CITY COMMISSION MEETING AGENDA

CITY COMMISSION  DAYTON, OHIO  JULY 14, 2021

8:30 A.M.

I. AGENDA SCHEDULE

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

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

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

   1. Purchase Orders:

      AVIATION
      A1. Hillside Maintenance (janitorial supplies as needed through 04/30/25)
          $250,000.00
1. (Cont’d):

**AVIATION**  
A2. Springfield Overhead Door LLC (overhead door maintenance and repair services as needed through 12/31/21)  


**FIRE**  
B1. Clarke Power Services, Inc. (Parts, supplies and repair services as needed through 12/31/22)  
B2. PH&S Products LLC (EMS gloves as needed through 12/31/21)  
B3. Tim Lally Chevrolet, Inc. (two 2021/2022 full-size Sports Utility Vehicles (SUVs))  


**INFORMATION TECHNOLOGY**  
C1. Bay Pointe Technology LTD (BitDefender managed detection and services, three-year subscription)  


**PUBLIC WORKS**  
D1. Rush Truck Centers of Ohio, Inc. (truck parts, supplies and related items as needed through 12/31/21)  


**RECREATION**  
E1. McCluskey Chevrolet (one 2022 regular cab pick-up truck)  


**WATER**  
F1. Precision Sales & Instrumentation, Inc. (MSA equipment and Toshiba mag meter parts and supplies as needed through 12/31/24)  
F2. A Meredith Schneider Co. LLC (sixty 40-foot treated utility poles.)  
F3. Brehob Air Compressor (maintenance services for air compressors and dryers as needed through 12/31/24)  
F4. Everett J Prescott, Inc. (plumbing and related supplies as needed through 12/31/21)  

- Depts. of Aviation, Fire, Information Technology, Public Works, Recreation and Water.  

**Total:** $987,968.50
2. **Optica Consulting – Service Agreement** – for as needed analysis, review and redaction services to videos recorded from video recorders, body worn cameras and other audio/video recording devices – Department of Police.

   **$58,350.00**

   *(Thru 12/31/21)*

C. **Other – Contributions, Etc.:**

3. **Ellen Belcher Langer, Inc. – Payment of Voucher** – outstanding invoice for professional services related to Police Reform initiative – Department of Procurement, Management and Budget.

   **$4,200.00**

4. **Miami Valley Fair Housing Center – Other** – Community Development Block Grant Memorandum of Understanding – Analysis of Impediments to Fair Housing Choice – Department of Planning, Neighborhoods and Community Development.

   **$51,800.00**

   *(Thru 12/31/21)*

IV. **LEGISLATION:**

   **Resolutions – First and Second Reading:**

5. **No. 6590-21** Approving the Petition and Supplemental Plan for Special Energy Improvement Projects Under Ohio Revised Code Chapter 1710 and Declaring an Emergency.

6. **No. 6591-21** Approving the Necessity of Acquiring, Constructing and Improving Certain Public Improvements in the City of Dayton, Ohio in Cooperation with the Dayton Regional Energy Special Improvement District, and Declaring an Emergency.
VI. MISCELLANEOUS:

ORDINANCE NO. 31899-21

RESOLUTION NO. 6592-21

IMPROVEMENT RESOLUTION NO. 3599-21

INFORMAL RESOLUTION NO. 991-21
City Manager’s Report

Date July 14, 2021
Expense Type Purchase Order
Total Amount $987,968.50

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>
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</tbody>
</table>

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

Description

AVIATION

(A1) P0210824 – HILLSIDE MAINTENANCE, CINCINNATI, OH
- Janitorial supplies as needed through 12/31/2021.
- These goods are required to replenish inventories used in daily operations.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 21007N with pricing through 4/30/2025.
- This amendment increases the previously authorized amount of $10,000.00 by $50,000.00 for a total not to exceed $60,000.00 and therefore requires City Commission approval.
- The Department of Aviation requests additional authority of $200,000.00 through 4/30/2025.
- The Department of Aviation recommends approval of this order.

<table>
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<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<td>51000-3220-1301-43</td>
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<td>2022</td>
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</table>

Signatures/Approval

Approved by City Commission

Clerk

Date

FORM NO. MS-16

Updated 06/2016
AVIATION (CONTINUED)

(A2) P0210220 – SPRINGFIELD OVERHEAD DOOR LLC, SPRINGFIELD, OH
- Overhead door maintenance and repair services as needed through 12/31/2021.
- These services are required to maintain the overhead doors at various Aviation facilities.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB N19007 with firm pricing through 3/31/2023.
- This amendment increases the previously authorized amount of $15,000.00 by $16,000.00 for a total not to exceed $31,000.00 and therefore requires City Commission approval.
- The City Department of Aviation recommends approval of this order.

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<th>Fund Code(s)</th>
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<td>2021</td>
<td>DIA Airport Operations</td>
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<td>$16,000.00</td>
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</table>

FIRE

(B1) P0210182 – CLARKE POWER SERVICES, INC., HUBER HEIGHTS, OH
- Parts, supplies and repair services as needed through 12/31/2021.
- These goods and services are required to maintain and repair fire apparatus and support vehicles.
- Clarke Power Services, Inc. is recommended as the Original Equipment Manufacturer (OEM) authorized distributor; therefore, this purchase was negotiated.
- This amendment increases the previously authorized amount of $10,000.00 by $40,000.00 for a total not to exceed $50,000.00 and therefore requires City Commission approval.
- The Department of Fire requests additional authority of $50,000.00 through 12/31/2022.
- The Department of Fire recommends approval of this order.

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

(B2) P0210938 – PH & S PRODUCTS LLC, MINERVA, OH
- EMS gloves as needed through 12/31/2021.
- These goods are required to protect Fire and EMS workers while in the line of duty.
- Twelve (12) possible vendors were solicited and six (6) responses were received. This order establishes firm pricing through 9/30/2021.
- One hundred percent (100%) of funding is from the 2021 Department of Justice CESF Grant #2020-VD-BX-0645.
- The Department of Fire recommends acceptance of the lowest and best response meeting specifications.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
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<td>Supplemental Grnt</td>
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</table>
FIRE (CONTINUED)

(B3) **P0210988 – TIM LALLY CHEVROLET, INC., WARRENSVILLE HEIGHTS, OH**
- Two (2) 2021/2022 full-size Sport Utility Vehicles (SUVs).
- These vehicles are required for the daily operations of the Division and will replace Units #765 and #769 which will be disposed of in the best interest of the City.
- Ten (10) possible vendors were solicited and four (4) bids were received. This order establishes a price agreement per IFB 21027D with pricing through 1/31/2022.
- The Department of Fire recommends acceptance of the lowest and best bid.

