host to re-locate the Great American Bagel concept as required in the Airport Master Plan project and offer for the amortization of that investment. The City agrees to reimburse Host an amount not to exceed $75,000.00 for the required re-location. This also allows for Host to open a new Dunkin Donuts concept to replace the Starbucks concepts currently closed due to decreased travel. The City agrees to reimburse Host an amount not to exceed $40,000 for this new capital improvement. Further adjustments may need to be made as the economy and air service industry continues to be fluid in recovery. Market conditions permitting, an RFP may be completed in 2023 for all concession locations at the Airport. A Second Renewal Term option of two (2) years is included if circumstances do not return to a level where an RFP can be issued at that time. This First Amendment will generate an estimated additional $675,750.00 in rental revenue, and an estimated additional $724,500.00 if the Second Renewal Term is exercised. Host will be billed for utilities and property taxes based on actual charges.

The Department of Law has reviewed and approved the First Amendment as to form and correctness. A Certificate of Funds and two (2) Certificates of Revenue are attached.

Signatures/Approval

Approved by City Commission

Clerk

Date

FORM NO. MS-16

Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>x Contract Start Date</th>
<th>05/19/21</th>
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<tbody>
<tr>
<td>Expiration Date</td>
<td>12/31/23</td>
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<tr>
<td>Original Commission Approval</td>
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<td>Initial Encumbrance</td>
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<td>Original CT/CF</td>
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<tr>
<td>Increase Encumbrance</td>
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<td>Decrease Encumbrance</td>
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<td>Remaining Commission Approval</td>
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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

<table>
<thead>
<tr>
<th>Sequence 1</th>
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<td>Amount: $115,000.00</td>
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<p>| Amount: |
| Fund Code | 51000 - 3210 - 1425 - 43 - 60 |</p>
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<th>Acct</th>
<th>Prog</th>
<th>Act</th>
<th>Loc</th>
</tr>
</thead>
</table>

Attach additional pages for more FOAPALS

Vendor Name: Host International, Inc.
Vendor Address: 6005 Rockledge Dr. Bethesda, MD 20817
Federal ID: 52-1242334
Commodity Code: 91065
Purpose: This project under the First Amendment will re-locate the Great American Bagel concept ($75,000.00) and install a new Dunkin Donut concept ($40,000.00) in the Terminal at the Dayton International Airport in 2021.

Contact Person: Sarah Spees
Contact Person: Aviation
Department/Division: 454-8207
Date: 5/3/2021

SECTION II - to be completed by the Finance Department

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

Finance Director Signature:
Date: 5/1/2021
CF Prepared by: Laura Williams
Date: 5/1/2021
CF/CT Number: CTAI-2982

Finance Department
October 16, 20
May 3, 2021

TO: City Commission Office
City Manager's Office

FROM: Gilbert B. Turner, Director
Department of Aviation

SUBJECT: First Amendment to Aviation Concession Agreement,
Host International, Inc.

In June and December 2020, you received Memo's from Aviation giving you a summary of the global COVID situation and its’ direct effect on the Aviation industry concession operations, as well as the changes Aviation would need to make as a result. In summary, here are the specifics related to the food and beverage Master Concessionaire, Host International, Inc. Agreement:

- **Original Agreement Term** - 2001 – 2013 (12 years total)
- **Amended and Restated Master Lease, 2008**
  - Allowed for development, installation and construction of Quizno's, Boston Stoker Pre-Security, Starbucks on Concourse A, and refresh of 12th Fairway
- **Amended and Restated Master Lease, 2013**
  - Allowed for development, installation and construction of Chick-fil-A and Starbucks on Concourse B; Added 2 years to the Term, therefore now terminating 2020 (19 years total)

Both Master Concessionaire contracts expired 12/31/2020, and, Host is currently in month-to-month carryover, as stated in their agreement. As mentioned in previous communications, an RFP could not be administered due to the economic circumstances. We received approval from the FAA for a 3-year term extension, and an additional 2-year renewal for each operator. A proforma review of each operator identifies the need for the term to allow for return on capital expenditures with dramatically reduced organic growth. The Paradies-Cooper, LLC Amendment was approved by Commission on Feb. 24, 2021. Now presented to Commission for approval is the following for Host International, Inc.:

- **First Amendment, 2021**
  - 3-year term renewal, with additional 2-year renewal if conditions warrant; Great American Bagel concept moves location, as required in the Airport Master Plan
  - New concept Dunkin Donuts will be installed to replace Starbucks
  - Term still coincides with other Master Concessionaire, Paradies-Cooper, LLC, therefore now terminating 2023, or 2025 if the additional 2-year renewal is executed

Thank you for the effort and understanding City leadership has provided to work with the Department of Aviation specifically. If you would like further information, please contact me or Sarah Spees at sspees@flydayton.com.

GBT/sss

Attachments (CMR packet for Commission Approval May 12, 2021)

cc/ S. Spees
S. Beck
E. Fields
C. Winsatt
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information:  
Name: Host International, Inc.  
Address: Dayton International Airport  
City: Vandalia  
State: OH  
Zip+4: 45377  
Customer #: 8391138918  
Address Location #:  
Federal ID#: 52-1242334

Revenue Information:  
Fund: 51000  
Organization: 3212  
Revenue: 23351  
Program: 43

Contract Information:  
Contract Start Date: 5/1/2021  
Contract Expiration Date: 12/31/23

Billing Information:  
Rate: 7% Actual Gross  
Arrears:  
Pre-bill:  
Monthly (1st month of billing): June  
Quarterly (1st month of quarter):  
Semi-annual (1st month of half):  
Annual (1st month of billing):  
Other (explain):  
Rate Change Date: 1/1/23  
Rate Change Amount: 8% Actual Gross

Description of Services (wording on invoice):  
7% of Actual Monthly Gross Revenue at Dayton International Airport for years 1 (2021) and 2 (2022)  
8% of Actual Monthly Gross Revenue at Dayton International Airport for year 3 (2023)

Departmental Approval: [Signature]

TO BE COMPLETED BY FINANCE

Revenue Contract Number: 1-3898  
Auditor: Patricia Jones  
Date: 5/16/2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

Director of Finance: [Signature]  
Date: 5/13/2021
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information:
Name: Host International, Inc.
Address: 6905 Rockledge Dr.
City: Bethesda  State: MD  Zip+4: 20817
Customer #: 839278898  Address Location: #
Federal ID#: 52-1242334

Revenue Information:
Fund: 51000  Organization: 3212  Revenue: 23207**  Program: 43

Contract Information:
Contract Start Date: 5/1/2021  Contract Expiration Date: 12/31/23

Billing Information:
Rate: N/A  Arrears: X  Pre-bill: 
Monthly (1st month of billing) May - Cost of Utilities, Electricity**
Quarterly (1st month of quarter) July - Water & Sewer**
Semi-annual (1st month of half) January - Property Taxes*
Annual (1st month of billing) June - Property Charges*
Other (explain)
Rate Change Date: N/A  Rate Change Amount: N/A

Description of Services (wording on invoice):
Cost of Property Taxes; Water & Sewer; Electricity for Concourse Stores
Cost of Utilities: Montgomery County Property Charges

Departmental Approval

TO BE COMPLETED BY FINANCE

Revenue Contract Number: 1-3898-1  Auditor: Latonne Jones  Date: 5/16/2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable database and contains the terms and conditions necessary for collection.

Director of Finance
FIRST AMENDMENT TO
AMENDED AND RESTATED MASTER LEASE AND CONCESSION AGREEMENT
WITH HOST INTERNATIONAL, INC.

This First Amendment to Amended and Restated Master Lease and Concession Agreement ("First Amendment") is dated this ___ day of April, 2021 between the City of Dayton, Ohio (hereinafter referred to as "City") and Host International, Inc. (hereinafter referred to as "Concessionaire").

WHEREAS, On the 15th day of May, 2013, the Commission of the City of Dayton approved an Amended and Restated Master Lease and Concession Agreement (the "Agreement") at the James M. Cox Dayton International Airport ("Airport") between City and Concessionaire; and,

WHEREAS, The parties now mutually agree to further amend the Agreement to extend the termination date with the First Renewal Term (defined hereinbelow) due to the COVID-19 Pandemic and to allow for the amortization of the costs related to the relocation of the concession concept in the Airport Secure location M-1 "Great American Bagel Shop" to M-2. The parties further agree that Concessionaire shall add the concession concept "Dunkin Donuts" in the Airport Secure location M-4;

NOW, THEREFORE, in consideration of the mutual agreements herein contained and the mutual benefits derived, IT IS AGREED AS FOLLOWS:

1. Article III Concessionaire’s Obligation. The following section 3.5(a) is hereby added:

Section 3.5(a) Except as provided hereinbelow, the Concession Locations which are currently closed as of the date of this Amendment shall be reopened at such time and date mutually agreed to by the parties, and within fourteen (14) days of written notice of such provided by the City to the Concessionaire. The parties agree that Quizno’s (secure location B-1), Boston Stoker location (pre-security PS-1), Starbucks on A (secure location A-1) and Starbucks Kiosk on B (secure location B-1) will not be reopened. The Concessions Locations described hereinabove shall be removed as Concession Locations under the Agreement immediately upon execution of this Amendment, and those Concessions Locations shall be returned to the City as described in Article IX Section 9.9 of the Agreement. See Exhibit B attached hereto and incorporated herein.

(i) The parties agree that the new Concession Location PS-1A shall be added to the Agreement (currently the concession concept illy Coffee Kiosk), and this location shall open for business at such time and date to be mutually agreed to by the parties.

(ii) The parties agree that concession concept located in Location M-1, Great American Bagel Shop concept, shall relocate to Concession Location M-2, and open no later than ninety (90) days from execution of this Amendment. Upon completion of this relocation, Concession Location M-1 shall be removed as Concession Location under the Agreement as described above.
(iii) The parties also agree that Concessionaire shall add the concession concept "Dunkin Donuts" in Concession Location M-4, and open no later than December 1, 2021.

2. Article IV Financial Terms. The following section 4.1(c) is hereby added:

Section 4.1 (c) Beginning and including the month of April 2020, the MAG will be abated and the Concessionaire will pay Periodic Rent as defined in the current Agreement for the remainder of the current Lease Year and Term.

For each Lease Year in the First Renewal Term, the MAG will be abated and the Concessionaire will pay Periodic Rent determined as follows:

(i) Seven percent (7%) of Gross Receipts derived from all Concession Operations and the sale of all merchandise and alcoholic beverages at all Concession Locations for year one (1) of the First Renewal Term, except location PS-1A, which the City will exempt Concessionaire from paying Periodic Rent.

(ii) Seven percent (7%) of Gross Receipts derived from all Concession Operations and the sale of all merchandise and alcoholic beverages at all Concession Locations for year two (2) of the First Renewal Term;

(iii) Eight percent (8%) of Gross Receipts derived from all Concession Operations and the sale of all merchandise and alcoholic beverages at all Concession Locations for year three (3) of the First Renewal Term.

For each Lease Year in the Second Renewal Term (defined hereinbelow), the MAG will be abated and the Concessionaire will pay Periodic Rent determined as follows:

(iv) Eight percent (8%) of Gross Receipts derived from all food and non-alcoholic Concession Operations and the sale of all merchandise, and Twelve percent (12.0%) of Gross Receipts derived from the sale of alcoholic beverages at all Concession Locations for year one (1) and year two (2) of the Second Renewal Term.

The City agrees to defer Concessionaire payment of the monthly Periodic Rent for year one (1) of the First Renewal Term. Concessionaire agrees to make an annual Periodic Rent payment to the City, on or before January 1st of year two (2) equal to fifty-percent (50%) of the total deferred Periodic Rent from year one (1) and on or before January 1st of year three (3) equal to the balance due of the total deferred Periodic Rent from year one (1). These annual re-payments are in addition to the monthly Periodic Rent due for years two (2) and three (3). If Concessionaire (as relates to Concessionaire's operations at the Airport) or City receive Federal or State pandemic relief or recovery funding during any term of this Agreement, any amounts abated under this Amendment will, if eligible pursuant to the fund source, be counted as a City contribution to Concessionaire, and City will retain such funds as to make itself whole for any amounts abated hereunder.
3. **Article IX Construction: Capital Improvements.** The following sections 9.21 and 9.22 are hereby added:

Section 9.21 Concessionaire agrees to relocate the Great American Bagel Shop concept, as required in the Airport Master Plan project, from Airport Secure location M-1 to M-2. The Concessionaire must provide a detailed Scope of Work, including a timeline, budget estimates for such items as new signage, paint/wall coverings, equipment, plumbing, electrical, permitting, etc. The City will reimburse Concessionaire up to fifty percent (50%) of all costs associated with this project, up to a maximum of seventy-five thousand dollars ($75,000.00). The balance of all costs associated are the sole responsibility of the Concessionaire. Concessionaire must provide a detailed and audited report of all construction costs associated with this relocation for City approval prior to the City reimbursement. The Concessionaire must return the current Great American Bagel Shop M-1 location space to the City as described in Article IX Section 9.9 of the Agreement, upon the completion of the relocation. Such relocation shall commence immediately upon execution of this First Amendment and be completed within ninety (90) days. See Section 18.1 below.

Section 9.22 Concessionaire agrees to add the concession concept “Dunkin Donuts” in Concession Location M-4. The Concessionaire must provide a detailed Scope of Work, including a timeline, budget estimates for such items as new signage, paint/wall coverings, equipment, plumbing, electrical, permitting, etc. The City will reimburse Concessionaire up to forty-thousand dollars ($40,000.00) of all costs associated with this project. The balance of all costs associated are the sole responsibility of the Concessionaire. Concessionaire must provide a detailed and audited report of all construction costs associated with this relocation for City approval prior to the City reimbursement. This new concept must be completed and open for service no later than December 1, 2021. See Section 18.1 below.

4. **Article XVIII Conduct of Business.** The following section 18.1(a) is hereby added:

Section 18.1(a) The “First Renewal Term” shall be effective for a period of three (3) years commencing January 1, 2021 and terminating on December 31, 2023.

The “Second Renewal Term” shall be effective for a period of two (2) years commencing January 1, 2024 and terminating on December 31, 2025 shall be effective upon written notice from Concessionaire showing completion of Article IX as stated in this Amendment and on Exhibit B hereto attached.

All other provisions of the Agreement, except as changed or modified hereby, shall remain in full force and effect.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]
IN WITNESS WHEREOF, City and Concessionaire, each by a duly authorized representative, have executed this First Amendment as of the day and date first set forth above.

WITNESSED BY:

[Signature]

Philip Fletcher
Senior Paralegal

HOST INTERNATIONAL, INC.

By: 

[Signature]

JON W. STENTZ
SECRETARY

WITNESSED BY:

CITY OF DAYTON, OHIO

By: [Signature]

City Manager

APPROVED AS TO FORM AND CORRECTNESS:

E-SIGNED by Leonard Bazelak on 2021-05-04 18:10:18 GMT

City Attorney

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

_________________________, 2021

Min. / Bk. _____ Pg. _______

Clerk of the Commission
## Exhibit B

First Amendment Capital Improvements and Concept Changes

<table>
<thead>
<tr>
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<th>Scope of Work</th>
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<td>Host will relocate the Great American Bagel concept (current location M-1) to location M-2, and update all elements as required by Great American Bagel design standards. Must return M-1 space to the City as described in Article IX Section 9.9 of the Agreement. Must be completed and open within ninety (90) days of execution of this Amendment.</td>
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<tr>
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<td>Concourse A (A-1)</td>
<td>Host will remove all remaining items in location A-1 from the Starbucks concept, and, return A-1 space to the City as described in Article IX Section 9.9 of the Agreement. Must be completed by June 15, 2021.</td>
</tr>
<tr>
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<td>Host will remove all remaining items in location B-1 from the Quizno's concept, and, return B-1 space to the City as described in Article IX Section 9.9 of the Agreement. Must be completed by June 15, 2021.</td>
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<tr>
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<td>Host will remove all remaining items in location B-2 from the Starbucks Kiosk concept, and, return B-2 space to the City as described in Article IX Section 9.9 of the Agreement. Must be completed by June 15, 2021.</td>
</tr>
<tr>
<td>Other</td>
<td>All parties agree that all items listed on this Exhibit B must be completed as stated, or the Second Renewal Term will not be effective.</td>
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All parties also agree that Host Concessionaire is responsible for all costs associated with these Capital Improvements.

The City of Dayton, Department of Aviation agree to reimburse Concessionaire up to fifty (50%) of all costs associated with the Main Terminal M-1, M-2 project, up to a maximum of seventy-five thousand dollars ($75,000.00). The City also agrees to reimburse Concessionaire up to forty-thousand dollars ($40,000.00) of all costs associated with the Main Terminal M-4 project.

Concessionaire must provide a detailed and audited report of all construction costs associated with these projects for City approval prior to the City reimbursement.

April, 2021
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AMENDED AND RESTATED MASTER LEASE AND CONCESSION AGREEMENT
WITH HOST INTERNATIONAL, INC.

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   [THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]
IN WITNESS WHEREOF, City and Concessionaire, each by a duly authorized representative, have executed this First Amendment as of the day and date first set forth above.

WITNESSED BY:

[Signature]

PHILIP FLETCHER Paralegal

HOST INTERNATIONAL, INC.

By:

[Signature]

JON W. STENTZ SECRETARY

WITNESSED BY:

CITY OF DAYTON, OHIO

City Manager

APPROVED AS TO FORM AND CORRECTNESS:

E-SIGNED by Leonard Bazelak on 2021-05-04 18:10:18 GMT
City Attorney

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

[Signature]

Min. / Bk. _____ Pg. ________

Clerk of the Commission
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**First Amendment Capital Improvements and Concept Changes**

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April, 2021
AMENDED AND RESTATED MASTER LEASE
AND CONCESSION AGREEMENT

BY AND BETWEEN

CITY OF DAYTON, OHIO

AND

HOST INTERNATIONAL, INC.
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household, guardian or representative, or with respect to which or whom the specified Person acts or serves in a similar capacity; (iv) any Person, who, directly or indirectly, is the legal or beneficial owner of or controls ten percent (10%) or more of the equity ownership interests of the specified Person; and (v) any Person who is an Affiliate as defined in the preceding clauses (i), (ii), (iii) or (iv) of an Affiliate of the specified Person.

"Air Transportation Company" means a company engaged in the business of scheduled or non-scheduled commercial transportation by air of persons at the Airport.

"Aircraft" has the meaning assigned thereto in Section 24.27 hereof.

"Airport Security Plan" means a program developed by City for the maintenance of the safety and security of the Airport and Persons using the Terminal or any other portion of the Airport premises, as it may be amended, modified or revised by City from time to time. The Airport Security Plan is a part of the Rules and Regulations.

"Applicable Laws" means all present and future applicable laws, ordinances, orders, directives, rules, codes and regulations of all Governmental Authorities and all present and future grant assurances provided by City to any Governmental Authority in connection with City’s ownership or operation of the Airport, as the same may be amended, modified or updated from time to time, applicable decisional law (including, without limitation, judicial or administrative interpretations, orders and judgments) and the Rules and Regulations.

"Architect/Engineer" means the licensed firm or firms engaged by Concessionaire or other Concession Operator from time to time, and approved by City, to design and prepare the plans and specifications for improvements to the Premises.

"Assistant Concession Manager" means the natural person employed by Concessionaire to assist the Concession Manager with managing and overseeing the day-to-day management of Concession Operations, as further described in Section 3.3 hereof.

"Auto Coverage" has the meaning assigned thereto in Section 14.3 hereof.

"Base Building Work" means the sub-floor, structural elements, demising walls at the exterior of a Concession Location, utilities infrastructure and other base building improvements, structures and fixtures that City installs within the Concession Locations.

"Business Day" shall mean any calendar day other than a Saturday, a Sunday or a day on which national banks are not required or authorized by law to remain closed.

"CGL Coverage" has the meaning assigned thereto in Section 14.1 hereof.

"Capital Improvements" means the improvements, structures and fixtures installed by Concessionaire and/or any Concession Operator in the Premises, including, without limitation, finish-out work on floors, ceilings, demising walls and store facades; storefront signage; panel boxes and hook-ups to utilities; wires and conduits infrastructure; decorations; furniture; equipment; shelves; counters; cash wraps; lighting; and interior design and construction work necessary in general to accommodate the Concession Operations.
"Construction Period Capital Improvements" means the Capital Improvements to the Concession Locations described in Exhibit B attached hereto and incorporated herein.

"Construction Representative" means a Person retained by Concessionaire to manage construction and renovation activities within the Premises by Concessionaire and the Concession Operators.

"Construction Permit" means an authorizing document permitting certain construction work to be performed within specified portions of the Premises in accordance with the terms thereof.

"DBE" means a business entity, whether a sole proprietorship, partnership, corporation or other entity, of which at least fifty-one percent (51%) of the ownership thereof is owned and controlled by a "socially and economically disadvantaged individual" as such term is defined in the Airport and Airways Improvement Act of 1982, as amended, and the regulations promulgated pursuant thereto in 49 C.F.R. Part 23, as amended. To qualify as a DBE, a business entity must meet the experience and economic guidelines for an “Airport Concession Disadvantaged Business Enterprise” set forth in 49 C.F.R. Part 23, as amended, and must be certified by City as a DBE.

"Day" means a calendar day of twenty-four (24) hours measured from midnight to the next midnight.

"Depreciation Schedule" means a schedule reflecting the monthly depreciation of the costs for Capital Improvements (excluding City-Financed Improvements) made by Concessionaire or a Concession Operator in or to the Premises, which schedule is subject to approval by City and shall reflect depreciation on a straight-line basis of the property described therein over the portion of the Term remaining at the time City provides such approval. Any schedule submitted for this purpose shall not be deemed a “Depreciation Schedule” until City has approved it, which approval City shall not unreasonably withhold.

"EPA" means the United States Environmental Protection Agency, and any successor agency, office or department thereto.

"Eligible Costs" means the following: (i) Construction Costs; (ii) architectural and engineering fees, construction management fees and the cost to obtain applicable permits (which amounts under this item (ii) shall not exceed fifteen percent (15%) of the contracted Construction Costs, unless otherwise approved by City in writing); and (iii) the cost of permanent fixtures. Notwithstanding the foregoing, the definition of “Eligible Costs” shall not include: (a) costs for Base Building Work incurred by City; (b) any overhead, financing costs (e.g., loan origination fees or interest, points, legal fees or any non-construction-related costs) in connection with such Capital Improvements; or (c) amounts paid to any Affiliate of Concessionaire or a Concession Operator, unless otherwise specifically approved by City in writing. In addition, a cost or expenditure shall not qualify as an “Eligible Cost” unless Concessionaire submits to City documentary evidence of the payment thereof, as described in Section 9.5 hereof.
(a) Proceeds from the sale of gift and merchandise certificates (but only when such certificates are treated as a sale from the Concession Location pursuant to the applicable Concession Operator’s record-keeping system);

(b) Mail order sales arising out of preliminary contacts made at Airport facilities;

(c) Catalog sales (catalogs displayed in a Concession Location must include a tracking number unique to the Concession Location that allows for an auditable method for tracking such sales);

(d) Computer/Internet sales for delivery at the Airport or when products or merchandise to fill such orders are taken from Airport locations;

(e) Other electronic or telephone orders received or filled by a Concession Operator at the Airport;

(f) Deposits not refunded to purchasers;

(g) Orders taken within a Concession Location (although such orders may be filled elsewhere);

(h) Sales of Catering Services; and

(i) Sales through vending machines or other devices located within the Concession Locations.

A “sale” shall be treated as consummated, and a service shall be deemed rendered, for the purposes of this definition, and the entire amount of the sales price shall be included in “Gross Receipts” and deemed received, at the time of determination of the amount due for each transaction, whether for cash, credit or otherwise, and not at the time of payment. No deduction shall be allowed for uncollected or uncollectible credit accounts or checks returned for insufficient funds. “Gross Receipts” shall not include:

A. Any sums collected for any federal, state, county or municipal sales taxes, so-called luxury taxes, use taxes, consumer excise taxes, gross receipts taxes and other similar taxes now or hereafter imposed by law upon the sale of products, merchandise or services, but only if separately stated from the sales price and only to the extent paid by a Concession Operator to any duly constituted Governmental Authority;

B. The exchange of products or merchandise between the stores or warehouses owned by or affiliated with a Concession Operator, if any, where such exchanges of products or merchandise are made solely for the convenient operation of the business of such Concession Operator and not for the purpose of consummating a sale which has heretofore been made at, in, from or upon a Concession Location nor for the purpose of decreasing payments otherwise due to City hereunder which otherwise would be made at, in, from or upon a Concession Location;
diesel fuel, lubricating oils and solvents, urea formaldehyde, flammable explosives, PCBs, radioactive materials or waste, and any other substance that, because of its quantity, concentration or physical, chemical or infectious characteristics, may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, distributed, disposed or released.

"Indemnified Parties" means City and its elected officials, officers, employees, agents, servants, representatives, contractors, subcontractors, Affiliates, successors and assigns.

"Insurance Coverages" has the meaning assigned thereto in Section 14.5 hereof.

"Interim Concession Program" means the concession and construction program as prepared by Concessionaire in accordance with Section 3.4(a) hereof and approved by City, and as modified from time to time, for the operation and development of Concession Operations during the Construction Period.

"Kiosk" means a site within the Premises that is a mobile or non-mobile, free-standing temporary facility not affixed to the Terminal, whether completely free-standing or located against the wall, which is used as a selling location for products, merchandise or services during the Construction Period.

"Landside" means all parts of the Terminal not located within the Non-Public Area or the Secured Area.

"Lease Year" means each twelve (12) calendar month period commencing on January 1 of each calendar year and ending on December 31 of each calendar year.

"MAG" means the minimum amount payable by Concessionaire to City as Periodic Rent for the Premises during the Term as set forth herein. The MAG shall equal the greater of the following amounts per Lease Year: (i) Three Hundred Twenty-Five Thousand and No/100 Dollars ($325,000.00) or (ii) eighty percent (80%) of the aggregate Periodic Rent due hereunder for the immediately preceding Lease Year.

"Midterm Renovations" means Capital Improvements to the Concession Locations to be completed during the Lease Year commencing January 1, 2014, pursuant to which Concessionaire shall spend, or shall cause the Concession Operators of such Concession Locations to spend, not less than a total of Three Hundred Twenty-Five Thousand and No/100 Dollars ($325,000.00) in Eligible Costs to refurbish, renovate and remodel the Concession Locations.

"Minimum Rating" means a rating (if A.M. Best Company is the Rating Service) of A-(Financial Size: X) based upon the criteria for financial strength and financial size ratings utilized by A.M. Best Company on the date of this Agreement, or such equivalent rating (if A.M. Best Company is not the Rating Service or if A.M. Best Company subsequently revises its criteria for financial strength and financial size ratings) as determined by City.
(a) If an entity of the same business, franchise or trade name as such Concession Location operates at one or more non-Airport locations within the greater Dayton, Ohio metropolitan area, the Price Comparison Location shall mean such non-Airport location designated by Concessionaire and approved by City; or

(b) If an entity of the same business, franchise or trade name as such Concession Location does not operate within the greater Dayton, Ohio metropolitan area, Concessionaire shall propose to City a comparable location closest to the greater Dayton, Ohio metropolitan area, which City shall review and, if approved by City, such location shall be the Price Comparison Location. City agrees not to unreasonably withhold its approval of any such comparable location proposed by Concessionaire as the Price Comparison Location.

A request for a change to the Price Comparison Location for a particular good, product or service shall be provided to City for its approval, which City shall not unreasonably withhold, and shall become effective only upon receipt of City's approval.

"Rating Service" means A.M. Best Company, or, if A.M. Best Company no longer exists or discontinues its rating of insurance companies, such alternative rating service for insurance companies as determined by City.

"Reasonable Pricing" shall have the meaning set forth in Section 7.1 hereof.

"Real Property Taxes" means any form of real property taxes and other governmental charges or impositions of any kind, including, without limitation, ad valorem taxes, special assessments and liens for public improvements, that are levied, assessed or imposed against real property or real property interests by any Governmental Authority.

"Releasing Parties" has the meaning assigned thereto in Section 24.27 hereof.

"Rent" means the Periodic Rent, the Additional Rent and any other charges due from Concessionaire to City hereunder.

"Report" shall have the meaning assigned thereto in Section 13.2 hereof.

"Rules and Regulations" means those rules, procedures and regulations promulgated by City from time to time for the orderly use of the Airport, as the same may be amended, modified or supplemented from time to time, and including, without limitation, the Airport Security Plan.

"Secured Area" means all non-public areas of the Airport beyond the passenger security checkpoint, including the designated "SIDA" and the "AOA", as these terms are defined in 49 C.F.R. Part 1542, as amended or replaced from time to time, and the Airport Security Program, to which an individual does not have access without a Secured Area Identification Badge.

"Secured Area Identification Badge" means the Airport's security identification badge required by City and issued by City to an individual for access to the Non-Public Area and the Secured Area.
Section 2.2 Concession Locations. Each of the Concession Locations identified below and as shown on Exhibit A hereto is leased to Concessionaire as of the Effective Date; provided, however, that Concessionaire shall have no right to use, possess or occupy a Concession Location (or a portion thereof not presently occupied under the Original Concession Agreement by Concessionaire on the Effective Date) until City permits Concessionaire (or a Concession Operator) to send construction workers therein to commence the construction of the Construction Period Capital Improvements therein in accordance with the terms and provisions of this Agreement:

<table>
<thead>
<tr>
<th>Concession Location</th>
<th>Approximate Square Footage</th>
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</thead>
<tbody>
<tr>
<td>PS-1</td>
<td>1,000</td>
</tr>
<tr>
<td>M-1</td>
<td>2,395</td>
</tr>
<tr>
<td>M-2</td>
<td>1,400</td>
</tr>
<tr>
<td>M-3</td>
<td>11,290</td>
</tr>
<tr>
<td>M-4</td>
<td>600</td>
</tr>
<tr>
<td>B-1</td>
<td>720</td>
</tr>
<tr>
<td>B-3</td>
<td>1,708</td>
</tr>
<tr>
<td>C-1</td>
<td>838</td>
</tr>
<tr>
<td>C-3</td>
<td>2,100</td>
</tr>
</tbody>
</table>

Concessionaire shall move as expeditiously as possible in the development, renovation and construction of Construction Period Capital Improvements within the Concession Locations; provided, however, that City recognizes that, during the Construction Period, it may be necessary for Concessionaire and the Concession Operators to utilize a program of temporary Kiosks to provide adequate levels of customer service to Airport users in accordance with Concessionaire’s Interim Concession Program. Sizes of Concession Locations set forth above and shown on Exhibit A hereto are approximate. Concessionaire is responsible for the coordination, design and completion of such Concession Locations with the Capital Improvements. Except as set forth below, no portion of a Concession Location may be used for storage, office or non-revenue generating functions without the prior written consent of City:
Concessionaire for the remaining un-depreciated portion of the affected Capital Improvements within such Concession Location (excluding City-Financed Improvements) based upon the Depreciation Schedule therefor. If City exercises its right to delete or reduce space from the Premises, the portion of the Premises to be reduced shall cease to be leased to Concessionaire and shall no longer be subject to the terms and provisions of this Agreement. In addition, if City requires deletion or reduction of the Premises, City shall not be liable to Concessionaire or any Concession Operator for any damages, including, without limitation, damages for any inconvenience or loss of business as a result of the deletion or reduction of any Premises, except for the reimbursement of the un-depreciated cost of Capital Improvements (excluding City-Financed Improvements) as expressly set forth in this Section 2.4. If any deletion or reduction of the Premises under this Section 2.4 results in a reduction of greater than fifteen percent (15%) of the total square footage of the Concession Locations leased to Concessionaire or includes any entire Concession Location, then the MAG will be decreased in proportion to the amount of such percentage reduction until space of similar square footage is provided by City to Concessionaire for use in or as one or more Concession Locations.

Section 2.5 Concession Numbering. Concessionaire shall assign to each business conducting Concession Operations a unique concept number for the purpose of tracking its productivity, and such unit number will follow such business regardless of where it is located within the Terminal. If a Concession Operator has Concession Operations within multiple Concession Locations, the business conducted within each Concession Location shall receive a separate number, regardless of whether one or more such businesses are operated by the same Concession Operator or under the same food and/or beverage concept.

ARTICLE III
CONCESSIONAIRE'S OBLIGATIONS

Section 3.1 General Operational Standards. Concessionaire shall develop the Concession Locations and manage the Concession Operations so as to provide high quality, customer service-oriented food and beverage concessions within the Premises to accommodate the traveling public and other Airport users. Development and management of the Concession Locations shall be the responsibility of Concessionaire, notwithstanding the execution of one or more Subleases with respect to Concession Locations in accordance with the terms and provisions of this Agreement.

Section 3.2 Concession Management. Concessionaire shall perform the following duties, subject to the terms and provisions of this Agreement:

(a) Prepare the Plans as required in Section 9.1 hereof;

(b) Coordinate its subleasing activities with City and submit each proposed Sublease and supporting documentation therefor to City at least thirty (30) days prior to the date on which the proposed Sublessee thereunder proposes to commence the construction and renovation of the Concession Location that is the subject of such proposed Sublease. The term of any Sublease may not extend beyond the expiration of the Term. City will provide its approval or rejection of a proposed Sublease within
(n) Maintain and develop, and cause each of the Concession Operators to maintain and develop, programs to increase the business conducted within each Concession Location(s) in which it conducts Concession Operations. All Concession Locations shall be operated: (i) in a First Class Manner seven (7) days a week, every day of the year (unless otherwise agreed by City or prevented by Force Majeure) and during the hours specified in Section 3.5 hereof; (ii) in accordance with the terms and provisions of this Agreement and Applicable Laws; and (iii) in a manner otherwise consistent with the requirements prescribed by City in accordance with City's own determination of its operational needs within the Terminal. Concessionaire shall establish reasonable procedures for all Concession Operators to meet high quality customer service standards, to adjust (with City approval) the opening and closing times of Concession Locations based on daily flight schedules, and to receive from City and to disseminate schedule changes, weather or maintenance delays and other flight information that will require adjustments in Concession Operations to meet such customer service standards; provided, however, that, notwithstanding the foregoing, upon the expiration or early termination of a Sublease, Concessionaire may leave the Concession Location subject thereto vacant on an interim basis, but in any event, Concession Operations within such Concession Location must be recommenced within not less than thirty (30) days after the cessation of Concession Operations therein. Concessionaire's failure to cause the re-commencement of Concession Operations within any vacated Concession Location will not result in a reduction of the MAG owed to City. In addition, if such Concession Location vacated by a Sublessee has not re-opened for business within such thirty (30) day period, then City may reclaim such Concession Location and remove it from the Premises with no reduction in the MAG. City may offer any such Concession Location so reclaimed by City to others to develop, lease, operate or manage a concession operation therein;

(o) Serve as the project manager and provide the management, administration and coordination of all design and construction associated with the maintenance, repair and/or subleasing of the Premises, including, without limitation, all Capital Improvements to be constructed, installed or completed within the Concession Locations, whether initial construction and alterations associated with any expansion, redevelopment or refurbishment of the Premises or future construction and alterations and including cleaning and maintenance of external design elements installed;

(p) Have the right, but not the obligation, to finance the improvement, construction and equipping of any Capital Improvements pursuant to such financing arrangements as Concessionaire may determine; provided, however, that, (i) although City shall not be a party to such agreements or responsible in any manner for the performance or enforcement thereof, no improvement, construction or equipping of any part of the Premises may be commenced until City shall have reviewed and approved such financing arrangement for the applicable portion of the Premises; (ii) if Concessionaire finances a Concession Operator's costs of improving, constructing or equipping a Concession Location in accordance with the terms and provisions of this Agreement, Concessionaire's right to repayment or reimbursement under such financing arrangement shall be junior and subordinate in all respects to any obligation of such Concession Operator to City (and Concessionaire agrees to execute any such additional instruments or agreements evidencing such subordination as City may require); and (iii)
(z) Answer, and cause any affected Concession Operator to answer, all written customer complaints within five (5) days after the receipt thereof, and provide to City copies of all complaints to Concessionaire or any Concession Operator and the answer thereof or before the last day of the calendar month in which such answer was provided;

(aa) Participate in meetings with City staff representatives to discuss operational issues not less frequently than monthly; and

(bb) At the request of City, Concessionaire will construct and/or remove offices and/or facilities that are displaced as a result of Construction Period Capital Improvements.

Section 3.3 Concessionaire Staff. Concessionaire shall employ, at no cost to City, at least one (1) full-time, dedicated, on-site Concession Manager, and at least two (2) full-time, dedicated, on-site Assistant Concession Managers. The individual whom Concessionaire proposes to employ as the Concession Manager is subject to the prior approval of City. The Concession Manager and Assistant Concession Managers shall serve as liaisons with City and Concession Operators and have sufficient authority and support staff and appropriate equipment, supplies and means to manage and perform the development, management, maintenance, repair and other functions and obligations of Concessionaire with respect to the Premises, including, without limitation, the obligation to administer the Subleases and other contracts to which Concessionaire is a party, to monitor and enforce compliance by Sublessees with their Subleases and this Agreement, and to resolve operational issues that do not require the execution of an amendment to this Agreement. The Concession Manager and the Assistant Concession Managers shall use commercially reasonable efforts to remedy any problem or issue raised by Airport patrons with respect to Concession Operations within the Premises. Unless otherwise approved in writing by City, the Concession Manager or an Assistant Concession Manager shall be available twenty-four (24) hours per day to resolve any issues pertaining to Concession Operations, shall be present at the Airport a minimum of twelve (12) hours per day and available to meet with City representatives at the Airport, and shall be available at all other times by telephone or pager to arrive by car at the Airport within three (3) hours after being called in an emergency situation.

Section 3.4 Concession Program.

(a) Within thirty (30) days after the Effective Date, Concessionaire shall submit to City for its approval the final Interim Concession Program to provide Concession Operations in a First Class Manner during the transition to Concessionaire’s Permanent Concession Program. This Interim Concession Program:

(i) shall ensure a high level of customer satisfaction during the Construction Period;

(ii) shall ensure that passengers within the Terminal are provided with a variety of food and beverage choices;
have often just traveled from different time zones and are not yet acclimated to the time zone in which the Airport is located. For these reasons, all Concession Locations shall be operated seven (7) days a week, every day of the year, unless otherwise approved by City, and in a manner otherwise consistent with the requirements prescribed by City in accordance with the actual aviation operations at the Airport. Concessionaire shall provide to City for City approval a detailed schedule of the hours of operation for each Concession Location by day of the week. This schedule must accommodate the Airport’s flight schedules. Generally, a Concession Location in the Secured Area shall be open, except as otherwise approved by City, from one and one-half (1½) hours before the first scheduled departure of the day from the Concourse where it is located until the last actual departure of the day from such Concourse. A Concession Location on the Landside shall be open from one and one-half (1½) hours before the first scheduled departure of the day from any Concourse until at least 11:00 p.m. Any Concessionaire-requested permanent change to the City-approved schedule must be delivered to City not less than thirty (30) days prior to proposed change, and City shall provide its approval or disapproval of the request, in part or total, within fifteen (15) days after receipt of such request. Specific requests for a temporary exceptions to City-approved operating hours for holidays and other reasons must be submitted to City at least fifteen (15) days before the proposed change, and City shall provide its approval or disapproval of the request, in part or total, within five (5) days after receipt of such request. City reserves the right to modify the aforementioned hours of operation based on flight schedules and/or customer demands. Neither Concessionaire nor any Concession Operator shall have the right to modify the operating hours of any Concession Location without the prior approval of City. City reserves the right to require Concessionaire to operate, or to cause the applicable Concession Operator to operate, a specific Concession Location beyond the approved operating hours due to unusual circumstances (e.g., delayed flights, weather). Concessionaire shall establish reasonable procedures for adjusting the opening and closing times of Concession Locations based on daily flight schedules and incorporating those schedules into shift schedules for a Concession Operator’s staff, as well as for receiving and disseminating schedule changes, weather or maintenance delays and other flight information that will require adjustments in such Concession Operator’s operations. In addition, Concessionaire shall ensure that each Concession Operator is aware of the peak hours for its Concession Location and will staff the Concession Location appropriately to provide excellent customer service and avoid lengthy service lines. The staffing levels at a Concession Location must reflect both the hourly and seasonal fluctuations in passenger traffic that affect such Concession Location.

Section 3.6 Annual Reporting. Concessionaire shall submit, within sixty (60) days after the end of each Lease Year, an operations report that shall contain the following information:

(a) A review of the performance of Concession Operations for such prior Lease Year, including, without limitation, a statement of Gross Receipts derived from the Concession Program for such Lease Year that is certified by the chief financial officer of Concessionaire to be true and correct and a statement of Concession Operators’ achievement of sales projections, financial results and other goals and objectives;

(b) The establishment of new operational goals and objectives for the forthcoming Lease Year, including projections, for each Concession Location, of sales,
Premises and related facilities. City may amend or modify such Rules and Regulations and operating performance standards from time to time after prior notice, which is reasonable under the circumstances, to Concessionaire. From time to time, City may issue directives or advisories that provide information to all Airport tenants regarding issues that affect operations at the Airport. Concessionaire shall be responsible for distributing copies of such directives or advisories to all Concession Operators on a timely basis to ensure that all Concession Operators are aware of the contents thereof and able to comply therewith. Concessionaire is responsible for complying with, and ensuring that each Concession Operator complies with, the Rules and Regulations as they exist from time to time, including, without limitation, the Airport Security Plan.

Section 3.9 Concession Operator Performance Reviews; Operational Audits. Concessionaire shall complete regular reviews and operational audits of each Concession Operator as described in Section 2.2 hereof.

Section 3.10 Transition. Upon the expiration or earlier termination of this Agreement, Concessionaire shall cooperate fully with City and any successor to Concessionaire to ensure an effective and efficient transition of concession operations within the Premises to Concessionaire’s successor. Concessionaire acknowledges and agrees, and shall cause each Concession Operator to acknowledge and agree, that any licenses or permits granted for use at the Airport in Concession Operations shall not be taken off-Airport for use at other locations. Concessionaire acknowledges its responsibility to help to ensure continued Concession Operations within the Premises in a First Class Manner during any transition to a successor and shall take no action that would impair the ability of any successor to Concessionaire to obtain, in a timely manner, licenses and permits required to commence and maintain such operations.

Section 3.11 Airport Security. Employees, agents and representatives of Concessionaire and Concession Operators and their respective contractors and subcontractors shall comply with the Airport Security Plan and all other airport security regulations as adopted or required by City, the TSA or other Governmental Authorities from time to time. If a breach of the Airport Security Plan or such other airport security regulations occurs as a result of the acts or omissions of an employee, agent, representative, contractor or subcontractor of Concessionaire or a Concession Operator in any manner or form at any time during the Term, Concessionaire immediately shall, or shall cause such Concession Operator immediately to, remedy such breach or assist the TSA or other Governmental Authorities in remediying such breach, regardless of the circumstances and shall assume full and complete responsibility for such breach, including payment of any penalty imposed, and shall defend, indemnify and hold the Indemnified Parties harmless therefrom. Concessionaire shall maintain, and shall cause the Concession Operators to maintain, the integrity of the controlled access security system of the Airport for the Term.