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<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
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</table>

INFORMATION TECHNOLOGY

(C1) **P0211011 – BAY POINTE TECHNOLOGY LTD., RICHLFIELD, OH**
- BitDefender managed detection and services, three (3) year subscription.
- These services are required as the increase of remote work from home access requires tighter security controls to guard against cybersecurity attacks and data breaches.
- Bay Pointe Technology Ltd is an authorized reseller for BitDefender; therefore, this purchase was negotiated.
- The Department of Information Technology recommends approval of this order.

<table>
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<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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PUBLIC WORKS – FLEET MANAGEMENT

(D1) **P0210400 – RUSH TRUCK CENTERS OF OHIO, INC., VANDALIA, OH**
- Truck parts, supplies and related items as needed through 12/31/2021.
- These goods are required to maintain and repair the City’s fleet.
- Rush Truck Centers of Ohio, Inc. is recommended as the sole local distributor for International brand equipment; therefore, this purchase was negotiated.
- This amendment increases the previously authorized amount of $50,000.00 by $10,000.00 for a total not to exceed $60,000.00 and therefore requires City Commission approval.
- The Department of Public Works recommends approval of this order.

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<th>Fiscal Year</th>
<th>Fund Source(s)</th>
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</table>
RECREATION

(E1)  P0211017 – MCCLUSKEY CHEVROLET, CINCINNATI, OH

- One (1) 2022 regular cab pickup truck.
- This vehicle is required for the daily operations of the Division.
- Eight (8) possible vendors were solicited and three (3) bids were received.
- The Department of Recreation recommends acceptance of the lowest and best bid.

<table>
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</table>

WATER – WATER RECLAMATION

(F1)  P0211019 – PRECISION SALES & INSTRUMENTATION, INC., NEW BREMAN, OH

- MSA equipment and Toshiba mag meter parts and supplies as needed through 12/31/2021.
- These goods are required to maintain the equipment utilized within the cogeneration and anaerobic digester complexes.
- Precision Sales & Instrumentation, Inc. is recommended as the sole regional distributor for MSA and Toshiba brand parts; therefore, this purchase was negotiated.
- The Department of Water requests additional authority of $75,000.00 through 12/31/2024.
- The Department of Water recommends approval of this order.

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<td>$25,000.00</td>
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</table>

WATER – WATER SUPPLY AND TREATMENT

(F2)  P0211010 – A MEREDITH SCHNEIDER CO, LLC, EAST POINT, GA

- Sixty (60) 40-foot treated utility poles.
- These goods are required for the daily operations of the Division.
- Three (3) possible vendors were solicited and three (3) responses were received.
- The Department of Water recommends acceptance of the lowest and best response.

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<th>Fiscal Year</th>
<th>Fund Source(s)</th>
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</table>
WATER – WATER SUPPLY AND TREATMENT (CONTINUED)

(F3) P0211012 – BREHOB AIR COMPRESSOR, WEST CHESTER, OH

- Maintenance services for air compressors and dryers as needed through 12/31/2021.
- These services are required to maintain air compressors and dryers used at the Division of Water Supply and Treatment Plant facilities.
- Eleven (11) possible vendors were solicited and two (2) bids were received. This order establishes a price agreement per IFB 21032N with pricing through 6/30/2025.
- The Department of Water requests additional authority of $75,000.00 through 12/31/2024.
- The Department of Water recommends acceptance of the lowest and best bid.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
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<tr>
<td>2021</td>
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<td>2022</td>
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<td>2024</td>
<td>Water Operating</td>
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<td>$25,000.00</td>
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WATER – WATER UTILITY FIELD OPERATIONS

(F4) P0210128 – EVERETT J PRESCOTT, INC., WEST CARROLLTON, OH

- Plumbing and related supplies as needed through 12/31/2021.
- These goods are required to replenish inventory for maintenance and repairs.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 21006N with firm pricing through 12/31/2021.
- This amendment increases the previously authorized amount of $40,000.00 by $15,000.00 for a total not to exceed $55,000.00 and therefore requires City Commission approval.
- The Department of Water recommends approval of this order.

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<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
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<td>2021</td>
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<td>53998-3445-1350-54</td>
<td>$15,000.00</td>
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The aforementioned departments recommend approval of this order.
City Manager's Report

From 6210 - Police Director
Supplier, Vendor, Company, Individual
Name Optica Consulting, Inc.
Address 2312 Far Hills Ave.
Dayton, Ohio 45419

Date July 14, 2021
Expense Type Service Agreement
Total Amount $58,350.00 thru 12/31/2021

<table>
<thead>
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<th>Fund Source(s)</th>
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<tbody>
<tr>
<td>General Fund</td>
<td>10000-6210-1158-71</td>
<td>$58,350.00</td>
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Includes Revenue to the City ✔ No
Affirmative Action Program ✔ Yes

Professional Services Agreement

The City of Dayton, Department of Police is requesting permission to enter into an Agreement with Optica Consulting, Incorporated ("Optica"). The Agreement will provide, as needed, the Police Department with analysis, review and redaction services to videos recorded from video recorders, body worn cameras and other audio/video recording devices. Approval of this Agreement supports the implementation of the body worn camera program, which is an approved recommendation from the Use of Force Working Group established by the Dayton City Commission. This Agreement with expenditure authority of $58,350.00 will begin on August 1, 2021 and expire on December 31, 2021. The Agreement has three (3) optional one-year renewals.

Optica, founded in 1998, provides data analysis services, software development, technology solutions, and systems integration to the public safety industry.

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

A Certificate of Funds and a copy of the Agreement are attached.

SM

Signatures/Approval
Approved by City Commission

Division

Department

City Manager
FORM NO. MS-16

E-SIGNED by Paul Saunders on 2021-07-07 16:32:54 GMT
E-SIGNED by Matt Carper on 2021-07-07 16:08:21 GMT

Clerk

Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>X</th>
<th>New Contract</th>
<th>Renewal Contract</th>
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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

Seq. #1

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<th>Amount:</th>
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Seq. #2

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

Attach additional pages for more FOAPALs

Vendor Name: Optica Consulting, Inc.
Vendor Address: 2312 Far Hills Ave., Dayton, OH 45419
Federal ID: 52-2436353
Commodity Code: 92-099
Purpose: Agreement for video analysis and editing/redaction services.

Contact Person: Sheelah Moyer ext. 1045

Police/Director's Office Department/Division 6/25/2021 Date

Originating Departments Director's Signature: E-SIGNED by Matt Carper on 2021-06-28 20:14:08 GMT

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: 7/6/2021

CF Prepared by: 7/14/2021

CF/CT Number: CT21-3015

Finance Department
October 10, 2011
PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is entered into this ______ day of ___________, 2021 between the City of Dayton, Ohio ("City") and Optica Consulting, Incorporated ("Consultant"), an Ohio corporation.

WITNESSETH THAT:

WHEREAS, the City of Dayton seeks to provide a safe and secure environment in the City and promote the transparency of interactions with law enforcement personnel; and

WHEREAS, on June 18, 2020, the Dayton City Commission announced the working structure for the Police Reform Initiative with the formation of Police Reform Working Groups (Working Groups) to make recommendations about Dayton Police Department practices and policies; and

WHEREAS, the Use of Force Working Group recommended body worn cameras be used by the Dayton Police Department; and

WHEREAS, on January 20, 2021, the Dayton City Commission approved a contract to purchase body worn cameras for Dayton Police Department sworn personnel; and

WHEREAS, the Dayton Police Department requires professional video analysis and redaction services to analyze, review and appropriately edit videos from mobile recorders, body worn cameras and other audio/video recording devices; and

WHEREAS, the Consultant is willing to perform such services and represents that its staff has the experience and expertise to perform such services for the City.

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

1. SCOPE OF WORK

   A. Services. Consultant shall provide, as needed and upon request by the City, video analysis and editing/redaction services to Dayton Police Department (DPD) for the analysis, review and redaction to videos recorded from mobile video recorders, body worn cameras and other audio/video recording devices used by DPD. Specifically, Consultant shall assign two (2) or more of its analysts to provide the services requested by the City. During the term of the agreement, the analysts will provide a minimum of Seven Thousand Two Hundred (7,200) total service hours, (generally delivered during standard business hours Monday through Friday, or as mutually agreed between Consultant and City). Consultant agrees that its analysts will use all reasonable efforts to schedule vacations, training, and meeting days in such a manner as to minimize disruption of services to the City.
B. These personnel are hereinafter referred to as "Video Analysts/Redactionists" (VARs). Services performed shall include:

1. Reviewing raw footage from videos created from the multiple video recording platforms used by DPD;
2. VARs will group, analyze and prepare video for release after redacting video to comply with law enforcement investigative processes/procedures, City policy and applicable privacy laws;
3. VARs will use skills and experience in exercising judgment to interpret source data, recognizing errors prior to data entry, and edit source data to reduce or eliminate compound errors and re-runs;
4. VARs will perform work to assist the Strategic Planning Bureau on special programs and the Inspection and Audits Commander with review of video for policy compliance; and
5. VARs will work primarily during normal business hours, but circumstances may arise where they may be required to work non-traditional hours.

C. Release of Information. VARs will operate in an environment where they will come into contact with law enforcement sensitive or confidential footage, documents and other media that must not be disclosed to anyone outside of the department, except in the instance of a court-ordered subpoena. Deliverables from analyses should be released to the Police Information Specialist, Training Bureau, or other formally approved parties. VARs should only release information to other persons or agencies with the written approval from either DPD’s Commander of Strategic Planning, Commander of Inspections and Audits, Police Information Specialist, the managing Police Major, Assistant Chiefs or Chief of Police.

D. Employee Skills and Experience. Consultant represents that its employees are effectively trained to perform the services requested under this Agreement. Consultant’s employees shall:

1. Ensure that Consultant’s employees assigned to provide consulting services to the City do not have a record of any criminal conviction;
2. Know and abide by the City’s business policies, procedures, and security requirements;
3. Possess a working knowledge of Ohio’s Sunshine/Public Records laws;
4. Have a minimum of two years’ experience on electronic data entry or preparation equipment, which includes encoding data on a computer data terminal or workstation from source documents or coding forms;
5. Demonstrate a knowledge of modern office principles, practices, and equipment;
6. Communicate in a business-like manner with these skills to include business writing, speaking and accurate spelling;
7. Maintain moderately complex clerical records and prepare detailed reports from these records; and
8. Make relatively complex arithmetic computations and tabulations accurately and with reasonable speed.
In the event the employees are not able to perform the services or do not perform the services to the reasonable satisfaction of the City, Consultant agrees to replace said employees with mutually agreeable replacements having similar capabilities, training, and qualifications. In the event suitable and mutually agreeable replacements are not available, the City may, at its option, terminate this Agreement or reduce the amount of compensation to be paid for services.

E. Consultant Employees’ Background Investigation. The City reserves the right to conduct, for security reasons, a lawful background investigation on Consultant, its principals, and personnel, including all employees assigned to perform the services. Consultant agrees to fully cooperate with the City in this endeavor and to provide any information, to the extent allowed by law, which is reasonably necessary to perform such background investigation. The City will, upon Consultant’s written request and if allowable by law, provide a copy of such background investigations to Consultant. Dependent upon the results of the background check, the City and Consultant may, by mutual written agreement, immediately remove any of Consultant’s employee from performance of the services.

2. Term and Termination

A. Term. This Agreement shall commence on August 1, 2021 and shall expire on December 31, 2021 unless terminated earlier as provided in Subsections 2.C.1 or 2.C.2. This Agreement shall be renewable for three (3) optional one-year terms. The renewal must be executed in writing, approved by the Commission of the City of Dayton, and signed by a duly authorized representative for each party.

B. Notice to Proceed. Consultant shall not commence work under this Agreement until a Notice to Proceed is issued by the Dayton Police Department. No work performed prior to the issuance of the Notice to Proceed shall be reimbursed by the City.

C. Termination. Either party may immediately terminate this Agreement, if the other party defaults in the performance of any of the covenants and conditions required herein to be kept and performed by it, and such defaulting party fails to cure the default within thirty (30) days after receipt of written notice of said default.

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

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

3. Funding, Financial Standards and Auditing

This Agreement is contingent on the availability and approval of funding in future years by the Dayton City Commission, which is not guaranteed or promised in this Agreement.
A. Funding. The Agreement is a firm, fixed rate contract and the total amount of remuneration in this Agreement shall not exceed the sum of Fifty-Eight Thousand Three Hundred Fifty Dollars and Zero Cents ($58,350.00) over the initial 5-month term of this Agreement. Should the Agreement be extended, the three (3) one-year renewal terms cost shall not exceed the sum of Four Hundred Thirty-Seven Thousand One Hundred Seventy-Two Dollars and Zero Cents ($437,172.00).

B. Invoices. Payment to Consultant for the consulting services provided in accordance with this Agreement shall be made according to the following schedule.

<table>
<thead>
<tr>
<th>Initial Term Service Delivery Dates</th>
<th>Monthly Invoice</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 Months Beginning 8/1/2021</td>
<td>Not to exceed $11,670</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Renewable Term Service Delivery Dates, if applicable</th>
<th>Monthly Invoice</th>
</tr>
</thead>
<tbody>
<tr>
<td>12 Months Beginning 1/1/2022</td>
<td>Not to exceed $11,904</td>
</tr>
<tr>
<td>12 Months Beginning 1/1/2023</td>
<td>Not to exceed $12,142</td>
</tr>
<tr>
<td>12 months Beginning 1/1/2024</td>
<td>Not to exceed $12,385</td>
</tr>
</tbody>
</table>

Consultant shall submit a monthly invoice for the preceding month’s services. Each invoice shall be on Consultant letterhead, include the contract number, detail the professional services and/or deliverables provided during the invoice period, list the total charges for such professional services, number of hours the Consultant’s personnel devoted to the performance of such services and/or providing deliverables and the total amount of expenses incurred during the invoice period. All invoices shall be reviewed by the appropriate City staff to verify that the Consultant rendered services and/or provided deliverables during the invoice period. Upon verification of the invoice, the City will tender payment of all invoices within fifteen (15) days from approval of the invoice, unless disputed.