Section 3.12 Identification Badges and Security Clearances.

(a) To the extent any of the personnel of Concessionaire or any Concession Operator or any of their respective contractors or subcontractors requires identification badges or security clearances for access at the Airport, Concessionaire is responsible, at its expense, for obtaining such identification badges and security clearances. Each
(d) All City-issued identification badges are the property of City and, upon the expiration or earlier termination of the Term, the termination of the employment or resignation of any employee of Concessionaire or a Concession Operator or any of their respective contractors or subcontractors, City-issued identification badges issued to employees of Concessionaire and such Concession Operator or any of their respective contractors or subcontractors must be returned to City within twenty-four (24) hours. In addition, the holder of a lost City-issued identification badge is responsible for the replacement cost thereof. The issuance of City-issued identification badges is subject to the completion of such applications and conditions as City may require from time to time. Each perimeter fence gate and Secured Area access point (manual and automatic) at the Airport must be secured or manned at all times for the entire duration it is open. Any access gate or door found to be unsecured, or any entry by an unauthorized person(s) and/or vehicle(s), as a result of Concessionaire’s or a Concession Operator’s failure to comply, or to cause compliance by any of their respective contractors or subcontractors, with the Rules and Regulations may subject Concessionaire or such Concession Operator to a TSA-imposed fine of up to Ten Thousand and No/100 Dollars ($10,000.00) per occurrence, and/or suspension or revocation of the violator’s City-issued identification badge.

(e) In the event City determines that any fine or penalty has been imposed upon City as a result of the failure of Concessionaire or a Concession Operator or any of their respective contractors or subcontractors to comply with Applicable Laws, Concessionaire shall pay such fine or penalty or reimburse City therefor upon demand by City. Concessionaire shall monitor compliance by each Concession Operator and its contractors and subcontractors with the requirements for identification badges and security clearances and the screening of goods, products, equipment, materials and supplies of such Concession Operator and its contractors and subcontractors. Concessionaire shall enforce the remedies under its agreements with other Concession Operators to rectify violations or other deficiencies by them with respect to the requirements of this Section 3.12.

Section 3.13 Employee Parking. Employees of Concessionaire and Concession Operators are permitted to park their personal vehicles in the employee surface parking areas designated by City from time to time, subject to the same terms and conditions of use as are applicable to employees of other tenants at the Airport, Air Transportation Companies and other concessionaires using the employee surface parking areas at the Airport. No parking will be provided to employees of Concessionaire or Concession Operators in the parking garages at the Airport.

Section 3.14 Knowledge of the Airport. Employees of a Concession Operator are expected to be able to assist Airport users with wayfinding within the Airport. As such, Concessionaire shall ensure that each Concession Operator (i) causes its employees to have information regarding the locations of other concessions, restrooms, elevators, airlines, gates, information desks and other facilities within the Terminal and to provide such information upon request and with courtesy and dispatch, and (ii) provides all of its employees with a list of emergency and other important telephone numbers as well as other means through which such employees can respond to customers’ requests for information.
Periodic Rent for any partial Lease Year shall be prorated on the basis of the actual number of days included in such partial Lease Year.

(b) On or before the first day of each month of the Term, Concessionaire shall pay a monthly installment of the MAG due hereunder equal to one-twelfth (1/12) of the MAG specified herein for the Lease Year in which such month occurs. On or before the twentieth (20th) day of each month of the Term, and ending with the month following the final month of the Term, Concessionaire shall remit to City the difference, if any, between the monthly installment of MAG paid for the preceding month and the aggregate amount of Gross Receipts due for such preceding month as specified in this Section 4.1. Regardless of whether any additional payment is due for the preceding month, Concessionaire shall submit, on or before the twentieth (20th) day of each month, a Concession Location sales report that details the total Gross Receipts for such preceding month from the Concession Program and a breakdown of such Gross Receipts by Concession Location. In addition, within sixty (60) days after the end of each Lease Year, Concessionaire shall provide its annual report, as required by Section 3.6 hereof, along with a reconciliation and payment to City (if any is due) as follows: (A) a comparison of the MAG for such preceding Lease Year and the percentage of Gross Receipts due to City for such Lease Year to determine the total amount owed to City by Concessionaire for such preceding Lease Year under this Section 4.1; and (B) payment of any additional amount owed as Rent for such preceding Lease Year under the terms of this Agreement. In the event that such Annual Report reflects an overpayment by Concessionaire of Periodic Rent for such preceding Lease Year, Concessionaire shall receive a credit by City for the overpayment with respect to subsequent Periodic Rent due to City or a refund, as City may determine; provided, however, that in no event shall Concessionaire take a credit against any subsequent Periodic Rent owed to City for any such overpayment without the prior written approval of City. Concessionaire shall have no right to set-off or offset any Rent owed under this Agreement against any against amounts that may be payable by City to Concessionaire. Upon City’s receipt of the annual report for the immediately preceding Lease Year pursuant to Section 3.6 hereof, the MAG for the then-current Lease Year shall be established and Concessionaire shall remit, together with such annual report, any additional amount due under such newly-established MAG for the then-current Lease Year. Until the MAG is so established for a Lease Year pursuant to this Section 4.1(b), the monthly installment of MAG due hereunder shall remain in the amount due for the immediately preceding Lease Year.

Section 4.2 Payments to City. All payments to City shall be made payable to “City of Dayton, Ohio” and forwarded as set forth in this Section 4.2. All annual reports and monthly statements of Gross Revenues and the associated payments of Periodic Rent to City shall be sent to City at the following address:

City of Dayton, Ohio
Department of Aviation
Attn: Accounts Receivable
3600 Terminal Drive, Suite 300
Vandalia, OH 45377
Ohio metropolitan area and shall ensure that Concession Operations are maintained in the Concession Locations for the uses as specified below:

<table>
<thead>
<tr>
<th>Concession Location</th>
<th>Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>M-3</td>
<td>Operation of a full-service restaurant and bar under the Max &amp; Erma’s® concept</td>
</tr>
<tr>
<td>PS-1, M-4</td>
<td>Operation of a quick-service restaurant and coffee bar under the Boston Stoker® concept</td>
</tr>
<tr>
<td>M-2</td>
<td>Operation of a quick-service restaurant under the Sbarro’s® concept</td>
</tr>
<tr>
<td>C-1</td>
<td>Operation of a gourmet coffee bar and restaurant under the Starbucks® concept</td>
</tr>
<tr>
<td>B-1</td>
<td>Operation of a quick-service restaurant under the Quiznos® concept</td>
</tr>
<tr>
<td>C-3</td>
<td>Operation of a full-service restaurant and bar under the Dewar’s Clubhouse® concept</td>
</tr>
<tr>
<td>B-3</td>
<td>Operation of a full-service restaurant and bar under the Tool Town Restaurant &amp; Bar® concept</td>
</tr>
<tr>
<td>M-1</td>
<td>Operation of a quick-service restaurant under the Cinnabon® concept</td>
</tr>
</tbody>
</table>

Each Concession Operator is responsible for obtaining all licenses and permits necessary for sales of any food or beverage it wishes to offer, including, without limitation, alcoholic beverage licenses and permits. In the event any question or dispute arises as to whether any specific item or category of items may be sold at a Concession Location, City shall give a decision in writing and such determination shall be considered as the final resolution of the matter. Concessionaire shall abide by and conform to the decisions of City. A Concession Operator may provide Catering Services upon demand, and a Concession Operator also may provide such services within airline or Airport clubs if so requested by the club’s sponsor or operator. A Concession Operator also shall be permitted to sell, within its Concession Location, themed merchandise advertising the food and beverage concept operated within such Concession Location; provided, however, that such Concession Operator obtains the prior approval of City for the sale of such
Section 6.2 DBE Participation Goal. To provide a fair opportunity for DBE participation in the various concession programs at the Airport, City has established an overall goal for DBE participation in Airport concessions of five and nine-tenths percent (5.9%) of the total gross revenues of all Airport concessions. Concessionaire agrees that it will use its best efforts to provide opportunities for participation by DBEs in the performance of this Agreement and shall provide all information requested by (and on forms specified by) City regarding DBE participation in the Concession Program (and Concessionaire’s good faith efforts to obtain DBE participation in the Concession Program) necessary for City to satisfy its reporting and record-keeping obligations under 49 C.F.R. Part 23, as amended or modified from time to time, and other Applicable Laws. It is agreed that “best efforts” and “good faith efforts” as used herein shall not require Concessionaire to sublease a Concession Location (as of the Effective Date) to a DBE and/or require Concessionaire to terminate any existing Sublease of a Concession Location. However, upon the expiration or earlier termination of any existing Sublease of a Concession Location, or in the event that one or more additional Concession Locations are added to the Premises, Concessionaire agrees to make good faith efforts, as described in 49 C.F.R. Section 23.95(i), to provide for a level of Ohio-certified DBE participation in the Concession Program that results in the generation of five and nine-tenths percent (5.9%) or more of total Gross Receipts from Concession Operations which are attributable to the participation of Ohio-certified DBEs in the Concession Program.

Section 6.3 Discrimination Prohibited. This Agreement is subject to the requirements of the U.S. Department of Transportation’s regulations, 49 C.F.R. Part 23, Subpart F. Concessionaire agrees that it will not discriminate against any business owner because of the owner’s race, color, national origin or sex in connection with the award or performance of any concession agreement covered by 49 C.F.R. Part 23, Subpart F. Concessionaire agrees to include the above statements in any subsequent concession agreements it executes and cause those businesses to similarly include the statements in further agreements.

ARTICLE VII
PRICING

Section 7.1 Reasonable Pricing. Concessionaire and Concession Operators shall observe and maintain Reasonable Pricing for goods, products and services sold within the Concession Locations. For purposes of this Agreement, the term “Reasonable Pricing” means the regular price of the good, product or service charged at the applicable Price Comparison Location, plus ten percent (10%); provided, however, that, if a good, product and/or service is not available from a Price Comparison Location, the regular price for such good, product or service shall be determined by reference to a range of the regular prices of three (3) separate businesses for such good, product and/or service, of comparable nature, ambiance and product and service lines, as agreed by City and Concessionaire. Concessionaire is required to submit, prior to the opening of a Concession Location, a complete list of items to be offered by the Concession Operator therein and the prices to be charged for City’s approval. No Concession Location shall open without such City approval. Concessionaire shall submit to City, within sixty (60) days after the end of each Lease Year, an annual pricing report for each Concession Location that indicates the extent of compliance by the Concession Operator thereof with Reasonable Pricing and the actions taken by Concessionaire and each Concession Operator to remedy any noncompliance.
City requires that Concessionaire and such Concession Operator obtain required permits and otherwise comply with the requirements of City. Concessionaire or any Concession Operator shall submit for approval by City's Department of Aviation, the Plans for all Capital Improvements before seeking any construction permits. Concessionaire shall act as the construction coordinator with City for each Concession Operator's design and construction requirements.

Section 9.2 Construction Period Capital Improvements. During the Construction Period, Concessionaire has agreed to develop, install and construct, pursuant to Plans approved by City in accordance with Section 9.1 hereof, the Construction Period Capital Improvements. In consideration of Concessionaire's agreement to develop, install and construct the Construction Period Capital Improvements, City agrees to reimburse Concessionaire for certain costs of the Construction Period Capital Improvements in an aggregate amount not to exceed One Million and No/100 Dollars ($1,000,000.00), subject to the following:

(a) Notwithstanding that the costs associated with Construction Period Capital Improvements may constitute Eligible Costs under this Agreement, City shall have no obligation to pay, or to reimburse Concessionaire for, the cost of any Capital Improvements that comprise movable equipment, furniture and furnishings, decorations, signage containing proprietary information, trade names or registered trademarks or service marks or non-permanent fixtures used in connection with Concession Operations;

(b) Concessionaire shall submit to City, not more frequently than monthly, requests for reimbursement, together with detailed invoices and other supporting documentation reasonably requested by City to substantiate each such request; and

(c) As to any costs for which Concessionaire requests reimbursement from City hereunder, Concessionaire shall have complied with the procurement requirements of City set forth in Exhibit D attached hereto and incorporated herein.

Unless Concessionaire complies with the requirements of this Section 9.2, City shall have no obligation to pay, or reimburse Concessionaire for, the costs of any Construction Period Capital Improvements.

Section 9.3 General Requirements for Capital Improvements. Concessionaire shall construct, equip and install, or cause to be constructed, equipped, and installed, the Capital Improvements in a Concession Location in accordance with the plans and specifications to be submitted to and approved by City, free and clear of all liens, encumbrances and security interests. The construction, equipping and installation of the Capital Improvements within a Concession Location shall be completed within one hundred twenty (120) days after the commencement of construction therein, unless an extension of such one hundred twenty (120) day period is approved in advance by City. Concessionaire shall ensure that construction activities are closed off from public view with a painted gypsum board dust partition with attractive, easily readable signs explaining the construction, as approved by City prior to such construction.
reasonable and lawful provisions for the payment of actual or liquidated damages in the event a contractor fails to complete such construction on a timely basis. Concessionaire agrees that it will take all necessary action available under each such construction contract to enforce the timely completion of the work covered thereby.

Section 9.8 Midterm Renovations. Concessionaire shall complete, or shall cause the applicable Concession Operator to complete, the Midterm Renovations for the Concession Locations as required hereunder.

Section 9.9 Surrender of Premises. Upon the expiration or earlier termination of the Term, Concessionaire shall yield and deliver peaceably to City possession of the Premises and the Capital Improvements (to the extent City has elected to retain title thereto), broom clean and in a condition at least as good as that which existed on the Effective Date, except for obsolescence and ordinary wear and tear. Concessionaire shall cause the immediate removal of all distinctive proprietary and physical features associated with the trade dress of Concessionaire and other Concession Operators as necessary to distinguish the Concession Locations so clearly from their former appearance as to prevent any possibility that the public will associate a Concession Location with the prior Concession Operator of such Concession Location and any confusion created by such association. In making such removal, Concessionaire agrees to maintain the structural integrity of the Terminal and to repair any damage done to the Premises.

Section 9.10 Displaced Offices and Facilities. In the event City requests that Concessionaire construct and/or remove offices and/or facilities that are displaced as a result of Construction Period Capital Improvements as provided in Section 3.2(bb) hereof, City agrees to reimburse Concessionaire for the cost of such construction and/or removal work in an aggregate amount not to exceed Five Hundred Thousand and No/100 Dollars ($500,000.00) upon satisfaction of the following requirements: (i) prior to the commencement of such work, City has approved the plans and specifications for such work and the contractor cost estimates therefor; and (ii) such work is completed in accordance with City-approved plans and specifications.

ARTICLE X
PREMISES MAINTENANCE; RESERVATION OF RIGHTS

Section 10.1 Premises Maintenance. City shall have primary responsibility for all maintenance, cleaning and routine upkeep of the Common Areas and shall keep such Common Areas in a clean, neat, orderly, sanitary and attractive condition. Concessionaire shall be responsible for the cleaning, maintenance, repair and replacement of the Concession Locations and shall keep, and cause the applicable Concession Operators to keep, the Concession Locations in a clean, neat, orderly, sanitary and attractive condition. Concessionaire agrees that all personal property brought into the Premises by Concessionaire or any Concession Operator or any of their respective agents, contractors, employees, invitees, assignees, subtenants or licensees, shall be at the sole risk of Concessionaire and such Concession Operator. City is not liable for theft thereof or for money deposited therein or for any damage thereto, such theft or damage being the sole responsibility of Concessionaire or such Concession Operator, and Concessionaire shall indemnify, defend and hold the Indemnified Parties harmless from any and all claims arising or resulting directly or indirectly from any such theft or damage. Concessionaire agrees to provide at its own expense such janitorial, toilet and cleaning services
notice, with such reasonable notice understood not to exceed twenty-four (24) hours (provided no notice shall be required during any real or threatened emergency) to inspect any part thereof, and to make such repairs, replacements or alterations thereto as may, in the opinion of City, be deemed necessary or advisable; (iii) to inspect, install, operate, maintain, recover and repair the Common Areas; (iv) to have access to all mail facilities according to the rules and regulations of the United States Post Office; (v) to approve the weight, size and location of safes, computers and other heavy articles in or about the Premises and to require all such items and other office furniture and equipment to be moved in and out of the Terminal and the Premises only at such times and in such manner as City shall direct and in any event at Concessionaire’s sole risk and responsibility; (vi) to perform any acts related to the safety, protection or preservation of the Premises; (vii) to do or permit to be done any work in or about the Premises or any adjacent or nearby building, land, street or alley; (viii) to grant to anyone the exclusive right to conduct any business or render any service in the Terminal that does not operate to exclude Concessionaire from the beneficial use of the Premises as expressly permitted by this Agreement; (ix) to adopt, amend, modify, rescind or suspend any of the Rules and Regulations of City in effect from time to time and to adopt such additional Rules and Regulations as City shall determine to be desirable for the safe, economical and efficient operation of the Premises; (x) to exercise all other rights reserved by City pursuant to the provisions of this Agreement; and (xi) to construct or install over, in, under or through the Premises new lines, pipes, mains, wires, conduits and equipment; provided, however, that in each case in the exercise of any such rights, City shall not unreasonably interfere with the use and occupancy of the Premises by Concessionaire or the Concession Operators to extent reasonably practicable under the circumstances.

ARTICLE XI
SMOKING

Section 11.1 Smoking. The Terminal is a non-smoking facility, and smoking is not permitted in the Concession Locations.

ARTICLE XII
BOOKS, RECORDS, RECORDKEEPING AND REPORTS

Section 12.1 General Requirements. Concessionaire shall maintain, or cause to be maintained (including, without limitation, requiring each Concession Operator to maintain), for a period of three (3) years, or, in the event of a claim by City, until such claim shall have been fully resolved, separate and accurate daily records of Gross Receipts derived from the Concession Program, in accordance with GAAP, showing in detail all business done or transacted in, on, about or from the Premises and pertaining to the Concession Program. Concessionaire also shall maintain, and cause to be maintained by Concession Operators, separate and accurate records with respect to the construction of Capital Improvements in the Concession Locations in accordance with GAAP. Amounts expended shall be reported in the annual audited financial statements of Concessionaire. Concessionaire shall enter, and shall cause the Concession Operators to enter, all receipts arising from such business in regular books or electronic records of account, and all entries in any such records or books shall be made at or about the time such transactions occur. Upon City’s written request, Concessionaire shall make available, and shall cause all Concession Operators to make available, within fourteen (14) days after a request therefor, to City or its authorized representative(s) any and all reports, books,
and, wherever commercially reasonable, to provide a so-called “swipe and go” credit card service to customers.

Section 12.3 Statistics Report. City has the right at any time to request that Concessionaire make available to City Point of Sale Data for a one month period occurring within the most recent three (3) months prior to the date of the request, including, without limitation, daily, day-part and product category totals for weekly sales, average transaction values, average number of items sold per transaction per Concession Location and the total number of transactions per Concession Location. Unless otherwise approved in writing by City, such data shall be provided to City within twenty (20) days of its request therefor.

ARTICLE XIII
TAXES AND ASSESSMENTS; LIENS

Section 13.1 Payment of Taxes and Assessments; Liens. Concessionaire shall pay all Taxes and assessments applicable to or resulting from the Concession Operations on a timely basis. City is not responsible for the payment of any Taxes or assessments arising in connection with the Concession Program and the Concession Operations at the Airport. Concessionaire agrees not to permit or suffer any liens to be imposed upon the Terminal or any part thereof as a result of the Concession Operations, and, in the event that any such lien is filed, Concessionaire will cause such lien to be discharged of record within fifteen (15) days after the filing thereof.

Section 13.2 Real Property Taxes and Assessments. Concessionaire acknowledges that Real Property Taxes are assessed on the entire Airport parcel, of which the Premises are a portion thereof. Concessionaire shall pay the Real Property Taxes becoming due and payable from time to time that are attributable to the Concession Locations during the Term (the “Concessionaire’s Share”). The Concessionaire’s Share is based on the valuations set forth in the industrial report of the auditor of Montgomery County, Ohio (the “Report”) for Montgomery County Auditor Parcel #R727-174-13-0001 (or the Report’s successor and any updates thereto), in which the Concession Locations have been identified as “Host improvements” (or such other manner of identifying the Concession Locations in said Report). City shall bill Concessionaire for Concessionaire’s Share, which Concessionaire agrees to pay within thirty (30) days from the date of the invoice. Concessionaire may protest or contest, in the manner specified by City, the validity or amount of any such Real Property Taxes. City, as required by law, agrees to file such protest or contest for Concessionaire with the taxing authority for Montgomery County, Ohio; provided, however, that Concessionaire shall provide, at its own cost and expense, legal representation and the information, documentation and required appraisals for such protest or contest to City. Except for filing such protest or contest, City is not obligated or otherwise responsible to take any other action with respect to the protest or contest. Further, Concessionaire’s right to protest or contest Real Property Taxes hereunder does not relieve it of the obligation to pay the invoiced amount for Real Property Taxes to City. In the event the protest or contest is successful and a reduction of Real Property Taxes is granted, City will credit the amount overpaid to the next invoice for Real Property Taxes, unless the parties mutually agree to credit or pay the amount overpaid in a different manner. Concessionaire shall also pay any and all Taxes due with respect to its personal property situated on the Premises.
Dollars ($1,000,000.00) per occurrence, that insures against claims, damages, losses and liabilities arising from automobile related bodily injury, death and/or property damage, including any such claims, damages, losses or liabilities arising from or relating to Concession Operations or the presence of Concessionaire and Concession Operators at the Airport. The aggregate deductible amount under the insurance policy or policies providing the Auto Coverage shall not exceed Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00) per occurrence. Each insurance policy providing the Auto Coverage shall name City and its commissioners, officers and employees as additional insureds thereunder and shall provide that such insurance policy will be considered primary insurance as to any other valid and collectible insurance or self-insured retention City may possess or retain. Any insurance coverages maintained by City shall be considered excess insurance only. Each insurance policy providing the Auto Coverage shall provide contractual liability coverage under which the issuing insurance company agrees to insure (i) Concessionaire’s obligations under Section 15.1 hereof and (ii) any other liability that Concessionaire has under this Agreement for which such insurance policy would otherwise provide coverage. Each insurance company issuing an insurance policy providing the Auto Coverage shall be (A) admitted to do business in the State of Ohio and rated not less than the Minimum Rating or (B) otherwise approved by City. Such approval may be denied or withheld based upon an insurance company’s rating by the Rating Service or other indications of financial inadequacy, as determined by City.

Section 14.4 WC Coverage. Concessionaire shall obtain and maintain, and shall cause each Concession Operator to obtain and maintain, continuously in effect at all times during the Term, at its sole cost and expense, worker’s compensation insurance coverage (the “WC Coverage”) in accordance with statutory requirements and providing employer’s liability coverage with limits of not less than One Hundred Thousand and No/100 Dollars ($100,000.00) for bodily injury by accident, One Hundred Thousand and No/100 Dollars ($100,000.00) for bodily injury by disease, and Five Hundred Thousand and No/100 Dollars ($500,000.00) policy limit for disease. Each insurance company issuing an insurance policy providing the WC Coverage shall be (A) admitted to do business in the State of Ohio and rated not less than the Minimum Rating or (B) otherwise approved by City. Such approval may be denied or withheld based upon an insurance company’s rating by the Rating Service or other indications of financial inadequacy, as determined by City.

Section 14.5 General Requirements. For purposes of this Agreement, the CGL Coverage, the PC Coverage, the Auto Coverage and the WC Coverage are collectively referred to as the “Insurance Coverages”. Concessionaire agrees that each insurance policy providing any of the Insurance Coverages (i) shall not be altered, modified, cancelled or replaced without thirty (30) days prior notice from Concessionaire to City, (ii) shall provide for a waiver of subrogation by the issuing insurance company as to claims against City and its elected officials, officers and employees, (iii) shall provide that any “other insurance” clause in such insurance policy shall exclude any policies of insurance maintained by City and that such insurance policy shall not be brought into contribution with any insurance maintained by City, and (iv) shall have a term of not less than one year. City shall have the right to change the terms and amounts of the Insurance Coverages if such changes are required or imposed by City’s insurers. Concessionaire shall provide, prior to the commencement of Concessionaire’s performance under this Agreement, one or more certificates of insurance which shall indicate that the Insurance Coverages have been obtained and that the insurance policy or policies referenced or described
expenses) arising from any negligent act or omission of Concessionaire or any Concession Operator or any of their respective officers, contractors, subcontractors, agents, representatives or employees with respect to any bodily injury, death or property damage related to the use or placement of Hazardous Materials on the Airport premises or other areas.

Section 15.4 Negligent Acts or Omissions as to Hazardous Materials. Concessionaire agrees to defend, indemnify and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities and expenses (including, without limitation, reasonable attorneys’ fees, court costs and litigation expenses) arising from any negligent act or omission of Concessionaire or any Concession Operator or any of their respective officers, contractors, subcontractors, agents, representatives or employees with respect to (i) any monitoring, clean-up, containment, removal, storage or restoration work performed by City or a third party with respect to the use or placement of Hazardous Materials (of whatever kind or nature, known or unknown) on the Airport premises or any other areas; (ii) any actual, threatened or alleged contamination by Hazardous Materials on the Airport premises or other areas; (iii) the disposal, release or threatened release of Hazardous Materials on the Airport premises or other areas that is on, from or affects the soil, air, water, vegetation, buildings, personal property, Persons or otherwise; or (iv) any violation of any applicable Environmental Laws.

Section 15.5 Intentional Acts as to Hazardous Materials. Concessionaire agrees to defend, indemnify and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities and expenses (including, without limitation, reasonable attorneys’ fees, court costs and litigation expenses) arising from any intentional act of Concessionaire or any Concession Operator or any of their respective officers, contractors, subcontractors, agents, representatives or employees with respect to (i) any monitoring, clean-up, containment, removal, storage or restoration work performed by City or a third party with respect to the use or placement of Hazardous Materials (of whatever kind or nature, known or unknown) on the Airport premises or any other areas; (ii) any actual, threatened or alleged contamination by Hazardous Materials on the Airport premises or other areas; (iii) the disposal, release or threatened release of Hazardous Materials on the Airport premises or other areas that is on, from or affects the soil, air, water, vegetation, buildings, personal property, Persons or otherwise; (iv) any bodily injury, death or property damage related to the use or placement of Hazardous Materials on the Airport premises or other areas; or (v) any violation of any applicable Environmental Laws.

Section 15.6 Operation of Aircraft and Vehicles. Concessionaire agrees to defend, indemnify and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities and expenses (including, without limitation, reasonable attorneys’ fees, court costs and litigation expenses) arising from any use, non-use or condition in, on or about, or possession, alteration, repair, operation, maintenance or management of, any Aircraft, vehicle, mobile equipment or other property of Concessionaire or a Concession Operator used or available for use on Airport premises.

Section 15.7 Representations and Warranties; Violations of Agreement. Concessionaire agrees to defend, indemnify and hold each of the Indemnified Parties harmless
to the appointment of a receiver, trustee or liquidator of all or substantially all of its property;

(b) By order or decree of a court, Concessionaire is adjudged bankrupt or an order is made approving a petition filed by any of the creditors or equity owners of Concessionaire seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any state thereof;

(c) A petition or action under any part of the federal bankruptcy laws or under any other law or statute of the United States or of any state thereof is filed against Concessionaire and such petition or action against Concessionaire is not dismissed within sixty (60) days after the filing thereof;

(d) By or pursuant to or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator takes possession or control of all or substantially all of the property of Concessionaire and such possession or control shall continue in effect for a period of fifteen (15) days;

(e) Any materialman, construction, mechanic or other voluntary lien, judgment, attachment or encumbrance is filed against the Premises or any portion thereof as a result of any act or omission of Concessionaire or any Concession Operator and is not removed within fifteen (15) days after Concessionaire’s becoming aware of the filing thereof;

(f) Concession Operations are abandoned, deserted, vacated or discontinued in any of the Concession Locations (other than permitted under this Agreement) for a period of forty-eight (48) hours without the prior consent of City;

(g) Concessionaire assigns, transfers or encumbers this Agreement or any interest herein, without the prior consent of City;

(h) Concessionaire fails duly and punctually to pay any portion of the Rent when due or to make any other payment required hereunder when due to City and such failure continues for a period of ten (10) days after notice from City to Concessionaire of such failure;

(i) Concessionaire fails to comply with the Concessionaire Insurance Requirements;

(j) Concessionaire fails to maintain, or to cause the Concession Operators to maintain, Concession Operations in the manner required under this Agreement, as determined in the reasonable discretion of City, and such failure continues for a period of ten (10) days after notice from City to Concessionaire of such failure;

(k) Concessionaire conducts business activities at the Airport, other than those allowed under this Agreement, that have not been approved in writing by City and such...
(d) City may take whatever action at law or in equity may appear necessary or desirable to collect the Rent and any other amounts then due and thereafter to become due hereunder or to enforce performance and observance of any obligation, agreement or covenant of Concessionaire under this Agreement and to recover any and all damages to City for Concessionaire’s violation or breach of this Agreement, including, without limitation, attorneys’ fees, leasing commissions and all other costs incurred by City in re-releasing or subleasing the Premises or any part thereof to one or more other tenants;

(e) No termination of this Agreement prior to the last day of the Term, by lapse of time or otherwise, shall affect Concessionaire’s obligation to pay, and City’s right to collect, the entire Rent and any other amounts due under this Agreement; and

(f) In the event City elects to terminate this Agreement as hereinafore provided, City may, in addition to any other remedies it may have, recover from Concessionaire all damages City may incur by reason of such Event of Default, including, without limitation, the cost of recovering the Premises, attorneys’ fees and the value, at the time of such termination, of the excess, if any, of the amount of Rent for the remainder of the Term due from Concessionaire over the then estimated rent and other amounts for the remainder of the Term that City expects to receive from one or more replacement tenants, all of which amounts shall be immediately due and payable from Concessionaire to City.

The rights and remedies of City provided under this Section 18.2 shall not be exclusive and are in addition to any other rights and remedies which City may have at law or in equity or under this Agreement.

Section 18.3 No Waiver. No waiver by City at any time of any of the terms, conditions, covenants or agreements herein shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof. No delay, failure or omission of City to take or to exercise any right, power, privilege or option arising upon any Event of Default, or subsequent acceptance of any Rent, shall impair any such right, power, privilege or option or be construed to be a waiver of any such Event of Default or a relinquishment thereof or acquiescence therein; and no notice by City shall be required to restore or revive any option, right, power, remedy or privilege after waiver by City of an Event of Default in one or more instances.

Section 18.4 Termination by Concessionaire. Concessionaire may, so long as no Event of Default (or other event or circumstance that, with the giving of notice or the passage of time or both, would become an Event of Default) is then existing, terminate this Agreement upon or after the happening of any one of the following events by giving City sixty (60) days prior notice of termination in accordance with Section 24.10 hereof:

(a) The issuance by any court of competent jurisdiction of an injunction in any way substantially preventing or restraining the use of the Airport or any part thereof necessary for Concessionaire’s operation, and the remaining in force of such injunction for a period of at least thirty (30) days after City has exhausted or abandoned all appeals;
damage until such time as the Premises are fully restored and certified by City’s engineers as ready for occupancy; provided, however, that (i) if the damage is caused by the act or omission of Concessionaire or a Concession Operator or any of their respective officers, contractors, subcontractors, agents, representatives or employees, there shall be no abatement in the MAG and Concessionaire shall be responsible at its expense for making the necessary repairs and restorations as approved by City, and (ii) City shall have no obligation to repair or restore any damage to the Capital Improvements of a Concession Operator. City shall make any insurance proceeds of the PC Coverage paid to City available to Concessionaire in a manner reasonably acceptable to City for the purpose of paying the costs of repairing and restoring such Capital Improvements. If such insurance proceeds are not sufficient to pay such costs of repairing or restoring such Capital Improvements, Concessionaire shall pay the deficiency. If Concessionaire fails to make the necessary repairs and restorations in a timely manner as determined by City, then City may, at its option, cause such repairs and restorations to be completed and Concessionaire shall reimburse City for the costs and expenses incurred in such repairs and restorations, plus an administrative fee equal to fifteen percent (15%) of such costs and expenses.

Section 19.3 Complete Destruction. In the event the Premises are completely destroyed by fire, explosion, the elements, act(s) of war or terrorism or other casualty or are so damaged that they are untenable and cannot be replaced except after more than one hundred twenty (120) days, City shall be under no obligation to repair and restore the Premises, and the obligation of Concessionaire to pay Periodic Rent shall abate as of the date of such damage or destruction until such time as the Premises are fully restored or until City provides substitute facilities, reasonably acceptable to Concessionaire, for use by Concessionaire: provided, however, that (i) if the damage is caused by the act or omission of Concessionaire or a Concession Operator or any of their respective officers, contractors, subcontractors, agents, representatives or employees, there shall be no abatement in Periodic Rent and Concessionaire shall be responsible at its expense for making the necessary repairs and restorations as approved by City, and (ii) City shall have no obligation to repair or restore any damage to the Capital Improvements of a Concession Operator. City shall make any insurance proceeds of the PC Coverage paid to City available to Concessionaire in a manner reasonably acceptable to City for the purpose of paying the costs of repairing and restoring such Capital Improvements. If such insurance proceeds are not sufficient to pay such costs of repairing or restoring such Capital Improvements, Concessionaire shall pay the deficiency. If City undertakes the repair and restoration of the Premises under this Section 19.3 and does not complete such repair and restoration of the Premises within twelve (12) months after the time of such damage or destruction, or City has not supplied substitute facilities reasonably acceptable to Concessionaire, Concessionaire may terminate this Agreement in its entirety as of the date of such damage or destruction. If Concessionaire is responsible for the repair and restoration of the Premises under this Section 19.3 and does not complete such repair and restoration of the Premises within twelve (12) months after the time of such damage or destruction in a timely manner as determined by City, then City may, at its option, cause such repairs and restorations to be completed and Concessionaire shall reimburse City for the costs and expenses incurred in such repairs and restorations, plus an administrative fee equal to fifteen percent (15%) of such costs and expenses.
ARTICLE XXII
OPERATIONAL AUDITS

Section 22.1 Operating Standards. Concessionaire shall cause all Concession Operators to keep and maintain their respective Concession Locations in a First Class Manner in compliance with all Applicable Laws, including, without limitation, applicable health, fire and building inspection requirements.

Section 22.2 Performance Audits. Concessionaire will have an independent third party conduct a formal mystery shopper performance audit for each Concession Location at least once per month. The format and content of the audit will be the same as those performed in Concessionaire’s national mystery shopper program. Concessionaire shall provide, on a monthly basis, the results of such audits to City. The operating standards to be used for such performance audits shall address product quality, customer service and cleanliness and maintenance, and such standards shall be, to the greatest extent possible, objective measures. Concessionaire shall also establish a means for communicating results of such performance audits to Concession Operators and for addressing any deficiencies found.

ARTICLE XXIII
LEASEHOLD MORTGAGES

Section 23.1 Leasehold Mortgages Not Permitted. Concessionaire shall have no right (and shall not permit any other Concession Operator) (i) to convey, pledge or encumber, by deed of trust, mortgage or similar instrument, its leasehold interest in and to the Premises or any Capital Improvements constructed or placed on the Premises, or (ii) to assign this Agreement or any Sublease as collateral security for any indebtedness.

ARTICLE XXIV
GENERAL PROVISIONS

Section 24.1 Attempts or Payments to Influence. Concessionaire certifies to the best of its knowledge and belief that:

(a) No federally or state-appropriated funds have been paid or will be paid by or on behalf of Concessionaire or a Concession Operator to any person for influencing or attempting to influence an officer or employee of any agency of the United States government or a member, officer or employee of the United States Congress, or an employee of a member of the United States Congress, in connection with the awarding of any federal contract, the making of any federal grant or loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement;

(b) If Concessionaire or a Concession Operator has compensated or does compensate any person for influencing or attempting to influence an officer or employee of any agency of the United States government, a member, officer or employee of the United States Congress, or any employee of a member of the United States Congress, in connection with any contract, grant, loan or cooperative agreement, then Concessionaire
action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, handicap or creed, including, without limitation, action relating to employment; upgrading, demotion or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. 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 written herein and that failure to comply therewith shall constitute a breach thereof entitling City to terminate this Agreement at its option;

(b) Concessionaire will post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Section 24.5;

(e) Concessionaire will, in all solicitations or advertisements for employees placed by or on behalf of Concessionaire, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, handicap or creed;

(d) Concessionaire will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided advising such labor unions or workers' representatives of Concessionaire's commitments under this Section 24.5(d) and will post copies of the notice in conspicuous places available to employees and applicants for employment;

(e) Concessionaire will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the United States Secretary of Labor;

(f) Concessionaire will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the United States Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the administering agency and the United States Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders;

(g) In the event of Concessionaire's noncompliance with the nondiscrimination requirements of this Agreement, this Agreement may be immediately canceled, terminated or suspended, in whole or in part, by City by providing notice of termination to Concessionaire, and Concessionaire may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the United States Secretary of Labor, or as otherwise provided by law; and
presumed that this Agreement is in full force and effect in accordance with its terms and City is not in default hereunder.

**Section 24.9 No Waiver.** No waiver of default by either party of any of the terms, covenants or conditions herein to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained, to be performed, kept and observed by the other party.

**Section 24.10 Notices, Approvals, Consents, etc.** All notices, approvals, consents, demands, requests and other communications required or permitted by this Agreement must be in writing to be effective and personally delivered or sent by certified United States Mail, postage prepaid, or by a recognized delivery service that provides registered and verifiable shipment or airbill tracking and delivery record, with costs prepaid, to the addresses set forth below:

To City:

City of Dayton, Ohio  
Department of Aviation  
Dayton International Airport  
3600 Terminal Drive, Suite 300  
Vandalia, Ohio 45377  
Attn: Director of Aviation

Concessionaire:

Host International, Inc.  
Attn: General Counsel (Law Dept. – 7th floor)  
6905 Rockledge Drive  
Bethesda, Maryland, 20817

with a copy to:

Host International, Inc.  
Attn: Vice President, Business Development  
6905 Rockledge Drive  
Bethesda, Maryland, 20817

The person and place to which notices, approvals, consents, demands, requests and other communications are to be sent may be changed by a party hereto upon written notice to the other. A notice, approval, consent, demand, request or other communication required or permitted hereunder shall be deemed received and effective (i) on the date that is three (3) days after the date on which it is deposited in the United States Mail if sent by certified mail, or (ii) on the date it is received by the recipient if sent by personal delivery, or (iii) on the date on which the signature receipt is recorded by the recognized delivery service if it is sent by a recognized delivery service.

**Section 24.11 Consents, Approvals, etc., of City.** Whenever any provision of this Agreement requires the consent or approval of City or provides to City the right to make a determination or judgment, City shall have the absolute and unconditional right to withhold its consent or approval, in its sole discretion, and to make such determination or judgment in its sole discretion on the basis of such factors and considerations as it shall deem relevant (including, without limitation, self-interest), except for those circumstances, if any, where this Agreement
Section 24.18 **Limitation of City’s Liability.** Neither City nor any elected official, employee, officer or agent thereof shall have (i) any personal liability with respect to any of the provisions of this Agreement, or (ii) any liability for any consequential damages resulting from a default by City hereunder or from the exercise by City of any of its remedies hereunder upon the occurrence of an Event of Default. Concessionaire further agrees not to initiate or participate in any involuntary bankruptcy, reorganization, receivership or insolvency proceeding against City.

Section 24.19 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.

Section 24.20 **Required Modifications.** In the event that a Governmental Authority requires modifications or changes to this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Concessionaire shall make or agree to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required and any expenses resulting from such amendments, modifications, revisions, supplements or deletions shall be paid by City.

Section 24.21 **Time is of the Essence.** Time is of the essence in the performance of the terms and conditions of this Agreement.

Section 24.22 **Construction of Agreement.** Words of any gender used in this Agreement shall be deemed to include any other gender, and words in the singular number shall be deemed to include the plural, unless the context otherwise requires.

Section 24.23 **Understanding of Agreement.** The parties hereto acknowledge that they thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received such competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein.

Section 24.24 **Legal Interest and Other Charges.** Any payment of Rent or any other amount due and payable hereunder that is not paid on the date it is due shall bear interest until paid at the maximum lawful rate of interest permitted by Applicable Laws. Notwithstanding any provision of this Agreement to the contrary, it is the intent of City and Concessionaire that City shall not be entitled to receive, collect, reserve or apply, as interest, any amount in excess of the maximum amount of interest permitted to be charged by Applicable Laws. In the event this Agreement requires a payment of interest that exceeds the maximum amount of interest permitted under Applicable Laws, such interest shall not be received, collected, charged or reserved until such time as that interest, together with all other interest then payable, falls within the maximum amount of interest permitted to be charged under Applicable Laws. In the event City receives any such interest in excess of the maximum amount of interest permitted to be charged under Applicable Laws, the amount that would be excessive interest shall be deemed a partial prepayment of Rent and treated under this Agreement as such, or, if this Agreement has been terminated, any remaining excess funds shall immediately be paid to Concessionaire.

Section 24.25 **Holding Over.** Any holding over by Concessionaire after the expiration or termination of this Agreement, without the consent of City, shall not be deemed to operate as
Section 24.28 **Attorneys' Fees.** If any Rent due and payable under this Agreement is collected by or through an attorney, Concessionaire shall pay as Additional Rent all attorneys' fees and costs. Concessionaire also shall pay all attorneys' fees incurred by City as a result of any legal or equitable action proceeding arising from any breach or Event of Default by Concessionaire under this Agreement in the event City is the prevailing party in such proceeding.

Section 24.29 **Amendment and Restatement.** This Agreement amends and restates the Original Agreement in full.
Exhibit A

Concession Locations
## Exhibit B

**Capital Improvements During Construction Period**

<table>
<thead>
<tr>
<th>Location</th>
<th>Scope of Work</th>
</tr>
</thead>
<tbody>
<tr>
<td>Concourse B (B-1)</td>
<td>Design and construct a new Quiznos sandwich concept in the current vending room next to the Tool Town Restaurant &amp; Bar. Unit will share a back-of-house kitchen area with the Tool Town Restaurant &amp; Bar. Seating area for the Quiznos will extend into the Concourse (café seating area) and into the current space adjacent to the new Quiznos.</td>
</tr>
<tr>
<td>Concourse C (C-1)</td>
<td>Design and construct a new Starbucks Coffee concept in the current closed kitchen area next to the All-Star Restaurant &amp; Bar. Seating area for the Starbucks will extend into the Concourse (café seating area).</td>
</tr>
<tr>
<td>Concourse C (C-3)</td>
<td>Design and construct a Dewar’s Clubhouse Restaurant &amp; Bar in the existing All-Star Restaurant &amp; Bar. Seating area for the Dewar’s will extend into the Concourse (café seating area). The Dewar’s will be constructed upon opening of the Starbucks Coffee (ensuring food and beverage is available in the Concourse at all times).</td>
</tr>
<tr>
<td>Main Terminal (PS-1)</td>
<td>Request and manage subtenant Boston Stoker to expand the Boston Stoker facility to include a larger seating area and a new theme. Remove and/or relocate wall in front of existing store – City/Airport will repay Host for the cost of this work (per Section 9.10 and 3.2(bb) of the Lease).</td>
</tr>
<tr>
<td>Other</td>
<td>HMSHost and the Airport Properties Department will agree on an additional scope of work to refurbish existing concepts. Scope of work could include items such as new signage, new paint/wall coverings, new FF&amp;E, new kitchen equipment, etc. Maximum amount to be spent on these refurbishments is $250,000.</td>
</tr>
</tbody>
</table>
AMENDED AND RESTATED MASTER LEASE AND CONCESSION AGREEMENT

BY AND BETWEEN

CITY OF DAYTON, OHIO

AND

HOST INTERNATIONAL, INC.
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EXHIBIT B  Capital Improvements During Construction Period
EXHIBIT C  Terminal
EXHIBIT D  City Procurement Requirements
household, guardian or representative, or with respect to which or whom the specified Person acts or serves in a similar capacity; (iv) any Person, who, directly or indirectly, is the legal or beneficial owner of or controls ten percent (10%) or more of the equity ownership interests of the specified Person; and (v) any Person who is an Affiliate as defined in the preceding clauses (i), (ii), (iii) or (iv) of an Affiliate of the specified Person.

"Air Transportation Company" means a company engaged in the business of scheduled or non-scheduled commercial transportation by air of persons at the Airport.

"Aircraft" has the meaning assigned thereto in Section 24.27 hereof.

"Airport Security Plan" means a program developed by City for the maintenance of the safety and security of the Airport and Persons using the Terminal or any other portion of the Airport premises, as it may be amended, modified or revised by City from time to time. The Airport Security Plan is a part of the Rules and Regulations.

"Applicable Laws" means all present and future applicable laws, ordinances, orders, directives, rules, codes and regulations of all Governmental Authorities and all present and future grant assurances provided by City to any Governmental Authority in connection with City’s ownership or operation of the Airport, as the same may be amended, modified or updated from time to time, applicable decisional law (including, without limitation, judicial or administrative interpretations, orders and judgments) and the Rules and Regulations.

"Architect/Engineer" means the licensed firm or firms engaged by Concessionaire or other Concession Operator from time to time, and approved by City, to design and prepare the plans and specifications for improvements to the Premises.

"Assistant Concession Manager" means the natural person employed by Concessionaire to assist the Concession Manager with managing and overseeing the day-to-day management of Concession Operations, as further described in Section 3.3 hereof.

"Auto Coverage" has the meaning assigned thereto in Section 14.3 hereof.

"Base Building Work" means the sub-floor, structural elements, demising walls at the exterior of a Concession Location, utilities infrastructure and other base building improvements, structures and fixtures that City installs within the Concession Locations.

"Business Day" shall mean any calendar day other than a Saturday, a Sunday or a day on which national banks are not required or authorized by law to remain closed.

"CGL Coverage" has the meaning assigned thereto in Section 14.1 hereof.

"Capital Improvements" means the improvements, structures and fixtures installed by Concessionaire and/or any Concession Operator in the Premises, including, without limitation, finish-out work on floors, ceilings, demising walls and store facades; storefront signage; panel boxes and hook-ups to utilities; wires and conduits infrastructure; decorations; furniture; equipment; shelves; counters; cash wraps; lighting; and interior design and construction work necessary in general to accommodate the Concession Operations.
“Construction Period Capital Improvements” means the Capital Improvements to the Concession Locations described in Exhibit B attached hereto and incorporated herein.

“Construction Representative” means a Person retained by Concessionaire to manage construction and renovation activities within the Premises by Concessionaire and the Concession Operators.

“Construction Permit” means an authorizing document permitting certain construction work to be performed within specified portions of the Premises in accordance with the terms thereof.

“DBE” means a business entity, whether a sole proprietorship, partnership, corporation or other entity, of which at least fifty-one percent (51%) of the ownership thereof is owned and controlled by a “socially and economically disadvantaged individual” as such term is defined in the Airport and Airways Improvement Act of 1982, as amended, and the regulations promulgated pursuant thereto in 49 C.F.R. Part 23, as amended. To qualify as a DBE, a business entity must meet the experience and economic guidelines for an “Airport Concession Disadvantaged Business Enterprise” set forth in 49 C.F.R. Part 23, as amended, and must be certified by City as a DBE.

“Day” means a calendar day of twenty-four (24) hours measured from midnight to the next midnight.

“Depreciation Schedule” means a schedule reflecting the monthly depreciation of the costs for Capital Improvements (excluding City-Financed Improvements) made by Concessionaire or a Concession Operator in or to the Premises, which schedule is subject to approval by City and shall reflect depreciation on a straight-line basis of the property described therein over the portion of the Term remaining at the time City provides such approval. Any schedule submitted for this purpose shall not be deemed a “Depreciation Schedule” until City has approved it, which approval City shall not unreasonably withhold.

“EPA” means the United States Environmental Protection Agency, and any successor agency, office or department thereto.

“Eligible Costs” means the following: (i) Construction Costs; (ii) architectural and engineering fees, construction management fees and the cost to obtain applicable permits (which amounts under this item (ii) shall not exceed fifteen percent (15%) of the contracted Construction Costs, unless otherwise approved by City in writing); and (iii) the cost of permanent fixtures. Notwithstanding the foregoing, the definition of “Eligible Costs” shall not include: (a) costs for Base Building Work incurred by City; (b) any overhead, financing costs (e.g., loan origination fees or interest, points, legal fees or any non-construction-related costs) in connection with such Capital Improvements; or (c) amounts paid to any Affiliate of Concessionaire or a Concession Operator, unless otherwise specifically approved by City in writing. In addition, a cost or expenditure shall not qualify as an “Eligible Cost” unless Concessionaire submits to City documentary evidence of the payment thereof, as described in Section 9.5 hereof.
(a) Proceeds from the sale of gift and merchandise certificates (but only when such certificates are treated as a sale from the Concession Location pursuant to the applicable Concession Operator's record-keeping system);

(b) Mail order sales arising out of preliminary contacts made at Airport facilities;

(c) Catalog sales (catalogs displayed in a Concession Location must include a tracking number unique to the Concession Location that allows for an auditable method for tracking such sales);

(d) Computer/Internet sales for delivery at the Airport or when products or merchandise to fill such orders are taken from Airport locations;

(e) Other electronic or telephone orders received or filled by a Concession Operator at the Airport;

(f) Deposits not refunded to purchasers;

(g) Orders taken within a Concession Location (although such orders may be filled elsewhere);

(h) Sales of Catering Services; and

(i) Sales through vending machines or other devices located within the Concession Locations.

A "sale" shall be treated as consummated, and a service shall be deemed rendered, for the purposes of this definition, and the entire amount of the sales price shall be included in "Gross Receipts" and deemed received, at the time of determination of the amount due for each transaction, whether for cash, credit or otherwise, and not at the time of payment. No deduction shall be allowed for uncollected or uncollectible credit accounts or checks returned for insufficient funds. "Gross Receipts" shall not include:

A. Any sums collected for any federal, state, county or municipal sales taxes, so-called luxury taxes, use taxes, consumer excise taxes, gross receipts taxes and other similar taxes now or hereafter imposed by law upon the sale of products, merchandise or services, but only if separately stated from the sales price and only to the extent paid by a Concession Operator to any duly constituted Governmental Authority;

B. The exchange of products or merchandise between the stores or warehouses owned by or affiliated with a Concession Operator, if any, where such exchanges of products or merchandise are made solely for the convenient operation of the business of such Concession Operator and not for the purpose of consummating a sale which has theretofore been made at, in, from or upon a Concession Location nor for the purpose of decreasing payments otherwise due to City hereunder which otherwise would be made at, in, from or upon a Concession Location;
hazardous, toxic, radioactive, dangerous or any other similar term in or under any of the Environmental Laws, including, without limitation, asbestos and asbestos-containing materials, petroleum products (such as crude oil or any fraction thereof, gasoline, aviation fuel, jet fuel, diesel fuel, lubricating oils and solvents), urea formaldehyde, flammable explosives, PCBs, radioactive materials or waste, and any other substance that, because of its quantity, concentration or physical, chemical or infectious characteristics, may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, distributed, disposed or released.

"Indemnified Parties" means City and its elected officials, officers, employees, agents, servants, representatives, contractors, subcontractors, Affiliates, successors and assigns.

"Insurance Coverages" has the meaning assigned thereto in Section 14.5 hereof.

"Interim Concession Program" means the concession and construction program as prepared by Concessionaire in accordance with Section 3.4(a) hereof and approved by City, and as modified from time to time, for the operation and development of Concession Operations during the Construction Period.

"Kiosk" means a site within the Premises that is a mobile or non-mobile, free-standing temporary facility not affixed to the Terminal, whether completely free-standing or located against the wall, which is used as a selling location for products, merchandise or services during the Construction Period.

"Landside" means all parts of the Terminal not located within the Non-Public Area or the Secured Area.

"Lease Year" means each twelve (12) calendar month period commencing on January 1 of each calendar year and ending on December 31 of each calendar year.

"MAG" means the minimum amount payable by Concessionaire to City as Periodic Rent for the Premises during the Term as set forth herein. The MAG shall equal the greater of the following amounts per Lease Year: (i) Three Hundred Twenty-Five Thousand and No/100 Dollars ($325,000.00) or (ii) eighty percent (80%) of the aggregate Periodic Rent due hereunder for the immediately preceding Lease Year.

"Midterm Renovations" means Capital Improvements to the Concession Locations to be completed as set forth in Section 9.8.

"Minimum Rating" means a rating (if A.M. Best Company is the Rating Service) of A-(Financial Size: X) based upon the criteria for financial strength and financial size ratings utilized by A.M. Best Company on the date of this Agreement, or such equivalent rating (if A.M. Best Company is not the Rating Service or if A.M. Best Company subsequently revises its criteria for financial strength and financial size ratings) as determined by City.

"Non-Public Area" means the non-public areas of the Terminal before the passenger security checkpoints to which an individual does not have access without either a Non-Public Identification Badge or a Secured Area Identification Badge.
(b) If an entity of the same business, franchise or trade name as such Concession Location does not operate within the greater Dayton, Ohio metropolitan area, Concessionaire shall propose to City a comparable location closest to the greater Dayton, Ohio metropolitan area, which City shall review and, if approved by City, such location shall be the Price Comparison Location. City agrees not to unreasonably withhold its approval of any such comparable location proposed by Concessionaire as the Price Comparison Location.

A request for a change to the Price Comparison Location for a particular good, product or service shall be provided to City for its approval, which City shall not unreasonably withhold, and shall become effective only upon receipt of City’s approval.

“Rating Service” means A.M. Best Company, or, if A.M. Best Company no longer exists or discontinues its rating of insurance companies, such alternative rating service for insurance companies as determined by City.

“Reasonable Pricing” shall have the meaning set forth in Section 7.1 hereof.

“Real Property Taxes” means any form of real property taxes and other governmental charges or impositions of any kind, including, without limitation, ad valorem taxes, special assessments and liens for public improvements, that are levied, assessed or imposed against real property or real property interests by any Governmental Authority.

“Releasing Parties” has the meaning assigned thereto in Section 24.27 hereof.

“Rent” means the Periodic Rent, the Additional Rent and any other charges due from Concessionaire to City hereunder.

“Report” shall have the meaning assigned thereto in Section 13.2 hereof.

“Rules and Regulations” means those rules, procedures and regulations promulgated by City from time to time for the orderly use of the Airport, as the same may be amended, modified or supplemented from time to time, and including, without limitation, the Airport Security Plan.

“Secured Area” means all non-public areas of the Airport beyond the passenger security checkpoint, including the designated “SIDA” and the “AOA”, as these terms are defined in 49 C.F.R. Part 1542, as amended or replaced from time to time, and the Airport Security Program, to which an individual does not have access without a Secured Area Identification Badge.

“Secured Area Identification Badge” means the Airport’s security identification badge required by City and issued by City to an individual for access to the Non-Public Area and the Secured Area.

“Sublease” means a lease executed by Concessionaire and a Sublessee and approved by City by which Concessionaire subleases to such Sublessee one or more Concession Locations for a specified term.
Concession Operator) to send construction workers therein to commence the construction of the Construction Period Capital Improvements therein in accordance with the terms and provisions of this Agreement:

<table>
<thead>
<tr>
<th>Concession Location</th>
<th>Approximate Square Footage</th>
</tr>
</thead>
<tbody>
<tr>
<td>PS-1</td>
<td>1,000</td>
</tr>
<tr>
<td>M-1</td>
<td>2,395</td>
</tr>
<tr>
<td>M-2</td>
<td>1,400</td>
</tr>
<tr>
<td>M-3</td>
<td>11,290</td>
</tr>
<tr>
<td>M-4</td>
<td>600</td>
</tr>
<tr>
<td>B-1</td>
<td>720</td>
</tr>
<tr>
<td>B-2</td>
<td>918</td>
</tr>
<tr>
<td>B-3</td>
<td>1,708</td>
</tr>
<tr>
<td>A-1</td>
<td>838</td>
</tr>
<tr>
<td>A-3</td>
<td>2,100</td>
</tr>
</tbody>
</table>

Concessionaire shall move as expeditiously as possible in the development, renovation and construction of Construction Period Capital Improvements within the Concession Locations; provided, however, that City recognizes that, during the Construction Period, it may be necessary for Concessionaire and the Concession Operators to utilize a program of temporary Kiosks to provide adequate levels of customer service to Airport users in accordance with Concessionaire’s Interim Concession Program. Sizes of Concession Locations set forth above and shown on Exhibit A hereto are approximate. Concessionaire is responsible for the coordination, design and completion of such Concession Locations with the Capital Improvements. Except as set forth below, no portion of a Concession Location may be used for storage, office or non-revenue generating functions without the prior written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed:

<table>
<thead>
<tr>
<th>Concession Location</th>
<th>Approximate Square Footage that may be used for Storage, Office or Non-Revenue Generating Functions</th>
</tr>
</thead>
<tbody>
<tr>
<td>PS-1</td>
<td>246</td>
</tr>
<tr>
<td>M-1</td>
<td>455</td>
</tr>
<tr>
<td>M-2</td>
<td></td>
</tr>
<tr>
<td>M-3</td>
<td>7,799</td>
</tr>
<tr>
<td>M-4</td>
<td></td>
</tr>
<tr>
<td>B-1</td>
<td></td>
</tr>
<tr>
<td>B-2</td>
<td></td>
</tr>
<tr>
<td>B-3</td>
<td></td>
</tr>
<tr>
<td>A-1</td>
<td></td>
</tr>
<tr>
<td>A-3</td>
<td></td>
</tr>
</tbody>
</table>
Section 2.3 **Concession Numbering.** Concessionaire shall assign to each business conducting Concession Operations a unique concept number for the purpose of tracking its productivity, and such unit number will follow such business regardless of where it is located within the Terminal. If a Concession Operator has Concession Operations within multiple Concession Locations, the business conducted within each Concession Location shall receive a separate number, regardless of whether one or more such businesses are operated by the same Concession Operator or under the same food and/or beverage concept.

**ARTICLE III**

**CONCESSIONAIRE’S OBLIGATIONS**

Section 3.1 **General Operational Standards.** Concessionaire shall develop the Concession Locations and manage the Concession Operations so as to provide high quality, customer service-oriented food and beverage concessions within the Premises to accommodate the traveling public and other Airport users. Development and management of the Concession Locations shall be the responsibility of Concessionaire, notwithstanding the execution of one or more Subleases with respect to Concession Locations in accordance with the terms and provisions of this Agreement.

Section 3.2 **Concession Management.** Concessionaire shall perform the following duties, subject to the terms and provisions of this Agreement:

(a) Prepare the Plans as required in **Section 9.1** hereof;

(b) Coordinate its subleasing activities with City and submit each proposed Sublease and supporting documentation therefor to City at least thirty (30) days prior to the date on which the proposed Sublessee thereunder proposes to commence the construction and renovation of the Concession Location that is the subject of such proposed Sublease. The term of any Sublease may not extend beyond the expiration of the Term. City will provide its approval or rejection of a proposed Sublease within twenty (20) days after City’s receipt of such proposed Sublease and supporting documentation;

(c) Bill and collect all amounts payable by Sublessees under Subleases;

(d) Pay all Operating Expenses required under this Agreement;

(e) Select, engage, employ, pay, supervise, direct and discharge all employees or independent contractors reasonably necessary or appropriate for the proper and safe operation and maintenance of the Premises; satisfy the Concessionaire Insurance Requirements; and use reasonable care in the selection, supervision and discharge of Concessionaire’s employees and independent contractors;

(f) Comply with all Applicable Laws, including, without limitation, Applicable Laws providing for the fair and non-discriminatory hiring, promotion and treatment of all employees, and monitor and enforce compliance with such Applicable Laws by Concession Operators;
an interim basis, but in any event, Concession Operations within such Concession Location must be recommenced within not less than thirty (30) days after the cessation of Concession Operations therein. Concessionaire's failure to cause the re-commencement of Concession Operations within any vacated Concession Location will not result in a reduction of the MAG owed to City. In addition, if such Concession Location vacated by a Sublessee has not re-opened for business within such thirty (30) day period, then City may reclaim such Concession Location and remove it from the Premises with no reduction in the MAG. City may offer any such Concession Location so reclaimed by City to others to develop, lease, operate or manage a concession operation therein;

(o) Serve as the project manager and provide the management, administration and coordination of all design and construction associated with the maintenance, repair and/or subleasing of the Premises, including, without limitation, all Capital Improvements to be constructed, installed or completed within the Concession Locations, whether initial construction and alterations associated with any expansion, redevelopment or refurbishment of the Premises or future construction and alterations and including cleaning and maintenance of external design elements installed;

(p) Have the right, but not the obligation, to finance the improvement, construction and equipping of any Capital Improvements pursuant to such financing arrangements as Concessionaire may determine; provided, however, that, (i) although City shall not be a party to such agreements or responsible in any manner for the performance or enforcement thereof, no improvement, construction or equipping of any part of the Premises may be commenced until City shall have reviewed and approved such financing arrangement for the applicable portion of the Premises; (ii) if Concessionaire finances a Concession Operator's costs of improving, constructing or equipping a Concession Location in accordance with the terms and provisions of this Agreement, Concessionaire's right to repayment or reimbursement under such financing arrangement shall be junior and subordinate in all respects to any obligation of such Concession Operator to City (and Concessionaire agrees to execute any such additional instruments or agreements evidencing such subordination as City may require); and (iii) Concessionaire may not agree or arrange to tie-in or otherwise condition such financing or undertaking for any Concession Operator on any other rights, privileges, allowances or business terms and conditions granted to a Concession Operator. Concessionaire shall not waive any right to receive rents, fees, charges or other revenues that may be paid or payable by any Concession Operator without the prior written consent of City, and shall not grant any rent abatements, extensions or other modifications without the prior consent of City;

(q) Ensure that grease traps are installed and checked/cleaned on at least a quarterly basis in all Concession Locations, and, if a problem develops due to a clogged or under-maintained grease trap, Concessionaire shall repair, or cause to be repaired, all damages caused thereby;

(r) Maintain, and cause each Concession Operator to maintain in each of its Concession Locations, an adequate sales and work force at all times, including, without limitation, sales, cashiers, management and supervisory personnel on-site to fully meet
dedicated, on-site Assistant Concession Managers. The individual whom Concessionaire proposes to employ as the Concession Manager is subject to the prior approval of City. The Concession Manager and Assistant Concession Managers shall serve as liaisons with City and Concession Operators and have sufficient authority and support staff and appropriate equipment, supplies and means to manage and perform the development, management, maintenance, repair and other functions and obligations of Concessionaire with respect to the Premises, including, without limitation, the obligation to administer the Subleases and other contracts to which Concessionaire is a party, to monitor and enforce compliance by Sublessees with their Subleases and this Agreement, and to resolve operational issues that do not require the execution of an amendment to this Agreement. The Concession Manager and the Assistant Concession Managers shall use commercially reasonable efforts to remedy any problem or issue raised by Airport patrons with respect to Concession Operations within the Premises. Unless otherwise approved in writing by City, the Concession Manager or an Assistant Concession Manager shall be available twenty-four (24) hours per day to resolve any issues pertaining to Concession Operations, shall be present at the Airport a minimum of twelve (12) hours per day and available to meet with City representatives at the Airport, and shall be available at all other times by telephone or pager to arrive by car at the Airport within three (3) hours after being called in an emergency situation. In addition, Concessionaire shall ensure that each Concession Operator is aware of the peak hours for its Concession Location and will staff the Concession Location appropriately to provide excellent customer service and avoid lengthy service lines. Each Concession Operator shall staff its Concession Location with at least two (2) persons during peak hours. Additionally, the staffing levels at a Concession Location must reflect both the hourly and seasonal fluctuations in passenger traffic that affect such Concession Location.

Section 3.4 Concession Program.

(a) Within sixty (60) days after the Effective Date, Concessionaire shall submit to City for its approval the final Interim Concession Program to provide Concession Operations in a First Class Manner during the transition to Concessionaire’s Permanent Concession Program. This Interim Concession Program:

(i) shall ensure a high level of customer satisfaction during the Construction Period;

(ii) shall ensure that passengers within the Terminal are provided with a variety of food and beverage choices;

(iii) shall establish a barricade signage program for any unoccupied or incomplete Concession Locations, the design of which shall be subject to Airport’s permitting process and must compliment the interior design and finish of the Terminal. Such barricades shall provide information on locations providing similar products or services within reasonable walking distance in the Terminal, as well as “coming soon” information, as it is available;

(iv) shall specify the existing Concession Locations, if any, that will continue to function in the same capacity during the Construction Period and for how long such operations shall continue;
request, in part or total, within fifteen (15) days after receipt of such request. Specific requests for a temporary exceptions to City-approved operating hours for holidays and other reasons must be submitted to City at least fifteen (15) days before the proposed change, and City shall provide its approval or disapproval of the request, in part or total, within five (5) days after receipt of such request. City reserves the right to modify the aforementioned hours of operation based on flight schedules and/or customer demands. Neither Concessionaire nor any Concession Operator shall have the right to modify the operating hours of any Concession Location without the prior approval of City. City reserves the right to require Concessionaire to operate, or to cause the applicable Concession Operator to operate, a specific Concession Location beyond the approved operating hours due to unusual circumstances (e.g., delayed flights, weather). Concessionaire shall establish reasonable procedures for adjusting the opening and closing times of Concession Locations based on daily flight schedules and incorporating those schedules into shift schedules for a Concession Operator’s staff, as well as for receiving and disseminating schedule changes, weather or maintenance delays and other flight information that will require adjustments in such Concession Operator’s operations. In addition, Concessionaire shall ensure that each Concession Operator is aware of the peak hours for its Concession Location and will staff the Concession Location appropriately to provide excellent customer service and avoid lengthy service lines. The staffing levels at a Concession Location must reflect both the hourly and seasonal fluctuations in passenger traffic that affect such Concession Location.

Section 3.6 Annual Reporting. Concessionaire shall submit, within ninety (90) days after the end of each Lease Year, an operations report that shall contain the following information:

(a) A review of the performance of Concession Operations for such prior Lease Year, including, without limitation, a statement of Gross Receipts derived from the Concession Program for such Lease Year that is certified by the chief financial officer of Concessionaire to be true and correct and a statement of Concession Operators’ achievement of sales projections, financial results and other goals and objectives;

(b) The establishment of new operational goals and objectives for the forthcoming Lease Year, including projections, for each Concession Location, of sales, sales per square foot, sales per Enplaned Passenger and payments to City for the forthcoming Lease Year;

(c) Identification of Concession Operations that either will or might be replaced during the forthcoming Lease Year, along with photos, drawings, etc., of proposed replacement concepts and the reasons for such recommended changes;

(d) A discussion of Concession Operators’ customer service initiatives and activities, including, without limitation, information on surveys, secret shopper programs, incentives, etc.;

(e) Any planned expenditures or investments for improvements in the Concession Locations;
Section 3.10 Transition. Upon the expiration or earlier termination of this Agreement, Concessionaire shall cooperate fully with City and any successor to Concessionaire to ensure an effective and efficient transition of concession operations within the Premises to Concessionaire’s successor. Concessionaire acknowledges and agrees, and shall cause each Concession Operator to acknowledge and agree, that any licenses or permits granted for use at the Airport in Concession Operations shall not be taken off-Airport for use at other locations. Concessionaire acknowledges its responsibility to help to ensure continued Concession Operations within the Premises in a First Class Manner during any transition to a successor and shall take no action that would impair the ability of any successor to Concessionaire to obtain, in a timely manner, licenses and permits required to commence and maintain such operations.

Section 3.11 Airport Security. Employees, agents and representatives of Concessionaire and Concession Operators and their respective contractors and subcontractors shall comply with the Airport Security Plan and all other airport security regulations as adopted or required by City, the TSA or other Governmental Authorities from time to time. If a breach of the Airport Security Plan or such other airport security regulations occurs as a result of the acts or omissions of an employee, agent, representative, contractor or subcontractor of Concessionaire or a Concession Operator in any manner or form at any time during the Term, Concessionaire immediately shall, or shall cause such Concession Operator immediately to, remedy such breach or assist the TSA or other Governmental Authorities in remedying such breach, regardless of the circumstances and shall assume full and complete responsibility for such breach, including payment of any penalty imposed, and shall defend, indemnify and hold the Indemnified Parties harmless therefrom. Concessionaire shall maintain, and shall cause the Concession Operators to maintain, the integrity of the controlled access security system of the Airport for the Term.

Section 3.12 Identification Badges and Security Clearances.

(a) To the extent any of the personnel of Concessionaire or any Concession Operator or any of their respective contractors or subcontractors requires identification badges or security clearances for access at the Airport, Concessionaire is responsible, at its expense, for obtaining such identification badges and security clearances. Each employee of Concessionaire or a Concession Operator or their respective contractors or subcontractors who requires access to the Non-Public Area in the performance of his duties must first obtain a Non-Public Area Identification Badge, which requires no criminal history records check. Each employee of Concessionaire or a Concession Operator or their respective contractors or subcontractors who requires access to the Secured Area in the performance of his duties must first obtain a Secured Area Identification Badge. Prior to the issuance of a Secured Area Identification Badge to any individual, the applicant must submit to fingerprinting for the purposes of undergoing a criminal history records check that will determine whether such individual has, within the last ten (10) years, been convicted of, or found innocent by reason of insanity with respect to, one of thirty-six (36) disqualifying crimes. In accordance with 49 C.F.R. Part 1542 and Public Law 106-528, the results of this criminal history records check will be used as the sole determining factor for granting permanent unescorted Secured Area access privileges at the Airport. In addition to the required criminal history records check for access to the Secured Area, each individual applying for access thereto must attend a
with the Rules and Regulations may subject Concessionaire or such Concession Operator to a TSA-imposed fine of up to Ten Thousand and No/100 Dollars ($10,000.00) per occurrence, and/or suspension or revocation of the violator’s City-issued identification badge.

(e) In the event City determines that any fine or penalty has been imposed upon City as a result of the failure of Concessionaire or a Concession Operator or any of their respective contractors or subcontractors to comply with Applicable Laws, Concessionaire shall pay such fine or penalty or reimburse City therefor upon demand by City. Concessionaire shall monitor compliance by each Concession Operator and its contractors and subcontractors with the requirements for identification badges and security clearances and the screening of goods, products, equipment, materials and supplies of such Concession Operator and its contractors and subcontractors. Concessionaire shall enforce the remedies under its agreements with other Concession Operators to rectify violations or other deficiencies by them with respect to the requirements of this Section 3.12.

Section 3.13 Employee Parking. Employees of Concessionaire and Concession Operators are permitted to park their personal vehicles in the employee surface parking areas designated by City from time to time, subject to the same terms and conditions of use as are applicable to employees of other tenants at the Airport, Air Transportation Companies and other concessionaires using the employee surface parking areas at the Airport. No parking will be provided to employees of Concessionaire or Concession Operators in the parking garages at the Airport.

Section 3.14 Knowledge of the Airport. Employees of a Concession Operator are expected to be able to assist Airport users with wayfinding within the Airport. As such, Concessionaire shall ensure that each Concession Operator (i) causes its employees to have information regarding the locations of other concessions, restrooms, elevators, airlines, gates, information desks and other facilities within the Terminal and to provide such information upon request and with courtesy and dispatch, and (ii) provides all of its employees with a list of emergency and other important telephone numbers as well as other means through which such employees can respond to customers’ requests for information.

ARTICLE IV
FINANCIAL TERMS

Section 4.1 Periodic Rent. For the right to develop, manage and operate the Concession Program as described herein and to lease the Premises in the Terminal during the Term, Concessionaire shall pay, commencing on the first day of the Effective Date and continuing throughout the Term, Periodic Rent determined as follows:

(a) For each Lease Year, Concessionaire shall pay Periodic Rent in an amount equal to the greater of (i) the MAG due for such Lease Year as set forth herein or (ii) an amount equal to the applicable percentages of Gross Receipts from Concession Operations for such Lease Year as set forth below:
Concessionaire shall submit, on or before the twentieth (20th) day of each month, a
Concession Location sales report that details the total Gross Receipts for such preceding
month from the Concession Program and a breakdown of such Gross Receipts by
Concession Location. In addition, within one hundred twenty (120) days after the end of
each Lease Year, Concessionaire shall provide its annual report, as required by Section
3.6 hereof, along with a reconciliation and payment to City (if any is due) as follows: (A)
a comparison of the MAG for such preceding Lease Year and the percentage of Gross
Receipts due to City for such Lease Year to determine the total amount owed to City by
Concessionaire for such preceding Lease Year under this Section 4.1; and (B) payment of
any additional amount owed as Rent for such preceding Lease Year under the terms of
this Agreement. In the event that such Annual Report reflects an overpayment by
Concessionaire of Periodic Rent for such preceding Lease Year, Concessionaire shall
receive a credit by City for the overpayment with respect to subsequent Periodic Rent due
to City or a refund, as City may determine; provided, however, that in no event shall
Concessionaire take a credit against any subsequent Periodic Rent owed to City for any
such overpayment without the prior written approval of City. Concessionaire shall have
no right to set-off or off-set any Rent owed under this Agreement against any amounts
that may be payable by City to Concessionaire. Upon City’s receipt of the annual report
for the immediately preceding Lease Year pursuant to Section 3.6 hereof, the MAG for
the then-current Lease Year shall be established and Concessionaire shall remit, together
with such annual report, any additional amount due under such newly-established MAG
for the then-current Lease Year. Until the MAG is so established for a Lease Year
pursuant to this Section 4.1(b), the monthly installment of MAG due hereunder shall
remain in the amount due for the immediately preceding Lease Year.

Section 4.2  Payments to City. All payments to City shall be made payable to “City
of Dayton, Ohio” and forwarded as set forth in this Section 4.2. All annual reports and monthly
statements of Gross Revenues and the associated payments of Periodic Rent to City shall be sent
to City at the following address:

City of Dayton, Ohio
Department of Aviation
Attn: Accounts Receivable
3600 Terminal Drive, Suite 300
Vandalia, OH 45377

or to other such party or addressee as designated by City pursuant to this Agreement.
Except as provided above in this Section 4.2, all fees and other amounts payable
hereunder shall be remitted by Concessionaire to the following address:

City of Dayton, Ohio
P. O. Box 632094
Cincinnati, OH 45263-2094

or to other such party or addressee as designated by City pursuant to this Agreement.
<table>
<thead>
<tr>
<th>Concession Location</th>
<th>Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>M-3</td>
<td>Operation of a full-service restaurant and bar under the Max &amp; Erma's® concept</td>
</tr>
<tr>
<td>PS-1, M-4</td>
<td>Operation of a quick-service restaurant and coffee bar under the Boston Stoker® concept</td>
</tr>
<tr>
<td>M-2</td>
<td>Operation of a quick-service restaurant under the Chick-fil-A concept</td>
</tr>
<tr>
<td>A-1, B-2</td>
<td>Operation of a gourmet coffee bar and restaurant under the Starbucks® concept</td>
</tr>
<tr>
<td>B-1</td>
<td>Operation of a quick-service restaurant under the Quiznos® concept</td>
</tr>
<tr>
<td>A-3</td>
<td>Operation of a full-service restaurant and bar under the 12th Fairway concept</td>
</tr>
<tr>
<td>B-3</td>
<td>Operation of a full-service restaurant and bar under the MVP Lounge Restaurant &amp; Bar® concept</td>
</tr>
<tr>
<td>M-1</td>
<td>Operation of a quick-service restaurant under the Great American Bagel® concept</td>
</tr>
</tbody>
</table>

Each Concession Operator is responsible for obtaining all licenses and permits necessary for sales of any food or beverage it wishes to offer, including, without limitation, alcoholic beverage licenses and permits. In the event any question or dispute arises as to whether any specific item or category of items may be sold at a Concession Location, City shall give a decision in writing and such determination shall be considered as the final resolution of the matter. Concessionaire shall abide by and conform to the decisions of City. A Concession Operator may provide Catering Services upon demand, and a Concession Operator also may provide such services within airline or Airport clubs if so requested by the club's sponsor or operator. A Concession Operator also shall be permitted to sell, within its Concession Location, themed merchandise advertising the food and beverage concept operated within such Concession Location; provided, however, that such Concession Operator obtains the prior approval of City for the sale of such merchandise and the sale of such merchandise does not violate other concession rights granted by City, as determined by City.
total gross revenues of all Airport concessions. Concessionaire agrees that it will use its best efforts to provide opportunities for participation by DBEs in the performance of this Agreement and shall provide all information requested by (and on forms specified by) City regarding DBE participation in the Concession Program (and Concessionaire’s good faith efforts to obtain DBE participation in the Concession Program) necessary for City to satisfy its reporting and record-keeping obligations under 49 C.F.R. Part 23, as amended or modified from time to time, and other Applicable Laws. It is agreed that “best efforts” and “good faith efforts” as used herein shall not require Concessionaire to sublease a Concession Location (as of the Effective Date) to a DBE and/or require Concessionaire to terminate any existing Sublease of a Concession Location. However, upon the expiration or earlier termination of any existing Sublease of a Concession Location, or in the event that one or more additional Concession Locations are added to the Premises, Concessionaire agrees to make good faith efforts, as described in 49 C.F.R. Section 23.95(f), to provide for a level of Ohio-certified DBE participation in the Concession Program that results in the generation of five and nine-tenths percent (5.9%) or more of total Gross Receipts from Concession Operations which are attributable to the participation of Ohio-certified DBEs in the Concession Program.

Section 6.3 Discrimination Prohibited. This Agreement is subject to the requirements of the U.S. Department of Transportation’s regulations, 49 C.F.R. Part 23, Subpart F. Concessionaire agrees that it will not discriminate against any business owner because of the owner’s race, color, national origin or sex in connection with the award or performance of any concession agreement covered by 49 C.F.R. Part 23, Subpart F. Concessionaire agrees to include the above statements in any subsequent concession agreements that it executes and cause those businesses to similarly include the statements in further agreements.

ARTICLE VII PRICING

Section 7.1 Reasonable Pricing. Concessionaire and Concession Operators shall observe and maintain Reasonable Pricing for goods, products and services sold within the Concession Locations. For purposes of this Agreement, the term “Reasonable Pricing” means the regular price of the good, product or service charged at the applicable Price Comparison Location, plus ten percent (10%); provided, however, that, if a good, product and/or service is not available from a Price Comparison Location, the regular price for such good, product or service shall be determined by reference to a range of the regular prices of three (3) separate businesses for such good, product and/or service, of comparable nature, ambiance and product and service lines, as agreed by City and Concessionaire. Concessionaire is required to submit, prior to the opening of a Concession Location, a complete list of items to be offered by the Concession Operator therein and the prices to be charged for City’s approval. No Concession Location shall open without such City approval. Concessionaire shall submit to City, within sixty (60) days after the end of each Lease Year, an annual pricing report for each Concession Location that indicates the extent of compliance by the Concession Operator thereof with Reasonable Pricing and the actions taken by Concessionaire and each Concession Operator to remedy any noncompliance.

Section 7.2 Pricing Adjustments. Not less than bi-annually, Concessionaire shall conduct, or shall cause to be conducted, an audit concerning compliance with the Reasonable
ARTICLE IX
CONSTRUCTION: CAPITAL IMPROVEMENTS

Section 9.1 Permitting; Planning Requirements. Before Concessionaire or any Concession Operator may undertake any construction or improvement work within the Terminal, City requires that Concessionaire and such Concession Operator obtain required permits and otherwise comply with the requirements of City. Concessionaire or any Concession Operator shall submit for approval by City’s Department of Aviation, the Plans for all Capital Improvements before seeking any construction permits. Concessionaire shall act as the construction coordinator with City for each Concession Operator’s design and construction requirements.

Section 9.2 Construction Period Capital Improvements. During the Construction Period, Concessionaire has agreed to develop, install and construct, pursuant to Plans approved by City in accordance with Section 9.1 hereof, the Construction Period Capital Improvements. Construction Period Capital Improvements shall consist of construction of a Chick-Fil-A® and Starbucks® restaurants and renovation of the existing Max & Erma’s® restaurant. Concessionaire agrees to spend not less than One Million One Hundred Seventy-Five Thousand Dollars ($1,175,000) on Construction Period Capital Improvements. In consideration of Concessionaire’s agreement to develop, install and construct the Construction Period Capital Improvements, City agrees to reimburse Concessionaire for certain costs of the Construction Period Capital Improvements in an aggregate amount not to exceed Five Hundred Thousand and No/100 Dollars ($500,000.00), subject to the following:

(a) Notwithstanding that the costs associated with Construction Period Capital Improvements may constitute Eligible Costs under this Agreement, City shall have no obligation to pay, or to reimburse Concessionaire for, the cost of any Capital Improvements that comprise movable equipment, furniture and furnishings, decorations, signage containing proprietary information, trade names or registered trademarks or service marks or non-permanent fixtures used in connection with Concession Operations;

(b) Concessionaire shall submit to City, not more frequently than monthly, requests for reimbursement, together with detailed invoices and other supporting documentation reasonably requested by City to substantiate each such request; and

(c) As to any costs for which Concessionaire requests reimbursement from City hereunder, Concessionaire shall have complied with the procurement requirements of City set forth in Exhibit D attached hereto and incorporated herein.

Unless Concessionaire complies with the requirements of this Section 9.2, City shall have no obligation to pay, or reimburse Concessionaire for, the costs of any Construction Period Capital Improvements.

Section 9.3 General Requirements for Capital Improvements. Concessionaire shall construct, equip and install, or cause to be constructed, equipped, and installed, the Capital Improvements in a Concession Location in accordance with the plans and specifications to be submitted to and approved by City, free and clear of all liens, encumbrances and security
Agreement. Concessionaire agrees to give City immediate notice of the placing of any lien or encumbrance against the Premises or the Terminal and further agrees to extinguish such lien in accordance with Section 13.1 hereof.

Section 9.7 Construction Fines. All contracts for the construction of Capital Improvements shall require completion of such Capital Improvements within the applicable Construction Schedule submitted by Concessionaire and accepted by City and shall contain reasonable and lawful provisions for the payment of actual or liquidated damages in the event a contractor fails to complete such construction on a timely basis. Concessionaire agrees that it will take all necessary action available under each such construction contract to enforce the timely completion of the work covered thereby.

Section 9.8 Midterm Renovations. During the Lease Year commencing January 1, 2016, Concessionaire shall spend, or shall cause the Concession Operators of such Concession Locations to spend, not less than a total of Three Hundred Thousand and No/100 Dollars ($300,000.00) in Eligible Costs to refurbish, renovate and remodel the Concession Locations.

Section 9.9 Surrender of Premises. Upon the expiration or earlier termination of the Term, Concessionaire shall yield and deliver peaceably to City possession of the Premises and the Capital Improvements (to the extent City has elected to retain title thereto), broom clean and in a condition at least as good as that which existed on the Effective Date, except for obsolescence, casualty, and ordinary wear and tear. Concessionaire shall cause the immediate removal of all distinctive proprietary and physical features associated with the trade dress of Concessionaire and other Concession Operators as necessary to distinguish the Concession Locations so clearly from their former appearance as to prevent any possibility that the public will associate a Concession Location with the prior Concession Operator of such Concession Location and any confusion created by such association. In making such removal, Concessionaire agrees to maintain the structural integrity of the Terminal and to repair any damage done to the Premises.

Section 9.10 Displaced Offices and Facilities. In the event City requests that Concessionaire construct and/or remove offices and/or facilities that are displaced as a result of Construction Period Capital Improvements as provided in Section 3.2(bb) hereof, City agrees to reimburse Concessionaire for the cost of such construction and/or removal work in an aggregate amount not to exceed Five Hundred Thousand and No/100 Dollars ($500,000.00) upon satisfaction of the following requirements: (i) prior to the commencement of such work, City has approved the plans and specifications for such work and the contractor cost estimates therefor; and (ii) such work is completed in accordance with City-approved plans and specifications.

ARTICLE X
PREMISES MAINTENANCE; RESERVATION OF RIGHTS

Section 10.1 Premises Maintenance. City shall have primary responsibility for all maintenance, cleaning and routine upkeep of the Common Areas and shall keep such Common Areas in a clean, neat, orderly, sanitary and attractive condition. Concessionaire shall be responsible for the cleaning, maintenance, repair and replacement of the Concession Locations and shall keep, and cause the applicable Concession Operators to keep, the Concession Locations
injury, property damage or loss of any kind. In addition, Concessionaire shall send a written report to City within twenty-four (24) hours or as soon as possible, but no more than four (4) Business Days, after such accident or event.