C. Financial Standards. The Consultant agrees to require the use of Generally Accepted Accounting Principles (GAAP) in recording and documenting all costs and expenditures relating to this Agreement. All costs and expenditures for the services performed under this Agreement shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other accounting documents, which shall be clearly identified and readily accessible to the City. All costs and expenditures pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible to the City and its designees. At any time during normal business hours and as often as the City may deem necessary, the Consultant shall make available to the City all of its records with respect to all matters covered under this Agreement, and will permit the City or designee to audit, examine, and make excerpts or transcripts from such records and to have audits made of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data pertaining in whole or in part to matters covered by this Agreement.
D. Auditing. If Consultant performs an independent audit of business and/or financial records, the Consultant shall require the company and/or auditor(s) to comply with all applicable Generally Accepted Auditing Standards that have been developed by the American Institute of Certified Public Accountants. The City shall receive a summary of the audit findings and, if requested, the Consultant shall provide the City with a complete copy of such audit report.

4. City Responsibilities

A. The City will direct and prioritize the services that Consultant’s employees will provide under this Agreement so that the selected consulting services can be completed during the term hereof.

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

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

5. Confidential Information

A. Either party may provide the other party with information that it considers confidential or proprietary. Proprietary information shall be information, which, if made public, would put the disclosing party at a disadvantage in the marketplace or trade of which the party is a part. Confidential information shall be information which, under the laws of the State of Ohio, is classified as being “private” or “confidential.” Such information shall be marked “confidential” and/or “proprietary” by the party providing it within ten (10) days after disclosure.

B. To the extent permitted by law and recognizing that the City is a political subdivision of the State of Ohio and subject to the Ohio Public Records Act (Ohio Revised Code §149.43 et seq.), the parties agree that for a period of two (2) years following the date of disclosure of confidential or proprietary information, it will not disclose such information to any third party without the other party’s written consent. During this two-year period, each party will protect the confidential or proprietary information received by it in the same manner that it protects its own confidential information of a similar nature. Each party agrees that it will only copy the confidential or proprietary information to the extent necessary to perform the services contracted for under this Agreement.
with the City and its contractors in all respects concerning the performance of the services and the review and monitoring of its performance under this Agreement.

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

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

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

H. Consultant, its employees and any other persons retained or hired by Consultant to perform the services, duties and responsibilities under this Agreement are not City employees, and therefore, such persons shall not be entitled to, nor will they make a claim for, any of the emoluments of employment with the City of Dayton. Consultant is not a “public employer” for the purpose of Ohio Public Employees Retirement System membership. Further, Consultant shall be responsible to withhold and pay, or cause such agents, contractors, and sub-contractors to withhold and pay all applicable local, state, and federal taxes and Workers’ Compensation Insurance.

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

J. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws. By execution hereof, Consultant irrevocably consents to the jurisdiction of the state and federal courts located in Montgomery County, Ohio, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement.

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

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

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

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

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

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

CITY OF DAYTON, OHIO

______________________________
City Manager

OPTICA CONSULTING, INC.

E-SIGNED by Thomas Lachey
By: on 2021-06-23 12:12:22 GMT

Thomas Lachey, President

APPROVED AS TO FORM
AND CORRECTNESS:

E-SIGNED by John Musto
on 2021-06-21 20:13:17 GMT

City Attorney

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

______________________________, 2021

Min. / Bk. ________ Pg. ________

______________________________
Clerk of the Commission
City Manager’s Report

From 9980 - DPMB/Management & Budget
Supplier, Vendor, Company, Individual
Name Ellen Belcher Langer, Inc.
Address 531 Evans Lane
Dayton, Ohio 45459

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Fund</td>
<td>10000-9980-1159-99</td>
<td>$4,200.00</td>
</tr>
</tbody>
</table>

Date July 14, 2021
Expense Type Payment of Voucher
Total Amount $4,200.00

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

Description

Payment of Voucher – Ellen Belcher Langer, Inc.

Management and Budget requests payment for a June 1, 2021 outstanding invoice with Ellen Belcher Langer, Inc. for professional services.

On February 22, 2021 Management & Budget, through the Non-Departmental Budget, requisitioned grant writing services with Ellen Belcher Langer, Inc. for the 2021 Bloomberg Mayor’s Challenge Grant. Later it was mistakenly assumed that the same purchase order could be used for professional services related to preparing a written history of the Police Reform initiative. Given the difference in the scope of services performed, it was determined that applying these charges to the grant writing purchase order was inappropriate; thereby resulting in this Payment of Voucher.

Management and Budget is responsible for management of the Non-Departmental budget. In the future, Management & Budget will work closely with Departments who utilize these resources to ensure that proper authority is obtained in advance of procuring goods and services. To that end, a document is being recirculated to Departments on the proper process and notifications needed.

A Certificate of Funds is attached.

Signatures/Approval

Approved by City Commission

Division

Department

City Manager

FORM NO. MS-16

Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

X New Contract

Renewal Contract

Change Order

Contract Start Date: 07/14/21

Expiration Date

Original Commission Approval: $4,200.00

Initial Encumbrance: $4,200.00

Remaining Commission Approval: $-

Original CT/CF

Increase Encumbrance

Decrease Encumbrance

Remaining Commission Approval

Required Documentation

Initial City Manager's Report

Initial Certificate of Funds

Initial Agreement/Contract

Copy of City Manager's Report

Copy of Original Certificate of Funds

<table>
<thead>
<tr>
<th>Amount: $4,200.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund Code: 10000</td>
</tr>
<tr>
<td>9980 - 1159 - 99</td>
</tr>
<tr>
<td>XXXX - XXXX</td>
</tr>
</tbody>
</table>

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

Attach additional pages for more FOAPALs

Vendor Name: Ellen Belcher Langer, Inc.