Section 10.4 Reservation of Rights by City. City and its elected officials, officers, employees, agents, representatives, contractors and subcontractors, and furnishers of utilities and other services, shall have the right from time to time, at their own cost and expense, to do or permit any of the following: (i) to construct and maintain existing and future utility and other systems; (ii) to enter upon the Concession Locations at all reasonable times and upon reasonable notice, with such reasonable notice understood not to exceed twenty-four (24) hours (provided no notice shall be required during any real or threatened emergency) to inspect any part thereof, and to make such repairs, replacements or alterations thereto as may, in the opinion of City, be deemed necessary or advisable; (iii) to inspect, install, operate, maintain, recover and repair the Common Areas; (iv) to have access to all mail facilities according to the rules and regulations of the United States Post Office; (v) to approve the weight, size and location of safes, computers and other heavy articles in or about the Premises and to require all such items and other office furniture and equipment to be moved in and out of the Terminal and the Premises only at such times and in such manner as City shall direct and in any event at Concessionaire’s sole risk and responsibility; (vi) to perform any acts related to the safety, protection or preservation of the Premises; (vii) to do or permit to be done any work in or about the Premises or any adjacent or nearby building, land, street or alley; (viii) to grant to anyone the exclusive right to conduct any business or render any service in the Terminal that does not operate to exclude Concessionaire from the beneficial use of the Premises as expressly permitted by this Agreement; (ix) to adopt, amend, modify, rescind or suspend any of the Rules and Regulations of City in effect from time to time and to adopt such additional Rules and Regulations as City shall determine to be desirable for the safe, economical and efficient operation of the Premises; (x) to exercise all other rights reserved by City pursuant to the provisions of this Agreement; and (xi) to construct or install over, in, under or through the Premises new lines, pipes, mains, wires, conduits and equipment; provided, however, that in each case in the exercise of any such rights, City shall not unreasonably interfere with the use and occupancy of the Premises by Concessionaire or the Concession Operators to extent reasonably practicable under the circumstances.

Notwithstanding anything to the contrary contained herein, if, during the course of performing any work permitted by this Section 10.4, it becomes commercially unreasonable for Tenant to conduct business in the Premises and, in fact, Concessionaire or Concession Operator closes the Premises for business during its normal business hours, as the sole and direct result of City’s work within the Premises, then Periodic Rent shall abate for every day that Concessionaire or Concession Operator is closed because it is not reasonably able to conduct business in the Premises until the earlier of (i) the day Concessionaire or Concession Operator reopens the Premises for business, and (ii) the day the interference ceases.

ARTICLE XI
SMOKING

Section 11.1 Smoking. The Terminal is a non-smoking facility, and smoking is not permitted in the Concession Locations.
Section 12.2 Minimum Features of Point of Sale Terminals. In order to provide an accurate record of concessions transactions and to provide a high level of service to customers, all cash registers or other point of sale terminals used in Concession Locations must have, as a minimum, the features listed below:

(a) A reasonable number of segregated category addresses to allow for analysis of sales trends and sales by types of products;

(b) An input device consisting of a keyboard, scanner or both;

(c) A patron fee display of sufficient size and legibility to be readily observed by the patron during the processing of a transaction;

(d) The capability (i) to record transactions by sequential control number to the audit tape or computer files, (ii) to print a transaction history to tape or file by hour (time of day), day, month, and year, and (iii) to print a customer receipt showing the amount due, amount tendered and the change due to the customer together with the time and date, as well as the printed customer service number and website address for the applicable Concession Operator; and

(e) Unless otherwise approved by City prior to the opening of a business within a Concession Location, the capability to accept at least three (3) major credit cards and, wherever commercially reasonable, to provide a so-called “swipe and go” credit card service to customers.

Section 12.3 Statistics Report. City has the right at any time to request that Concessionaire make available to City Point of Sale Data for a one month period occurring within the most recent three (3) months prior to the date of the request, including, without limitation, daily, day-part and product category totals for weekly sales, average transaction values, average number of items sold per transaction per Concession Location and the total number of transactions per Concession Location. Unless otherwise approved in writing by City, such data shall be provided to City within twenty (20) days of its request therefor.

ARTICLE XIII
TAXES AND ASSESSMENTS; LIENS

Section 13.1 Payment of Taxes and Assessments; Liens. Concessionaire shall pay all Taxes and assessments applicable to or resulting from the Concession Operations on a timely basis. City is not responsible for the payment of any Taxes or assessments arising in connection with the Concession Program and the Concession Operations at the Airport. Concessionaire agrees not to permit or suffer any liens to be imposed upon the Terminal or any part thereof as a result of the Concession Operations, and, in the event that any such lien is filed, Concessionaire will cause such lien to be discharged of record within fifteen (15) days after notice of the filing thereof.

Section 13.2 Real Property Taxes and Assessments. Concessionaire acknowledges that Real Property Taxes are assessed on the entire Airport parcel, of which the Premises are a portion thereof. Concessionaire shall pay the Real Property Taxes becoming due and payable
Section 14.2  **PC Coverage.** Concessionaire shall obtain and maintain continuously in effect at all times during the Term, at its sole cost and expense, property insurance coverage (the "PC Coverage") with respect to the Capital Improvements for one hundred percent (100%) of the insurable replacement value of thereof, with no coinsurance penalty, that provides (i) special form property insurance at least as broad as that provided by form CP 10 30 (© ISO Properties, Inc.), together with builder’s risk (with respect to the construction or alteration of or addition to a Concession Location during the Term) with any deductible in excess of Ten Thousand and No/100 Dollars ($10,000.00) to be approved by City, and (ii) ordinance and law coverage. Each insurance policy providing the PC Coverage shall name City as a co-loss payee and shall provide that such insurance policy shall be considered primary insurance as to any other valid and collectible insurance or self-insured retention City may possess or retain. Any insurance coverages maintained by City shall be considered excess insurance only. Each insurance company issuing an insurance policy providing the PC Coverage shall be (A) admitted to do business in the State of Ohio and rated not less than the Minimum Rating or (B) otherwise approved by City. Such approval may be denied or withheld based upon an insurance company’s rating by the Rating Service or other indications of financial inadequacy, as determined by City.

Section 14.3  **Auto Coverage.** If Concessionaire operates motor vehicles in the performance of this Agreement, then Concessionaire shall obtain and maintain continuously in effect at all times during the Term, at its sole cost and expense, automobile liability insurance coverage (the “Auto Coverage”), with a coverage limit of not less than One Million and No/100 Dollars ($1,000,000.00) per occurrence, that insures against claims, damages, losses and liabilities arising from automobile related bodily injury, death and/or property damage, including any such claims, damages, losses or liabilities arising from or relating to Concession Operations or the presence of Concessionaire and Concession Operators at the Airport. The aggregate deductible amount under the insurance policy or policies providing the Auto Coverage shall not exceed Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00) per occurrence. Each insurance policy providing the Auto Coverage shall name City and its commissioners, officers and employees as additional insureds thereunder and shall provide that such insurance policy will be considered primary insurance as to any other valid and collectible insurance or self-insured retention City may possess or retain. Any insurance coverages maintained by City shall be considered excess insurance only. Each insurance policy providing the Auto Coverage shall provide contractual liability coverage under which the issuing insurance company agrees to insure (i) Concessionaire’s obligations under Section 15.1 hereof and (ii) any other liability that Concessionaire has under this Agreement for which such insurance policy would otherwise provide coverage. Each insurance company issuing an insurance policy providing the Auto Coverage shall be (A) admitted to do business in the State of Ohio and rated not less than the Minimum Rating or (B) otherwise approved by City. Such approval may be denied or withheld based upon an insurance company’s rating by the Rating Service or other indications of financial inadequacy, as determined by City.

Section 14.4  **WC Coverage.** Concessionaire shall obtain and maintain, and shall cause each Concession Operator to obtain and maintain, continuously in effect at all times during the Term, at its sole cost and expense, worker’s compensation insurance coverage (the “WC Coverage”) in accordance with statutory requirements and providing employer's liability coverage with limits of not less than One Hundred Thousand and No/100 Dollars ($100,000.00) for bodily injury by accident, One Hundred Thousand and No/100 Dollars ($100,000.00) for
damage may be due to the negligence or fault of either party, its agents, representatives, or employees. City and Concessionaire shall cause each property insurance policy carried by either of them insuring the Premises, the contents thereof, or the Airport, to provide that the insurer waives all rights of recovery by way of subrogation or otherwise against the other party hereto in connection with any loss or damage which is covered by such policy or that such policy shall otherwise permit, and shall not be voided by the releases provided for above.

ARTICLE XV
INDEMNIFICATION

Section 15.1 Negligent Acts or Omissions. Concessionaire agrees to defend, indemnify and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities and expenses (including, without limitation, reasonable attorneys’ fees, court costs and litigation expenses) claimed or incurred by reason of any bodily injury, death and/or property damage arising from any negligent act or omission of Concessionaire or any Concession Operator or any of their respective officers, contractors, subcontractors, agents, representatives or employees.

Section 15.2 Intentional Acts. Concessionaire agrees to defend, indemnify and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages demands, penalties, fines, settlements, liabilities and expenses (including, without limitation, reasonable attorneys’ fees, court costs and litigation expenses) claimed or incurred by reason of any bodily injury, death and/or property damage arising from any intentional act of Concessionaire or any Concession Operator or any of their respective officers, contractors, subcontractors, agents, representatives or employees.

Section 15.3 Placement or Use of Hazardous Materials. Concessionaire agrees to defend, indemnify and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities and expenses (including, without limitation, reasonable attorneys’ fees, court costs and litigation expenses) arising from any negligent act or omission of Concessionaire or any Concession Operator or any of their respective officers, contractors, subcontractors, agents, representatives or employees with respect to any bodily injury, death or property damage related to the use or placement of Hazardous Materials on the Airport premises or other areas.

Section 15.4 Negligent Acts or Omissions as to Hazardous Materials. Concessionaire agrees to defend, indemnify and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities and expenses (including, without limitation, reasonable attorneys’ fees, court costs and litigation expenses) arising from any negligent act or omission of Concessionaire or any Concession Operator or any of their respective officers, contractors, subcontractors, agents, representatives or employees with respect to (i) any monitoring, clean-up, containment, removal, storage or restoration work performed by City or a third party with respect to the use or placement of Hazardous Materials (of whatever kind or nature, known or unknown) on the Airport premises or any other areas; (ii) any actual, threatened or alleged contamination by Hazardous Materials on the Airport premises or other areas; (iii) the disposal, release or
Section 15.9 Survival of Article XV. It is expressly understood and agreed that Concessionaire’s obligations under this Article XV shall survive the expiration or earlier termination of this Agreement.

ARTICLE XVI
RELATIONSHIP OF CITY AND CONCESSIONAIRE

Section 16.1 Relationship of City and Concessionaire. City and Concessionaire are not and shall not be considered as joint venturers, partners or agents of each other, and neither shall have the power to bind or obligate the other except as set forth in any contract executed by the party to be bound or obligated. There shall be no liability on the part of City to any Person for any debts incurred by Concessionaire or any Concession Operator or by any business conducted on- or off-Airport in connection with the development or management of Concession Operations.

ARTICLE XVII
CONDUCT OF BUSINESS

Section 17.1 Conduct of Business. Concessionaire and Concession Operators shall have the right to use public Airport facilities in common with others authorized to do so, subject to compliance with Applicable Laws.

ARTICLE XVIII
TERM/TERMINATION/REMEDIERS

Section 18.1 Term. The Term of this Agreement shall commence on the Effective Date and terminate December 31, 2020, unless sooner terminated in accordance with the terms and provisions of this Agreement.

Section 18.2 Termination by City. City shall have the right to terminate this Agreement in the following circumstances:

(a) The occurrence of an Event of Default, as that term is defined in Section 18.3;

(b) In the event the City, through implementation of its Terminal Master Plan, decides to construct a new terminal or renovate the existing terminal, subject to the notice requirement and other consideration provided in Section 2.4.

Section 18.3 Events of Default. The occurrence of any of the events described in this section shall be defined as and shall constitute an “Event of Default” under this Agreement:

(a) Concessionaire becomes insolvent, or takes the benefit of any present or future insolvency law, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any state thereof, or consents to the appointment of a receiver, trustee or liquidator of all or substantially all of its property;
(l) Concessionaire fails to implement or to maintain, or to cause the Concession Operators to implement and maintain, Reasonable Pricing, and such failure continues for a period of ten (10) days after notice of from City to Concessionaire of such failure,

(m) Concessionaire fails to demonstrate a good faith effort to achieve Ohio-certified DBE participation pursuant to Section 6.2 hereof;

(n) Independent certified public accountants retained by City determine that Concessionaire's failure to maintain a proper internal control structure has resulted in an audit adjustment to the amount due to City of two percent (2%) or more on a monthly basis, or Concessionaire has engaged in fraudulent practices regardless of the amount of any audit adjustment; or

(o) Concessionaire fails to comply with each and every promise, covenant, condition and agreement set forth in this Agreement on its part to be kept, performed or observed (other than the promises, covenants, conditions and agreements otherwise addressed by specific provisions of this Section 18.3), and such noncompliance continues for a period of ten (10) days after notice from City to Concessionaire of such noncompliance; provided, however, that if correction of such noncompliance (i) does not involve the payment of money, (ii) requires activity over a period of time and (iii) Concessionaire promptly commences to cure such noncompliance, to the reasonable satisfaction of City, within such ten (10) day period, then such noncompliance shall not constitute an Event of Default hereunder so long as Concessionaire diligently pursues the cure of such noncompliance as reasonably determined by City.

Section 18.4 City's Remedies. Upon the occurrence of an Event of Default, City may exercise any and all rights and remedies permitted under law or equity, including, without limitation, any one or more of the following:

(a) City may, at its option, declare all installments of Rent payable under this Agreement for the remainder of the Term to be immediately due and payable, whereupon such amount, discounted to net present value using a discount rate that is then consistent with current market conditions, shall be immediately due and payable hereunder;

(b) City may re-enter and take possession of the Premises and sublease all or any portion(s) of the Premises for the account of Concessionaire, and Concessionaire shall remain liable for the difference between the Rent and other amounts payable by Concessionaire hereunder and the rent and other amounts actually paid by any such subtenant(s);

(c) City may terminate this Agreement and exclude Concessionaire from the Premises, and Concessionaire shall remain liable for all Rent and other amounts payable by Concessionaire hereunder;

(d) City may take whatever action at law or in equity may appear necessary or desirable to collect the Rent and any other amounts then due and thereafter to become due hereunder or to enforce performance and observance of any obligation, agreement or
same in accordance with Section 24.10 hereof; provided, however, that no notice of termination shall be of any force or effect if City shall have remedied the default prior to receipt of Concessionaire’s notice of termination; or

(c) In the event the Terminal is damaged or destroyed through no fault or other misconduct of Concessionaire so as render the Premises untenantable, Periodic Rent payable hereunder shall abate as of the date of such damage or destruction and such abatement shall continue until such time as the Premises are fully restored. If, within twelve (12) months after the time of such damage to or destruction of the Terminal, the Terminal has not been repaired or restored, Concessionaire may cancel this Agreement in its entirety as of the date of such damage or destruction. Notwithstanding the foregoing provisions of this Section 18.6, City has no obligation to repair, replace or reconstruct the Terminal and, in the event Concessionaire elects to terminate this Agreement pursuant to this Section 18.6, City shall have no obligation to reimburse Concessionaire or any Concession Operator for any Capital Improvements.

ARTICLE XIX
DAMAGE OR DESTRUCTION OF PREMISES

Section 19.1 Partial Damage. If all or any portion of the Premises is partially damaged by fire, explosion, the elements, act(s) of war or terrorism or other casualty, but the Concession Locations are not rendered untenantable or inaccessible to passengers, such damage will be repaired with due diligence by City at its own cost and expense and there shall be no abatement of payments to City; provided, however, that (i) if the damage is caused by the act or omission of Concessionaire or a Concession Operator or any of their respective officers, contractors, subcontractors, agents, representatives or employees, Concessionaire shall be responsible at its expense for making the necessary repairs and restorations as approved by City, and (ii) City shall have no obligation to repair or restore any damage to the Capital Improvements of a Concession Operator. City shall make any insurance proceeds of the PC Coverage paid to City available to Concessionaire in a manner reasonably acceptable to City for the purpose of paying the costs of repairing and restoring such Capital Improvements. If such insurance proceeds are not sufficient to pay such costs of repairing or restoring such Capital Improvements, Concessionaire shall pay the deficiency. If Concessionaire fails to make the necessary repairs and restorations in a timely manner as reasonably determined by City, then City may, at its option, cause such repairs and restorations to be completed and Concessionaire shall reimburse City for the costs and expenses incurred in such repairs and restorations, plus an administrative fee equal to fifteen percent (15%) of such costs and expenses.

Section 19.2 Extensive Damage. If all or any portion of the Premises is damaged by fire, explosion, the elements, act(s) of war or terrorism, or other casualty, and such damage shall be so extensive as to render part or all of the Concession Locations untenantable or inaccessible to passengers, but such damage is capable of being repaired and restored within one hundred twenty (120) days, such damage shall be repaired and restored with due diligence by City at its own cost and expense and the MAG for such period shall be reduced in proportion to the portion of the Concession Locations rendered untenantable or inaccessible, from the time of such damage until such time as the Premises are fully restored and certified by City’s engineers as ready for occupancy; provided, however, that (i) if the damage is caused by the act or omission
ARTICLE XX
OPERATING RIGHTS

Section 20.1 Operating Rights. Concessionaire, subject to the terms and provisions of this Agreement, including, without limitation, Section 20.2 hereof, has the exclusive right under this Agreement during the Term to operate all current and future restaurant/snack bar locations in the public portions of the Terminal that do not include the Concourses and to serve food and beverages therein, including the sale of alcoholic beverages; provided, however, that City reserves unto itself the right to allow other operators, under separate agreements, to sell pre-packaged food items and bottled and canned beverages in other locations throughout the entire Terminal. In addition, Concessionaire’s rights under this Agreement to operate restaurant and snack bar locations in the Concourses and to serve food and beverages therein, including the sale of alcoholic beverages, are non-exclusive. Concessionaire has the right to sell branded gift items at the Concession Locations; provided, however, that Concessionaire does not have the right to operate a gift shop or to conduct any business other than Concession Operations at the Airport.

Section 20.2 Right of First Refusal. During the Term, Concessionaire shall have the right of first refusal on all future opportunities for food and beverage concessions on the Concourses. Concessionaire must respond to all written proposals for any such future food and beverage concession opportunities within thirty calendar (30) days after City provides notice thereof to Concessionaire. If Concessionaire chooses not to develop and operate any such concession, City shall have the right to enter into a separate concession agreement for such concession with another Person on terms not more favorable than provided in this Agreement. This first right of refusal does not apply to the sale of pre-packaged foods and bottled and canned beverages throughout the Terminal as is or shall be permitted under any other concession agreement with City. City reserves unto itself the right to operate or contract directly for the vending of food and beverages within the Terminal.

ARTICLE XXI
ENVIRONMENTAL PROTECTION

Section 21.1 Compliance with Environmental Laws. Concessionaire hereby agrees to comply with the Environmental Laws. Further, any fines or penalties that may be levied against City by the EPA or any other Governmental Authority arising from or relating to Concessionaire’s failure to comply with any of the Environmental Laws shall be reimbursed to City by Concessionaire immediately after notice of the amount of such fines or penalties from City. Upon the expiration or earlier termination of the Term, Concessionaire shall, at Concessionaire’s sole expense, remove or permanently clean all Hazardous Materials that Concessionaire, a Concession Operator or anyone for whom Concessionaire or a Concession Operator is responsible, caused to be situated on, at, in or under any Airport premises. This shall be done in compliance with all Applicable Laws and shall include the performance of any necessary clean-up or remedial action. Concessionaire shall provide City with copies of all records related to any Hazardous Materials that are required to be maintained by any Applicable Laws.

Notwithstanding the foregoing, Concessionaire or Concession Operators may handle, store, use or dispose of products containing small quantities of Hazardous Materials (such as
contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and make disclosures in accordance with this Section 24.1.

Section 24.2 Ohio Revised Code § 3517.13 Compliance. By execution hereof, Concessionaire affirms and certifies that it complies with Ohio Revised Code § 3517.13 limiting political contributions.

Section 24.3 Drug-Free Workplace. City operates a drug-free workplace program in compliance with Ohio Administrative Code § 123:1-76-01, et. seq. Concessionaire hereby agrees to submit, and to cause each Concession Operator to submit, an affidavit not less than annually while this Agreement is in effect certifying that Concessionaire or such Concession Operator, as the case may be, operates a drug-free workplace program or other drug or alcohol testing program containing requirements at least as stringent as those of the program operated by City.

Section 24.4 Affirmative Action. Concessionaire shall undertake, to the extent applicable, an affirmative action program as required by 14 C.F.R. Part 152, Subpart E, as amended from time to time, to ensure that no person shall, on the grounds of race, creed, color, national origin or sex, be excluded from participating in any employment, contracting or leasing activities covered in 14 C.F.R. Part 152, Subpart E, as amended from time to time. Concessionaire further assures that (i) no person shall be excluded, on these grounds, from participating in or receiving the services or benefits of any program or activity covered by 14 C.F.R. Part 152, Subpart E, as amended from time to time, and (ii) it will require that its covered organizations under 14 C.F.R. Part 152, Subpart E, as amended from time to time, and the Concession Operators provide assurances to Concessionaire that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 C.F.R. Part 152, Subpart E, as amended from time to time, to the same effect. Concessionaire agrees to comply with any affirmative action plan or steps for equal employment opportunity required by 14 C.F.R. Part 152, Subpart E, as amended from time to time, as part of the affirmative action program, and by any federal, state or local agency or court, including those resulting from a conciliation agreement, a consent decree, court order or similar mechanism. Concessionaire agrees that state or local affirmative action plans will be used in lieu of any affirmative action plan or steps required by 14 C.F.R. Part 152, Subpart E, as amended from time to time, only when they fully meet the standards set forth in 14 C.F.R. 152.409, as amended from time to time. Concessionaire agrees to obtain a similar assurance from its covered organizations and the Concession Operators, and to cause them to require a similar assurance of their covered suborganizations, as required by 14 C.F.R. Part 152, Subpart E, as amended from time to time.

Section 24.5 Non-Discrimination. Concessionaire hereby agrees as follows:

(a) Concessionaire will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, handicap or creed, and Concessionaire will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, handicap or creed, including, without limitation, action relating to employment; upgrading, demotion or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and
provisions will be binding upon each Sublessee, other Concession Operator, subcontractor or vendor. Concessionaire will take such action with respect to any Sublease, other agreement establishing a Concession Operator's ability to conduct Concession Operations, subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Concessionaire becomes involved in or is threatened with litigation by a Sublessee, other Concession Operator, subcontractor or vendor as a result of such direction by the administering agency, Concessionaire may request the United States to enter into such litigation to protect the interests of the United States.

Section 24.6 No Exclusive Right. Nothing herein contained shall be deemed to grant Concessionaire any exclusive right or privilege within the Federal Aviation Act, or the conduct of any activity at the Airport, except that, subject to the terms and provisions hereof, Concessionaire shall have the right to use the Premises for the purposes stated in this Agreement.

Section 24.7 Subordination to Other Agreements. This Agreement is subject and subordinate to the provisions of any agreement heretofore or hereafter made between City and any other Governmental Authority relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to City for Airport purposes, or the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act.

Section 24.8 Subordination to City Encumbrances. This Agreement and all rights of Concessionaire hereunder shall be subject and subordinate to any deed of trust or mortgage lien or security interest encumbering City's interest in the Premises and to any renewal, extension, modification or consolidation of such deed of trust or mortgage or security agreement granting such security interest. Concessionaire agrees, at any time, and from time to time, upon not less than thirty (30) days prior notice by City, to execute, acknowledge and deliver to City a statement in writing certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), and the dates to which the Rent and other charges have been paid, and stating whether, to the best knowledge of Concessionaire, City is in default in the performance of any covenant, agreement, provision or condition contained in this Agreement and, if so, specifying each such default of which Concessionaire may have knowledge. City and Concessionaire intend that any such statement delivered pursuant hereto may be relied upon by any prospective mortgagee of City and any purchaser or tenant of the Premises or the Terminal and such purchaser's or tenant's mortgagee or prospective mortgagee, and by any prospective assignee and its mortgagee or prospective mortgagee. Concessionaire also agrees to execute and deliver from time to time, upon not less than thirty (30) days prior notice by City, such similar estoppel certificates as a lender to City may require with respect to this Agreement. If Concessionaire fails or refuses to furnish such certificate within the time provided, it will be conclusively presumed that this Agreement is in full force and effect in accordance with its terms and City is not in default hereunder.

Section 24.9 No Waiver. No waiver of default by either party of any of the terms, covenants or conditions herein to be performed, kept and observed by the other party shall be
construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 24.13 Severability. If one or more clauses, sections or provisions of this Agreement shall be held to be unlawful, invalid or unenforceable, the parties hereto agree that the material rights of either party hereto shall not be affected thereby except to the extent of such holding, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted herefrom.

Section 24.14 Agents for Service of Process. The parties hereto hereby designate the following as their agents for service of process and will waive any objection to service of process if served upon its agent as set forth below:

To City: Director of Law
City of Dayton, Ohio
101 W. Third Street
P.O. Box 22
Dayton, Ohio 45202

Concessionaire: General Counsel
Host International, Inc.
6905 Rockledge Drive
Bethesda, Maryland, 20817

Section 24.15 Waiver of Anticipated Profits. Concessionaire hereby waives any claim against City and its managers, commissioners, officers, employees, agents, servants, representatives, contractors, subcontractors, affiliates, successors and assigns for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part hereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable, or delaying the exercise of any rights under this Agreement.

Section 24.16 Right of City to Develop Airport. The parties hereto further covenant and agree that City reserves the right to further develop or improve the Airport as it may see fit, regardless of the desires or views of Concessionaire and without interference or hindrance.

Section 24.17 Incorporation of Legally Required Provisions. The parties incorporate herein by reference all provisions legally required to be contained herein by any Governmental Authority.

Section 24.18 Limitation of Liability. Neither City nor any elected official, employee, officer or agent thereof shall have (i) any personal liability with respect to any of the provisions of this Agreement, or (ii) any liability for any consequential damages resulting from a default by City hereunder or from the exercise by City of any of its remedies hereunder upon the occurrence of an Event of Default.
Section 24.26 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. By execution hereof, Concessionaire 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 Agreement.

Section 24.27 Avigation Easement. City hereby reserves from the Premises, for the use and benefit of itself and its successors and assigns, and the operators, owners and users of Aircraft of all types and for the public in general, a perpetual easement and right-of-way for the free and unobstructed flight and passage of Aircraft ("Aircraft" being defined for the purposes of this Agreement as any contrivance now known or hereafter invented, used or designed for navigation of or flight in or through the air) by whomsoever owned or operated, in and through the airspace above, over and across the surface of the Premises, together with the right to cause in such airspace such noise, vibration, odors, vapors, particulates, smoke, dust and other effects as may be inherent in the operation of Aircraft for navigation of or flight or passage in and through such airspace, and for the use of such airspace by Aircraft for approaching, landing upon, taking off from, maneuvering about or operating at the Airport.

This easement is reserved upon and subject to the following terms and conditions:

(a) Concessionaire shall not hereafter use, cause or permit to be used, or suffer use of, the Premises so as: (i) to cause electrical, electronic or other interference with radio, radar, microwave or other similar means of communications between the Airport and any Aircraft; (ii) to adversely affect or impair the ability of operators of Aircraft to distinguish between regularly installed air navigation lights and visual aids and other lights serving the Airport; or (iii) to cause glare in the eyes of operators of Aircraft approaching or departing the Airport, or to impair visibility in the vicinity of the Airport, or to otherwise endanger the approaching, landing upon, taking off from, maneuvering about or operating of Aircraft on, above and about the Airport; provided, however, that, notwithstanding any contrary provision contained above, Concessionaire shall be permitted to construct and maintain such improvements and to utilize all lighting, finishes and building materials as shall have been submitted to and approved by City; and

(b) Concessionaire, for itself and Concession Operators and their respective assigns, subtenants and legal representatives (collectively, the "Releasing Parties"), hereby expressly releases and forever discharges City and its Board of Commissioners, legal representatives, officers, assigns, associates, employees, agents and all others acting in concert with City, from any and all claims, debts, liabilities, obligations, costs, expenses, actions or demands, vested or contingent, known or unknown, whether in tort, contract or otherwise, that the Releasing Parties may now own or hold, or have at any time heretofore owned or held, or may at any other time own or hold, by reason of noises, vibration, odors, vapors, particulates, smoke, dust or other effects as may be inherent in the operation of Aircraft and caused or created by the flight or passage of Aircraft in or through the airspace subject to the easement and right-of-way herein reserved; provided, however, that such operation or use is in compliance with Applicable Laws.

Section 24.28 Attorneys’ Fees. If any Rent due and payable under this Agreement is collected by or through an attorney, Concessionaire shall pay as Additional Rent all attorneys’
AN ORDINANCE

Authorizing a Community Reinvestment Area Tax Exemption Agreement with Wright Dunbar REH, LLC for Property Located at 1153/1159/1171 W. Third Street in the City of Dayton, Ohio, and Declaring an Emergency.

WHEREAS, The City of Dayton, Ohio (the “City”) has encouraged the development of real property and the acquisition of personal property in areas designated as community reinvestment areas (“CRAs,” or singularly, a “CRA”); and,

WHEREAS, On September 14, 2016, this Commission adopted, and the Mayor of the City signed, Ordinance No. 31515-16 (the “CRA Ordinance”), which designated certain real property within the City as the “Innerwest CRA” and declared the remodeling of existing structures and the construction of new structures within the Innerwest CRA to be a public purpose for which real property tax exemptions may be granted; and,

WHEREAS, The Ohio Development Services Agency determined that the Innerwest CRA contained the characteristics set forth in Ohio Revised Code (“O.R.C.”) Section 3735.66 required for a CRA and confirmed the Innerwest CRA on December 27, 2016, as CRA No. 113-21000-161; and,

WHEREAS, Wright Dunbar REH, LLC (the “Owner”) is in the process of consolidating its ownership of the approximately .4764-acre property within the Innerwest CRA, located at 1153/1159/1171 W. Third Street, Dayton, Ohio, and more particularly described on Exhibit A attached to and incorporated into this Ordinance (the “Property”); and,

WHEREAS, Owner is under contract to purchase the remaining parcels and recognizes that any CRA tax exemptions approved under this Ordinance shall be contingent upon Owner becoming the owner of record of all of the parcels in the Property; and,

WHEREAS, The Owner intends to invest approximately One Million One Hundred Thousand Dollars and Zero Cents ($1,100,000.00) to redevelop commercial property for multiple uses including a small market/bodega and a restaurant (the “Project”); and,

WHEREAS, The Owner has submitted an application (attached to and incorporated into this Ordinance as Exhibit B) to the City’s Housing Officer (as designated in the CRA Ordinance) requesting a 12-year, one hundred percent (100%) Commercial CRA tax exemption on the increase in assessed value of the Property resulting from the Project, and the Housing Officer has reviewed the application and has recommended the same to the Commission on the basis that the Owner is qualified as financially responsible and experienced in business to create and preserve employment opportunities in the Innerwest CRA and improve the economic climate of the City; and,
WHEREAS, The City has considered the Owner’s application and the Housing Officer’s recommendation and determined that the Owner is qualified to receive a CRA tax exemption for the Property, provided Owner acquires title to the Property; and,

WHEREAS, The Owner has submitted to the City the required State application fee of Seven Hundred Fifty Dollars and Zero Cents ($750.00) made payable to the State of Ohio which shall be transferred by the City to the State of Ohio for credit to the Tax Incentive Program Operating Fund created in O.R.C. Section 122.174, which fee is required by O.R.C. Section 3735.672(C); and,

WHEREAS, The Property is located within the Dayton City School District (the “School District”), and the City has notified the School District of its intention to adopt this Ordinance and enter into the CRA Agreement (as defined below), and has delivered to the School District copy of this Ordinance and CRA Agreement in accordance with O.R.C. Sections 3735.671 and 5709.83; and,

WHEREAS, The School District has adopted a resolution pertaining to this Ordinance, by which the School District has (1) agreed to waive notice of this Ordinance within fourteen (14) days of its adoption notwithstanding any other notice period provided by Ohio law, (2) approved this Ordinance on the condition that the Owner and the School District enter into a compensation agreement (the “Compensation Agreement”), and (3) authorized the School District to enter into the Compensation Agreement; and,

WHEREAS, Pursuant to O.R.C. Sections 3735.67(A) and 3735.671 and the CRA Ordinance, the City and the Owner desire to enter into an agreement (the “CRA Agreement”) setting forth the CRA tax exemption and the terms and conditions of the CRA exemption with respect to the Property, a form of which CRA Agreement is attached to and incorporated into this Ordinance as Exhibit C; and,

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

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

Section 1. That this Commission hereby determines that the Owner is qualified to receive CRA tax exemptions with respect to Property, all pursuant to O.R.C. Sections 3735.65 through 3735.70 and to the CRA Ordinance, upon Owner acquiring title to the Property.

Section 2. This Commission hereby approves the CRA Agreement, attached to this Ordinance as Exhibit C, which CRA Agreement shall be in the form required by O.R.C. Section 3735.671 and shall provide a tax exemption for the Property due to the completion of the Project for a period of twelve (12) years in an amount equal to one hundred percent (100%) of the increase in assessed value of the Property as a result of the completion of the Project at the Property. No exemption shall commence after January 1, 2023 nor extend beyond January 1, 2035. The CRA Agreement further shall require the Owner to enter into the Compensation Agreement with the School District.
Section 3. That the City Manager, or her designee, is hereby authorized to execute, deliver, and perform the CRA Agreement, substantially in the form attached to this Ordinance as Exhibit C, with such changes as are consistent with this Ordinance and not materially adverse to the City, both of which shall be conclusively evidenced by the signature of the City Manager or her designee on the CRA Agreement. The CRA Agreement shall not be executed until Owner acquires title to the Property.

Section 4. That the Clerk of this Commission shall forward a certified copy of this Ordinance, along with all exhibits to this Ordinance, to the Director of Ohio Development Services Agency within fifteen (15) days after the CRA Agreement is entered into, all pursuant to O.R.C. Section 3735.671.

Section 5. That pursuant to the CRA Agreement, the Owner shall pay to the City an initial fee of Two Thousand Five Hundred Dollars and Zero Cents ($2,500.00) upon execution of this Agreement. On each anniversary of the date of the execution of the CRA Agreement, the Owner shall pay to City an annual fee as provided under OR.C. Section 3735.671(D), which annual fee shall equal to the greater of (i) 1.00% of the value of the CRA tax exemption to the Owner in the previous year, or (ii) Five Hundred Dollars and Zero Cents ($500.00); provided, that if the value of the CRA tax exemption exceeds Two Hundred Fifty Thousand Dollars and Zero Cents ($250,000.00) in a year, the annual fee shall not exceed Two Thousand Five Hundred Dollars and Zero Cents ($2,500.00) in such year. The City agrees to use the initial fee and any annual fees paid by the Owner for the purposes specified in O.R.C. Section 3735.671(D), including compliance with O.R.C. Sections 3735.672 and 5709.85.

Section 6. That for the reasons set forth in the preamble, this Ordinance shall take effect and be in force from and after the earliest period allowed by law and upon confirmation by the Director of Development for the State of Ohio of the findings in this Ordinance.

PASSED BY THE COMMISSION...........MAY. 19..........., 2021

SIGNED BY THE MAYOR.................MAY 19, 2021

MAYOR OF THE CITY OF DAYTON, OHIO

Attest:

Clerk of the Commission

Approved as to form:

City Attorney
EXHIBIT A

1100 W. Third Street

Legal Description

Situate in the City of Dayton, County of Montgomery, State of Ohio, and being all of Lots Numbered SIX THOUSAND THREE HUNDRED FORTY (6340) and SIX THOUSAND THREE HUNDRED FORTY ONE (6341) of the consecutive numbers of lots on the revised plat of said City of Dayton, EXCEPTING therefrom 27.60 feet taken by parallel lines off of the West side of lot numbered 6341.


More commonly known as: 1100 West Third, Dayton, OH 45402
May 12, 2021

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

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

SUBJECT: Ordinance for CRA Agreement – Cornerstone Redevelopment Project

Attached is an Ordinance with related exhibits granting a twelve-year commercial CRA tax exemption for the Cornerstone redevelopment project located at 1153-1171 W. Third Street, Dayton, Ohio. The developer has been negotiating the terms of a Compensation Agreement with Dayton Public Schools (DPS). As a result of these negotiations, the project is running behind schedule, and the developer is incurring substantial costs. We anticipate DPS approving the Compensation Agreement at its Tuesday, May 18, 2021 meeting. We are requesting that the Ordinance be on the May 19 City Commission calendar.

The Cornerstone project includes approximately $1,100,000 in construction investment. The commercial development will include a bodega and a restaurant, which are expected to create seven full-time and nine part-time jobs.

A map showing the project’s location is also attached.

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

Attachments
C: LaShea Lofton
   Joe Parlette
CRA Project Location

Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS, NLS, OS, NMA, Geo-data, Rijkswaterstaat, GSA, Geoland, FEMA, Intermap and the GIS user community, Source: ESRI. HERE. USGS, FAO, NGA, USGS. © OpenStreetMap contributors, and the GIS User Community

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.
EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

Situate in the City of Dayton, County of Montgomery and State of Ohio, being part Lot numbered 6411 of the revised and consecutive numbers of lots on the Plat of said City of Dayton, described as follows: Beginning at a point on the east line of said lot 125 feet north of the S.E. corner of said lot thence W. parallel to the S. line of said lot 35 feet to a point thence S. on a line parallel with the E. line of said lot 125 feet to the S. line of said lot thence E. along the S. line of said lot 35 feet to the S. E. corner of said lot; thence N. along the E. line of said lot 125 feet to the place of beginning. Together with the right to use in common with the other owners of lots 6411, 6412 and 6413 on the revised plat of said City, their heirs and assigns, a private alley on part of said lots, bounded and described as follows: Beginning at a point on the W. line of Lot 6413, 120 feet N. of the S.W. corner of Lot 6413; thence E. parallel to the S. lines of Lots 6413, 6412 and 6411 to a point on the E. line of Lot 6411; thence N. on the E. line of Lot 6411 to the N.E. corner of Lot 6411; thence W. along the N. line of Lot 6411, 10 feet to a point; thence S. on a line parallel to the E. line of Lot 6411, 37 feet to a point; thence W. parallel to the S. line of Lots 6411, 6412 and 6413 to a point on the W. line of Lot 6413; thence S. along the W. line of Lot 6413, 10 feet to the place of beginning, a strip of land 5 feet in width off the N. side of the premises herein conveyed being a part of the private alley hereinbefore described and subject to the use as such by the owners of Lots 6411, 6412 and 6413 on the revised plat of said City, their heirs and assigns in common with the grantee herein, their heirs and assigns.

For Reference Purposes Only
Address: 1159; 1163 W Third Street, Dayton, Ohio 45402
Parcel ID Number: R72 08407 0008

PARCEL 2:

Situate in the City of Dayton, County of Montgomery and State of Ohio, being part of Lots numbered six thousand four hundred eleven (6411) and six thousand four hundred twelve (6412) of the revised and consecutive numbers of lots on the Plat of said City of Dayton, described as follows: Beginning on the South line of said lot 6412 at a point 48 feet distant eastwardly from the southwest corner of lot numbered 6413 on the revised plat of said City; thence northwardly on a line parallel with the west line of said lot 6413 and along the east line of the land conveyed by a prior grantor to Hester Anna Thorne by deed recorded in Deed Book 244, Page 371, of the records of said County 125 feet to a point in the middle of a private alley 10 feet in width; thence eastwardly on a line parallel to the south line of said lots 6412 and 6411 and along the center line of said private alley 40.71 feet to a point being the northwest corner of the land conveyed by a prior grantor to Ellen Weber by deed recorded in Deed Book 228, Page 556, of the records of said County; thence southwardly on a line parallel with the east line of said lot numbered 6411.

Exhibit A - Page 1
and along the west line of said land belonging to said Ellen Weber 125 feet to the south line of said lot 6411; thence along the south line of said lots 6411 and 6412 40 ½ feet to the place of beginning. Together with the right to use in common with the other owners of lots 6411, 6412 and 6413 on the revised plat of said City, their heirs and assigns, a private alley on part of said lots, bounded and described as follows: Beginning at a point on the W. line of Lot 6413, 120 feet N. of the S.W. corner of Lot 6413; thence eastwardly parallel to the S. lines of Lots 6413, 6412 and 6411 to a point on the E. line of Lot 6411; thence northwardly on the E. line of Lot 6411 to the N.E. corner of Lot 6411; thence westwardly along the N. line of Lot 6411, 10 feet to a point; thence southwardly on a line parallel to the E. line of Lot 6411, 37 feet to a point; thence westwardly on a line parallel to the S. lines of Lots 6411, 6412 and 6413 to a point on the W. line of Lot 6413; thence southwardly along the W. line of Lot 6413, 10 feet to the place of beginning, a strip of land 5 feet in width off the N. side of the premises herein conveyed being a part of the private alley hereinbefore described and subject to the use as such by the owners of Lots 6411, 6412 and 6413 on the revised plat of said City, their heirs and assigns in common with the grantee herein, their heirs and assigns.

For Reference Purposes Only  
Address: 1167, 1171 W Third Street, Dayton, Ohio 45402  
Parcel ID Number: R72 08407 0003  

PARCEL 3:

Situate in the City of Dayton, County of Montgomery, State of Ohio and being part of Lots Numbered SIX THOUSAND FOUR HUNDRED TWELVE (6412) and SIX THOUSAND FOUR HUNDRED THIRTEEN (6413) on the revised plat of said City of Dayton, bounded and described as follows: Beginning at the southwest corner of said lot SIX THOUSAND FOUR HUNDRED THIRTEEN (6413); northwardly along the west line of said lot numbered SIX THOUSAND FOUR HUNDRED THIRTEEN (6413), Eighty (80) feet to a point; thence Eastwardly parallel to the South lines of said lots numbered SIX THOUSAND FOUR HUNDRED TWELVE (6412) and SIX THOUSAND FOUR HUNDRED THIRTEEN (6413) and Forty-eight (48) feet to a point; thence southwardly parallel to the west line of said lot numbered SIX THOUSAND FOUR HUNDRED TWELVE (6412); thence westwardly along the South lines of said lots numbered SIX THOUSAND FOUR HUNDRED TWELVE (6412) and SIX THOUSAND FOUR HUNDRED THIRTEEN (6413) and Forty-eight (48) feet to the place of beginning; said property is located at the Northwest corner of Broadway and West Third Street; being the same premises conveyed to the City Trust and Savings Bank of Dayton by deed recorded in Volume 437, Page 119 of the Deed Records of said County and State.

For Reference Purposes Only  
Address: 1175 W Third Street, Dayton, Ohio 45402  
Parcel ID Number: R72 08407 0002

Exhibit A - Page 2
PARCEL 4:

Situate in the City of Dayton, County of Montgomery and State of Ohio, and described as follows: Being parts of Lots Numbered SIX THOUSAND FOUR HUNDRED TWELVE (6412) and SIX THOUSAND FOUR HUNDRED THIRTEEN (6413) of the revised and consecutive numbers of lots on the plat of said City of Dayton, bounded and described as follows: Beginning on the west line of Lot 6413, a distance of Eighty (80) feet north of the southwest corner thereof; thence northwardly along the west line of said Lot 6413, Forty-five (45) feet to the middle of a private alley Ten (10) feet in width; thence eastwardly parallel to the south line of said Lots 6413 and 6412 along the center line of said private alley, forty-eight (48) feet to a point; thence southwardly parallel to the west line of said Lot 6413, forty-five (45) feet to a point; thence westwardly parallel to the south line of said lots forty-eight (48) feet to the place of beginning. Together with the right to use in common with the other owners of Lots 6411, 6412 and 6413 on the revised plat of said City, a private alley on part of said lots, bounded and described as follows: Beginning at a point on the W. line of Lot 6413, 120 feet N. of the S.W. corner of Lot 6413; thence eastwardly parallel to the S. lines of Lots 6413, 6412 and 6411 to a point on the E. line of Lot 6411; thence northwardly on the line of Lot 6411 to the N.E. corner of Lot 6411; thence westwardly along the N. line of Lot 6411, 10 feet to a point; thence southwardly on a line parallel to the E. line of Lot 6411, 37 feet to a point; thence westwardly parallel to the S. line of Lots 6411, 6412 and 6413 to a point on the W. line of Lot 6413; thence southwardly along the W. line of Lot 6413, 10 feet to the place of beginning. A strip of land 5 feet in width off the N. side of the premises herein conveyed being a part of the private alley hereinbefore described and subject to the use as such by the owners of Lots 6411, 6412 and 6413, their heirs and assigns in common with the grantee herein, their heirs and assigns.

For Reference Purposes Only
Address: 10 North Broadway Street, Dayton, Ohio 45402
Parcel ID Number: R72 08407 0001

PARCEL 5:

Situate in the City of Dayton, in the County of Montgomery and State of Ohio and being parts of lots numbered SIX THOUSAND FOUR HUNDRED ELEVEN (6411), SIX THOUSAND FOUR HUNDRED TWELVE (6412), and SIX THOUSAND FOUR HUNDRED THIRTEEN (6413) of the revised and consecutive numbers of lots on the plat of the City of Dayton and more particularly described as follows: Beginning at the Northwest corner of said lot numbered 6413; thence Eastwardly along the North lines of said lots 6413, 6412, and 6411 to the Northeast corner of said lot numbered 6411; thence Southwardly on the East line of said lot numbered 6411 to a point 125 feet North of the Southeast corner of said lot numbered 6411; thence Westwardly parallel to the South lines of said lots numbered 6411, 6412 and 6413 to a point in the West line of said lot numbered 6413, being the middle point of a private alley hereinafter described; thence Northwardly along the West line of said lot numbered 6413 to the place of beginning. Together with the right to use in common with the other owners of lots 6411, 6412 and 6413 on the revised plat of said City, a private alley on part of said lots, bounded and described as follows:

Exhibit A - Page 3
Beginning at a point on the W. line of Lot 6413, 120 feet N. of the S.W. corner of Lot 6413; thence eastwardly parallel to the S. lines of Lots 6413, 6412 and 6411 to a point in the E. line of Lot 6411; thence northwardly on the E. line of Lot 6411 to the N.E. corner of Lot 6411; thence westwardly along the N. line of Lot 6411, 10 feet to a point; thence southwardly on a line parallel to the E. line of Lot 6411, 37 feet to a point; thence westwardly parallel to the S. line of Lots 6411, 6412 and 6413 to a point on the W. line of Lot 6413; thence southwardly along the W. line of Lot 6413, 10 feet to the place of beginning. A strip of land 5 feet in width off the south side of the premises herein described and 10 feet in width off the east side of the premises herein described being a part of the private alley hereinbefore described and subject to the use as such by the owners of Lots 6411, 6412 and 6413 on the revised plat of said City.

For Reference Purposes Only
Address: Broadway Street, Dayton, Ohio 45402
Parcel ID Number: R72 08407 0005
EXHIBIT B

COMMERCIAL APPLICATION
Commercial CRA Application

PROPOSED AGREEMENT for Community Reinvestment Area Tax Incentives between the City of Dayton located in the County of Montgomery and Wright Dunbar REH, LLC.

1. a. Name of property owner, home or main office address, contact person, and telephone number (attach additional pages if multiple enterprise participants).

   Wright Dunbar REH, LLC
   Enterprise Name

   Jordanne Horn
   Contact Person

   155 W Central Ave
   Springboro OH 45066
   Address
   (937) 903-2050
   Telephone Number

b. Project site:

   1159/1171 W Third Street
   Dayton, OH 45402
   Address (Line 1)
   Jordanne Horn
   Contact Person

   1153 W. Third Street
   Dayton OH 45402
   Address (Line 2)
   (937) 903-2050
   Telephone Number

2. a. Nature of commercial/industrial activity (manufacturing, warehousing, wholesale or retail stores, or other) to be conducted at the site.

   Retail (Bodega Grocery / Convenience Store) / Restaurants

b. List primary 6 digit North American Industry Classification System (NAICS) \#445120 & 722511

Business may list other relevant SIC numbers. 549900 / 54110202 / 581205.

c. If a consolidation, what are the components of the consolidation? (must itemize the location, assets, and employment positions to be transferred: N/A
d. Form of business of enterprise (corporation, partnership, proprietorship, or other).

**Limited Liability Company LLC**

3. Name of principal owner(s) or officers of the business.

**Larry B. Dillin**

4. a. State the enterprise's current employment level at the proposed project site:

   0

b. Will the project involve the relocation of employment positions or assets from one Ohio location to another? Yes ___ No X ___

c. If yes, state the locations from which employment positions or assets will be relocated and the location to where the employment positions or assets will be located:

   N/A

d. State the enterprise's current employment level in Ohio (itemized for full and part-time and permanent and temporary employees):

   N/A

e. State the enterprise's current employment level for each facility to be affected by the relocation of employment positions or assets:

   N/A

f. What is the projected impact of the relocation, detailing the number and type of employees and/or assets to be relocated?

   N/A
5. Does the Property Owner owe:

a. Any delinquent taxes to the State of Ohio or a political subdivision of the state?  
   Yes ___  No X

b. Any moneys to the State or a state agency for the administration or enforcement of any environmental laws of the State?  
   Yes ___  No X

c. Any other moneys to the State, a state agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not?  
   Yes ___  No X

d. If yes to any of the above, please provide details of each instance including but not limited to the location, amounts and/or case identification numbers (add additional sheets).

6. Project Description: **Dillin will be restoring three Historic Buildings to create ground floor retail / restaurant space. This will incorporate a convenience store and restaurants to an area that is currently a food deserts. Dillin is working to incorporate local vendors that will be invested in the long term reinvestment in Wright Dunbar. Dillin is working closely with Wright Dunbar Inc. The City of Dayton and National Park service to understand the needs in the community and how to re-energize an important commercial district in the heart of Dayton's historical neighborhoods.**

7. Project will begin **May, 2021** and be completed **October, 2021** provided a tax exemption is provided.

8. a. Estimate the number of new employees the property owner will cause to be created at the facility that is the project site (job creation projection must be itemized by the name of the employer, full and part-time and permanent and temporary):
   i. **Bodega:** 4 Full Time/ 2 Part Time
   ii. **Restaurant:** 2 Full Time / 5 Part Time
   iii. **Retail Space:** 1 Full Time / 2 Part Time
   iv. **Temporary**
      1. **Construction:** 8 Employees

b. State the time frame of this projected hiring: 1-3 yrs.

c. State proposed schedule for hiring (itemize by full and part-time and permanent and temporary employees):
   i. **Bodega:** Hire Manager in July to prepare for opening in August. Hire full time employees first week of August and part time two weeks after.
ii. **Restaurant**: Begin the hiring process in second half of 2021

iii. **Temporary Construction Jobs**: 3-4 months from start date

d. a. Estimate the amount of annual payroll such new employees will add **$290,000 in annual payroll for full-time employees and $90,000 in annual payroll of part-time employees. Temporary jobs will create $150,00 in annual payroll.** (new annual payroll must be itemized by full and part-time and permanent and temporary new employees).

e. Indicate separately the amount of existing annual payroll relating to any job retention claim resulting from the project: **$0.**

10. **An estimate of the amount to be invested by the enterprise to establish, expand, renovate or occupy a facility:**

   A. Acquisition of Buildings: **$630,000**
   B. Additions/New Construction: **$882,754**
   C. Improvements to existing buildings: **$220,000**
   D. Machinery & Equipment: **$237,500**
   E. Furniture & Fixtures: **$162,500**
   F. Inventory: **$250,000**

   **Total New Project Investment:** **$2,382,754**

11. a. Business requests the following tax exemption incentives: **100% for 15 years** covering real property as described above. Be specific as to the rate, and term.

   b. Business's reasons for requesting tax incentives (be as quantitatively specific as possible):

   The tax abatement for the Cornerstone project is vital to the revitalization and stabilization efforts in Wright Dunbar. Dillin has multiple Dayton and local Wright Dunbar businesses that are looking to invest their time and money into this area and this abatement closes the gap to make this a reality. With this tax abatement we will have the ability to bring more investment dollars into the Wright Dunbar neighborhood and with the help of Wright Dunbar inc. National Park Service and National Aviation Heritage Area we will be able to create a place people want to spend their time with their families and friends learning the background of Aviation. This project alone will bring in 2.5 million dollars’ worth of investment to the Cornerstone of this Wright Dunbar Neighborhood. This will bring sales and Income Tax Revenue back to the city and visitors to our NPS Aviation Museum.
Submission of this application expressly authorizes the City of Dayton to contact the Ohio Environmental Protection Agency to confirm statements contained within this application including item # 5 and to review applicable confidential records. As part of this application, the property owner may also be required to directly request from the Ohio Department of Taxation, or complete a waiver form allowing the Department of Taxation to release specific tax records to the local jurisdiction considering the request.

The Applicant agrees to supply additional information upon request.

The Applicant affirmatively covenants that the information contained in and submitted with this application is complete and correct and is aware of the ORC Sections 9.66(C) (1) and 2921.13(D) (1) penalties for falsification which could result in the forfeiture of all current and future economic development assistance benefits as well as a fine of not more than $1,000 and/or a term of imprisonment of not more than six months.

Wright Dunbar REH, LLC
Name of Property Owner

Signature

05/04/2021
Date

Larry B. Dillin – President and CEO
Typed Name and Title

* A copy of this proposal must be forwarded by the local governments to the affected Board of Education along with notice of the meeting date on which the local government will review the proposal. Notice must be given a minimum of fourteen (14) days prior to the scheduled meeting to permit the Board of Education to appear and/or comment before the legislative authorities considering the request.

** Attach to Final Community Reinvestment Area Agreement as Exhibit A

Please note that copies of this proposal must be included in the finalized Community Reinvestment Area Agreement and be forwarded to the Ohio Department of Taxation and the Ohio Development Services Agency within fifteen (15) days of final approval.
EXHIBIT C

CRA AGREEMENT
COMMUNITY REINVESTMENT AREA AGREEMENT

THIS COMMUNITY REINVESTMENT AREA AGREEMENT (the “Agreement”) is made and entered into effective this ____ day of __________, 2021 between the CITY OF DAYTON, OHIO, a municipal corporation duly organized and validly existing under the Constitution and laws of the State of Ohio and its Charter, with its main offices located at 101 W. Third St., Dayton, Ohio, 45401, (the “City”), and WRIGHT DUNBAR REH, LLC, an Ohio limited liability company (the “Owner”), having its principal office address at 155 West Central Avenue, Springboro, Ohio 45066.

WITNESSETH:

WHEREAS, The City Commission (the “Commission”) by its Ordinance No. 30861-09, passed on May 13, 2009, and modified by Ordinance No. 31399-15, passed on May 20, 2015 and Ordinance No. 31602-17, passed on December 20, 2017 authorizes the City of Dayton, Ohio (the “City”) to implement a community reinvestment area program pursuant to Ohio Revised Code Sections 3735.65 through 3735.70, and approved certain administrative procedures for the program; and,

WHEREAS, Effective December 27, 2016, the Director of Development of the State of Ohio determined that the area designated by Ordinance No. 31515-16 (the “Innerwest CRA”) contained the characteristics set forth in Ohio Revised Code Section 3735.66, and confirmed the Innerwest CRA as community reinvestment area No. 113-21000-161 under Ohio Revised Code Chapter 3735; and,

WHEREAS, The City has determined to pursue tax incentives to encourage the redevelopment of real property located at 1153/1159/1171 West Third Street within the City (as described more particularly in Exhibit A attached to and incorporated into this Agreement, the “Property”), which Property is entirely within the boundaries of the Innerwest CRA, in order to enable economic stability, maintain real property values, and generate new employment opportunities within the City; and,

WHEREAS, The Owner intends to redevelop the Property for a variety of uses including a small market/bodega and a restaurant that will help provide access to food and enrich the quality of life in the surrounding neighborhood (the “Project”), provided that the appropriate development incentives are available to support the economic viability of the improvements to be constructed on the Property; and,

WHEREAS, The Owner (i) has submitted to the City the required State application fee of Seven Hundred Fifty Dollars and Zero Cents ($750.00) made payable to the State of Ohio which shall be transferred by the City to the State of Ohio for credit to the Tax Incentive Program Operating Fund created in Ohio Revised Code Section 122.174, which fee is required by Ohio Revised Code Section 3735.672(C) in connection with this Agreement; (ii) has submitted to the City a proposed commercial improvement application (the “Commercial Application”), attached to this Agreement as Exhibit B; (iii) has remitted to the Ohio Department of Development a copy of the Commercial Application; and (iv) agrees in this Agreement to forward a copy of the final Agreement to the Ohio Department of Development; and,

WHEREAS, The Director of Economic Development of the City has reviewed the Commercial Application and has recommended the same to the Commission on the basis that the Owner is qualified as financially responsible and experienced in business to create and preserve employment opportunities in the Innerwest CRA and improve the economic climate of the City; and,

WHEREAS, The Property is located in the Dayton City School District and the Board of Education of such school district has been notified in accordance with Ohio Revised Code Sections 3735.671 and 5709.83 and has been provided a certified copy of this Agreement, has agreed to waive the notice period
with respect to the contents of this Agreement, and has approved this Agreement and has entered into a Compensation Agreement with the Owner; and,

WHEREAS, The City, having the appropriate authority under Ohio Revised Code Chapter 3735, is desirous of providing the Owners with incentives available for the development of the Property in the Innerwest CRA; and,

WHEREAS, Pursuant to Ordinance No. ___________ (the “CRA Ordinance”), passed on ____________, 2021, the Commission has authorized the execution of this Agreement; and,

WHEREAS, Pursuant to Ohio Revised Code Section 3735.671(A) and in conformance with the format required under Ohio Revised Code Section 3735.671(B), the City and the Owner desire to enter into this Agreement with respect to the matters described in this Agreement.

NOW, THEREFORE, in consideration of the mutual obligations contained in this Agreement and the benefit to be derived by the City and the Owner from the execution of this Agreement the City and the Owner agree as follows:

Section 1. The estimated total cost of the improvements to the Property, excluding acquisition, equipment, furniture, and fixtures, is expected to be approximately One Million One Hundred Thousand Dollars and Zero Cents ($1,100,000.00). The commencement of the Project is scheduled to begin on or after the date on which this Agreement is executed, and will be completed not later than December 31, 2022.

The City and the Owner acknowledge that the investment and cost associated with the Project may increase or decrease. The City and the Owner acknowledge that the cost of Project does not and will not necessarily equal the taxable or assessed value of the Property following completion of the Project. The Owner further acknowledges, no machinery, equipment, furniture, fixtures or inventory of the Owner exists at the Property prior to execution of this Agreement.

The assumptions and estimates provided in this Section 1 are good faith estimates provided pursuant to Ohio Revised Code Section 3735.671(B) and shall not be construed in a manner that would limit the amount or term of the tax exemptions provided in this Agreement. The assumptions and estimates provided in this Section 1 are based on forward-looking assessments of market conditions for commercial development in Ohio and on assumed increases in assessed value that may occur as a result of the development in and around the Property. The City and the Owner agree that the assumptions and estimates provided in this Section 1 are not a guarantee of future performance by the Owner.

Section 2. The Owners currently estimate that there are no employees of the Owner employed at the Property. The Owner currently estimates that its businesses at the Property will result in approximately seven full-time equivalent employees and nine part-time employees employed on the Property, with such employment to commence in early 2023. The Owner currently estimates that employment at the Property will result in approximately Three Hundred Eighty Thousand Dollars and Zero Cents ($380,000.00) of total payroll each year.

The estimates provided in this Section 2 are good faith estimates provided pursuant to Ohio Revised Code Section 3735.671(B) and shall not be construed in a manner that would limit the amount or term of the tax exemptions provided in this Agreement. The City and the Owner recognize that the employment and payroll estimates associated with the Project may increase or decrease. The City and the Owner agree that the estimates provided in this Section 2 are not a guarantee of future performance by the Owner.
Section 3. Pursuant to Ohio Revised Code Section 3735.67 and the CRA Ordinance and subject to the terms and conditions of this Agreement, the City hereby grants the Owner a tax exemption for the Property for a period of twelve (12) years in an amount equal to one hundred percent (100%) of the increase in assessed value of the Property as a result of the completion of the Project at the Property. The exemption from real property taxation referenced in this Section 3 is a community reinvestment area exemption (the "CRA Exemption"). The CRA Exemption for any portion of the Project shall commence the first year for which such portion of the Project would first be taxable were such portion of the Project not exempted from taxation. No exemption shall commence after January 1, 2023 nor extend beyond January 1, 2035.

Section 4. The Owner shall pay or cause to be paid such real property taxes as are not exempted under this Agreement and are charged against the Property and shall file all tax reports and returns as required by law. If the Owner fails to pay such taxes or file such returns and reports, exemptions from taxation granted under this Agreement with respect to the Property are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter; provided, that such failure is not corrected within thirty (30) days of written notice thereof to the Owner.

Section 5. The Owner hereby certifies that at the time this Agreement is executed, the Owner does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio, and does not owe delinquent taxes for which the Owner is liable under Ohio Revised Code Chapters 5733, 5735, 5739, 5741, 5743, 5747, or 5753, or, if such delinquent taxes are owed, the Owner currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has been filed against the Owner. 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.

Section 6. The City shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

The Housing Officer shall, upon completion of the remodeling or construction of a commercial improvement meeting the requirements for the CRA Exemption and to which this Agreement applies, forward to the Montgomery County Auditor (i) a copy of the Owners’ initial Commercial Applications, and (ii) a certification of the eligibility of such commercial remodeling or construction to be placed on the tax list and duplicate by the Montgomery County Auditor to exempt property, as required by Ohio Revised Code Section 3735.67(C).

Section 7. If for any reason the City revokes its designation of the Innerwest CRA containing the Property, or the Director of the Ohio Department of Development revokes certification of the Innerwest CRA containing the Property, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement unless the Owner materially fails to fulfill its obligations under this Agreement and the City terminates or modifies exemptions from taxation granted pursuant to this Agreement with respect to the Property.

Section 8. If the Owner materially fails to fulfill its obligations under this Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement is fraudulent, the City may terminate or modify the exemptions from taxation granted under this Agreement with respect to the Property, and may require the repayment of the amount of taxes that would have been payable had the Property not been exempted from taxation under this Agreement. The Commission of the City may, in
making any of the determinations contemplated by this Section 8, secure repayment of such taxes that are required to be repaid by a lien on the Property in the amount required to be repaid. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property.

Section 9. The Owner shall provide to the proper Tax Incentive Review Council any information reasonably required by that Council to evaluate the Owner’s compliance with this Agreement, including returns filed pursuant to Ohio Revised Code Section 5711.02 if requested by the Tax Incentive Review Council.

Section 10. This Agreement is not transferable or assignable by the Owner without the express written approval of the City.

Section 11. Exemptions from taxation granted under this Agreement shall be revoked with respect to the Property if it is determined that the Owner, any successor to the Owner or any related member (as those terms are defined in Ohio Revised Code Section 3735.671(E)) has violated the prohibition against entering into this Agreement under Ohio Revised Code Sections 3735.671(E), 5709.62 or 5709.63 prior to the time prescribed by those sections.

Section 12. The City and the Owner acknowledge that this Agreement must be approved by formal action of the legislative authority of the City as a condition for the Agreement to take effect. This Agreement takes effect upon such approval.

Section 13. The Owner shall pay to the City an initial fee of Two Thousand Five Hundred Dollars and Zero Cents ($2,500.00) upon execution of this Agreement. On each anniversary of the date of the execution of this Agreement, the Owner shall pay to City an annual fee as provided under Ohio Revised Code Section 3735.671(D), which annual fee shall equal to the greater of (i) 1.00% of the value of the CRA Exemption to the Owner in the previous year, or (ii) Five Hundred Dollars and Zero Cents ($500.00); provided, that if the value of the CRA Exemption exceeds Two Hundred Fifty Thousand Dollars and Zero Cents ($250,000.00) in a year, the annual fee shall not exceed Two Thousand Five Hundred Dollars and Zero Cents ($2,500.00) in such year. The City agrees to use the initial fee and any annual fees paid by the Owner for the purposes specified in Ohio Revised Code Section 3735.671(D), including compliance with Ohio Revised Code Sections 3735.672 and 5709.85.

Section 14. The Owners agree to pay the required State application fee of Seven Hundred Fifty Dollars and Zero Cents ($750.00) upon execution of this Agreement required by Ohio Revised Code 3735.672(C) in connection with this Agreement and the Commercial Application. The City agrees to transfer the State application fee to the State of Ohio for credit to the Tax Incentive Program Operating Fund created in Ohio Revised Code Section 122.174 upon receipt of the fee from the Owners.

Section 15. The owner agrees to abide by the terms of the Compensation Agreement dated , 2021 and executed by the Owner and Dayton Public Schools (attached hereto as Exhibit C). Specifically, the Owner agrees to remit annual compensation payments to Dayton Public Schools Board of Education (“DPS”) on or before October 1st of each year while the CRA exemption is in effect in the amount of twenty-five percent (25%) of the real property taxes that would have been charged and payable against the value of the building improvements had there been no commercial CRA exemption. Owner’s failure to make a compensation payment to DPS, unless cured on or before December 1st shall be a material default of this Agreement and grounds for termination of the CRA exemption.

Section 16. The Owner affirmatively represents and agrees that it does not owe: (i) any delinquent taxes to the State of Ohio or a political subdivision of the State; (ii) any moneys to the State or a state agency.
for the administration or enforcement of any environmental laws of the State; and (iii) any other moneys to
the State, a state agency or a political subdivision of the State that are past due, whether or not the amounts
owed are being contested in a court of law.

Section 17. The Owner agrees to follow non-discriminating hiring practices and acknowledges that
no individual may be denied employment solely on the basis of race, religion, sex, disability, color, national
origin, or ancestry or any other classification that is now or may become a classification protected by Federal
or State law.

Section 18. The Owner affirmatively represents and agrees it has made no false statements to the
State or the City or any other local political subdivisions in the process of obtaining approval of the
community reinvestment area incentives for the Buildings. If any representative of the Owner has
knowingly made a false statement to the State or a local political subdivision to obtain the community
reinvestment area incentives, the Owner shall be required to immediately return all benefits received under
this Agreement pursuant to Ohio Revised Code Section 9.66(C)(2) and shall be ineligible for any future
economic development assistance from the State, any State agency or a political subdivision pursuant to
Ohio Revised Code Section 9.66(C)(1). Any person who provides a false statement to secure economic
development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio
Revised Code Section 2921.13(D)(1), which is punishable by a fine of not more than One Thousand Dollars
and Zero Cents ($1,000.00) and/or a term of imprisonment of not more than six (6) months.

Section 19. The City agrees to forward a copy of this Agreement to the Ohio Department of
Development within fifteen (15) days of its execution.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, the City of Dayton, Ohio, pursuant to Ordinance Number -21, passed ___, 2021, has caused this instrument to be executed as of the date and year first above written above, and the Owner, has caused this instrument to be executed by the authorized representative named below as of the date and year first above written above.

CITY OF DAYTON, OHIO

By: __________________________
   City Manager

WRIGHT DUNBAR, REH, LLC

By: __________________________
   __________________________
   Name: Larry D. Miller
   Title: Manager

APPROVED AS TO FORM AND CORRECTNESS:

5/11/2021

X Amelia N. Blankenship for

City Attorney
Signed by: Blankenship, Amelia

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

_____________________, 2021

Min. Bk. _____ Pg. _____

Clerk of the Commission
EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

Situate in the City of Dayton, County of Montgomery and State of Ohio, being part Lot numbered 6411 of the revised and consecutive numbers of lots on the Plat of said City of Dayton, described as follows: Beginning at a point on the east line of said lot 125 feet north of the S.E. corner of said lot thence W. parallel to the S. line of said lot 35 feet to a point thence S. on a line parallel with the E. line of said lot 125 feet to the S. line of said lot thence E. along the S. line of said lot 35 feet to the S. E. corner of said lot; thence N. along the E. line of said lot 125 feet to the place of beginning. Together with the right to use in common with the other owners of lots 6411, 6412 and 6413 on the revised plat of said City, their heirs and assigns, a private alley on part of said lots, bounded and described as follows: Beginning at a point on the W. line of Lot 6413, 120 feet N. of the S.W. corner of Lot 6413; thence E. parallel to the S. lines of lots 6413, 6412 and 6411 to a point on the E. line of Lot 6411; thence N. on the E. line of Lot 6411 to the N.E. corner of Lot 6411; thence W. along the N. line of LOT 6411, 10 feet to a point; thence S. on a line parallel to the E. line of Lot 6411, 37 feet to a point; thence W. parallel to the S. line of Lots 6411, 6412 and 6413 to a point on the W. line of Lot 6413; thence S. along the W. line of Lot 6413, 10 feet to the place of beginning, a strip of land 5 feet in width off the N. side of the premises herein conveyed being a part of the private alley hereinbefore described and subject to the use as such by the owners of Lots 6411, 6412 and 6413 on the revised plat of said City, their heirs and assigns in common with the grantee herein, their heirs and assigns.

For Reference Purposes Only
Address: 1159; 1163 W Third Street, Dayton, Ohio 45402
Parcel ID Number: R72 08407 0008

PARCEL 2:

Situate in the City of Dayton, County of Montgomery and State of Ohio, being part of Lots numbered six thousand four hundred eleven (6411) and six thousand four hundred twelve (6412) of the revised and consecutive numbers of lots on the Plat of said City of Dayton, described as follows: Beginning on the South line of said lot 6412 at a point 48 feet distant eastwardly from the southwest corner of lot numbered 6413 on the revised plat of said City; thence northwardly on a line parallel with the west line of said lot 6413 and along the east line of the land conveyed by a prior grantor to Hester Anna Thorne by deed recorded in Deed Book 244, Page 371, of the records of said County 125 feet to a point in the middle of a private alley 10 feet in width; thence eastwardly on a line parallel to the south line of said lots 6412 and 6411 and along the center line of said private alley 40.71 feet to a point being the northwest corner of the land conveyed by a prior grantor to Ellen Weber by deed recorded in Deed Book 228, Page 556, of the records of said County; thence southwardly on a line parallel with the east line of said lot numbered 6411.

Exhibit A - Page 1
and along the west line of said land belonging to said Ellen Weber 125 feet to the south line of said lot 6411; thence along the south line of said lots 6411 and 6412 40 1/2 feet to the place of beginning. Together with the right to use in common with the other owners of lots 6411, 6412 and 6413 on the revised plat of said City, their heirs and assigns, a private alley on part of said lots, bounded and described as follows: Beginning at a point on the W. line of Lot 6413, 120 feet N. of the S.W. corner of Lot 6413; thence eastwardly parallel to the S. lines of Lots 6413, 6412 and 6411 to a point on the E. line of Lot 6411; thence northwardly on the E. line of Lot 6411 to the N.E. corner of Lot 6411; thence westwardly along the N. line of Lot 6411, 10 feet to a point; thence southwardly on a line parallel to the E. line of Lot 6411, 37 feet to a point; thence westwardly on a line parallel to the S. lines of Lots 6411, 6412 and 6413 to a point on the W. line of Lot 6413; thence southwardly along the W. line of Lot 6413, 10 feet to the place of beginning, a strip of land 5 feet in width off the N. side of the premises herein conveyed being a part of the private alley hereinbefore described and subject to the use as such by the owners of Lots 6411, 6412 and 6413 on the revised plat of said City, their heirs and assigns.

For Reference Purposes Only
Address: 1167, 1171 W Third Street, Dayton, Ohio 45402
Parcel ID Number: R72 08407 0003

PARCEL 3:

Situates in the City of Dayton, County of Montgomery, State of Ohio and being part of Lots Numbered SIX THOUSAND FOUR HUNDRED TWELVE (6412) and SIX THOUSAND FOUR HUNDRED THIRTEEN (6413) on the revised plat of said City of Dayton, bounded and described as follows: Beginning at the southwestern corner of said lot SIX THOUSAND FOUR HUNDRED THIRTEEN (6413), northwardly along the west line of said lot numbered SIX THOUSAND FOUR HUNDRED THIRTEEN (6413), Eighty (80) feet to a point; thence Eastwardly parallel to the South lines of said lots numbered SIX THOUSAND FOUR HUNDRED TWELVE (6412) and SIX THOUSAND FOUR HUNDRED THIRTEEN (6413) and Forty-eight (48) feet to a point; thence southwardly parallel to the west line of said lot numbered SIX THOUSAND FOUR HUNDRED THIRTEEN (6413), Eighty (80) feet to a point on the south line of said lot numbered SIX THOUSAND FOUR HUNDRED TWELVE (6412); thence westwardly along the South lines of said lots numbered SIX THOUSAND FOUR HUNDRED TWELVE (6412) and SIX THOUSAND FOUR HUNDRED THIRTEEN (6413) and Forty-eight (48) feet to the place of beginning; said property is located at the Northwest corner of Broadway and West Third Street; being the same premises conveyed to the City Trust and Savings Bank of Dayton by deed recorded in Volume 437, Page 119 of the Deed Records of said County and State.

For Reference Purposes Only
Address: 1175 W Third Street, Dayton, Ohio 45402
Parcel ID Number: R72 08407 0002

Exhibit A - Page 2
PARCEL 4:

Situate in the City of Dayton, County of Montgomery and State of Ohio, and described as follows: Being parts of Lots Numbered SIX THOUSAND FOUR HUNDRED TWELVE (6412) and SIX THOUSAND FOUR HUNDRED THIRTEEN (6413) of the revised and consecutive numbers of lots on the plat of said City of Dayton, bounded and described as follows: Beginning on the west line of Lot 6413, a distance of Eighty (80) feet north of the southwest corner thereof; thence northwardly along the west line of said Lot 6413, Forty-five (45) feet to the middle of a private alley Ten (10) feet in width; thence eastwardly parallel to the south line of said lots 6413 and 6412 along the center line of said private alley, forty-eight (48) feet to a point; thence southwardly parallel to the west line of said lot 6413, forty-five (45) feet to a point; thence westwardly parallel to the south line of said lots forty-eight (48) feet to the place of beginning. Together with the right to use in common with the other owners of lots 6411, 6412 and 6413 on the revised plat of said City, a private alley on part of said lots, bounded and described as follows: Beginning at a point on the W. line of Lot 6413, 120 feet N. of the S.W. corner of Lot 6413; thence eastwardly parallel to the S. lines of Lots 6413, 6412 and 6411 to a point on the E. line of Lot 6411; thence northwardly on the line of Lot 6411 to the N.E. corner of Lot 6411; thence westwardly along the N. line of Lot 6411, 10 feet to a point; thence southwardly on a line parallel to the E. line of Lot 6411, 37 feet to a point; thence westwardly parallel to the S. line of Lots 6411, 6412 and 6413 to a point on the W. line of Lot 6413; thence southwardly along the W. line of Lot 6413, 10 feet to the place of beginning. A strip of land 5 feet in width off the N. side of the premises herein conveyed being a part of the private alley hereinbefore described and subject to the use as such by the owners of Lots 6411, 6412 and 6413, their heirs and assigns in common with the grantee herein, their heirs and assigns.

For Reference Purposes Only
Address: 10 North Broadway Street, Dayton, Ohio 45402
Parcel ID Number: R72 08407 0001

PARCEL 5:

Situate in the City of Dayton, in the County of Montgomery and State of Ohio and being parts of lots numbered SIX THOUSAND FOUR HUNDRED ELEVEN (6411), SIX THOUSAND FOUR HUNDRED TWELVE (6412), and SIX THOUSAND FOUR HUNDRED THIRTEEN (6413) of the revised and consecutive numbers of lots on the plat of the City of Dayton and more particularly described as follows: Beginning at the Northwest corner of said lot numbered 6413; thence Eastwardly along the North lines of said lots 6413, 6412, and 6411 to the Northeast corner of said lot numbered 6411; thence Southwardly on the East line of said lot numbered 6411 to a point 125 feet North of the Southeast corner of said lot numbered 6411; thence Westwardly parallel to the South lines of said lots numbered 6411, 6412 and 6413 to a point in the West line of said lot numbered 6413, being the middle point of a private alley hereinafter described; thence Northwardly along the West line of said lot numbered 6413 to the place of beginning. Together with the right to use in common with the other owners of lots 6411, 6412 and 6413 on the revised plat of said City, a private alley on part of said lots, bounded and described as follows:

Exhibit A - Page 3
Beginning at a point on the W. line of Lot 6413, 120 feet N. of the S.W. corner of Lot 6413; thence eastwardly parallel to the S. lines of Lots 6413, 6412 and 6411 to a point in the E. line of Lot 6411; thence northwardly on the E. line of Lot 6411 to the N.E. corner of Lot 6411; thence westwardly along the N. line of Lot 6411, 10 feet to a point; thence southwardly on a line parallel to the E. line of Lot 6411, 37 feet to a point; thence westwardly parallel to the S. line of Lots 6411, 6412 and 6413 to a point on the W. line of Lot 6413; thence southwardly along the W. line of Lot 6413, 10 feet to the place of beginning. A strip of land 5 feet in width off the south side of the premises herein described and 10 feet in width off the east side of the premises herein described being a part of the private alley hereinbefore described and subject to the use as such by the owners of Lots 6411, 6412 and 6413 on the revised plat of said City.

For Reference Purposes Only
Address: Broadway Street, Dayton, Ohio 45402
Parcel ID Number: R72 08407 0005
# Commercial CRA Application

**PROPOSED AGREEMENT** for Community Reinvestment Area Tax Incentives between the City of Dayton located in the County of Montgomery and **Wright Dunbar REH, LLC**.

1. **a.** Name of property owner, home or main office address, contact person, and telephone number (attach additional pages if multiple enterprise participants).

<table>
<thead>
<tr>
<th>Wright Dunbar REH, LLC</th>
<th>Jordanne Horn</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enterprise Name</td>
<td>Contact Person</td>
</tr>
<tr>
<td><strong>155 W Central Ave</strong></td>
<td></td>
</tr>
<tr>
<td>Springfield OH 45066</td>
<td>(937) 903-2050</td>
</tr>
<tr>
<td>Address</td>
<td>Telephone Number</td>
</tr>
</tbody>
</table>

   **b.** Project site:

<table>
<thead>
<tr>
<th>1159/1171 W Third Street</th>
<th>Jordanne Horn</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dayton, OH 45402</td>
<td>Contact Person</td>
</tr>
<tr>
<td>Address (Line 1)</td>
<td></td>
</tr>
</tbody>
</table>

   | 1153 W. Third Street     |               |
   | Dayton OH 45402          | (937) 903-2050|
   | Address (Line 2)         | Telephone Number|

2. **a.** Nature of commercial/industrial activity (manufacturing, warehousing, wholesale or retail stores, or other) to be conducted at the site.

   Retail (Bodega Grocery / Convenience Store) / Restaurants

   **b.** List primary 6 digit North American Industry Classification System (NAICS) #445120 & 722511

   Business may list other relevant SIC numbers. **549900 / 54110202 / 581205.**

   **c.** If a consolidation, what are the components of the consolidation? (must itemize the location, assets, and employment positions to be transferred): **N/A**
d. Form of business of enterprise (corporation, partnership, proprietorship, or other).

**Limited Liability Company LLC**

3. Name of principal owner(s) or officers of the business.

**Larry B. Dillin**

4. a. State the enterprise’s current employment level at the proposed project site:

0

b. Will the project involve the relocation of employment positions or assets from one Ohio location to another?  Yes ___  No X ___

c. If yes, state the locations from which employment positions or assets will be relocated and the location to where the employment positions or assets will be located:

N/A

d. State the enterprise’s current employment level in Ohio (itemized for full and part-time and permanent and temporary employees):

N/A

e. State the enterprise’s current employment level for each facility to be affected by the relocation of employment positions or assets:

N/A

f. What is the projected impact of the relocation, detailing the number and type of employees and/or assets to be relocated?

N/A
5. Does the Property Owner owe:
   a. Any delinquent taxes to the State of Ohio or a political subdivision of the state?  
      Yes ___  No X

   b. Any moneys to the State or a state agency for the administration or enforcement of any  
      environmental laws of the State?  Yes ___  No X

   c. Any other moneys to the State, a state agency or a political subdivision of the State that  
      are past due, whether the amounts owed are being contested in a court of law or not?  
      Yes ___  No X

   d. If yes to any of the above, please provide details of each instance including but not limited  
      to the location, amounts and/or case identification numbers (add additional sheets).

6. Project Description:  **Dillin will be restoring three Historic Buildings to create  
ground floor retail/restaurant space. This will incorporate a convenience store and  
restaurants to an area that is currently a food deserts. Dillin is working to  
incorporate local vendors that will be invested in the long term reinvestment in  
Wright Dunbar. Dillin is working closely with Wright Dunbar Inc. The City of  
Dayton and National Park service to understand the needs in the community and  
how to re-energize an important commercial district in the heart of Dayton's  
historical neighborhoods.**

7. Project will begin **May, 2021** and be completed **October, 2021** provided a tax  
exemption is provided.

8. a. Estimate the number of new employees the property owner will cause to be created at  
the facility that is the project site (job creation projection must be itemized by the name  
of the employer, full and part-time and permanent and temporary):
   i. **Bodega**: 4 Full Time/ 2 Part Time
   ii. **Restaurant**: 2 Full Time / 5 Part Time
   iii. **Restaurant / Retail Space**: 1 Full Time / 2 Part Time
   iv. **Temporary**
      1. **Construction**: 8 Employees

b. State the time frame of this projected hiring:  **1-3 vrs.**

c. State proposed schedule for hiring (itemize by full and part-time and permanent and  
temporary employees):
   i. **Bodega**: Hire Manager in July to prepare for opening in August.  
      Hire full time employees first week of August and part time two weeks after.
ii. Restaurant: Begin the hiring process in second half of 2021
iii. Temporary Construction Jobs: 3-4 months from start date

d. a. Estimate the amount of annual payroll such new employees will add $290,000 in annual payroll for full-time employees and $90,000 in annual payroll of part-time employees. Temporary jobs will create $150,000 in annual payroll. (new annual payroll must be itemized by full and part-time and permanent and temporary new employees).

e. Indicate separately the amount of existing annual payroll relating to any job retention claim resulting from the project: $0.

10. An estimate of the amount to be invested by the enterprise to establish, expand, renovate or occupy a facility:

A. Acquisition of Buildings: $630,000
B. Additions/New Construction: $882,754
C. Improvements to existing buildings: $220,000
D. Machinery & Equipment: $237,500
E. Furniture & Fixtures: $162,500
F. Inventory: $250,000
Total New Project Investment: $2,382,754

11. a. Business requests the following tax exemption incentives: 100% for 15 years covering real property as described above. Be specific as to the rate, and term.

b. Business’s reasons for requesting tax incentives (be as quantitatively specific as possible):

The tax abatement for the Cornerstone project is vital to the revitalization and stabilization efforts in Wright Dunbar. Dillin has multiple Dayton and local Wright Dunbar businesses that are looking to invest their time and money into this area and this abatement closes the gap to make this a reality. With this tax abatement we will have the ability to bring more investment dollars into the Wright Dunbar neighborhood and with the help of Wright Dunbar Inc, National Park Service and National Aviation Heritage Area we will be able to create a place people want to spend their time with their families and friends learning the background of Aviation. This project alone will bring in 2.5 million dollars’ worth of investment to the Cornerstone of this Wright Dunbar Neighborhood. This will bring sales and Income Tax Revenue back to the city and visitors to our NPS Aviation Museum.
Submission of this application expressly authorizes the City of Dayton to contact the Ohio Environmental Protection Agency to confirm statements contained within this application including item # 5 and to review applicable confidential records. As part of this application, the property owner may also be required to directly request from the Ohio Department of Taxation, or complete a waiver form allowing the Department of Taxation to release specific tax records to the local jurisdiction considering the request.

The Applicant agrees to supply additional information upon request.

The Applicant affirmatively covenants that the information contained in and submitted with this application is complete and correct and is aware of the ORC Sections 9.66(C)(1) and 2921.13(D)(1) penalties for falsification which could result in the forfeiture of all current and future economic development assistance benefits as well as a fine of not more than $1,000 and/or a term of imprisonment of not more than six months.

Wright Dunbar REH, LLC
Name of Property Owner

Signature

05/04/2021
Date

Larry B. Dillin – President and CEO
Typed Name and Title

* A copy of this proposal must be forwarded by the local governments to the affected Board of Education along with notice of the meeting date on which the local government will review the proposal. Notice must be given a minimum of fourteen (14) days prior to the scheduled meeting to permit the Board of Education to appear and/or comment before the legislative authorities considering the request.

** Attach to Final Community Reinvestment Area Agreement as Exhibit A

Please note that copies of this proposal must be included in the finalized Community Reinvestment Area Agreement and be forwarded to the Ohio Department of Taxation and the Ohio Development Services Agency within fifteen (15) days of final approval.
COMPENSATION AGREEMENT
Dillin, LLC

This Compensation Agreement (this “Agreement”) is made and entered into as of ____________, 2021, by and between Dillin, LLC (the “Developer”), a corporation in the State of Ohio, located at 155 West Central Avenue, Springboro, Ohio 45066, and the BOARD OF EDUCATION OF THE DAYTON CITY SCHOOL DISTRICT (the “School District”), a public school district organized and existing under the laws of the State of Ohio with its main offices located at 115 South Ludlow Street, Dayton, Ohio 45402.

WITNESSETH:

WHEREAS, the Developer intends to develop an entrepreneurial food hall (the “Project”) at the site located at 1100 W, Third Street (the “Property”) and also develop additional properties (“Additional Properties”) in the vicinity of the Property which are identified on the attached Exhibit A as (i) Cornerstone Project, (ii) Pekin Theater/Fish Market, (iii) Marietta Flats, and (iv) Rubenstein Building; and

WHEREAS, the Property and the Additional Properties are within the School District boundary; and

WHEREAS, the Property and the Additional Properties are collectively the “CRA Properties” and are located within an area designated as a Community Reinvestment Area (CRA) pursuant to Ohio Revised Code (“O.R.C.”) § 3735.66; and

WHEREAS, the City of Dayton (the “City”), as an incentive for the Developer to redevelop the CRA Properties, is providing commercial CRA real property tax abatements; and

WHEREAS, and in recognition of the commercial CRA real property tax abatements on the CRA Properties that will subsequently be derived from the CRA, the Developer has agreed to provide compensation to the School District; and

NOW, THEREFORE, in consideration of the premises and obligations contained in this Agreement, the parties agree as follows:

Section 1. Compensation. In consideration of the financial benefits that will derived from the commercial tax abatement under the CRA, the Developer hereby agrees to compensate the School District by providing additional payments and in-kind services (the “Developer Services”) to the School District, as described in the attached Exhibit B.