Vendor Address: 531 Evans Lane Dayton, Ohio 45459

Federal ID: 47-3869841

Commodity Code: 961-90

Purpose: Please pay past due invoice (June 1, 2021). Thank you

Contact Person: Shonda Bryant

DPMB/M&B Department/Division 6/29/2021

Date

Originating Department Director's Signature: Diane J. Sharrow 7/1/2021

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: 7/6/2021

CF Prepared by: [Signature]

Date: 7/6/2021

CF/CT Number: CF21-0141

October 18, 2021
DATE: June 1, 2021

INVOICE # 345  
PO # 210715  
EIN: 47-3869841

TO:  City of Dayton  
ATTN: Torey Hollingsworth  
Senior Policy Aide to Mayor Nan Whaley

ADDRESS:  
Ellen Belcher Langer, Inc.  
531 Evans Lane  
Dayton, OH 45459  
937-321-6325 (cell)  
ellenbelcherlanger@gmail.com

Please consider this my invoice for arranging and conducting 15 interviews with individuals who participated in Dayton’s police reform initiative, and for preparing a written history of the initiative. All interviews were conducted between April 14, 2021 and May 7, 2021.

AMOUNT:  
Hours worked: 42 (billed at $100/hour)  
Total due: $4,200

[Signature]  
DEPARTMENT APPROVAL
[Required]
: Invoice for police reform report

To: Hollingsworth, Torey <Victoria.Hollingsworth@daytonohio.gov>
Thu 6/3/2021 5:50 PM
To: Hall, Lamonte <Lamonte.Hall@daytonohio.gov>

1 attachments (19 KB)
CityOfDaytonInvoice.06.01.2021.docx;

Thank you!

DAYTON

Torey Hollingsworth
Senior Policy Aide to Mayor Nan Whaley
Office of the Mayor | City of Dayton
101 W Third Street | Dayton, Ohio 45402 | www.daytonohio.gov
Office 937.333.3590 | Fax 937.333.4297

This message and any response to it may constitute a public record and thus may be publicly available to anyone who requests it.

From: Ellen Belcher <ellenbelcherlanger@gmail.com>
Sent: Sunday, May 30, 2021 7:47 PM
To: Hollingsworth, Torey <Victoria.Hollingsworth@daytonohio.gov>
Subject: Invoice for police reform report

Torey,
Thank you again for contracting with me to write the police reform initiative report. It was a terrific experience. My invoice is attached.
Best,
Ellen
937-321-6325
Invoice for police reform report

Hollingsworth, Torey <Victoria.Hollingsworth@daytonohio.gov>
Tue 6/1/2021 2:17 PM
To: Ellen Belcher <ellenbelcherlanger@gmail.com>
Cc: Hall, Lamonte <Lamonte.Hall@daytonohio.gov>

Thank you, Ellen! I’m looping in Lamonte who you worked with on the last invoice as well.

Torey

---

Torey Hollingsworth
Senior Policy Aide to Mayor Nan Whaley
Office of the Mayor | City of Dayton
101 W Third Street | Dayton, Ohio 45402 | www.daytonohio.gov
Office 937.333.3590 | Fax 937.333.4297

This message and any response to it may constitute a public record and thus may be publicly available to anyone who requests it.

---

From: Ellen Belcher <ellenbelcherlanger@gmail.com>
Sent: Sunday, May 30, 2021 7:47 PM
To: Hollingsworth, Torey <Victoria.Hollingsworth@daytonohio.gov>
Subject: Invoice for police reform report

Torey,

Thank you again for contracting with me to write the police reform initiative report. It was a terrific experience.

My invoice is attached.

Best,

Ellen

937-321-6325
From 2390 - Planning & CD/Community Dev
Supplier, Vendor, Company, Individual
Name Miami Valley Fair Housing Center
Address 21-23 E. Babbit St.
Dayton, OH 45405-4968

Date July 14, 2021
Expense Type Other, (See Description Below)
Total Amount $51,800.00

Fund Source(s) Fund Code(s) Fund Amount(s)
FY2020 Community Development Block Grant (CDBG) 26205-2390-1159-31 $51,800.00

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

Description
Community Development Block Grant Memorandum of Understanding – Analysis of Impediments to Fair Housing Choice

The Department of Planning, Neighborhoods, and Development requests approval to enter into a Memorandum of Understanding with Montgomery County and the City of Kettering to complete the Analysis of Impediments to Fair Housing Choice (AI) for the Consolidated Plan.

These funds will support Miami Valley Fair Housing Center (MVFHC)’s generation of the AI for the 2021-2025 Consolidated Plan. Montgomery County, the City of Dayton, the City of Kettering are Entitlement funding recipients from the United States Department of Housing and Urban Development and are required to complete the AI and to develop a Fair Housing Action Plan. While each Partner could conduct its own AI, each has agreed to participate in a unified approach to identify and address local fair housing concerns.

This Memorandum shall commence upon execution and it shall terminate on December 31, 2021.

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

A Certificate of Funds and a copy of the Memorandum of Understanding are attached.

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 1/2019
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

X New Contract

Renewal Contract

Change Order

Contract Start Date: Upon Execution by the City
Expiration Date: 12/31/21
Original Commission Approval: $ 51,800.00
Initial Encumbrance: $ 51,800.00
Remaining Commission Approval: $ -

Required Documentation:

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

Amount: $ 51,800.00

Fund Code: 26205 - 2390 - 1159 - 31 - XXXX - XXXX
Fund: Org Acct Prog Act Loc

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

Attach additional pages for more FOAPALs

Vendor Name: Miami Valley Fair Housing Center
Vendor Address: 21-23 E. Babbit St. Dayton OH 45405-4968
Street City State Zipcode + 4

Federal ID: 311384075
Commodity Code: 90698
Purpose: City of Dayton has agreed, based on percentage of HUD entitlement to pay for their share of a Consultant to conduct the Analysis of Impediments to Fair Housing (AI) and develop a Fair Housing Action Plan.

Contact Person: Kyren F. Gantt ext. 3816
PND/Community Development 7/2/2021
Department/Division Date

Originating Department Director’s Signature: [Signature]

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: [Signature] 7/6/2021
Date

CF Prepared by

Date

CF/CT Number

CT21-3014

Finance Department
October 18, 2021
July 2, 2021

TO: C. LaShea Lofton, Deputy City Manager/Acting Finance Director  
Department of Finance

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

SUBJECT: 2021 Memorandum of Understanding – Analysis of Impediments to Fair Housing Choice

We have requested that the 2021 Memorandum of Understanding (MOU) with Montgomery County and the City of Kettering for the Analysis of Impediments to Fair Housing Choice be placed on the July 14, 2021 City Commission calendar.

The MOU will be signed by both Montgomery County and the City of Kettering once executed by the City of Dayton. Two emails are attached documenting responses from both entities. The City of Kettering provided signatures for a prior version of the document before the Law Department’s review and approval, and Montgomery County has indicated that they will sign after City Commission approval is obtained. Additionally, the City of Dayton is providing seventy percent (70%) of the funding for the creation of the Analysis of Impediments. As the primary funding source, our execution of the MOU provides assurance to the governing bodies of our partner jurisdictions that the cost of this regional analysis will be split and properly funded for expeditious completion.