Section 2. Term. The Term of this Agreement shall commence on the date the Developer completes the redevelopment of the first CRA Property (which is anticipated to be no later than December 31, 2022) and shall end when none of the CRA Properties are receiving commercial real estate tax exemption (which is anticipated to be on or before December 31, 2039).

In the event the Developer does not develop any of the CRA Properties, then this Agreement shall be void and the parties shall be free from any obligations under it. Nothing in this Agreement shall
be construed as prohibiting the City of Dayton from extending the maximum term of CRA real property tax abatements in the Wright-Dunbar CRA District to fifteen years in accordance with Ohio law.

Section 3. School District Consents and Waivers. In consideration of the Compensation to be provided by the Developer to the School District, the School District hereby waives compliance with any notice requirements set forth in O.R.C. §§ 3735.671, 5709.83 and 5715.27(B) with respect to the CRA Exemptions for the Project and the Additional Properties.

Section 4. Amendment. This Agreement may be amended or modified by the parties only in writing, signed by both parties to the Agreement, and copied to the City of Dayton within 30 days of execution.

Section 5. Entire Agreement. This Agreement is executed pursuant to O.R.C. §§ 3735.671, 5709.82, 5709.83 and 5715.27(B) and (C), and sets forth the entire agreement and understanding between the parties, including without limitation all forms of compensation to be paid to the School District pursuant to those sections, 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.

Section 6. 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 Developer: Dilllin, LLC
155 W. Central Avenue
Springboro, Ohio 45066
Attention: Larry Dilllin, President

If to the School District: Dayton City School District
115 South Ludlow Street
Dayton, Ohio 45402
Attention: Treasurer/CFO

Copy to: City of Dayton
Economic Development Department
101 West Third Street
Dayton, OH 45402
Attention: Director

Any party may change its address for receiving notices and reports by giving written notice of such change to the other parties.
Section 7.  General Provisions.

i.  Conflict of Interest.  Developer 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.

ii.  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.

iii.  Third Party Rights.  Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the School District and Developer.

iv.  Assignment.  Neither the School District nor Developer 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 Developer from employing independent consultants, associates, and subcontractors to assist in the performance of the services.

v.  Waiver.  A waiver by either the School District or Developer 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.

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

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

Section 8.  Severability of Provisions.  The invalidity of any provision of this Agreement shall not affect the other provisions of this Agreement, and this Agreement shall be construed in all respects as if any invalid portions were omitted.

Section 9.  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.
IN WITNESS WHEREOF, the Developer and the School District have caused this Agreement to be executed in their respective names by their duly authorized officers or representatives, as of the date hereinabove written.

DILLIN, LLC

By: ____________________________
Name: __________________________
Title: __________________________

DAYTON CITY SCHOOL DISTRICT

By: ____________________________
Treasurer/CFO

By: ____________________________
President, Board of Education

Received by the City of Dayton: __________ Date

By: ____________________________
Exhibit A

Additional Properties

The Additional Properties are listed below and geographically identified on the attached aerial image.

1. Cornerstone Project
2. Pekin Theater/Fish Market
3. Marietta Flats
4. Rubenstein Building
Exhibit B
Developer Services

Developer shall conduct fundraising events in the Wright-Dunbar neighborhood, which fundraising events shall raise no less than $5,000 annually for each of the CRA Properties then benefitting from a commercial CRA real property tax exemption. For example, if three CRA Properties are benefitting from a commercial CRA real property tax exemption in a given year, the annual minimum net fundraising contribution to the School District shall be $15,000.

On or about ____________ each year, Developer and School District shall confirm in writing the CRA Properties that are currently benefitting from a commercial CRA real property tax exemption and the Developer's minimum net fundraising contribution to the School District for that year.

On or about ____________ each year, Developer shall provide School District with a simple statement setting forth the fundraising activities that were conducted during the previous year and the net proceeds that were paid to the School District. In the event the net proceeds to the School District were less than the minimum fundraising contribution for the School District that year, Developer shall also pay the shortfall.

The Developer's annual minimum net fundraising contribution to the School District notwithstanding, Developer shall have the right to conduct fundraising activities that do not benefit the School District as well as conduct fundraising activities that benefit the School District and one or more other entities including, without limitation, fundraising activities that benefit Wright-Dunbar, Inc.

The School District shall have the right to review and approve the cultural suitability of all fundraising activities for which it is a beneficiary.

The School District shall provide no less than 50 volunteers for each fundraising activity for which it is the sole beneficiary.

Each year in lieu of conducting fundraising events Developer may make a payment to the School District in the amount of $5,000 for each of the CRA Properties that is currently benefitting from a commercial CRA real property tax exemption.

Developer shall facilitate conversations between the School District and the commercial tenants of the CRA Properties to explore possible internship or part-time employment opportunities for students enrolled in the School District.

Developer shall facilitate conversations between the School District and contractors/construction trades to explore possible vocational education or part-time employment opportunities for students enrolled in the School District.
AN ORDINANCE

Authorizing a Community Reinvestment Area Tax Exemption Agreement with Wright Dunbar, Inc. for Property Located at 1100 W. Third Street in the City of Dayton, Ohio, and Declaring an Emergency.

WHEREAS, The City of Dayton, Ohio (the “City”) has encouraged the development of real property and the acquisition of personal property in areas designated as community reinvestment areas (“CRAs,” or singularly, a “CRA”); and,

WHEREAS, On September 14, 2016, this Commission adopted, and the Mayor of the City signed, Ordinance No. 31515-16 (the “CRA Ordinance”), which designated certain real property within the City as the “Innerwest CRA” and declared the remodeling of existing structures and the construction of new structures within the Innerwest CRA to be a public purpose for which real property tax exemptions may be granted; and,

WHEREAS, The Ohio Development Services Agency determined that the Innerwest CRA contained the characteristics set forth in Ohio Revised Code (“O.R.C.”) Section 3735.66 required for a CRA and confirmed the Innerwest CRA on December 27, 2016, as CRA No. 113-21000-161; and,

WHEREAS, Wright Dunbar, Inc. (the “Owner”) owns the approximately .4339-acre property within the Innerwest CRA, located at 1100 W. Third Street, Dayton, Ohio, and more particularly described on Exhibit A attached to and incorporated into this Ordinance (the “Property”); and,

WHEREAS, The Owner intends to invest approximately One Million Six Hundred Thousand Dollars and Zero Cents ($1,600,000.00) to redevelop a commercial property to create an entrepreneurial food hall (the “Project”); and,

WHEREAS, The Owner has submitted an application (attached to and incorporated into this Ordinance as Exhibit B) to the City’s Housing Officer (as designated in the CRA Ordinance) requesting a 12-year, one hundred percent (100%) Commercial CRA tax exemption on the increase in assessed value of the Property resulting from the Project, and the Housing Officer has reviewed the application and has recommended the same to the Commission on the basis that the Owner is qualified as financially responsible and experienced in business to create and preserve employment opportunities in the Innerwest CRA and improve the economic climate of the City; and,

WHEREAS, The City has considered the Owner’s application and the Housing Officer’s recommendation and determined that the Owner is qualified to receive a CRA tax exemption for the Property; and,

WHEREAS, The Owner has submitted to the City the required State application fee of Seven Hundred Fifty Dollars and Zero Cents ($750.00) made payable to the State of Ohio
which shall be transferred by the City to the State of Ohio for credit to the Tax Incentive Program Operating Fund created in O.R.C. Section 122.174, which fee is required by O.R.C. Section 3735.672(C); and,

WHEREAS, The Property is located within the Dayton City School District (the “School District”), and the City has notified the School District of its intention to adopt this Ordinance and enter into the CRA Agreement (as defined below), and has delivered to the School District copy of this Ordinance and CRA Agreement in accordance with O.R.C. Sections 3735.671 and 5709.83; and,

WHEREAS, The School District has adopted a resolution pertaining to this Ordinance, by which the School District has (1) agreed to waive notice of this Ordinance within fourteen (14) days of its adoption notwithstanding any other notice period provided by Ohio law, (2) approved this Ordinance on the condition that the Owner and the School District enter into a compensation agreement (the “Compensation Agreement”), and (3) authorized the School District to enter into the Compensation Agreement; and,

WHEREAS, Pursuant to O.R.C. Sections 3735.67(A) and 3735.671 and the CRA Ordinance, the City and the Owner desire to enter into an agreement (the “CRA Agreement”) setting forth the CRA tax exemption and the terms and conditions of the CRA exemption with respect to the Property, a form of which CRA Agreement is attached to and incorporated into this Ordinance as Exhibit C; and,

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

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

Section 1. That this Commission hereby determines that the Owner is qualified to receive CRA tax exemptions with respect to Property, all pursuant to O.R.C. Sections 3735.65 through 3735.70 and to the CRA Ordinance.

Section 2. This Commission hereby approves the CRA Agreement attached to this Ordinance as Exhibit C, which CRA Agreement shall be in the form required by O.R.C. Section 3735.671 and shall provide a tax exemption for the Property due to the completion of the Project for a period of twelve (12) years in an amount equal to one hundred percent (100%) of the increase in assessed value of the Property as a result of the completion of the Project at the Property. No exemption shall commence after January 1, 2023 nor extend beyond January 1, 2035. The CRA Agreement further shall require the Owner to enter into the Compensation Agreement with the School District.

Section 3. That the City Manager, or her designee, is hereby authorized to execute, deliver, and perform the CRA Agreement, substantially in the form attached to this Ordinance as Exhibit C, with such changes as are consistent with this Ordinance and not materially adverse to the City, both of which shall be conclusively evidenced by the signature of the City Manager or her designee on the CRA Agreement.
Section 4. That the Clerk of this Commission shall forward a certified copy of this Ordinance, along with all exhibits to this Ordinance, to the Director of Ohio Development Services Agency within fifteen (15) days after the CRA Agreement is entered into, all pursuant to O.R.C. Section 3735.671.

Section 5. That pursuant to the CRA Agreement, the Owner shall pay to the City an initial fee of Two Thousand Five Hundred Dollars and Zero Cents ($2,500.00) upon execution of this Agreement. On each anniversary of the date of the execution of the CRA Agreement, the Owner shall pay to City an annual fee as provided under O.R.C. Section 3735.671(D), which annual fee shall equal to the greater of (i) 1.00% of the value of the CRA tax exemption to the Owner in the previous year, or (ii) Five Hundred Dollars and Zero Cents ($500.00); provided, that if the value of the CRA tax exemption exceeds $250,000 in a year, the annual fee shall not exceed Two Thousand Five Hundred Dollars and Zero Cents ($2,500.00) in such year. The City agrees to use the initial fee and any annual fees paid by the Owner for the purposes specified in O.R.C. Section 3735.671(D), including compliance with O.R.C. Sections 3735.672 and 5709.85.

Section 6. That for the reasons set forth in the preamble, this Ordinance shall take effect and be in force from and after the earliest period allowed by law and upon confirmation by the Director of Development for the State of Ohio of the findings in this Ordinance.

PASSED BY THE COMMISSION ....... MAY. 19 .............., 2021

SIGNED BY THE MAYOR ............... MAY. 19 .............., 2021

[Signature]
MAYOR OF THE CITY OF DAYTON, OHIO

Attest:

[Signature]
Clerk of the Commission

Approved as to form:

[Signature]
City Attorney
EXHIBIT A

1100 W. Third Street

Legal Description

Situate in the City of Dayton, County of Montgomery, State of Ohio, and being all of Lots Numbered SIX THOUSAND THREE HUNDRED FORTY (6340) and SIX THOUSAND THREE HUNDRED FORTY ONE (6341) of the consecutive numbers of lots on the revised plat of said City of Dayton, EXCEPTING therefrom 27.60 feet taken by parallel lines off of the West side of lot numbered 6341.


More commonly known as: 1100 West Third, Dayton, OH 45402
EXHIBIT C

CRA AGREEMENT
May 12, 2021

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

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

SUBJECT: Ordinance for CRA Agreement – Wright-Dunbar Food Hall Redevelopment Project

Attached is an Ordinance with related exhibits granting a twelve-year commercial CRA tax exemption for the Wright-Dunbar Food Hall redevelopment project located at 1100 W. Third Street, Dayton, Ohio. The developer has been negotiating the terms of a Compensation Agreement with Dayton Public Schools (DPS). As a result of these negotiations, the project is running behind schedule, and the developer is incurring substantial costs. We anticipate DPS approving the Compensation Agreement at its Tuesday, May 18, 2021 meeting. We are requesting that the Ordinance be on the May 19 City Commission calendar.

The Wright-Dunbar Food Hall project includes approximately $1,600,000 in construction investment. The commercial development will create an entrepreneurial food hall, which is expected to create seven full-time and two part-time jobs.

This Ordinance is time sensitive due to the project needs of the company. Therefore, we request it be passed as an emergency with two readings at one meeting.

A map showing the project’s location is also attached.

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

Attachments

C: LaShea Lofton
   Joe Parlette
EXHIBIT A

Property Description

Situate in the City of Dayton, County of Montgomery, State of Ohio, and being all of Lots Numbered SIX THOUSAND THREE HUNDRED FORTY (6340) and SIX THOUSAND THREE HUNDRED FORTY ONE (6341) of the consecutive numbers of lots on the revised plat of said City of Dayton, EXCEPTING therefrom 27.60 feet taken by parallel lines off of the West side of lot numbered 6341.


More commonly known as: 1100 West Third, Dayton, OH 45402
EXHIBIT B

COMMERCIAL APPLICATION
Commercial CRA Application

PROPOSED AGREEMENT for Community Reinvestment Area Tax Incentives between the City of Dayton located in the County of Montgomery and Wright Dunbar Inc, its affiliates and assigns; WD-Food Hall JV, LLC, its affiliates and assigns

1. a. Name of property owner, home or main office address, contact person, and telephone number (attach additional pages if multiple enterprise participants).

   Wright Dunbar Inc
   Enterprise Name

   Erica Hubler
   Contact Person

   1139 W 3rd Street
   Dayton, OH 45402
   Address

   (937) 443-0249
   Telephone Number

   Dayton, OH 45402
   Address (Line 1)

   (937) 903-8010
   Telephone Number

b. Project site:

   1100 W 3rd Street
   Dayton, OH 45402
   Address (Line 1)

   Aaron Horn
   Contact Person

   (937) 903-8010
   Telephone Number

   Address (Line 2)

2. a. Nature of commercial/industrial activity (manufacturing, warehousing, wholesale or retail stores, or other) to be conducted at the site.

   Renovation and leasing of existing structure for Indoor/Outdoor Restaurant(s) use.

b. List primary 6 digit North American Industry Classification System (NAICS) # 531120

   Business may list other relevant SIC numbers.
   Tenant/subtenant operations: 722513, 722410.

   Tenant/subtenant operations:

   Business may list other relevant SIC numbers.
   Tenant/subtenant operations: 722513, 722410.

   Business may list other relevant SIC numbers.
   Tenant/subtenant operations: 722513, 722410.

   Tenant/subtenant operations:

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   Tenant/subtenant operations: 722513, 722410.

   Tenant/subtenant operations:

   Business may list other relevant SIC numbers.
   Tenant/subtenant operations: 722513, 722410.

   Tenant/subtenant operations:

   Business may list other relevant SIC numbers.
   Tenant/subtenant operations: 722513, 722410.
3. Name of principal owner(s) or officers of the business.

**Wright Dunbar Inc, its affiliates and assigns; WD-Food Hall JV, LLC, its affiliates and assigns**

4. a. State the enterprise's current employment level at the proposed project site:

0

b. Will the project involve the relocation of employment positions or assets from one Ohio location to another? Yes _ No _

c. If yes, state the locations from which employment positions or assets will be relocated and the location to where the employment positions or assets will be located:

N/A

d. State the enterprise's current employment level in Ohio (itemized for full and part-time and permanent and temporary employees):

None

e. State the enterprise's current employment level for each facility to be affected by the relocation of employment positions or assets:

N/A

f. What is the projected impact of the relocation, detailing the number and type of employees and/or assets to be relocated?

N/A

5. Does the Property Owner owe:

a. Any delinquent taxes to the State of Ohio or a political subdivision of the state? Yes _ No _

b. Any moneys to the State or a state agency for the administration or enforcement of any environmental laws of the State? Yes _ No _

c. Any other moneys to the State, a state agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not? Yes _ No _

d. If yes to any of the above, please provide details of each instance including but not
limited to the location, amounts and/or case identification numbers (add additional sheets).

6. Project Description: The project will convert an existing unused banquet hall into a cutting edge “Food Hall” featuring six varied food stations, a coffee shop and bar, all operated by local vendors, with indoor (116) and outdoor (192) seating capacity on a fully permitted +/-0.32-acre parcel located at 1100 W. Third Street, adjacent to the National Aviation Heritage Park.

7. Project will begin April 2021 and be completed September 2021 provided a tax exemption is provided.

8. a. Estimate the number of new employees the property owner will cause to be created at the facility that is the project site (job creation projection must be itemized by the name of the employer, full and part-time and permanent and temporary):

   Permanent:
   
   Delish: 1 full-time employee
   Sweetums: 1 full-time employee
   SoCa: 1 full-time employee, 1 part-time employee
   Illy’s: 1 full-time employee
   Taco Street: 1 full-time employee
   Grindhouse: 1 full-time employee, 1 part-time employee
   W. Social Tap & Table: 1 full-time employee

   Temporary:
   
   Construction: 10 temporary employees

   b. State the time frame of this projected hiring: 1-2 yrs.

   c. State proposed schedule for hiring (itemize by full and part-time and permanent and temporary employees):

   Permanent:
   
   Delish: 1 full-time employee 1-2 years from start date
   Sweetums: 1 full-time employee 1-2 years from start date
   SoCa: 1 full-time employee, 1 part-time employee 1-2 years from start date
   Illy’s: 1 full-time employee 1-2 years from start date
   Taco Street: 1 full-time employee, 1-2 years from start date
   Grindhouse: 1 full-time employee, 1 part-time employee 1-2 years from start date
   W. Social Tap & Table: 1 full-time employee 1-2 years from start date

   Temporary:
   
   Construction: 10 temporary employees 3-4 months away from start date

9. a. Estimate the amount of annual payroll such new employees will add $420,000 in annual payroll for full-time employees and $60,000 in annual payroll for part-time employees. Temporary jobs will create $300,000 in annual payroll. (new annual
payroll must be itemized by full and part-time and permanent and temporary new employees).

b. Indicate separately the amount of existing annual payroll relating to any job retention claim resulting from the project: $0

10. An estimate of the amount to be invested by the enterprise to establish, expand, renovate or occupy a facility:
   A. Acquisition of Buildings:
   B. Additions/New Construction:
   C. Improvements to existing buildings:
   D. Machinery & Equipment:
   E. Furniture & Fixtures:
   F. Inventory:
   Total New Project Investment:

   $ 0
   $ 50,000
   $ 1,559,000
   $ 114,000
   $ 77,000
   $ 50,000
   $ 1,850,000

11. a. Business requests the following tax exemption incentives: __100___ % for __12___ years covering real property as described above. Be specific as to the rate, and term.

b. Business's reasons for requesting tax incentives (be as quantitatively specific as possible):

This abatement will fill a vital underwriting gap in support of revitalization of the historic Wright Dunbar neighborhood, making rents affordable for the local subtenants (vendors) offering services through this project, and strengthening the Opportunity Zone investment case needed to attract the capital necessary to complete the project. With this abatement, the project sponsors may invest more heavily in this historic neighborhood than would otherwise be feasible, attracting $1.85 million in new construction and capital investment, generating 7 new full-time and 2 new part-time permanent jobs and an estimated 10 temporary construction jobs (with at least 20% of construction contract volume being awarded to SWMBE contractors), and bringing important retail support services to visitors, workers and residents in this under-served area. This project will enhance local retail traffic, encouraging visitors to the National Aviation Heritage Park to stay longer and spend more, improving sales tax revenues to the City of Dayton and will be an important factor in catalyzing additional capital investment in the immediate area.

Submission of this application expressly authorizes the City of Dayton to contact the Ohio Environmental Protection Agency to confirm statements contained within this application including item # 5 and to review applicable confidential records. As part of this application, the property owner may also be required to directly request from the Ohio Department of Taxation, or complete a waiver form allowing the Department of Taxation to release specific tax records to the local jurisdiction considering the request.

The Applicant agrees to supply additional information upon request.
The Applicant affirmatively covenants that the information contained in and submitted with this application is complete and correct and is aware of the ORC Sections 9.66(C) (1) and 2921.13(D) (1) penalties for falsification which could result in the forfeiture of all current and future economic development assistance benefits as well as a fine of not more than $1,000 and/or a term of imprisonment of not more than six months.

Wright Dunbar, Inc
Name of Property Owner

Signature

January 13, 2021
Date

Erica Hubler, Director of Real Estate
Typed Name and Title

WD-Food Hall JV, LLC
Name of Affiliate

Signature

January 13, 2021
Date

Larry B. Dillin, Manager
Typed Name and Title

* A copy of this proposal must be forwarded by the local governments to the affected Board of Education along with notice of the meeting date on which the local government will review the proposal. Notice must be given a minimum of fourteen (14) days prior to the scheduled meeting to permit the Board of Education to appear and/or comment before the legislative authorities considering the request.

** Attach to Final Community Reinvestment Area Agreement as Exhibit A

Please note that copies of this proposal must be included in the finalized Community Reinvestment Area Agreement and be forwarded to the Ohio Department of Taxation and the Ohio Development Services Agency within fifteen (15) days of final approval.
EXHIBIT C

CRA AGREEMENT
COMMUNITY REINVESTMENT AREA AGREEMENT

THIS COMMUNITY REINVESTMENT AREA AGREEMENT (the "Agreement") is made and entered into effective this ___ day of ___, 2021 between the CITY OF DAYTON, OHIO, a municipal corporation duly organized and validly existing under the Constitution and laws of the State of Ohio and its Charter, with its main offices located at 101 W. Third St., Dayton, Ohio, 45401, (the "City"), and WRIGHT DUNBAR, INC., an Ohio limited liability company (the "Owner"), having its principal office address at 1139 W. Third Street, Dayton, Ohio 45402.

WITNESSETH:

WHEREAS, The City Commission (the "Commission") by its Ordinance No. 30861-09, passed on May 13, 2009, and modified by Ordinance No. 31399-15, passed on May 20, 2015 and Ordinance No. 31602-17, passed on December 20, 2017 authorizes the City of Dayton, Ohio (the "City") to implement a community reinvestment area program pursuant to Ohio Revised Code Sections 3735.65 through 3735.70, and approved certain administrative procedures for the program; and,

WHEREAS, Effective December 27, 2016, the Director of Development of the State of Ohio determined that the area designated by Ordinance No. 31515-16 (the "Innerwest CRA") contained the characteristics set forth in Ohio Revised Code Section 3735.66, and confirmed the Innerwest CRA as community reinvestment area No. 113-21000-16 under Ohio Revised Code Chapter 3735; and,

WHEREAS, The City has determined to pursue tax incentives to encourage the redevelopment of real property located at 1100 West Third Street within the City (as described more particularly in Exhibit A attached to and incorporated into this Agreement, the "Property"), which Property is entirely within the boundaries of the Innerwest CRA, in order to enable economic stability, maintain real property values, and generate new employment opportunities within the City; and,

WHEREAS, The Owner intends to create and operate an entrepreneurial food hall focused on creating opportunities for start-up restaurants and enlivening the quality of life in the surrounding neighborhood (the "Project"), provided that the appropriate development incentives are available to support the economic viability of the improvements to be constructed on the Property; and,

WHEREAS, The Owner (i) has submitted to the City the required State application fee of Seven Hundred Fifty Dollars and Zero Cents ($750.00) made payable to the State of Ohio which shall be transferred by the City to the State of Ohio for credit to the Tax Incentive Program Operating Fund created in Ohio Revised Code Section 122.174, which fee is required by Ohio Revised Code Section 3735.672(C) in connection with this Agreement; (ii) has submitted to the City a proposed commercial improvement application (the "Commercial Application"), attached to this Agreement as Exhibit B; (iii) has remitted to the Ohio Department of Development a copy of the Commercial Application; and (iv) agrees in this Agreement to forward a copy of the final Agreement to the Ohio Department of Development; and,

WHEREAS, The Director of Economic Development of the City has reviewed the Commercial Application and has recommended the same to the Commission on the basis that the Owner is qualified as financially responsible and experienced in business to create and preserve employment opportunities in the Innerwest CRA and improve the economic climate of the City; and,

WHEREAS, The Property is located in the Dayton City School District and the Board of Education of such school district has been notified in accordance with Ohio Revised Code Sections 3735.671 and 5709.83 and has been provided a certified copy of this Agreement, has agreed to waive the notice period
with respect to the contents of this Agreement, and has approved this Agreement and has entered into a Compensation Agreement with the Owner; and,

WHEREAS, The City, having the appropriate authority under Ohio Revised Code Chapter 3735, is desirous of providing the Owners with incentives available for the development of the Property in the Innerwest CRA; and,

WHEREAS, Pursuant to Ordinance No. ____________ (the "CRA Ordinance"), passed on ____________, 2021, the Commission has authorized the execution of this Agreement; and,

WHEREAS, Pursuant to Ohio Revised Code Section 3735.671(A) and in conformance with the format required under Ohio Revised Code Section 3735.671(B), the City and the Owner desire to enter into this Agreement with respect to the matters described in this Agreement.

NOW, THEREFORE, in consideration of the mutual obligations contained in this Agreement and the benefit to be derived by the City and the Owner from the execution of this Agreement the City and the Owner agree as follows:

Section 1. The estimated total cost of the improvements to the Property is expected to be approximately One Million Six Hundred Thousand Dollars and Zero Cents ($1,600,000.00). The commencement of the Project is scheduled to begin on or after the date on which this Agreement is executed, and will be completed not later than December 31, 2022.

The City and the Owner acknowledge that the investment and cost associated with the Project may increase or decrease. The City and the Owner acknowledge that the cost of Project does not and will not necessarily equal the taxable or assessed value of the Property following completion of the Project. The Owner further acknowledges, no machinery, equipment, furniture, fixtures or inventory of the Owner exists at the Property prior to execution of this Agreement.

The assumptions and estimates provided in this Section 1 are good faith estimates provided pursuant to Ohio Revised Code Section 3735.671(B) and shall not be construed in a manner that would limit the amount or term of the tax exemptions provided in this Agreement. The assumptions and estimates provided in this Section 1 are based on forward-looking assessments of market conditions for commercial development in Ohio and on assumed increases in assessed value that may occur as a result of the development in and around the Property. The City and the Owner agree that the assumptions and estimates provided in this Section 1 are not a guarantee of future performance by the Owner.

Section 2. The Owners currently estimate that there are no employees of the Owner employed at the Property. The Owner currently estimates that its businesses at the Property will result in approximately seven full-time equivalent employees and two part-time employees employed on the Property, with such employment to commence in early 2023. The Owner currently estimates that employment at the Property will result in approximately Four Hundred Eighty Thousand Dollars and Zero Cents ($480,000.00) of total payroll each year.

The estimates provided in this Section 2 are good faith estimates provided pursuant to Ohio Revised Code Section 3735.671(B) and shall not be construed in a manner that would limit the amount or term of the tax exemptions provided in this Agreement. The City and the Owner recognize that the employment and payroll estimates associated with the Project may increase or decrease. The City and the Owner agree that the estimates provided in this Section 2 are not a guarantee of future performance by the Owner.

WD Food Hall
CRA Agreement
Section 3. Pursuant to Ohio Revised Code Section 3735.67 and the CRA Ordinance and subject to the terms and conditions of this Agreement, the City hereby grants the Owner a tax exemption for the Property for a period of twelve (12) years in an amount equal to one hundred percent (100%) of the increase in assessed value of the Property as a result of the completion of the Project at the Property. The exemption from real property taxation referenced in this Section 3 is a community reinvestment area exemption (the "CRA Exemption"). The CRA Exemption for any portion of the Project shall commence the first year for which such portion of the Project would first be taxable were such portion of the Project not exempted from taxation. No exemption shall commence after January 1, 2023 nor extend beyond January 1, 2035.

Section 4. The Owner shall pay or cause to be paid such real property taxes as are not exempted under this Agreement and are charged against the Property and shall file all tax reports and returns as required by law. If the Owner fails to pay such taxes or file such returns and reports, exemptions from taxation granted under this Agreement with respect to the Property are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter; provided, that such failure is not corrected within thirty (30) days of written notice thereof to the Owner.

Section 5. The Owner hereby certifies that at the time this Agreement is executed, the Owner does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio, and does not owe delinquent taxes for which the Owner is liable under Ohio Revised Code Chapters 5733, 5735, 5739, 5741, 5743, 5747, or 5753, or, if such delinquent taxes are owed, the Owner currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof; has filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has been filed against the Owner. 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.

Section 6. The City shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

The Housing Officer shall, upon completion of the remodeling or construction of a commercial improvement meeting the requirements for the CRA Exemption and to which this Agreement applies, forward to the Montgomery County Auditor (i) a copy of the Owners' initial Commercial Applications, and (ii) a certification of the eligibility of such commercial remodeling or construction to be placed on the tax list and duplicate by the Montgomery County Auditor as exempt property, as required by Ohio Revised Code Section 3735.67(C).

Section 7. If for any reason the City revokes its designation of the Innerwest CRA containing the Property, or the Director of the Ohio Department of Development revokes certification of the Innerwest CRA containing the Property, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement unless the Owner materially fails to fulfill its obligations under this Agreement and the City terminates or modifies exemptions from taxation granted pursuant to this Agreement with respect to the Property.

Section 8. If the Owner materially fails to fulfill its obligations under this Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement is fraudulent, the City may terminate or modify the exemptions from taxation granted under this Agreement with respect to the Property, and may require the repayment of the amount of taxes that would have been payable had the Property not been exempted from taxation under this Agreement. The Commission of the City may, in making any of the determinations contemplated by this Section 8, secure repayment of such taxes that are required to be paid.
required to be repaid by a lien on the Property in the amount required to be repaid. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property.

Section 9. The Owner shall provide to the proper Tax Incentive Review Council any information reasonably required by that Council to evaluate the Owner’s compliance with this Agreement, including returns filed pursuant to Ohio Revised Code Section 5711.02 if requested by the Tax Incentive Review Council.

Section 10. This Agreement is not transferable or assignable by the Owner without the express written approval of the City.

Section 11. Exemptions from taxation granted under this Agreement shall be revoked with respect to the Property if it is determined that the Owner, any successor to the Owner or any related member (as those terms are defined in Ohio Revised Code Section 3735.671(E)) has violated the prohibition against entering into this Agreement under Ohio Revised Code Sections 3735.671(E), 5709.62 or 5709.63 prior to the time prescribed by those sections.

Section 12. The City and the Owner acknowledge that this Agreement must be approved by formal action of the legislative authority of the City as a condition for the Agreement to take effect. This Agreement takes effect upon such approval.

Section 13. The Owner shall pay to the City an initial fee of Two Thousand Five Hundred Dollars and Zero Cents ($2,500.00) upon execution of this Agreement. On each anniversary of the date of the execution of this Agreement, the Owner shall pay to City an annual fee as provided under Ohio Revised Code Section 3735.671(D), which annual fee shall equal to the greater of (i) 1.00% of the value of the CRA Exemption to the Owner in the previous year, or (ii) Five Hundred Dollars and Zero Cents ($500.00); provided, that if the value of the CRA Exemption exceeds Two Hundred Fifty Thousand Dollars and Zero Cents ($250,000.00) in a year, the annual fee shall not exceed Two Thousand Five Hundred Dollars and Zero Cents ($2,500.00) in such year. The City agrees to use the initial fee and any annual fees paid by the Owner for the purposes specified in Ohio Revised Code Section 3735.671(D), including compliance with Ohio Revised Code Sections 3735.672 and 5709.85.

Section 14. The Owners agree to pay the required State application fee of Seven Hundred Fifty Dollars and Zero Cents ($750.00) upon execution of this Agreement required by Ohio Revised Code 3735.672(C) in connection with this Agreement and the Commercial Application. The City agrees to transfer the State application fee to the State of Ohio for credit to the Tax Incentive Program Operating Fund created in Ohio Revised Code Section 122.174 upon receipt of the fee from the Owners.

Section 15. The owner agrees to abide by the terms of the Compensation Agreement dated , 2021 and executed by the Owner and Dayton Public Schools (attached hereto as Exhibit C). Specifically, the Owner agrees to remit annual compensation payments to Dayton Public Schools Board of Education (“DPS”) on or before October 1st of each year while the CRA exemption is in effect in the amount of twenty-five percent (25%) of the real property taxes that would have been charged and payable against the value of the building improvements had there been no commercial CRA exemption. Owner’s failure to make a compensation payment to DPS, unless cured on or before December 1st shall be a material default of this Agreement and grounds for termination of the CRA exemption.

Section 16. The Owner affirmatively represents and agrees that it does not owe: (i) any delinquent taxes to the State of Ohio or a political subdivision of the State; (ii) any moneys to the State or a state agency for the administration or enforcement of any environmental laws of the State; and (iii) any other moneys to.
the State, a state agency or a political subdivision of the State that are past due, whether or not the amounts owed are being contested in a court of law.

Section 17. The Owner agrees to follow non-discriminating hiring practices and acknowledges that no individual may be denied employment solely on the basis of race, religion, sex, disability, color, national origin, or ancestry or any other classification that is now or may become a classification protected by Federal or State law.

Section 18. The Owner affirmatively represents and agrees it has made no false statements to the State or the City or any other local political subdivisions in the process of obtaining approval of the community reinvestment area incentives for the Buildings. If any representative of the Owner has knowingly made a false statement to the State or a local political subdivision to obtain the community reinvestment area incentives, the Owner shall be required to immediately return all benefits received under this Agreement pursuant to Ohio Revised Code Section 9.66(C)(2) and shall be ineligible for any future economic development assistance from the State, any State agency or a political subdivision pursuant to Ohio Revised Code Section 9.66(C)(1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2921.13(D)(1), which is punishable by a fine of not more than One Thousand Dollars and Zero Cents ($1,000.00) and/or a term of imprisonment of not more than six (6) months.

Section 19. The City agrees to forward a copy of this Agreement to the Ohio Department of Development within fifteen (15) days of its execution.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, the City of Dayton, Ohio, pursuant to Ordinance Number 21-21, passed , 2021, has caused this instrument to be executed as of the date and year first above written above, and the Owner, has caused this instrument to be executed by the authorized representative named below as of the date and year first above written above.

CITY OF DAYTON, OHIO

By: ____________________________
    City Manager

WRIGHT DUNBAR, INC.

By: ____________________________
    Name: Harry Seifert
    Title: President

APPROVED AS TO FORM AND CORRECTNESS:

5/11/2021

X Amelia N. Blankenship for

City Attorney
Signed by Blankenship, Amelia

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

___________________________ , 2021

Min. Bk. _____ Pg. _____

Clerk of the Commission

WD Food Hall
CRA Agreement
EXHIBIT A

Property Description

Situate in the City of Dayton, County of Montgomery, State of Ohio, and being all of Lots Numbered SIX THOUSAND THREE HUNDRED FORTY (6340) and SIX THOUSAND THREE HUNDRED FORTY ONE (6341) of the consecutive numbers of lots on the revised plat of said City of Dayton, EXCEPTING therefrom 27.60 feet taken by parallel lines off of the West side of lot numbered 6341.


More commonly known as: 1100 West Third, Dayton, OH 45402
EXHIBIT B

COMMERCIAL APPLICATION
EXHIBIT C

COMPENSATION AGREEMENT
EXHIBIT A

Property Description

Situate in the City of Dayton, County of Montgomery, State of Ohio, and being all of Lots Numbered SIX THOUSAND THREE HUNDRED FORTY (6340) and SIX THOUSAND THREE HUNDRED FORTY ONE (6341) of the consecutive numbers of lots on the revised plat of said City of Dayton, EXCEPTING therefrom 27.60 feet taken by parallel lines off of the West side of lot numbered 6341.


More commonly known as: 1100 West Third, Dayton, OH 45402
EXHIBIT B

COMMERCIAL APPLICATION
Commercial CRA Application

PROPOSED AGREEMENT for Community Reinvestment Area Tax Incentives between the City of Dayton located in the County of Montgomery and Wright Dunbar Inc, its affiliates and assigns; WD-Food Hall JV, LLC, its affiliates and assigns

1. a. Name of property owner, home or main office address, contact person, and telephone number (attach additional pages if multiple enterprise participants).

   Wright Dunbar Inc
   Enterprise Name

   1139 W 3rd Street
   Dayton, OH 45402
   Address

   Erica Hubler
   Contact Person

   (937) 443-0249
   Telephone Number

b. Project site:

   1100 W 3rd Street
   Dayton, OH 45402
   Address (Line 1)

   Aaron Horn
   Contact Person

   (937) 903-8010
   Telephone Number

   Address (Line 2)

2. a. Nature of commercial/industrial activity (manufacturing, warehousing, wholesale or retail stores, or other) to be conducted at the site.

   Renovation and leasing of existing structure for Indoor/Outdoor Restaurant(s) use.

   b. List primary 6 digit North American Industry Classification System (NAICS) # 531120

   Business may list other relevant SIC numbers.

   Tenant/subtenant operations: 722513, 722410.

   c. If a consolidation, what are the components of the consolidation? (must itemize the location, assets, and employment positions to be transferred: N/A

   d. Form of business of enterprise (corporation, partnership, proprietorship, or other).

   Limited liability company.
3. Name of principal owner(s) or officers of the business:

*Wright Dunbar Inc, its affiliates and assigns; WD-Food Hall JV, LLC, its affiliates and assigns*

4. a. State the enterprise’s current employment level at the proposed project site:

0

b. Will the project involve the relocation of employment positions or assets from one Ohio location to another?  Yes  No X

c. If yes, state the locations from which employment positions or assets will be relocated and the location to where the employment positions or assets will be located:

N/A

d. State the enterprise’s current employment level in Ohio (itemized for full and part-time and permanent and temporary employees):

None

e. State the enterprise’s current employment level for each facility to be affected by the relocation of employment positions or assets:

N/A

f. What is the projected impact of the relocation, detailing the number and type of employees and/or assets to be relocated?

N/A

5. Does the Property Owner owe:

a. Any delinquent taxes to the State of Ohio or a political subdivision of the state?  Yes  No X

b. Any moneys to the State or a state agency for the administration or enforcement of any environmental laws of the State?  Yes  No X

c. Any other moneys to the State, a state agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not?  Yes  No X

d. If yes to any of the above, please provide details of each instance including but not
limited to the location, amounts and/or case identification numbers (add additional sheets).

6. Project Description: The project will convert an existing unused banquet hall into a cutting edge “Food Hall” featuring six varied food stations, a coffee shop and bar, all operated by local vendors, with indoor (116) and outdoor (192) seating capacity on a fully permitted +/-0.32-acre parcel located at 1100 W. Third Street, adjacent to the National Aviation Heritage Park.

7. Project will begin April 2021 and be completed September 2021, provided a tax exemption is provided.

8. a. Estimate the number of new employees the property owner will cause to be created at the facility that is the project site (job creation projection must be itemized by the name of the employer, full and part-time and permanent and temporary):

   **Permanent:**
   - Delish: 1 full-time employee
   - Sweetums: 1 full-time employee
   - SoCa: 1 full-time employee, 1 part-time employee
   - Illy's: 1 full-time employee
   - Taco Street: 1 full-time employee
   - Grindhouse: 1 full-time employee, 1 part-time employee
   - W. Social Tap & Table: 1 full-time employee

   **Temporary:**
   - Construction: 10 temporary employees

b. State the time frame of this projected hiring: 1-2 yrs.

c. State proposed schedule for hiring (itemize by full and part-time and permanent and temporary employees):

   **Permanent:**
   - Delish: 1 full-time employee 1-2 years from start date
   - Sweetums: 1 full-time employee 1-2 years from start date
   - SoCa: 1 full-time employee, 1 part-time employee 1-2 years from start date
   - Illy's: 1 full-time employee 1-2 years from start date
   - Taco Street: 1 full-time employee, 1-2 years from start date
   - Grindhouse: 1 full-time employee, 1 part-time employee 1-2 years from start date
   - W. Social Tap & Table: 1 full-time employee 1-2 years from start date

   **Temporary:**
   - Construction: 10 temporary employees 3-4 months away from start date

9. a. Estimate the amount of annual payroll such new employees will add $420,000 in annual payroll for full-time employees and $60,000 in annual payroll for part-time employees. Temporary jobs will create $300,000 in annual payroll. (new annual
payroll must be itemized by full and part-time and permanent and temporary new employees).

b. Indicate separately the amount of existing annual payroll relating to any job retention claim resulting from the project: $0

10. An estimate of the amount to be invested by the enterprise to establish, expand, renovate or occupy a facility:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Acquisition of Buildings</td>
<td>$0</td>
</tr>
<tr>
<td>B. Additions/New Construction</td>
<td>$50,000</td>
</tr>
<tr>
<td>C. Improvements to existing buildings</td>
<td>$1,559,000</td>
</tr>
<tr>
<td>D. Machinery &amp; Equipment</td>
<td>$114,000</td>
</tr>
<tr>
<td>E. Furniture &amp; Fixtures</td>
<td>$77,000</td>
</tr>
<tr>
<td>F. Inventory</td>
<td>$50,000</td>
</tr>
</tbody>
</table>

**Total New Project Investment:** $1,850,000

11. a. Business requests the following tax exemption incentives: 100% for 12 years covering real property as described above. Be specific as to the rate, and term.

b. Business’s reasons for requesting tax incentives (be as quantitatively specific as possible):

This abatement will fill a vital underwriting gap in support of revitalization of the historic Wright Dunbar neighborhood, making rents affordable for the local subtenants (vendors) offering services through this project, and strengthening the Opportunity Zone investment case needed to attract the capital necessary to complete the project. With this abatement, the project sponsors may invest more heavily in this historic neighborhood than would otherwise be feasible, attracting $1.85 million in new construction and capital investment, generating 7 new full-time and 2 new part-time permanent jobs and an estimated 10 temporary construction jobs (with at least 20% of construction contract volume being awarded to SWMBE contractors), and bringing important retail support services to visitors, workers and residents in this underserved area. This project will enhance local retail traffic, encouraging visitors to the National Aviation Heritage Park to stay longer and spend more, improving sales tax revenues to the City of Dayton and will be an important factor in catalyzing additional capital investment in the immediate area.