While the City requires signature from all parties before Commission, we are requesting an exception so that this Memorandum can be executed and the Analysis of Impediments completed for inclusion in each municipality’s Consolidated Plan.

Thank you for your assistance. If you have any questions or require further information, please contact Sarah Geist at extension 3814.

SG/sg  
Attachments

C: Ms. Henderson  
Ms. Browning  
Ms. Geist  
File
Here is our signed MOU - I'll be snail mailing three original copies to Tawana for her to sign and get to Dayton.

Angela Brown
Community Development Manager
direct line: (937)296-2524
department : (937) 296-2441

>>> <engandplancopier@ketteringoh.org> 6/2/2021 1:52 PM >>>
This E-mail was sent from "EngineeringAndPlanning" (Aficio MP 5001).

Scan Date: 06.02.2021 13:52:32 (-0400)
Queries to: engandplancopier@ketteringoh.org
MEMORANDUM of UNDERSTANDING
BETWEEN
MONTGOMERY COUNTY, THE CITY OF DAYTON and
THE CITY OF KETTERING

SUBJECT: Analysis of Impediments to Fair Housing/Affirmatively Furthering Fair Housing

Montgomery County, the City of Dayton, the City of Kettering (Partners) are grantees of funds from the United States Department of Housing and Urban Development and are required to complete an Analysis of Impediments to Fair Housing (AI) and to develop a Fair Housing Action Plan. While each Partner could conduct its own AI, each has agreed to participate in a unified approach to identify and address local fair housing concerns.

By agreement of all Partners, a Consultant has been selected to conduct the AI, with the total cost of $74,000.

Each Partner has agreed, based on percentage of HUD entitlement to pay for their share of the contract in the following amounts.

- City of Dayton (70%): $51,800
- City of Kettering (7%): $5,180
- Montgomery County (23%): $17,020

Each jurisdiction will either amend any existing contract with the selected Consultant to include their portion of the AI, or will enter into new contracts directly with the selected Consultant. Any Partner wishing for the Consultant to perform additional work specific to that Partner is responsible for payment of those services, above and beyond their financial obligation for the AI.

All Partners will review and comment on the draft AI, its analysis and recommendations, before it is submitted in its final format. It is the expectation of all Partners that the AI will address aggregate information that is applicable across the County as well as specific statistics, impediments and recommendations unique to each Partner.

The Consultant will provide regular updates to the Partners prior to billing for services provided.

The Consultant will invoice each invoice each Partner at quarterly intervals throughout the duration of the work, with final payment being due upon completion of the AI and Action Plan.

continued
Memorandum of Understanding
Analysis of Impediments and Fair Housing Action Plan
Page 2

<table>
<thead>
<tr>
<th>For Montgomery County</th>
<th>For City of Dayton</th>
<th>For City of Kettering</th>
</tr>
</thead>
<tbody>
<tr>
<td>Printed Name</td>
<td>Printed Name</td>
<td>Printed Name</td>
</tr>
<tr>
<td>Date</td>
<td>Date</td>
<td>Date</td>
</tr>
</tbody>
</table>

APPROVED AS TO FORM:

[Signature]

Law Director

CERTIFICATION OF FUNDS

[Signature]

Finance Director

APPROVED AS TO FORM:
MATHIAS H. HECK, JR.
Prosecuting Attorney for Montgomery County, Ohio

BY:____________________________________
Assistant Prosecuting Attorney

DATE:___________________________________
Sarah:

Thanks! You can just scan a copy, that works too. Our Clerk just wants signatures, but we have been allowing scanned copies.

Have a nice weekend.

Tawana

---

From: Geist, Sarah <Sarah.Geist@daytonohio.gov>
Sent: Friday, June 25, 2021 3:35 PM
To: Jones, Tawana <JonesT@mcohio.org>
Subject: RE: AI MOU

CAUTION: This email originated from outside of Montgomery County’s email system (mcohio.org). DO NOT click links or open attachments unless you recognize the sender and know the content is safe.

Not a problem! I have the document approved by Law, and have sent it down for inclusion on Commission Calendar. I’ll let you know when it is fully executed and I’ll hand-deliver the copies to you ASAP.

Sarah Geist (she/her)
Community Development Grant Administrator
Planning, Neighborhoods, and Development I City of Dayton
101 W. Third Street, 6th Floor I Dayton, Ohio 45402
Office: 937.333.3814 I Fax: 937.333.4281 I www.daytonohio.gov

---

From: Jones, Tawana <JonesT@mcohio.org>
Sent: Wednesday, June 23, 2021 4:12 PM
To: Geist, Sarah <Sarah_Geist@daytonohio.gov>
Subject: AI MOU

Any chance you got the City to sign this yet? The County won’t sign until you have signed. Grrr😊
MEMORANDUM of UNDERSTANDING
BETWEEN
MONTGOMERY COUNTY, THE CITY OF DAYTON and
THE CITY OF KETTERING

SUBJECT: Analysis of Impediments to Fair Housing/Affirmatively Furthering Fair Housing

Montgomery County, the City of Dayton, the City of Kettering (Partners) are grantees of funds from the United States Department of Housing and Urban Development and are required to complete an Analysis of Impediments to Fair Housing (AI) and to develop a Fair Housing Action Plan. While each Partner could conduct its own AI, each has agreed to participate in a unified approach to identify and address local fair housing concerns.

By agreement of all Partners, a Consultant has been selected to conduct the AI, with the total cost of $74,000.

Each Partner has agreed, based on percentage of HUD entitlement to pay for their share of the contract in the following amounts.

<table>
<thead>
<tr>
<th>Partner</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Dayton (70%)</td>
<td>$51,800</td>
</tr>
<tr>
<td>City of Kettering (7%)</td>
<td>$ 5,180</td>
</tr>
<tr>
<td>Montgomery County (23%)</td>
<td>$17,020</td>
</tr>
</tbody>
</table>

Each jurisdiction will either amend any existing contract with the selected Consultant to include their portion of the AI, or will enter into new contracts directly with the selected Consultant. Any Partner wishing for the Consultant to perform additional work specific to that Partner is responsible for payment of those services, above and beyond their financial obligation for the AI.

All Partners will review and comment on the draft AI, its analysis and recommendations, before it is submitted in its final format. It is the expectation of all Partners that the AI will address aggregate information that is applicable across the County as well as specific statistics, impediments and recommendations unique to each Partner.

The Consultant will provide regular updates to the Partners prior to billing for services provided.
Memorandum of Understanding  
Analysis of Impediments and Fair Housing Action Plan  
Page 2

The Consultant will invoice each Partner at quarterly intervals throughout the duration of the work, with final payment being due upon completion of the AI and Action Plan.