Submission of this application expressly authorizes the City of Dayton to contact the Ohio Environmental Protection Agency to confirm statements contained within this application including item # 5 and to review applicable confidential records. As part of this application, the property owner may also be required to directly request from the Ohio Department of Taxation, or complete a waiver form allowing the Department of Taxation to release specific tax records to the local jurisdiction considering the request.

The Applicant agrees to supply additional information upon request.
The Applicant affirmatively covenants that the information contained in and submitted with this application is complete and correct and is aware of the ORC Sections 9.66(C)(1) and 2921.13(D)(1) penalties for falsification which could result in the forfeiture of all current and future economic development assistance benefits as well as a fine of not more than $1,000 and/or a term of imprisonment of not more than six months.

**Wright Dunbar, Inc**
Name of Property Owner

Signature

**January 13, 2021**
Date

**Erica Hubler, Director of Real Estate**
Typed Name and Title

**WD-Food Hall JV, LLC**
Name of Affiliate

Signature

**January 13, 2021**
Date

**Larry B. Dillin, Manager**
Typed Name and Title

* A copy of this proposal must be forwarded by the local governments to the affected Board of Education along with notice of the meeting date on which the local government will review the proposal. Notice must be given a minimum of fourteen (14) days prior to the scheduled meeting to permit the Board of Education to appear and/or comment before the legislative authorities considering the request.

** Attach to Final Community Reinvestment Area Agreement as Exhibit A

Please note that copies of this proposal must be included in the finalized Community Reinvestment Area Agreement and be forwarded to the Ohio Department of Taxation and the Ohio Development Services Agency within fifteen (15) days of final approval.
EXHIBIT C

COMPENSATION AGREEMENT
COMPENSATION AGREEMENT
Dillin, LLC

This Compensation Agreement (this "Agreement") is made and entered into as of _ _, 2021, by and between DILLIN, LLC (the "Developer"), a corporation in the State of Ohio, located at 155 West Central Avenue, Springboro, Ohio 45066, and the BOARD OF EDUCATION OF THE DAYTON CITY SCHOOL DISTRICT (the "School District"), a public school district organized and existing under the laws of the State of Ohio with its main offices located at 115 South Ludlow Street, Dayton, Ohio 45402.

WITNESSETH:

WHEREAS, the Developer intends to develop an entrepreneurial food hall (the "Project") at the site located at 1100 W. Third Street (the "Property") and also develop additional properties ("Additional Properties") in the vicinity of the Property which are identified on the attached Exhibit A as (i) Cornerstone Project, (ii) Pekin Theater/Fish Market, (iii) Marietta Flats, and (iv) Rubenstein Building; and

WHEREAS, the Property and the Additional Properties are within the School District boundary; and

WHEREAS, the Property and the Additional Properties are collectively the "CRA Properties" and are located within an area designated as a Community Reinvestment Area (CRA) pursuant to Ohio Revised Code ("O.R.C.") § 3735.66; and

WHEREAS, the City of Dayton (the "City"), as an incentive for the Developer to redevelop the CRA Properties, is providing commercial CRA real property tax abatements; and

WHEREAS, and in recognition of the commercial CRA real property tax abatements on the CRA Properties that will subsequently be derived from the CRA, the Developer has agreed to provide compensation to the School District; and

NOW, THEREFORE, in consideration of the premises and obligations contained in this Agreement, the parties agree as follows:

Section 1. Compensation. In consideration of the financial benefits that will derived from the commercial tax abatement under the CRA, the Developer hereby agrees to compensate the School District by providing additional payments and in-kind services (the "Developer Services") to the School District, as described in the attached Exhibit B.

Section 2. Term. The Term of this Agreement shall commence on the date the Developer completes the redevelopment of the first CRA Property (which is anticipated to be no later than December 31, 2022) and shall end when none of the CRA Properties are receiving commercial real estate tax exemption (which is anticipated to be on or before December 31, 2039).

In the event the Developer does not develop any of the CRA Properties, then this Agreement shall be void and the parties shall be free from any obligations under it. Nothing in this Agreement shall
be construed as prohibiting the City of Dayton from extending the maximum term of CRA real property tax abatements in the Wright-Dunbar CRA District to fifteen years in accordance with Ohio law.

Section 3. School District Consents and Waivers. In consideration of the Compensation to be provided by the Developer to the School District, the School District hereby waives compliance with any notice requirements set forth in O.R.C. §§ 3735.671, 5709.83 and 5715.27(B) with respect to the CRA Exemptions for the Project and the Additional Properties.

Section 4. Amendment. This Agreement may be amended or modified by the parties only in writing, signed by both parties to the Agreement, and copied to the City of Dayton within 30 days of execution.

Section 5. Entire Agreement. This Agreement is executed pursuant to O.R.C. §§ 3735.671, 5709.82, 5709.83 and 5715.27(B) and (C), and sets forth the entire agreement and understanding between the parties, including without limitation all forms of compensation to be paid to the School District pursuant to those sections, 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.

Section 6. 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 Developer: Dillin, LLC
155 W. Central Avenue
Springboro, Ohio 45066
Attention: Larry Dillin, President

If to the School District: Dayton City School District
115 South Ludlow Street
Dayton, Ohio 45402
Attention: Treasurer/CFO

Copy to: City of Dayton
Economic Development Department
101 West Third Street
Dayton, OH 45402
Attention: Director

Any party may change its address for receiving notices and reports by giving written notice of such change to the other parties.
Section 7. General Provisions.

i. Conflict of Interest. Developer 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.

ii. 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.

iii. Third Party Rights. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the School District and Developer.

iv. Assignment. Neither the School District nor Developer 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 Developer from employing independent consultants, associates, and subcontractors to assist in the performance of the services.

v. Waiver. A waiver by either the School District or Developer 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.

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

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

Section 8. Severability of Provisions. The invalidity of any provision of this Agreement shall not affect the other provisions of this Agreement, and this Agreement shall be construed in all respects as if any invalid portions were omitted.

Section 9. 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.
IN WITNESS WHEREOF, the Developer and the School District have caused this Agreement to be executed in their respective names by their duly authorized officers or representatives, as of the date hereinabove written.

DILLIN, LLC

By: 
Name: 
Title: 

DAYTON CITY SCHOOL DISTRICT

By: 
Treasurer/CFO

By: 
President, Board of Education

Received by the City of Dayton: 
Date

By: 

Exhibit A

Additional Properties

The Additional Properties are listed below and geographically identified on the attached aerial image.

1. Cornerstone Project
2. Pekin Theater/Fish Market
3. Marietta Flats
4. Rubenstein Building
Exhibit B
Developer Services

Developer shall conduct fundraising events in the Wright-Dunbar neighborhood, which fundraising events shall raise no less than $5,000 annually for each of the CRA Properties then benefitting from a commercial CRA real property tax exemption. For example, if three CRA Properties are benefitting from a commercial CRA real property tax exemption in a given year, the annual minimum net fundraising contribution to the School District shall be $15,000.

On or about ________________ each year, Developer and School District shall confirm in writing the CRA Properties that are currently benefitting from a commercial CRA real property tax exemption and the Developer’s minimum net fundraising contribution to the School District for that year.

On or about ________________ each year, Developer shall provide School District with a simple statement setting forth the fundraising activities that were conducted during the previous year and the net proceeds that were paid to the School District. In the event the net proceeds to the School District were less than the minimum fundraising contribution for the School District that year, Developer shall also pay the shortfall.

The Developer’s annual minimum net fundraising contribution to the School District notwithstanding, Developer shall have the right to conduct fundraising activities that do not benefit the School District as well as conduct fundraising activities that benefit the School District and one or more other entities including, without limitation, fundraising activities that benefit Wright-Dunbar, Inc.

The School District shall have the right to review and approve the cultural suitability of all fundraising activities for which it is a beneficiary.

The School District shall provide no less than 50 volunteers for each fundraising activity for which it is the sole beneficiary.

Each year in lieu of conducting fundraising events Developer may make a payment to the School District in the amount of $5,000 for each of the CRA Properties that is currently benefitting from a commercial CRA real property tax exemption.

Developer shall facilitate conversations between the School District and the commercial tenants of the CRA Properties to explore possible internship or part-time employment opportunities for students enrolled in the School District.

Developer shall facilitate conversations between the School District and contractors/construction trades to explore possible vocational education or part-time employment opportunities for students enrolled in the School District.
A RESOLUTION

Authorizing the City Manager to Accept a Grant Award From the U.S. Department of Housing and Urban Development ("HUD") for a Total Amount of Two Million Three Hundred Forty-Two Thousand Two Hundred Seventy-Six Dollars and Zero Cents ($2,342,276.00) on Behalf of the City of Dayton, and Declaring an Emergency.

WHEREAS, HUD administers the Shelter Plus Care grant program; and

WHEREAS, The City of Dayton submitted a Shelter Plus Care grant application seeking funding to provide housing and supportive services to homeless individuals that was included in the Dayton/Kettering/Montgomery County 2020 Continuum of Care application; and

WHEREAS, Pursuant to Section 36.10 of the Revised Code of General Ordinances of the City of Dayton, the City Manager executed the grant application on behalf of the City of Dayton; and

WHEREAS, HUD approved the City of Dayton’s grant application and will award the City Shelter Plus Care grant subject to the City’s acceptance; and

WHEREAS, The City must accept the grant from HUD as soon as possible to ensure provision of uninterrupted assistance to the homeless, making it necessary for the immediate preservation of the public peace, property, health, and safety that this resolution take effect at an early date; now, therefore,

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

Section 1. That the City Manager is authorized to accept the Shelter Plus Care grant for a total amount of Two Million Three Hundred Forty-Two Thousand Two Hundred Seventy-Six Dollars and Zero Cents ($2,342,276.00) and is directed to execute any and all documents and agreements on behalf of the City of Dayton which are necessary to accept the grant from HUD.

Section 2. That for that reason stated in the preamble hereof, the Commission declares this Resolution to be an emergency measure that shall take effect immediately upon its adoption.

Adopted by the Commission ......................... MAY 19 ........................., 2021

Signed by the Mayor ......................... MAY 19 ........................., 2021

[Signature]

Mayor of the City of Dayton, Ohio

Attest:

[Signature]

Clerk of Commission

Approved as to form:

[Signature]

City Attorney
May 5, 2020

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

FROM: Todd M. Kinskey, Director  
    Department of Planning and Community Development

SUBJECT: Emergency Resolution Authorizing Acceptance of the 2020 Continuum of Care Grant Awards

Attached for your review and placement on the May 19, 2021, City Commission Calendar is an Emergency Resolution authorizing the acceptance of the 2020 Continuum of Care (CoC) Grant award from the U.S. Department of Housing and Urban Development (HUD). The Department is requesting two readings of the legislation at this meeting.

The City of Dayton submitted, and HUD approved, the Shelter Plus Care renewal applications totaling $2,342,726.

The Shelter Plus Care grant will fund the Tenant-Based Rental Assistance (TRA) program runs from running from May 1, 2021, to April 30, 2022, and assists 261 formerly homeless households. The TRA program was awarded $2,342,726 in COC funds.

If you have any questions or require additional information, please contact Jeff Green at extension 3302.

Thank you.

TMK/jg
Attachments
A RESOLUTION

Declaring the Intention of the Commission to Vacate Shelby Avenue from Kling Drive to 100 Feet East of Kling Drive.

WHEREAS, The vacation of Shelby Avenue from Kling Drive to 100 feet east of Kling Drive as described herein will enable the abutting property owners to safeguard this property; and

WHEREAS, The City Plan Board has recommended the vacation; now, therefore,

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

Section 1. That the intention of the Commission is hereby declared to vacate Shelby Avenue from Kling Drive to 100 feet east of Kling Drive more particularly bounded and described in as follows:

Being all of the 50 foot Shelby Avenue from the 50 foot Kling Drive to 100 feet east of Kling Drive

The vacation shall be subject to the following conditions:

A. DP&L shall retain a ten foot diagonal easement over, under, and through Shelby Avenue for its existing aerial electric facilities. With written consent from DP&L these facilities may be relocated or abandoned at the expense of the applicant.

B. The City of Dayton Department of Water shall retain an easement over, under, and through the vacated area for its existing six inch water main, and eight inch sanitary sewer. With written consent from City of Dayton Department of Water these facilities may be relocated or abandoned at the expense of the applicant.

Adopted by the Commission ............. MAY 19 ............., 2021

Signed by the Mayor ............. MAY 19 ............., 2021

Mayor, City of Dayton, Ohio

Attest:

Regina D. Blackshear
Clerk of the Commission

Approved as to form:

City Attorney
April 29, 2021

TO: Shelley Dickstein  
City Manager

FROM: Joseph Weinel, Chief Engineer  
Division of Civil Engineering

SUBJECT: The Vacation of Shelby Avenue from Kling Drive to 100 Feet East of Kling Drive.

Attached is the Resolution of Intent, the check of petition to vacate the subject alley, a letter from the City Plan Board recommending the vacation, and the original petition. Please present the resolution to the City Commission for their action.

Petition No. 21538 requesting the vacation was received from Nicholas Ungard on March 29, 2021. The vacation will enable the abutting property owners to safeguard this property.

If you have any additional questions, please contact me at 4218.

JRW

Attachments

cc: Mr. Parlette  
Ms. Lofton  
Mr. Stovall  
Department of Planning  
Department of Law  
Clerk of Commission  
Secretary / Board of Revision of Assessments
CHECK OF PETITION

Shelby Avenue from Kling Drive to 100’ East of Kling Drive.

Checked 4/19/2021 by Joseph Weinle

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<tr>
<td>Inga Ginn</td>
<td>62889</td>
<td>245.00</td>
<td>138-7-22</td>
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January 4, 2021

Nicholas Ungard
405 Shelby Avenue
Dayton, OH 45419

Re: PLN2020-00523 – Public Way Vacation: Shelby Avenue (405 & 410)

Meeting Date: December 8, 2020

Decision: Established Conditions

The City Plan Board found the proposed vacation (attached) met the criteria cited in R.C.G.O. Section 150.445(B) and therefore established the following conditions:

1. Establish an easement for underground water utilities running through Shelby Avenue.
   a. An existing 8-inch sanitary sewer.
   b. An existing 6-inch water main.
2. Establish a 10-ft easement centered on the DP&L aerial facilities running diagonally through Shelby Avenue.

The next step toward the completion of the vacation is to pursue the request through the petition process. Please contact Joe Weinel, Chief Engineer, at (937) 333-4218 or Joe.Weinel@daytonohio.gov to obtain the petition. If you have any questions, he will be your new contact for the remainder of the vacation process.

Sincerely,

\[Signature\]
Tony Kroeger, Secretary
City Plan Board

c: Decision Memorandum Distribution List
A RESOLUTION

Declaring the Intention of the Commission to Vacate South Orchard Avenue from Home Avenue to US Route 35 Right of Way.

WHEREAS, The vacation of South Orchard Avenue from Home Avenue to US Route 35 Right of Way as described herein will enable the abutting property owners to develop this property; and

WHEREAS, The City Plan Board has recommended the vacation; now, therefore,

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

Section 1. That the intention of the Commission is hereby declared to vacate South Orchard Avenue from Home Avenue to US Route 35 Right of Way more particularly bounded and described in as follows:

Being all of the 50 foot South Orchard Avenue from the 100 foot Home Avenue to the US Route 35 Right of Way

The vacation shall be subject to the following conditions:

A. The area shall be marked in a manner acceptable to the Division of Civil Engineering to indicate that it is not public right-of-way.

B. The street opening at Home Avenue shall be removed and replaced with curb and walk, or a driveway shall be constructed. All work shall be completed within 90 days of the vacation and to City of Dayton standards.

C. The City of Dayton Department of Water shall retain an easement over, under, and through the vacated area for its existing six inch water main, and thirty inch sanitary sewer. With written consent from City of Dayton Department of Water these facilities may be relocated or abandoned at the expense of the applicant

Adopted by the Commission ............................................. MAY 19, 2021

Signed by the Mayor ....................................................... MAY 19, 2021

Mayor, City of Dayton, Ohio

Attest:

Regina D Blackshear
Clerk of the Commission

Approved as to form:

City Attorney
CHECK OF PETITION

South Orchard Avenue from Home Avenue to US Route 35 Right of Way

Checked 4/19/2021 by Joseph Weinel

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<td>5 Star Investments LLC</td>
<td>16838</td>
<td>200.0</td>
<td>90-12-1</td>
</tr>
</tbody>
</table>
April 29, 2021

TO: Shelley Dickstein
    City Manager

FROM: Joseph Weinle, Chief Engineer
       Division of Civil Engineering

SUBJECT: The Vacation of South Orchard Avenue from Home Avenue to US Route 35 Right of Way.

Attached is the Resolution of Intent, the check of petition to vacate the subject alley, a letter from the City Plan Board recommending the vacation, and the original petition. Please present the resolution to the City Commission for their action.

Petition No. 21539 requesting the vacation was received from Randall E. Lucas on April 1, 2021. The vacation will enable the abutting property owners to develop this property.

If you have any additional questions, please contact me at 4218.

JRW

Attachments

cc: Mr. Parlette
    Ms. Lofton
    Mr. Stovall
    Department of Planning
    Department of Law
    Clerk of Commission
    Secretary / Board of Revision of Assessments
March 15, 2021

Randall Lucas
3616 Mandalay Drive
Dayton, OH 45426

Re: PLN2021-00055 – Public Way Vaction: S Orchard Ave

Meeting Date: March 9, 2021

Decision: Established Conditions

The City Plan Board found the proposed vacation (attached) met the criteria cited in R.C.G.O. Section 150.445(B) and therefore established the following conditions:

1. Establish an easement with boundaries of 40-feet wide for the 113’x72” storm sewer and 10-feet east of the 6” water main and 10-feet west of the 30” sanitary main, with the utility centered in the easement.

2. That the area shall be marked in a manner acceptable to the Division of Civil Engineering to indicate that it is not public right-of-way.

3. That the alley mouth at Home Avenue shall be removed and replaced with curb and walk, or a driveway shall be constructed. All work shall be completed within 90 days of the vacation and to City of Dayton standards.

The next step toward the completion of the vacation is to pursue the request through the petition process. Please contact Joe Weinel, Chief Engineer, at (937) 333-4218 or Joe.Weinel@daytonohio.gov to obtain the petition. If you have any questions, he will be your new contact for the remainder of the vacation process.

Sincerely,

Tony Kroeger, Secretary
City Plan Board

c: Decision Memorandum Distribution List
Notice is hereby given that the Dayton City Commission will hold two Public Hearings on Wednesday, May 19, 2021, at 6:00 P.M., or as soon thereafter as the hearing can begin and on Wednesday May 26, 2021 at 8:30 A.M., or as soon thereafter as the hearing can begin. The hearing will be held in the City Commission Chambers on the Second Floor of City Hall, 101 West Third Street, Dayton, Ohio. However, if certain Covid-19 restrictions remain in place, the hearing will be held remotely by electronic means. If you wish to attend or speak at the hearing, or if you wish to submit written comments, please contact Mark Charles, Sustainability Manager in the City Manager’s Office at 937-333-3612 or mark.charles@daytonohio.gov for information on how to do so. The City of Dayton will accept written comments on this matter until 9:00 am May 21, 2021.

The subject of the hearing is the following:

The City of Dayton is considering becoming a member of the Sustainable Ohio Public Energy Council of Governments organization.

In preparation for taking this action, the City of Dayton City Commission will hold two public hearings to take comment on SOPEC’s operations and governance plans. If Dayton becomes a member, SOPEC will implement an electric aggregation program for the City, its residents, and businesses. SOPEC will be providing exclusively green electrical energy derived from wind power.

Summary of the Operation and Governance Plan

SOPEC’s Operation and Governance Plan describes how the organization will provide aggregated electricity to its residential and commercial customers. In this case, the council of government organization will be providing electricity derived from renewable sources, primarily wind. SOPEC is governed by a General Assembly made up of all the jurisdictions participating as members of the Council of Governments. Furthermore, the day-to-day activities of SOPEC are directed by a Board of Directors on which Dayton will be seated once it has become a member.

Customer Rights and Obligations

Once residential and commercial customers have been notified that SOPEC will be providing future electricity, each customer has the option to opt out of the program if they chose to do so. Thereafter, the customers will be purchasing electricity from SOPEC but will continue to pay all bills through AES.
The proposed Operation and Governance Plan is available for public inspection in the Office of the City Manager with the Sustainability Manager. Please direct inquiries on this subject to Mark Charles, contact information above.

By order of the City Commission of the City of Dayton, Ohio.

REGINA D. BLACKSHEAR, CLERK
OFFICE OF THE CITY COMMISSION
Southeast Ohio Public Energy Council

Electric Plan of Operation & Governance

For Member Communities

02/18/2021
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I. Introduction

This Plan of Operation and Governance (the “Plan”) has been prepared by the Southeast Ohio Public Energy Council (“SOPEC”) on the behalf of its current members and any future members that may join SOPEC’s governmental aggregation of electric customers (the “Aggregation Program”). The Plan contains information on the structure, governance, operations, management, funding, and policies of the Aggregation Program to be utilized for participating customers in member communities.

On November 5, 2013, the voters of Athens City and Athens County approved ballot measures that authorized governmental electrical aggregation. The City has agreed to be part of the County aggregation program as permitted under Ohio Revised Code (“R.C.”) 4928.20(A), which allows for the creation of an “opt-out” aggregation program. Subsequently, additional member communities chose to join SOPEC’s Aggregation Program. Under SOPEC’s Opt-Out Aggregation Program (defined below), electric residential and non-mercantile commercial customers located in member communities are included in the Opt-Out Aggregation Program unless they explicitly opt-out.

To comply with the Public Utilities Commission of Ohio’s (“PUCO”) regulations, SOPEC members joined together to form an “aggregation council”, which filed an application for certification as a government aggregator with the PUCO. The following Plan, which SOPEC member communities developed, has also been filed with the PUCO. The Plan was adopted after public hearings were held in accordance with R.C. 4928.20(C), and modified by the SOPEC members.

II. Description and Objectives of the Aggregation Program: Endorsement Program

This Plan includes details related to operations of the collaborations between SOPEC members, the procurement of energy supply, and the expectations of members for Suppliers (defined below). This Plan includes all information necessary for the certification of SOPEC by the PUCO as a governmental aggregator under R.C. 4928.20.

The Aggregation Program contains two types of aggregations, an “Opt-Out Aggregation Program” and an “Opt-In Aggregation Program”. Under the Opt-Out Aggregation Program, participation is voluntary for each individual customer in a member community. Individual customers will be notified of their inclusion in the Opt-Out Aggregation Program and will have the opportunity to decline service. The customers may choose any electric supplier they wish at the outset of the program and at least every three years thereafter. New member communities also shall have the opportunity to join SOPEC’s Opt-Out Aggregation Program.

Under the Opt-In Aggregation Program, SOPEC offers customers who live in SOPEC member communities the ability to join the Opt-In Aggregation Program upon their affirmative consent. Customers who want to participate in SOPEC’s Opt-In Aggregation Program can contact the Supplier to enroll. Supplier and SOPEC also may contact individuals in SOPEC member communities regarding opt-in opportunities.

SOPEC and Supplier may offer customers more than one product during the Opt-Out Aggregation process and also during the Opt-In Aggregation process. SOPEC also may endorse any competitive retail electric service supplier to offer within SOPEC’s member communities products that are not included in the Aggregation Program, or sponsor other
programs (including endorsement programs) pursuant to one or more program agreements with any SOPEC member(s) or non-member(s) as may be authorized by the SOPEC Board of Directors (“Endorsement Program(s)”).

III. **Goals of the Aggregation Program**

The specific goals of the Aggregation Program are as follows:

1. To pursue reasonably priced energy supply through the bargaining power of pooled customer aggregation purchases;
2. To ensure maximum investment of energy generation dollars in local projects and energy options;
3. To secure clean and sustainable energy sources as significant portions of community energy supply if selected by member communities;
4. To include in generation supply purchases investments in local energy efficiency investments;
5. To provide, on a non-discriminatory basis, an option for aggregation of all customers who qualify under the PUCO’s rules and who SOPEC and its Supplier have elected to serve;
6. To allow the eligible customers who do not wish to participate to opt-out of the Opt-Out Aggregation Program;
7. To allow customers in member communities to opt-in to an Opt-In Aggregation Program upon providing affirmative consent
8. To ensure that Suppliers provide quality, reliable service and customer service;
9. To utilize and encourage renewable energy development if and to the extent practicable through contract provisions and voluntary programs;
10. To include, to the extent possible, government accounts into the aggregation;
11. To advance community economic and energy development goals; and
12. To utilize local government powers and authorities to achieve these goals.

The Aggregation Program involves the acquisition of competitive retail power supply. Distribution services (metering, billing, maintenance of the transmission and distribution system) will continue as a function of the local utility; but SOPEC may request Supplier(s) to take on billing responsibilities for customers participating in energy efficiency or distributed generation programs implemented by Supplier(s). The local utility will continue to own, furnish, install, calibrate, test, and maintain all meters and associated equipment used for customer billing and retail energy settlement purposes. The local utility shall be the “provider of last resort” for customers not participating in the Aggregation Program who have not elected to take service from another competitive supplier.

SOPEC will not assume title to electric generation. It will not buy and resell electric generation to the participants of the program. Instead, SOPEC will negotiate a contract with Supplier(s) to provide electric supply to the members of the aggregation program. Billing and scheduling of electric loads shall be handled by the Supplier or local utility.

IV. **Rates**
Under PUCO orders, the local distribution company assigns the customer classification and corresponding character of service and associated regulated rates. These rates include a monthly customer charge, a distribution charge, a transmission charge, and an access charge. Although SOPEC may participate in regulatory proceedings and represent the interests of customers regarding these regulated rates, it will not assign or alter existing customer classifications without the approval of the PUCO.

The focus of the Aggregation Program, as noted above, will be acquisition of competitive prices and terms for power supply. The prices will be set through a competitive request for proposals and contract and negotiation process, and will be indicated on customers’ bills as the “generation charge.” Ohio law requires that a government aggregator separately price competitive retail electric services and that the prices be itemized on the bill of a customer or otherwise disclosed to the customer. The generation charge for each customer class, or any customer grouping by load factor or other appropriate pricing category, is expected to be lower than the utility’s standard offer generation charge. All Supplier charges to the customer will be fully and prominently disclosed under the notification process, which is discussed further below.

V. Steps for Communities during the Aggregation Program Process

The process of establishing government aggregation involves a multi-step public process undertaken by the member communities or jointly through SOPEC on their behalf. The steps to authorize opt-out and opt-in aggregations are the same, except where noted below:

1. SOPEC shall develop and issue Request for Proposals (“RFPs”) that incorporate and address all of the goals expressed in this Plan;

2. Competitive retail electric suppliers (“Supplier(s)”) will respond to RFPs; SOPEC and its agents will engage in direct negotiations with Suppliers;

3. SOPEC shall select Supplier(s) and execute one or more supply contracts with Supplier(s);

4. The local distribution utility for each member community shall supply its electronic list of eligible customers for those communities;

5. For Opt-Out Aggregation only:
   a) Supplier(s) will acquire an electronic list of eligible customers in member communities from the local distribution utility (this information must include applicable meter numbers and other appropriate codes);
   b) SOPEC and selected Supplier(s) will notify customers of the opt-out process via U.S. mail utilizing the electronic customer list of addresses;
   c) SOPEC Supplier(s) will revise the electronic customer list to remove responding opt-out customers from the list;
   d) Supplier(s) will transmit the revised electronic customer list back to the distribution utility for customer transfer;
   e) The distribution utility will complete the administrative transfer of participating customers (via revised electronic list) to SOPEC Supplier(s); and
f) Participating customers on all billing cycles will be enrolled with the selected Supplier with the beginning of a new billing cycle.

6. For the Opt-In Aggregation Program only:
   a) SOPEC and Supplier will market and solicit customers within the SOPEC member communities;
   b) Supplier will enroll customers in the Opt-In Aggregation Program by obtaining their affirmative consent directly (in person, by mail or facsimile), telephonically or electronically in accordance with the PUCO’s rules and the applicable electric distribution utility’s tariff.

7. The appropriate distribution utility for each member community will complete the administrative transfer of participating customers to the Supplier;

8. SOPEC’s Supplier will ensure the firm delivery of electric supply based on the terms and conditions of the supply contract with SOPEC;

9. SOPEC and legal and technical advisors will monitor contract for compliance; and

10. SOPEC will act to protect the interests of member communities.

VI. Participation in the Aggregation Program; Endorsement Program

Opt-Out Aggregation. For purposes of an Opt-Out Aggregation Program, an “eligible customer” constitutes a customer eligible under utility or PUCO rules and which SOPEC and its Supplier have elected to serve. Customers that shall not be included in the Opt-Out Aggregation Program pursuant to utility or PUCO rules include the following:

- A customer located in the certified territory of a non-profit electric supplier;
- A customer served by transmission or distribution facilities of a municipal electric utility;
- A customer that affirmatively chooses to be included on the PUCO’s “do not aggregate” list;
- A “mercantile customer” (defined as a commercial or industrial customer that consumes more than seven hundred thousand kilowatt hours per year or is part of a national account involving multiple facilities in one or more states) that fails to affirmatively elect to participate in an aggregation program;
- A customer already in contract with another competitive retail electric service supplier;
- A customer that has opted out of the governmental aggregation program;
- A customer enrolled in the percentage of income payment plan (“PIPP”);
- A customer that has a special arrangement with the distribution utility; and
• A customer not located within the boundaries of the governmental aggregator’s member communities.

Eligible customers shall be notified of the Opt-Out Aggregation Program and terms and conditions of participation prior to initiation of services and be provided an opportunity to “opt-out” at no cost during a 21-day period specified in the terms and conditions of the supply contract(s). Customers may be offered a program electric supply product and one or more optional supply products through the opt-out notice. If options are provided, the customer may decline all products by opting-out of the Opt-Out Aggregation Program. Customers that do not choose to opt-out will be automatically enrolled in the program product, unless they make arrangements with the Supplier, as specified in the opt-out notice, to take one of the optional supply products.

During this 21-day opt-out period customers also may choose another competing supplier, or receive service from their local distribution company. Participating customers will be given the opportunity at least every three years after the initiation of service to opt-out of the Opt-Out Aggregation Program without interruption of their current service, or payment of a penalty or switching fee. In addition, participating customers can leave the Opt-Out Aggregation Program at any time without being subject to early termination fees. These participating customers can leave the Opt-Out Aggregation Program early in accordance with the terms and conditions of their supply contracts.

Customers who move to a SOPEC member community (including those who move from another SOPEC member community), and are considered by the distribution utility to be new electric customers, may participate in the Opt-Out Aggregation Program at the existing price and terms offered for that customer class, or other terms specified under the supply contract(s). Such new electric customers can also choose to opt-out of the Opt-Out Aggregation Program at no charge during the initial 21-day period after the postmark date on the opt-out notice and at subsequent opt-out periods of at least every three years.

Opt-In Aggregation. Supplier(s) and SOPEC may contact customers in SOPEC member communities regarding the opportunity to participate in the Opt-In Aggregation Program, or customers may contact the Supplier(s) regarding such opportunities. Supplier(s), with SOPEC’s consent, will determine the terms and conditions of service, as well as the customers’ rates, subject to written policies mutually agreed upon by the SOPEC and Supplier(s). For purposes of the Opt-In Aggregation Program, customers are enrolled by obtaining their affirmative consent directly (in person, by mail or facsimile), telephonically or electronically in accordance with the PUCO’s rules and the electric distribution utility’s tariff. Participating customers who terminate their contracts with the supplier prior to their contracts’ expiration may be subject to an early termination fee which will be described in their supply contract, if applicable.

Endorsement Program. SOPEC also may initiate an Endorsement Program whereby it may endorse any competitive retail electric service supplier to offer within SOPEC’s member communities or otherwise to a SOPEC Member or non-Member products that are not included in the Aggregation Program.

VII. Notification of Opt-Out Aggregation Program Customers
Prior to initiation of Opt-Out Aggregation Program service, all opt-out eligible customers shall be notified of the opt-out terms. The process of notification shall be as follows:

1. A separate mailing
2. Newspaper notices
3. Public service announcements
4. Posting of prominent notice in the local government office building in each member community

Prior to enrollment in the Opt-Out Aggregation Program, notification shall be mailed in a timely manner for receipt by customers prior to their start of service day. The opt-out period is 21 days. The notification shall include the following elements:

1. A summary of all actions taken by SOPEC to authorize the Aggregation Program;
2. A description of the services offered by the Opt-Out Aggregation Program
3. A statement informing customers of their right to opt-out of the Opt-Out Aggregation Program at least every three years, without interruption of their current service, or payment of a penalty or switching fee;
4. A statement indicating that any customer returning to the distribution utility after commencement of the Opt-Out Aggregation Program may pay the market price for power;
5. A statement informing customers that returning to the distribution utility may not result in that customer being served under the same rates, terms, and conditions as other customers served by the distribution utility;
6. An itemized list and explanation of all fees and charges not incorporated in the base Opt-Out Aggregation Program rates but that will be charged for participation in the Opt-Out Aggregation Program if any;
7. Disclosure of the dates covered by the Opt-Out Aggregation Program, including the estimated start date;
8. Disclosure of any credit and/or deposit requirements;
9. Disclosure of any limitations or conditions on customer acceptance into the Opt-Out Aggregation Program;
10. If applicable, inform customers whether SOPEC elected in the best interest of the Aggregation Program not to receive standby service from the electric utility under an approved electric security plan, and inform customers that non-standard service offer rates and conditions may apply if the customer returns to the electric utility after the opt-out period;
11. A description of the opt-out process and statement that the opt-out period will last for 21 days from the date of the postmark on the written notice;
12. A customer-friendly opt-out form (e.g., a postcard) to return to SOPEC or Supplier indicating whether the customer has opted out of the Opt-Out Aggregation Program.
13. A toll free phone number that customers can call to opt-out of the Opt-Out Aggregation Program.

14. Inform customers that they must return the completed opt-out form to the Supplier(s) or contact the Supplier(s) via telephone within the 21-day opt-out period to opt-out.

15. Inform customers that they shall be automatically included in the Opt-Out Aggregation Program if they do not return the opt-out form or do not call the Supplier within the 21-day opt-out period.

16. Inform customers in the terms and conditions of their supply contracts that SOPEC will not charge any early termination fees.

17. All charges to be made and a comparison of the primary terms of SOPEC’s selected contract compared to the Standard Offer; and

18. Information about eligible energy efficiency and distributed energy customer options.

Customers that do not return the opt-out form within 21 days or do not call the Supplier within the 21-day opt-out period to opt-out shall be automatically included in the Opt-Out Aggregation Program.

Eligible customers who relocate to a SOPEC member community shall be included in the Opt-Out Aggregation Program, subject to their opportunity to opt-out. The selected Supplier(s) shall provide standard opt-out notification materials to customers who have relocated to member communities, or customers who otherwise are eligible to join the Opt-Out Aggregation Program. The new customer may participate in the Opt-Out Aggregation Program at the existing price and terms offered for that customer class. Any such new or otherwise eligible electric customer can also choose to opt-out of the Opt-Out Aggregation Program at no charge during the opt-out period. At least every three years, customers may be permitted to opt-out of the Opt-Out Aggregation Program at no fee.

Consistent with the requirements of Ohio law and the regulations of the PUCO, termination of service may take place for non-payment of bills. Customers whose power supply is terminated by a selected Supplier will receive electric supply from their local distribution company. Customers may be considered for re-enrollment in the Opt-Out Aggregation Program once they have met the requirements of law and are current on bill payment.

VIII. The City of Athens, Ohio Carbon Fee

Pursuant to the #3 Advisory Election of Athens City on May 8, 2018 ("Advisory Election"), the voters of the City of Athens, Ohio granted SOPEC the authority to charge a 2 mills retail carbon fee for each kilowatt hour of electric consumption used by SOPEC retail electric customers in the City of Athens, Ohio (such fee, the "Carbon Fee"). The Advisory Election also authorized SOPEC to use all Carbon Fee revenues to fund local public solar projects. All SOPEC retail electric customers within the City of Athens shall automatically pay the Carbon Fee, except for those customers who elect to opt out of payment of the Carbon Fee. SOPEC’s supplier shall collect the Carbon Fee from participating customers enrolled in the Program in the jurisdiction of the City of Athens who have not elected to opt out of the Carbon Fee.
All Carbon Fee revenues shall be used for the purposes of promoting and supporting local solar projects. SOPEC, in its sole discretion, shall determine how the Carbon Fee revenues shall be distributed to proposed local solar projects.

IX. Customer Service

Regarding all issues of customer protection (including provisions relating to slamming and blocking), SOPEC will ensure that the selected Supplier comply all statutes, rules and regulations currently in place and as may be amended from time to time. SOPEC will provide on-going customer education in member communities through public service announcements, posting of information, media press releases, advertising, and direct mailing depending on the subject and appropriate venue. SOPEC will also assist member communities with all required notifications, information, and public hearings.

SOPEC will ensure that customers are provided with adequate, accurate and understandable pricing and terms and conditions of service, including any fees, opt-out opportunities, including the conditions under which a customer may rescind a contract without penalty.

Supplier shall utilize the billing services of the local distribution company to render timely billings to each participating customer; except where bills will be directly managed by the Supplier for the purposes of providing energy efficiency, distributed generation or other options as specified under contract.

All bills shall comply with PUCO rules, regulations, and requirements regarding the essential components and formats. Credit and collection processes concerning billing will remain the sole responsibility of the selected Supplier and the local distribution company as provided by state law. Under no circumstances shall SOPEC have any responsibility for payment of any bills.

Unless otherwise specified in customers’ supply contracts, all billing shall be based on the meter readings generated by meters of the distribution company at the customer’s facilities. Customer bills shall be rendered monthly. Customers are required to remit and comply with the payment terms of the distribution company and/or the Supplier. Billing may take place through the distribution company at the Supplier’s option. In the event that necessary billing data is not received from the distribution company in time to prepare monthly bills, the Supplier reserves the right to issue a bill based on an estimate of the participating customer’s usage for that billing period. Any over-charge or under-charge will be accounted for in the next billing period for which actual meter data is available.

X. Customer Protections

The following customer protection provisions are anticipated to be contained in customers’ contracts with the Supplier(s):

1. Title to and risk of loss with respect to the electric energy will transfer from the Supplier to participating customers at the Point-of-Sale, which is the customer’s side of the meter.

2. Energy delivered pursuant to the customer’s supply contract will begin on the first meter reading date following the scheduled initiation of service date for each rate class or customer group, or individual customer as described in the customer supply contract, or as soon as necessary arrangements can be made with the distribution company thereafter and will end on the last meter reading
date prior to the expiration date. The Supplier has the right to request a “special”
meter reading by the distribution company to initiate energy delivery and agrees
to accept all costs (if any) for such meter reading. The participating customer
also has such a right, and similarly would bear the costs (if any) of such special
meter reading.

3. Recognizing that electricity provided under the customer’s supply contract shall
be ultimately delivered by the distribution company, to the extent permitted by
law, the Supplier shall not be liable for any damage to a participating customer’s
equipment or facilities, or any economic losses, resulting directly or indirectly
from any service interruption, power outage, voltage or amperage fluctuations,
discontinuance of service, reversal of service, irregular service or similar
problems beyond the Supplier’s reasonable control. To the extent permitted by
law, except as expressly stated in the supply contract, the Supplier will make
no representation or warranty, express or implied (including warranty of
merchantability or of fitness for a particular purpose), with respect to the
provision of services and electric energy.

4. Given the increasing interest in and need for high levels of reliability, the supply
contract will help assure that participating customers in SOPEC member
communities receive power supply with reliability equal to that of native load
customers for the distribution company. The Supplier is providing generation
and, unless provided by the utility, transmission services, and participating
customers must rely upon the distribution company for regional transmission,
and local transmission and distribution services for ultimate delivery of
electricity where reliability problems occur. However, within the scope of
electric energy supplier obligations, the Supplier shall take or adopt all
reasonable steps or measures to avoid any unnecessary outages, service
interruptions, capacity shortages, curtailments of power supply, voltage
reductions, and any other interference or disruption of electric supply to Point-
of-Delivery, and shall give the highest priority of supply to the electricity made
available under the customer’s supply contract consistent with the requirements
of law and equivalent to network service available to native load customers.

XI. Customer Complaints

It is important that customer complaints be directed to the proper party. The selected Supplier
shall ensure that each participating customer receives a printed copy of a toll-free number to
call regarding service problems or billing questions. The Supplier shall refer reliability, line
repair, or service interruption, and billing issues to the local distribution company. The
Supplier(s) shall handle all complaints in accordance with applicable laws and regulations.
Problems regarding the selected Supplier can be directed to SOPEC or the PUCO. SOPEC will
continue to monitor the selected Supplier for compliance with customer protection provisions
in the customer’s contract with Supplier and timely resolution of customer problems. Problems
regarding the selected Supplier(s) can be directed to SOPEC or the PUCO. Customers may
contact the Public Utilities Commission of Ohio for assistance at 1-800-686-7826 (toll free) or
for TTY at 1-800-686-1570 (toll free) from 8:00 a.m. to 5:00 p.m. weekdays, or at. The Office
of the Ohio Consumers’ Counsel (“OCC”) represents residential utility customers in matters
before the PUCO. The OCC can be contacted at 1-877-742-5622 (toll free) from 8:00 a.m. to
5:00 p.m. weekdays, or at. SOPEC can be contacted at or 740-597-7955.
At the request of SOPEC, the selected Supplier(s) shall provide a periodic summary of the number and types of customer service issues and complaints that arose to date, and the status of resolution of those issues and complaints. If such reports indicate problem in the selected Supplier’s service, SOPEC will pursue timely remedial action or consider the Supplier in breach of its supply contract with SOPEC.

XII. Termination of Participation in the Opt-Out Aggregation Program

The Opt-Out Aggregation Program may be terminated for participating customers in two ways:

1. Upon the termination or expiration of the power supply contract for all member communities without any extension, renewal, or subsequent supply contract being negotiated; or

2. At the decision of an individual member community to cancel its membership in SOPEC.

In the event of termination of the Opt-Out Aggregation Program, each customer receiving power supply services under the Opt-Out Aggregation Program will receive notification of termination of the program ninety days before termination. SOPEC shall utilize appropriate processes for entering, modifying, enforcing, and terminating agreements pertinent to the Opt-Out Aggregation Program consistent with the requirements of local ordinances or resolutions, state and federal law.

XIII. Termination of Participation in the Opt-In Aggregation Program

Termination of the Opt-In Aggregation Program will be governed by the terms of individual opt-in customers’ supply contracts. An individual Opt-In Aggregation Program customer who chooses to terminate participation in the Aggregation Program before the expiration of the customer’s supply contract(s) may be required to pay an early termination fee, if applicable. Any obligation to pay an early termination fee, if any, will be made a part of the customer supply contract(s). Opt-In Aggregation Program Customers who move from a member community will have no penalties or early termination fees.