<table>
<thead>
<tr>
<th>For Montgomery County</th>
<th>For City of Dayton</th>
<th>For City of Kettering</th>
</tr>
</thead>
<tbody>
<tr>
<td>Printed Name</td>
<td>Printed Name</td>
<td>Printed Name</td>
</tr>
</tbody>
</table>

Date

APPROVED AS TO FORM  
AND CORRECTNESS:

6/15/2021

John Musto for  
City Attorney

Signed by: Musto, John

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

________________________________  2021

Min./Bk. ___________ Page __________

Clerk of the Commission

APPROVED AS TO FORM:  
MATHIAS H. HECK, JR.  
Prosecuting Attorney for Montgomery County, Ohio

BY: ________________________________  
Assistant Prosecuting Attorney

DATE: ______________________________
A RESOLUTION

Approving the Petition and Supplemental Plan for Special Energy Improvement Projects Under Ohio Revised Code Chapter 1710, and Declaring an Emergency.

WHEREAS, As set forth in Ohio Revised Code Chapter 1710, the Ohio General Assembly has authorized property owners to include their properties within energy special improvement districts ("ESIDs") upon a petition to a municipal corporation or township, which ESIDs are voluntary organizations of property owners who undertake special energy improvement projects for their properties and finance such special energy improvement projects by way of voluntary special assessments; and,

WHEREAS, Pursuant to Resolution 6117-15, passed June 24, 2015, this Commission approved the Petition for Creation of Energy Special Improvement District and for Special Assessments for Special Energy Improvement Projects (the "Establishing Petition"), including an initial plan entitled Dayton Regional Energy Special Improvement District Program Plan (the "Program Plan") and Articles of Incorporation of the Dayton Regional Energy Special Improvement District, Inc. (the "Articles"); and,

WHEREAS, Following such approval, the Dayton Regional Energy Special Improvement District (the "District"), an energy special improvement district under the laws of the State of Ohio, and the Dayton Regional Energy Special Improvement District, Inc. (the "Corporation"), a nonprofit corporation under the laws of the State of Ohio, the board of directors of which governs the District in accordance with Ohio Revised Code Chapters 1702 and 1710, were formed; and,

WHEREAS, 130 West 2nd Street LLC (the "Owner"), as the owner of certain real property located within the City of Dayton, Ohio (the "City"), has identified certain real property owned by the Owner located at 130 West 2nd Street in the City (the "Project Site"), as an appropriate property for a special energy improvement project pursuant to Ohio Revised Code Chapter 1710; and,

WHEREAS, The Owner has submitted to the District, and the board of directors of the Corporation (the "Board"), as the governing body of the District in accordance with Ohio Revised Code Chapter 1710, has approved or will approve a Petition for Special Assessments for Special Energy Improvement Projects (the "Project Petition") and a Supplement to Plan for 130 W. 2nd Street, Dayton, Ohio Project (the "Supplemental Plan"), which Project Petition and Supplemental Plan request that the Project Site be added to the District and that the City levy special assessments on the Project Site to pay the costs of a special energy improvement project to be provided on the Project Site, all
as described more particularly in the Project Petition and the Supplemental Plan (the “Project”); and,

WHEREAS, On July 2, 2021, pursuant to Ohio Revised Code Chapter 1710, the Owner submitted the Project Petition and the Supplemental Plan to this Commission and to the City Manager of the City, and said Project Petition and Supplemental Plan are on file with the Clerk of the Commission; and,

WHEREAS, Said Project Petition and Supplemental Plan are for the purpose of developing and implementing special energy improvement projects in furtherance of the purposes set forth in Section 20 of Article VIII of the Ohio Constitution, including, without limitation, the Project, and further, the Project Petition and the Supplemental Plan identify the maximum amount and length of the special assessments to be imposed with respect to the Project; and,

WHEREAS, This Commission, as mandated by Ohio Revised Code Section 1710.06, must approve or disapprove the Project Petition and Supplemental Plan within 60 days of the submission of the Project Petition and Supplemental Plan; and,

WHEREAS, This Commission has determined to approve the Project Petition and Supplemental Plan; and,

WHEREAS, This Commission, pursuant to Ohio Revised Code Section 1710.02(G)(4), has determined that the energy special improvement project to be constructed and implemented on the Project Site is not required to be owned exclusively by the City for its purposes, for uses determined by this Commission, as the legislative authority of the City as those that will promote the welfare of the people of the City; to improve the quality of life and the general and economic well-being of the people of City; to better ensure the public health, safety, and welfare; to protect water and other natural resources; to provide for the conservation and preservation of natural and open areas and farmlands, including by making urban areas more desirable or suitable for development and revitalization; to control, prevent, minimize, clean up, or mediate certain contamination of or pollution from lands in the state and water contamination or pollution; or to provide for safe and natural areas and resources; and,

WHEREAS, It is necessary for the immediate preservation of public peace, property, health and safety, that this Resolution take effect at the earliest possible date in order to allow the Owner to begin work on the Project, and the District to take advantage of financing available to it for a limited time; now, therefore,

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

Section 1. Approval of Project Petition and Supplemental Plan. That this Commission approves the Project Petition and further approves the Supplemental Plan in substantially the forms now on file with the Clerk of the Commission.
Section 2. Transfer of Energy Special Improvement Project. That pursuant to Ohio Revised Code Section 1710.02(G)(4), this Commission determines that the Project is not required to be owned exclusively by the City for its purposes, for uses determined by this Commission, as the legislative authority of the City, as those that will promote the welfare of the people of such participating political subdivision; to improve the quality of life and the general and economic well-being of the people of the City; to better ensure the public health, safety, and welfare; to protect water and other natural resources; to provide for the conservation and preservation of natural and open areas and farmlands, including by making urban areas more desirable or suitable for development and revitalization; to control, prevent, minimize, clean up, or mediate certain contamination of or pollution from lands in the state and water contamination or pollution; or to provide for safe and natural areas and resources. This Commission accordingly authorizes the Board to act as its agent to sell, transfer, lease, or convey the Project. The consideration the Board must obtain from any sale, transfer, lease, or conveyance of the special energy improvement project on the Project Site is any consideration greater than or equal to One Dollar and Zero Cents ($1.00).

Section 3. Compliance with Public Meetings Requirements. That this Commission finds and determines that all formal actions of this Commission concerning and relating to the passage of this legislative resolution were adopted in an open meeting of this Commission, and that all deliberations of this Commission and any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Ohio Revised Code Section 121.22.

Section 4. Effective Date. That for the reasons stated in the preamble hereof, this Resolution is declared to be an emergency measure and shall take effect immediately upon its adoption.