XIV. Organizational Structure

Each SOPEC member community shall have one representative in the SOPEC Assembly; which will serve as the legislative body for the organization. Members shall elect a Board of Directors. The Board of Directors of SOPEC shall oversee the implementation and operation of the Aggregation Program consistent with the provisions of the R.C. 4928.20 and the Bylaws of the SOPEC organization.

SOPEC shall act as agent for member communities to establish the Aggregation Program in accordance with law and to provide managerial, technical, and financial resources to acquire service and other guarantees sufficient to protect customers and the electric distribution utility. SOPEC may contract with service providers to achieve this purpose.

Outline of Structure:

1. Community Citizens: Customers can influence the program through elections that put in place officials that will appoint and control the assembly members.

2. Member Communities Legislative Bodies/Local Officials: Local officials may act on program and policy issues. They may individually choose to participate in additional programs of SOPEC, or terminate the community’s participation in
SOPEC. They may also raise issues directed to them by customers for the SOPEC Assembly and Board to address.

3. SOPEC Assembly: This is the legislative body of the organization, reviews its policies and contracts, and votes in the Board of Directors.

4. SOPEC Board of Directors: The Board of Directors shall manage the day-to-day operations of SOPEC, and may appoint agents and contract for services, and shall keep the Assembly informed of such actions.

5. Service Suppliers: Suppliers will contract with SOPEC to provide retail electric supply, energy efficiency, and local energy as part of contracts; and will report to SOPEC in carrying out these responsibilities.

6. Member Community Participating Customers: Participating customers in member communities will benefit from the professional representation and consumer protections provided under the negotiated service contracts. Individual customers may opt-out of participation and may also bring issues before their local legislative body.
SOPEC Member Electric Aggregation Program
Organizational Structure

Member Community Participating Customers
*Elect Public Officials

Member Community Legislative Bodies/Local Officials
*Election/appointment of SOPEC Assembly Representative
*Instructions to SOPEC Assembly Representative
*Determinations on Program Participation

SOPEC Assembly
*Decides Policy, Programs, Budgets & Contracts

SOPEC Board of Directors
*Oversees Program, Employees, Consultants

Service Suppliers
*Service delivery under contract terms

Consultants:
Administrator and Legal Counsel

Member Community Participating Customers
Use Services
XV. Certification

No governmental aggregator shall send an opt-out disclosure notice to potential customers of an aggregation prior to the governmental aggregator being certified by the commission. The certification of governmental aggregators is governed by Chapter 4901:1-21-16 of the Ohio Administrative Code (“O.A.C.”) and R.C. 4928.20. R.C. 4928.20 allows municipalities, townships, and counties to join together and combine their resources for development and implementation of an electric aggregation program.

XVI. Aggregation Program Funding

SOPEC offers member communities the opportunity to gain market leverage, share resources, and reduce administrative and other costs for developing, implementing and providing oversight for the Aggregation Program. Funding for these activities is anticipated to be provided by the selected Supplier(s) with an appropriate kilowatt hour charge to all participating customers to cover costs of the program. Such funds will be collected by the Supplier and paid to SOPEC. In the event additional funding for SOPEC is required, each SOPEC member may be assessed an annual fee pursuant to the agreement establishing SOPEC. The funding will be utilized for all Aggregation Program Operations.

XVII. Modification of SOPEC’s Plan

All material modifications to the SOPEC Plan shall be approved by majority vote of the SOPEC Board of Directors and ratified by a majority vote of the SOPEC General Assembly. By adopting this Plan, SOPEC member communities agree that future modifications to the Plan resulting from changes in law or regulations may be made automatically by SOPEC without further action of the SOPEC members or General Assembly.

As adopted 10/27/2014
As amended 09/29/2017
As amended 01/23/2018
As amended 02/18/2021
AN ORDINANCE

An Ordinance Authorizing the City to Enter into the Southeast Ohio Public Energy Council ("SOPEC"), the Execution and Delivery of the Agreement Establishing SOPEC, Approving the Bylaws of SOPEC, and Declaring an Emergency

WHEREAS, Section 4928.20, Revised Code, permits a municipality to aggregate customers within its jurisdiction in order to facilitate and promote lower cost electric utility services to its citizens; and

WHEREAS, the Commission of the City of Dayton, Ohio (the "City") previously enacted legislation authorizing the City to establish an electricity aggregation program pursuant to Section 4928.20, Ohio Revised Code, for the residents, businesses, and other eligible electric consumers in the City, and for that purpose, to act jointly with any other municipal corporation, county, or other political subdivision of the State of Ohio, as permitted by law; and

WHEREAS, by joining the Southeast Ohio Public Energy Council d/b/a Sustainable Ohio Public Energy Council ("SOPEC"), the City will be able to act jointly with other member political subdivisions and thereby maximize the potential benefit of electric deregulation through group purchasing efforts; and

WHEREAS, the Commission of the City, pursuant to Section 4928.20, Revised Code, has held two (2) public hearings on the Plan of Operation and Governance (the "Plan") for the SOPEC electricity aggregation program ("Electric Program"); and

WHEREAS, for the immediate preservation of the public peace, property, health and safety and for the further reason that this Ordinance is required to be immediately effective in order to maximize the potential benefit through the Electric Program, it is necessary that this Ordinance take effect at the earliest possible date; now, therefore,

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

Section 1. The City Commission finds and determines that it is in the best interest of the City, including the electric consumers located within the City, to join SOPEC and to adopt the SOPEC Bylaws, for the purpose of establishing and implementing the Electric Program within the City.

Section 2. The City Manager is hereby authorized and directed to execute and deliver the Agreement Establishing the Southeast Ohio Public Energy Council dba Sustainable Ohio Public Energy Council (the "SOPEC Agreement"). The SOPEC Agreement shall be
substantially in the form presented to this Commission and on file with the Clerk, subject to such changes, insertions, and omissions that are consistent with this Ordinance and are not substantially adverse to the City and as may be approved by the City Manager.

Section 3. The Commission hereby approves and adopts the Bylaws of SOPEC in the form attached to the SOPEC Agreement.

Section 4. For the reasons stated in the last preamble hereof, this Ordinance is declared to be an emergency measure and shall take effect immediately on its passage.

Passed by the Commission................................................., 2021

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

__________________________

Mayor of the City of Dayton, Ohio

Attest:

__________________________

Clerk of the Commission

Approved as to form:

__________________________

City Attorney
AN ORDINANCE

Approving the Plan of Operation and Governance for the Southeast Ohio Public Energy Council ("SOPEC") Electricity Aggregation Program, for the Purpose of Jointly Establishing and Implementing an Electricity Aggregation Program, and Declaring an Emergency.

WHEREAS, this Commission previously enacted legislation authorizing the City of Dayton to establish an electricity aggregation program pursuant to Section 4928.20, Ohio Revised Code (the "Electricity Aggregation Program"), for the residents, businesses and other electric consumers in the City, and for that purpose, to act jointly with any other municipal corporation, township, county or other political subdivision of the State of Ohio, as permitted by law; and

WHEREAS, by joining the Southeast Ohio Public Energy Council d/b/a Sustainable Ohio Public Energy Council, the City will be able to act jointly with other member political subdivisions and thereby maximize the potential benefits of electricity deregulation through group purchasing efforts; and

WHEREAS, this Commission, pursuant to Section 4928.20, Ohio Revised Code, has held two (2) public hearings on the Plan of Operation and Governance for the SOPEC Electricity Aggregation Program; and

WHEREAS, for the immediate preservation of the public peace, property, health and safety and for the further reason that this Ordinance is required to be immediately effective in order to maximize the potential benefit through the Electric Program, it is necessary that this Ordinance take effect at the earliest possible date; now, therefore,

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

Section 1. This Commission hereby approves and adopts the Plan of Operation and Governance of the SOPEC Electricity Aggregation Program in the form presented to this Commission and on file with the Clerk.
Section 2. For the reasons stated in the last preamble hereof, this Ordinance is declared to be an emergency measure and shall take effect immediately on its passage.

Passed by the Commission.............................................., 2021

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

Mayor of the City of Dayton, Ohio

Attest:

______________________________
Clerk of the Commission

Approved as to form:

______________________________
City Attorney
AMENDED AND RESTATE BYLAWS
GOVERNING THE
SOUTHEAST OHIO PUBLIC ENERGY COUNCIL

WHEREAS, certain municipal corporations, counties and/or townships of the State of Ohio (each, a "Member") entered into an Agreement Establishing the Southeast Ohio Public Energy Council, also referred to herein as "SOPEC", (the "Agreement") pursuant to Revised Code Chapter 167, for the purpose of carrying out the Aggregation Program pursuant to Revised Code Section 4928.20, and any Additional Programs which the Members or Board of Directors of the Council may approve, from time to time, and which are authorized under the laws of the State; and

WHEREAS, Revised Code Section 167.04 requires and the Agreement provides that the Council shall adopt Bylaws designating the officers of the Council and the method of selection thereof, creating a governing board to act for the Council, appointing a fiscal officer and providing for the conduct of the Council’s business; and

WHEREAS, each Member has by duly adopted legislation authorized its representative to approve these Bylaws, and the representatives of the Members have met for the purpose of adopting and amending these Bylaws in accordance with Revised Code Section 167.40 of the Agreement.

NOW, THEREFORE, the following provisions shall constitute the Bylaws of the Council:

Section 1. Definitions.

Any capitalized word or phrase used in these Bylaws and not otherwise defined herein, shall have the meaning given in Exhibit A of the Agreement as the Agreement may, from time to time, be amended, modified, or supplemented in accordance with Section 13 hereof.

Section 2. Inclusion of Members.

Any municipal corporation, county, township or any other political subdivision under the laws of the State of Ohio may apply to become a Member of the Council by submitting an application in writing to the Board of Directors, accompanied by duly adopted legislation authorizing inclusion in the Council, execution of this Agreement and approval of the Bylaws. The Board of Directors shall review the application and by duly adopted resolution, the applicant municipal corporation, county, township or other political subdivision under the laws of the State of Ohio shall be included in the Council and deemed a Member hereunder if its inclusion is approved by the affirmative vote of at least two-thirds (2/3) of the Board and the applicant municipal corporation, county, township or other political subdivision under the laws of the State
of Ohio executes the Agreement. The applicant shall thereafter be a Member and, if then applicable, may be assessed its portion of the Aggregation Costs by the same method and using the same formula as any other Member, in accordance with the Agreement and Bylaws.

Section 3 Withdrawal of a Member.

(A) Any Member wishing to withdraw from membership in the Council shall notify the Council in the manner described in Section 3(C) hereof and such withdrawal shall, except as otherwise provided in this Section 3, cause such Member’s membership in the Council to be terminated. Such termination shall not be effective until the end of the applicable opt-out period as to any electricity aggregation program of the Council under which service is being provided to customers in the Member’s community.

(B) Any Member wishing to withdraw from participation in any Program of the Council shall notify the Council at least 90 days before the end of the applicable opt-out period for the Council’s electricity program in the manner described in Section 3(C) hereof. A withdrawal from participation in a Council Program is not a withdrawal from Membership as long as the Member continues to participate in at least one Council Program.

(C) Any notification of withdrawal of a Member from Membership in the Council or from participation in a Council Program must (i) be given in writing to the Council at least ninety (90) days before the end of the applicable opt out period for the Council’s electricity program and (ii) include a certified copy of duly adopted legislation of the governing body of the withdrawing Member authorizing such withdrawal.

(D) After withdrawal from membership in the Council, the withdrawing Member may not become a Member again until it has fully complied with the procedures contained in Section 2 hereof.

Section 4. Assembly.

The Assembly shall be the legislative body of the Council. The Assembly shall be composed of the representatives of the Members. Each Member shall have one representative to the Assembly, who (i) in the case of municipal corporations, shall be the mayor or manager or an appointee of such officer, or (ii) in the case of counties, townships, or other political subdivisions under the laws of the State of Ohio, shall be a member of its governing board or an officer chosen by such governing board. All representatives to the Assembly shall serve without compensation.

An Assembly representative may designate another Assembly representative as a proxy at any meeting by delivering (which may be done electronically) to the Chairman of the Council a written designation of that proxy.
(A) **Officers.** The officers of the Board of Directors shall be the officers of the Council and its Assembly and shall consist of a Chairman, Vice-Chairman, and Treasurer, who each shall be selected pursuant to Section 5 hereof. The Chairman (and in the Chairman's absence, the Vice-Chairman) shall preside at Assembly meetings. If for any reason the offices of the Chairman and Vice-Chairman are vacant, the person serving as Executive Director, if any, shall preside as temporary Chairman until a Chairman is elected by the Board of Directors. If the Council does not have an Executive Director and the offices of the Chairman and Vice-Chairman are vacant, the person serving as Fiscal Agent or his designee shall preside as temporary Chairman until a Chairman is elected by the Board of Directors.

(B) **Resolutions.** A majority of all representatives to the Assembly (including proxies delivered to the Chairman) shall constitute a quorum to transact business except as otherwise provided in the Agreement or these Bylaws. Each representative (including the Chairman and Vice-Chairman) shall have one vote; provided, however, that when a matter is to be voted upon which is of concern to only one or more but not all Programs of the Council, only representatives of participating Members of those Programs shall be entitled to vote on that matter and only those representatives shall be counted for purposes of determining whether a quorum is present. All legislative action of the Assembly shall be by resolutions entered on its records. Except as otherwise provided in the Agreement, the affirmative vote of at least a majority of all of the representatives to the Assembly eligible to vote on a matter (not counting vacancies) shall be required for the enactment of every resolution. Unless otherwise specifically stated in the resolution, all resolutions shall be effective immediately upon enactment, subject to any authorizations or certifications required by the Revised Code to be made by the Fiscal Agent or the Members.

(C) **Meetings.** The Assembly shall meet on the fourth Tuesday of each January, unless such date is changed as determined by the Board of Directors, and at such other times as may be required by the Chairman or as may be requested, in writing to the Executive Director, by any two (2) or more Directors. Written notice of each meeting shall be served by the Executive Director upon each Assembly representative not less than twenty-four (24) hours preceding the time for the meeting, and shall state the date, time, and place of the meeting and subject or subjects to be considered at the meeting. The requirements of and procedures for notice may be waived in writing by each representative and any representative shall be deemed conclusively to have waived such notice with respect to a meeting by his or her attendance at that meeting. At the request of the Chairman and with the approval of a majority of the members of the Board of Directors, the annual meeting of the Assembly may be rescheduled to such other dates as may be so approved by the Board of Directors; provided, however, that actions required by this Agreement to be taken by the Assembly at its annual meeting are taken by the Assembly not later than thirty (30) days after the fourth Tuesday of each January.
Pursuant to Revised Code Section 121.22(F), the Assembly shall by rule, establish a reasonable method whereby any person may determine the time, place, and purpose of its meetings. All meetings of the Assembly shall be open to the public, subject to the exceptions in Revised Code Section 121.22(G). The Assembly may, but need not, adopt other rules.

(D) **Powers and Duties of Assembly.**

(1) At its annual meeting, the Assembly shall review the annual report of the Council, including but not limited to, the financial status of the Council’s operation, operation of the Aggregation Program, and any Additional Program being considered.

(2) At its annual meeting, the Assembly shall consider, upon submission by the Board of Directors, and thereafter modify, if necessary, and approve the annual appropriations of the Council for the next Fiscal Year based upon the estimate of Aggregation Costs and any Additional Program Costs determined. The Board of Directors shall have the authority to revise the appropriations between Assembly meetings.

(3) At its annual meeting, the Assembly shall select the members of the Board of Directors for the next Fiscal Year in accordance with Section 5 hereof.

(4) The following matters shall be submitted to the Assembly and are subject to final approval by the Assembly: the annual appropriations of the Council for each Fiscal Year; selection of the Board of Directors; assessment of Aggregation Costs to Members, and such other matters of the Board of Directors or the Assembly may, from time to time, determine to be matters requiring approval by the Assembly.

Section 5. **Board of Directors.**

The Board of Directors shall be the policy making body of the Council.

(A) **Composition.** The Board of Directors shall be composed of at least five Directors which shall include the five Members in the Council featuring the largest populations as measured at the most recent decennial U.S. Census. The Board of Directors also shall be composed of up to one additional Director representing each region of the Council, as designated by the Board, not to exceed six regions, of Members in the Council, who shall be an Assembly representative and shall be elected by the Assembly representatives of each respective region at the annual meeting of the Assembly, provided that the affirmative vote of at least a majority of the representatives to the Assembly of each such region shall be required to elect any Director of such region. In the event a Member in the Council is one of the five largest populations in the Council and is also the only Member in its
region, there shall be no second Director position filled for such region. In the event that each region is represented and one or more Director positions remain to be filled, those Director positions shall be filled by representatives receiving an affirmative vote of at least a majority of the Assembly. In addition, there shall be up to four Directors at-large, elected by the affirmative vote of at least a majority of the representatives to the Assembly. No Member in the Council shall have more than one Director representative.

In no event shall there be more than fifteen Directors.

The Fiscal Agent of the Council may attend all meetings of the Board of Directors but shall not have a vote.

(B) **Terms of Office.** Assembly representatives elected to serve on the Board of Directors at the first organizational meeting shall serve the following terms of office: Half, or as close as possible to half, of the members of the Board shall each serve a two-year term and the other half, or as close as possible to half, shall each serve a one-year term. Thereafter, any Assembly representative elected to serve on the Board of Directors shall serve a two (2) year term of office. If the number of members of the Board is increased (not to exceed six regions in total) as a result of an increase in the number of regions represented by the membership in the Council, then the terms of those additional Board members shall be set by the Board so that half, or as close as possible to half, of the members of the Board shall be elected every year. There shall be no limit to the number of terms to which a person may be elected or appointed. All members of the Board (exclusive of ex-officio members) shall serve without compensation.

In the event that a vacancy occurs on the Board of Directors, the remaining members of the Board of Directors shall meet and appoint an Assembly representative to fill the vacancy until the next meeting of the Assembly at which elections of Directors are held.

(C) **Meetings.** The Board of Directors shall hold regular meetings not less than once per calendar quarter at such times as may be determined by the Board or the Chairman. Special meetings shall be held at such other times as may be requested by the Chairman. Written notice of each meeting shall be served by the Executive Director upon each Director not less than twenty-four (24) hours preceding the time for the meeting, and shall state the date, time, and place of the meeting and subject to be considered at the meeting. The requirements of and procedures for notice may be waived in writing by each Director and any Director shall be deemed conclusively to have waived such notice with respect to a meeting by his or her attendance at that meeting. An organizational meeting of the Board of Directors shall be held after the Agreement Establishing SOPEC is approved by the first three member organizations.
(D) **Attendance.** Directors are expected to attend Board meetings. Any director who is absent from three Board meetings without excuse or without providing his or her proxy during a twelve-month period is subject to removal from the Board. The remaining Directors shall meet and appoint a person to fill the vacated seat until the next meeting of the General Assembly at which elections of Directors are held.

(E) **Officers.** At its first meeting in each Fiscal Year, the Board of Directors shall convene and organize. The Chairman of the Board shall be elected to serve a one-year term by the Board of Directors from its members by majority vote of all its members. The Chairman whose term has expired shall preside as temporary Chairman until the Chairman is elected. In the absence of the prior Chairman, the prior Vice-Chairman shall be elected to serve a one year term by the Board of Directors by a majority vote of its members.

(1) **Chairman.** The Chairman shall preside at all meetings of the Board of Directors and the Assembly. The Chairman’s duties shall also include, but not be limited to: preparing agendas for each meeting of the Board of Directors and arranging for distribution of such agendas so that each Board member receives an agenda at least seven (7) days in advance of each regularly scheduled Board meeting and as soon as practical before any specially scheduled Board meeting; and presenting an annual report to the Assembly at its annual meeting, or distribution of such report to the Members, concerning the activities and operations of the Council. In the event of a tie on matters subject to a vote of the Board, the Chairman shall cast the tie-breaking vote.

(2) **Vice-Chairman.** In the absence of the Chairman, the Vice-Chairman shall preside at meetings of the Board of Directors and the Assembly. The Vice-Chairman shall succeed to the office of the Chairman, should that office be vacated before the end of a term, and shall assist the Chairman in the discharge of his duties.

(3) **Treasurer.** The Treasurer shall oversee the financial operations of the Council and shall oversee the Council’s Fiscal Agent and Fiscal Officer in connection therewith.

(4) **Executive Director.** The Executive Director or his or her designee shall provide written notice to all members of the Board of Directors of all meetings of the Board in accordance with paragraph (C) of this Section. Minutes of all meetings of the Board shall be kept by the Executive Director or his or her designee and distributed to each member of the Board within thirty (30) days following each Board meeting. The Executive Director or his or her designee shall provide Assembly members with written notice of all Assembly meetings in accordance with Section 4 hereof. The Executive Director shall perform such other duties
as the Chairman may request. If no Executive Director is hired, the above assignments will be performed by the Fiscal Agent. If the Board of Directors decides to hire a chief executive officer for the Council, then this person will be titled the Executive Director. The Board of Directors shall provide a job description for this position.

(5) **Fiscal Agent.** The Board of Directors shall provide for the employment of a Fiscal Agent either by:

(a) contracting with a Member; or

(b) hiring a person to perform the duties of the Fiscal Agent, who shall be the Fiscal Officer. Separate Fiscal Agents may be hired to handle specific Programs or assigned to the Fiscal Officer if such employee is hired. The Fiscal Agent shall receive and disburse all funds of the Council, prepare all necessary fiscal reports for the Board of Directors and the Assembly, and undertake all other financial transactions necessary to the work of the Council; or

(c) designating the Council as its own Fiscal Agent.

The Fiscal Agent of the Council shall obtain and keep in force a fidelity bond, in an amount determined by the Board of Directors and with a surety company approved by the Board of Directors, or, in lieu of a separate fidelity bond, the Board of Directors may direct the Fiscal Agent to continue and keep in force any existing fidelity bond the Fiscal Agent may have which the Board of Directors determines to be adequate. In either case, the Council shall be named as an insured on such bond and the amount thereof shall not be reduced without prior written consent of the Board of Directors.

The Fiscal Agent and the Executive Director may be held by the same person or by two different persons.

(F) **Powers and Duties of the Board of Directors.** The Board of Directors shall have the authority to:

(1) Consider and approve any purchases of equipment, facilities, or services for the Council, and employment of personnel by the Council; provided that the cost thereof is within the Aggregation Costs approved by the Assembly.

(a) Make recommendations to the Assembly concerning any matter relating to the Council and its Programs, including but not limited to:
amendments to or modifications of the Agreement and Bylaws,

(ii) appropriations of the Council, and

(iii) disqualification of Members.

(2) Direct the Fiscal Agent concerning any disbursements from the Aggregation Fund.

(3) By affirmative vote of a majority of Board members and upon certification to the Board by the Fiscal Agent that the proposal is within the limits of the Council’s resources, amend the budget and appropriations of the Council.

(4) Approve the inclusion of additional Members into the Council.

(5) Enter into any and all necessary and incidental contracts to facilitate the aggregation the retail electric loads within the jurisdiction(s) of the Members.

(6) Approve and authorize any new Program of the Council and the terms and conditions of any Program Agreement, including eligibility of any Member or non-member to participate in any such Program, and costs thereof, if any, under any such Program Agreement.

(7) Enter into any and all necessary and incidental contracts to carry out all Programs of the Council; and

(8) Establish one or more standing or Advisory Committees of the Board of Directors.

Section 6. Advisory Committees.

One or more Advisory Committees may be appointed by the Board of Directors to assist the Board of Directors in the management of any Program of the Council. The members of an Advisory Committee shall be appointed by and shall serve at the pleasure of the Board of Directors. Each Advisory Committee shall perform the duties directed by the Board of Directors.

Each Advisory Committee shall elect from its membership a Chairman and Vice-Chairman, who shall each serve for a term of one year or such shorter period of time as the Advisory Committee may be in existence. The Chairman shall preside at all Committee meetings and prepare the agenda for each meeting following consultation with the Executive Director or Board of Directors. In the absence of the Chairman, the Vice-Chairman shall preside at Committee meetings. The Vice-Chairman shall succeed to the office of the Chairman, should
it be vacated before the end of a term, and shall assist the Chairman in the discharge of the Chairman’s duties.

Each Advisory Committee shall make recommendations to the Board of Directors concerning any matter referred to it by the Board of Directors.

Section 7.  Employees and Consultants.

The Board of Directors may employ the Fiscal Agent and the Executive Director for the Council. In addition, the Board of Directors may employ other persons and may contract for the services of independent contractors, consultants, legal counsel, or experts as the Board of Directors deems necessary or appropriate for the proper operation and administration of the Council and its Programs. Any staff employed by the Council shall be determined by the Board of Directors to have the educational background and work experience necessary to discharge the duties assigned to that person by the Board of Directors. The Board of Directors shall establish the salaries, benefits, and work and disciplinary rules for the Council’s staff and shall direct the hiring and discharge of that staff. The Board of Directors of the Council may designate the Executive Director to be responsible for the supervision of the Council’s staff. The salaries and independent contractors, consultants, legal counsel, or experts shall be paid either as Aggregation Costs or Additional Program Costs from their respective accounts as determined by the Board of Directors.

Section 8.  Equipment and Facilities.

The Council may purchase, lease, or otherwise provide supplies, materials, equipment, and facilities as it deems necessary and appropriate to carry out the Programs of the Council. The Council shall comply, to the extent applicable, with the provisions of the Ohio Revised Code with respect to the procedures for bidding and letting of contracts for the acquisition, repair, or improvement of its facilities, equipment, and supplies. The Fiscal Agent of the Council shall, at the direction of and on behalf of the Board of Directors, enter into all contracts or leases for supplies, materials, equipment, or facilities of the Council.


The Members will act jointly through the Council to establish and implement the Aggregation Program pursuant to Ohio Revised Code Section 4928.20. Each Member has adopted legislation, and approval by the electors of each Member has been or will be obtained, authorizing the Aggregation Program. Upon certification of the Members or the Council by the PUCO, as may be applicable, the Council, on behalf of the Members, may effect the aggregation of the retail electrical loads located within the jurisdictions of the Members. The Council may negotiate and enter into all necessary contracts and take any other necessary and incidental actions to effect and carry out the purposes of the Aggregation Program for the benefit of the Members and their respective electricity consumers.
The Board of Directors shall oversee and manage the operation of the Aggregation Program and may adopt policies and procedures supplementing the general terms of this Agreement and the Bylaws.

The Board of Directors shall develop a plan of operation and governance for the Aggregation Program pursuant to Ohio Revised Code Section 4928.20 to be adopted by each member.

The Council may establish, in addition to the Aggregation Program, such other Additional Programs as the Board of Directors may approve. Each Additional Program shall be established by an Additional Program Agreement among the Members or non-members of the Council whose governing bodies have determined to participate in the Additional Program and have approved an Additional Program Agreement. Each Additional Program Agreement shall be reviewed and approved by the Board of Directors prior to execution by any Member or non-member.

Each Additional Program Agreement shall include but not be limited to provisions that:

(A) Direct the Board of Directors concerning the management of the Additional Program and define matters which must be submitted to the participating Members for decision;

(B) Establish procedures for budgeting Additional Program Costs and apportioning Additional Program Costs among the participating Members and non-members;

(C) Establish one or more funds into which all monetary contributions for Additional Program Costs shall be deposited;

(D) Determine the method and timing of inclusion of additional participating Members and non-members;

(E) If determined to be necessary or desirable, appoint a Fiscal Agent for the Additional Program different from the Fiscal Agent for the Council; and

(F) Determine the disposition, upon termination of the Additional Program, of any supplies, equipment, facilities or moneys held in connection with the operation of the Additional Program.

Section 10. Conduct of Meetings.

All meetings provided for in these Bylaws shall be conducted in accordance with the latest edition of Robert’s Rules of Order, Revised unless otherwise directed by these Bylaws or by resolution of the Assembly, the Board of Directors, or any Advisory Committee with respect to the meetings of each of those bodies. The Chairman of each of those bodies shall be the parliamentary procedure officer and his or her decisions with respect to matters of parliamentary
procedure shall be final. If permitted by Ohio law, all meetings provided for in these Bylaws may be conducted electronically.

Section 11. Amendment to Agreement or Bylaws.

The Agreement may be modified, amended, or supplemented in any respect not prohibited by law upon the approval of the modification, amendment or supplement by the representatives of at least two-thirds (2/3) of the Members; and the amendment, modification, or supplement shall thereupon become binding upon all Members.

These Bylaws may be modified, amended or supplemented in any respect upon approval of the modification, amendment or supplement by at least two-thirds of the Members’ representatives, and the approved amendment, modification, or supplement shall only thereupon become binding upon all Members.

Section 12. Termination of the Agreement.

In the event that the governing bodies of eighty percent (80%) of the Members, by duly adopted legislation, determine that the Agreement shall be terminated, the Board of Directors shall meet within thirty (30) days following its receipt of certified copies of the legislation. At that meeting, the Board of Directors shall determine the date upon which the Agreement and the activities and operations of the Council shall terminate and make recommendations to the Assembly with respect to any matter which must be resolved in connection with the termination of the Council and which is not addressed by the Agreement, the Bylaws, or any Program Agreement.

Upon termination of the Agreement, any Additional Program Agreement shall automatically terminate. After payment of all known obligations of the Council in connection with each Additional Program, any surplus remaining in any Additional Program fund shall be distributed among the participating Members in the manner provided in the Additional Program Agreement. After payment of all known obligations of the Council, any surplus remaining in the Aggregation Fund shall be distributed among the Members participating in the Aggregation Program proportionally based on the number of electric accounts enrolled in the Aggregation Program prior to the date upon which the Board of Directors determines that the Agreement and activities and operations of the Council shall terminate in accordance with this Section 12.

No Member shall be required, by or under the Agreement or the Bylaws herein, by an amendment or otherwise, to pay any sum upon termination hereof, unless it shall have expressly agreed thereto.


In the first Fiscal Year of the Council’s operation, actions required by these Bylaws to be taken at the annual meeting of the Assembly or the first meeting of the Board of Directors shall be taken as soon as practical upon the establishment of the Council.
ADOPTED this 27th day of October, 2014.
AMENDED January 22, 2015
AMENDED January 23, 2018
AMENDED June 27, 2018
AMENDED February 18, 2021

SOUTHEAST OHIO PUBLIC ENERGY COUNCIL
AMENDED AND RESTATED AGREEMENT

ESTABLISHING THE

SOUTHEAST OHIO PUBLIC ENERGY COUNCIL

This AMENDED AND RESTATED AGREEMENT is made and entered into as of October 8, 2014, as amended and restated as of February 18, 2021 ("Agreement"), by and among the political subdivisions identified below.

RECITALS:

WHEREAS, Ohio Revised Code Chapter 167 provides that the governing bodies of two or more political subdivisions may enter into an agreement establishing a regional council of governments for purposes that include promoting cooperative agreements and contracts among members and other governmental agencies and private persons, corporations, or agencies; and

NOW, THEREFORE, in consideration of the services to be made available to and by the Southeast Ohio Public Energy Council, also referred to herein as “SOPEC,” it is agreed by and between the Members of SOPEC and any additional political subdivisions that may hereafter become Members as follows:

Section 1. Definitions.

Definitions of terms used in this Agreement and Amended and Restated Bylaws ("Bylaws") are set forth on Exhibit A hereto.

Section 2. Name.

The name of the council of regional governments that comprises all Members shall be the "Southeast Ohio Public Energy Council," which also may do business under one or more trade names, including the Sustainable Ohio Public Energy Council.

Section 3. Members.

Members of SOPEC shall be set forth on Exhibit B hereto, and shall include any other political subdivisions which become members of SOPEC pursuant to Bylaws established pursuant to Section 6 of this Agreement. Each Member shall have one representative to the Assembly, as further set forth in the Bylaws.

Section 4. Purpose: The Aggregation Program; Additional Programs of the Council.

The purpose of this Agreement is to allow Members to collectively pursue the benefits of the Aggregation Program and Additional Programs of the Council that the Council may establish. The Council may negotiate and enter into all necessary programs, contracts and take any necessary and incidental actions to effect and carry out the purposes of the Aggregation Program for the benefit of the Members and their respective electricity consumers. The Members will act jointly through the Council to establish and implement the Aggregation Program and the Board of Directors may establish Additional Programs of the Council, as set forth in the Bylaws.
Section 5. Fiscal Year.

The fiscal year for SOPEC shall be the twelve month period beginning January 1 and ending December 31.

Section 6. Adoption of Bylaws.

Within ninety (90) days of adoption of this Agreement, Members shall meet for the purpose of adopting Bylaws of SOPEC. The Bylaws shall address the purposes of SOPEC, its governance, addition and withdrawal of members, adding new programs, and other governance issues including SOPEC’s decision-making process and the designation of its fiscal agent.

Section 7. Withdrawal and Inclusion of Members.

All issues pertaining to the withdrawal of existing Members or inclusion of new Members shall be governed by the Bylaws.

Section 8. Amendments.

This Agreement may be amended subject to the majority vote of the signatory Members to the Agreement, until the adoption of Bylaws pursuant to Section 6 of this Agreement, at which time all amendments to this Agreement will be subject to the provisions set forth in the Bylaws.

Section 9. Term and Termination.

It is the intention of the Members that this Agreement shall continue for an indefinite term, but may be terminated subject to the provisions set forth in the Bylaws.

Section 10. Effective Date.

This Agreement shall take effect initially this 8th day of October, 2014, as amended and restated effective January 12, 2021. This Agreement, as amended, may be signed in separate counterparts on behalf of one, or more than one, of the Members, and may be signed electronically, without the necessity for any one counterpart to be signed on behalf of all Members.

The Honorable Chris Chmiel,
Athens County Commissioner

Approved as to form, Keller J. Blackburn,
For Athens County

The Honorable Paul Wiehl,
Mayor of Athens

Approved as to form, Patrick J. Lang,
For the City Athens
EXHIBIT A

As used in this Agreement and in the Bylaws the following words shall have the following meanings:

“Additional Program” means any other cooperative program the Council may establish, with approval of the Council’s Board of Directors, under an Additional Program Agreement.

“Additional Program Agreement” means any agreement among some or all Members, and such non-members as may be permitted to participate, establishing an Additional Program in accordance with Section 9 of the Bylaws.

“Additional Program Costs” means, with respect to any Additional Program of the Council, all costs incurred by the Council or the Fiscal Agent of the Council, in connection with the activities and operations of that Additional Program, as defined in the corresponding Additional Program Agreement; provided, however, that no Member shall be assessed Additional Program Costs if the Member is not participating in such Additional Program.

“Advisory Committee” means any committee established by the Board of Directors pursuant to the Bylaws to advise the Board of Directors or the Fiscal Agent with respect to the management and operation of any Program. The Board of Directors shall define the duties of each Advisory Committee.

“Aggregation Costs” means all costs incurred by the Council or by the Fiscal Agent in connection with the activities and operation of the Council for the Aggregation Program; provided, however, that no Member shall be assessed Aggregation Costs unless such assessment is imposed on all Members and approved at a meeting of the Assembly by a majority vote of all Members.

“Aggregation Fund” means the fund established and maintained by the Fiscal Agent of the Council as a separate fund pursuant to Section 10 of the Bylaws, into which the Fiscal Agent shall deposit any and all moneys contributed by the Members for Aggregation Costs of the Council, if any.

“Aggregation Program” means the cooperative program for the benefit of the Members acting as governmental aggregators to arrange for the purchase of electricity by electric customers in the political subdivisions that join the Southeast Ohio Public Energy Council, pursuant to the terms of Ohio Revised Code Section 4928.20, and this Agreement.

“Agreement” means this agreement, as the same may be amended, modified, or supplemented in accordance with Section 8 hereof.

“Assembly” means the legislative body of the Council established pursuant to, and having those powers and duties enumerated in, the Bylaws.

“Bylaws” means the regulations adopted by the Council pursuant to Ohio Revised Code Section 167.04 and this Agreement, as the same may be amended, modified, or supplemented in accordance with Section 13 thereof.

“Council” means the Southeast Ohio Public Energy Council established by this Agreement.

“Fiscal Agent” means the person or organization designated by the Members of the Council to receive, deposit, invest and disburse funds contributed by the Members or otherwise received by the Council, for the operation of the Council and its Programs, in accordance with this Agreement, the Bylaws and any applicable Program Agreement. The Council may serve as its own Fiscal Agent.
“Fiscal Year” means the twelve (12) month period beginning January 1 and ending December 31.

“Member” means any municipal corporation, county, township or any other political subdivision under the laws of the State of Ohio which pursuant to duly adopted legislation, has caused this Agreement to be executed in its name, which Member shall be listed on Exhibit B hereof, including any additional municipal corporation, county, township, or any other political subdivision under the laws of the state of Ohio which has caused this Agreement to be executed in accordance therewith, and has not withdrawn from the Council pursuant to this Agreement or the Bylaws.

“Program” means the Aggregation Program or any Additional Program.
EXHIBIT B

Current Listing of SOPEC Communities

**Athens County**
- Athens County
- City of Athens
- Village of Albany
- Village of Amesville
- Village of Buchtel
- Village of Chauncey
- Village of Jacksonville
- Village of Trimble

**Gallia County**
- City of Gallipolis
- Village of Rio Grande

**Hocking County**
- City of Logan

**Meigs County**
- Village of Racine

**Morgan County**
- Village of Chesterhill

**Perry County**
- Village of Glenford
- Village of Shawnee
- Village of Somerset
- Village of New Straitsville

**Washington County**
- City of Belpre
- Village of Lowell
AN ORDINANCE

Repealing Ordinance 31821-20 Requiring Face Coverings in Public Spaces to Limit the Spread of COVID-19; and Declaring an Emergency.

WHEREAS, The City Commission passed Ordinance No. 31821-20 on July 1, 2020 requiring face coverings in public spaces to limit the spread of COVID-19; and

WHEREAS, The City Commission finds it to be in the best interest of the City to repeal Ordinance 31821-20 in accordance with updated guidance from the Centers for Disease Control and Prevention; and

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

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

Section 1. That Ordinance 31821-20 passed on July 1, 2020 is hereby repealed in its entirety.

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

PASSED BY THE COMMISSION...........MAY 19.............., 2021

SIGNED BY THE MAYOR.................MAY 19.................., 2021

Mayor of the City of Dayton, Ohio

ATTEST:

Regina D Blackshear
Clerk of the Commission

APPROVED AS TO FORM:

City Attorney

BACK
AN INFORMAL RESOLUTION

Recognizing and Supporting the Updated Recommendations of the Centers for Disease Control Regarding Masks and Social Distancing for Those Fully Vaccinated Against COVID-19 and the Subsequent May 17, 2021 Ohio Department of Health Director’s Order and Encouraging Every Eligible Individual to Receive the COVID-19 Vaccine.

WHEREAS, on May 13, 2021, the Centers for Disease Control and Prevention (the “CDC”) issued a change in guidance and safety procedures for those fully vaccinated against COVID-19; and,

WHEREAS, Governor Dewine announced that effective June 2, 2021 the vast majority of COVID-19 related health orders will be rescinded; and,

WHEREAS, on May 17, 2021, the Ohio Department of Health issued a Director’s Order (“Director’s Order”) to bring Ohio’s health orders into conformity with the new CDC guidance until June 2, 2021; and,

WHEREAS, fully vaccinated individuals can safely return to most activities without a face covering and without social distancing; and,

WHEREAS, unvaccinated individuals should continue to take the precautions of wearing face coverings and social distancing; and,

WHEREAS, per the Director’s Order even fully vaccinated individuals must continue to wear a face covering in hospitals, health care settings, public transportation, businesses and employers that continue the face covering requirement, congregate care settings, schools and daycares, and places where a large number of people are not vaccinated; and,

WHEREAS, The Dayton City Commission seeks to remain consistent with and supportive of the CDC’s recommendations and the Director’s Order; and,

WHEREAS, The Dayton City Commission strongly encourages all eligible individuals to receive the COVID-19 vaccine; now, therefore,

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

Section 1. That this Commission recognizes and supports the CDC’s updated recommendations regarding face coverings and social distancing and the subsequent Director’s Order.
Section 2. That this Commission supports the right of businesses and employers to continue to require customers and employees to adhere to face covering and social distancing requirements.

Section 3. That this Commission encourages unvaccinated individuals to continue to take the precautions of wearing face coverings and social distancing.

Section 4. That this strongly encourages all eligible individuals to receive the COVID-19 vaccine.

ADOPTED BY THE COMMISSION .................. MAY 19 .................., 2021

SIGNED BY THE MAYOR .................. MAY 19 .................., 2021

MAYOR OF THE CITY OF DAYTON, OHIO

ATTEST:

Regina D. Blackshear
Clerk of the Commission

APPROVED AS TO FORM:

City Attorney
AN INFORMAL RESOLUTION

Opposing Early Termination of Ohio’s Federally Funded Enhanced Unemployment Benefits.

WHEREAS, Through the Federal Pandemic Unemployment Compensation Program, Ohioans who qualified for unemployment benefits received an additional three hundred dollars ($300) per week through the federally funded Program; and,

WHEREAS, The enhanced three hundred dollars ($300) per week benefit through the Program is not set to expire until September 6, 2021; and,

WHEREAS, Governor DeWine announced the early termination of these federally funded unemployment benefits effective June 26, 2021. State leaders were unable to point to data supporting the claim that the additional three hundred dollars ($300) per week benefit is causing people to stay at home and not seek employment; and,

WHEREAS, The unemployment rate has returned to pre-pandemic levels. The April jobs report by the United States Bureau of Labor Statistics has shown the highest increase in employment is for low-wage jobs: https://www.bls.gov/charts/employment-situation/employment-and-average-hourly-earnings-by-industry-bubble.htm; and,

WHEREAS, Daily Coronavirus infection rates are still much higher than the Governor’s established benchmark of 50 cases per 100,000 people; and,

WHEREAS, Data has shown that front line, low wage workers are more likely to be impacted by the Coronavirus. By ending benefits prematurely on June 26th, as opposed to September 6th, the Governor is shortening the timeline for the unvaccinated to get access by three full months; and,

WHEREAS, Families in particular will be greatly impacted as children go on summer break and are left without school-provided breakfast and lunch; and

WHEREAS, This early termination means fewer dollars will circulate through our community and to local businesses; now, therefore,

BE IT RESOLVED BY THE COMMISSION OF THE CITY OF DAYTON:
Section 1. That the Commission opposes Governor DeWine's decision to prematurely terminate the additional federally funded unemployment benefits on June 26, 2021.

Section 2. That the Commission urges Governor DeWine to allow Ohioans to continue receiving the additional federally funded unemployment benefit until the Program expires in September.

ADOPTED BY THE COMMISSION..........................MAY 19, 2021

SIGNED BY THE MAYOR...............................MAY 19, 2021

[Signature]
Mayor of the City of Dayton, Ohio

ATTEST:

[Signature]
Clerk of the Commission

APPROVED AS TO FORM:

[Signature]
City Attorney