ADOPTED BY THE COMMISSION................... JULY 14........, 2021

SIGNED BY THE MAYOR.................. JULY 14........, 2021

MAYOR OF THE CITY OF DAYTON, OHIO

A TEST:

Regina D. Blackshear
Clerk of the Commission

APPROVED AS TO FORM:

City Attorney
July 6, 2021

TO: Shelley Dickstein, City Manager

FROM: Chris Lipson
Department of Planning, Neighborhoods and Development – Division of Development

SUBJECT: Two Emergency Resolutions Approving a Petition to Include 130 West Second Street in the Dayton Energy Special Improvement District (ESID)

The Department of Planning, Neighborhoods and Development, Division of Development, is requesting adoption of the attached Resolutions approving the Petition and Supplemental Plan for Special Assessments to the property located at 130 West Second Street. We are requesting both resolutions as emergency legislation with two readings at one meeting.

Situated in the heart of downtown Dayton, The 130 Building is a 21 story, 323,454 square-foot office tower. It features modern suites, flexible meeting and conference room settings and the latest in workplace amenities. The current owner purchased the building in 2018 and embarked on substantial renovation of the interior and exterior of the building. The Property Assessed Clean Energy (PACE) project being submitted will improve the energy efficiency of the property. The project includes LED lighting and window tinting along with the replacement of cooling systems and air handling controls.

The Property Owner will finance the improvements through a Special Assessment to their property taxes. The first Resolution approves the Petition filed by the Property Owner, while the second Resolution approves the Necessity of the Special Assessments. Corresponding Ordinances for this project are being prepared for the July 21, 2021 and August 18, 2021 City Commission meetings.

The Department of Law has reviewed and approved the Resolutions as to form and correctness.

If you have any questions, please contact me at extension 3820.

cc: Todd Kinskey, Director, Department of Planning, Neighborhoods and Development

CJL
BY ...... MR. JOSEPH ....................... NO. 6591-21

A RESOLUTION

Approving the Necessity of Acquiring, Constructing, and Improving Certain Public Improvements in the City of Dayton, Ohio in Cooperation with the Dayton Regional Energy Special Improvement District, and Declaring an Emergency.

WHEREAS, Ohio Revised Code Section 1710.06(C) provides that a political subdivision which has approved a petition for special assessments for public improvements in an energy special improvement district and a plan pursuant to Ohio Revised Code Sections 1710.02(F) and 1710.06 shall levy the requested special assessments pursuant to Ohio Revised Code Chapter 727; and,

WHEREAS, 130 West 2nd Street LLC (the “Owner”) petitioned to add property owned by it to the Dayton Regional Energy Special Improvement District (the “ESID”) pursuant to Ohio Revised Code Chapter 1710 in part in order to finance the costs of a special energy improvement project to be constructed on the property; and,

WHEREAS, The Commission (“Commission”) of the City of Dayton, Ohio (the “City”) has, by Resolution No. __________, adopted on __________, 2021, approved a Petition for Special Assessments for Special Energy Improvement Projects (the “Project Petition”) and a Supplement to Plan for 130 W. 2nd Street, Dayton, Ohio Project (the “Supplemental Plan”), in accordance with Ohio Revised Code Section 1710.02; and,

WHEREAS, The Project Petition, a copy of which, together with the Supplemental Plan, is attached to, and incorporated into this Resolution as Exhibit A, has been signed by the Owner, as the owner of one hundred percent (100%) of the real property affected by the Project Petition (as further described in Exhibit A to the Project Petition, the “Property”); and,

WHEREAS, The Project Petition and the Supplemental Plan propose the necessity of the acquisition, construction, installation, improvement, and equipping of energy efficiency improvements, including, without limitation, LED lighting, chillers, a cooling tower, energy efficient window tinting, BAS controls upgrades, an AHU system, and related improvements (the “Project”) and financing the Project through the cooperation of the ESID; and,

WHEREAS, In the Project Petition and the Supplemental Plan, the Owner requests that the Project be paid for by special assessments to be assessed upon the Property (the “Special Assessments”) in a maximum amount sufficient to pay the costs of the Project, which is estimated to be $5,057,325.00, and other related costs of financing the Project, which include, without limitation, the payment of principal of and interest on
obligations issued to pay the costs of the Project and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and ESID administrative fees and expenses, and requests that the Project be undertaken cooperatively by the City, the ESID, and such other parties as the City may deem necessary or appropriate; and,

WHEREAS, It is necessary for the immediate preservation of public peace, property, health and safety, that this Resolution take effect at the earliest possible date in order to allow the Owner to begin work on the special energy improvement project on the Property, and the ESID to take advantage of financing available to it for a limited time; now, therefore,

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

Section 1. Definitions. That each capitalized term not otherwise defined in this Resolution or by reference to another document shall have the meaning assigned to it in the Project Petition.

Section 2. Public Necessity of Special Assessments. That this Commission declares necessary, and a vital and essential public purpose of the City, to improve the Property, which is located at 130 West 2nd Street in the City, by providing for the implementation of various special energy improvement projects on the Property including, without limitation, the Project, as set forth in the Project Petition and the Supplemental Plan, and providing for the payment of the costs of the project, including any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, surveying, testing, and inspection costs; the amount of any damages resulting from the Authorized Improvements and the interest on such damages; the costs incurred in connection with the preparation, levy and collection of the special assessments; the cost of purchasing and otherwise acquiring any real estate or interests in real estate; expenses of legal services; costs of labor and material; and other financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued to provide a loan to the Owner or otherwise to pay costs of the Project in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued, including any credit enhancement fees, trustee fees, and ESID administrative fees and expenses; together with all other necessary expenditures, all as more fully described in the Project Petition and the Supplemental Plan, profiles, specifications, and estimates of cost of the Project, all of which are on file with the Director of the Department of Finance and open to the inspection of all persons interested.

Section 3. One Project. That this Commission determines that the Project’s elements are so situated in relation to each other that in order to complete the acquisition and improvement of the Project’s elements in the most practical and economical manner, they should be acquired and improved at the same time, with the same kind of materials, and in the same manner; and that the Project’s elements shall be treated as a single improvement, pursuant to Ohio Revised Code Section 727.09, and the Project’s elements shall be treated as a joint improvement to be undertaken cooperatively by the City and the
ESID pursuant to Ohio Revised Code Section 9.482 and Ohio Revised Code Chapter 1710.

Section 4. Approval of Plans. That the Plans and Specifications and total cost of the Project now on file in the office of the Clerk of the Commission are approved, subject to changes as permitted by Ohio Revised Code Chapter 727. The Project shall be made in accordance with the plans, specifications, profiles, and estimates for the Project.

Section 5. Public Necessity of Project. That this Commission has previously determined and by this Resolution ratifies and declares that the Project is an essential and vital public, governmental purpose of the City as a Special Energy Improvement Project, as defined in Ohio Revised Code Section 1710.01(D); and that in order to fulfill that essential and vital public purpose of the City, it is necessary and proper to provide, in cooperation with the ESID, for the acquisition, construction, and improvement of the Project in the manner contemplated by the Project Petition and the Supplemental Plan. This Commission determines and declares that the Project is conducive to the public peace, health, safety and welfare of the City and the inhabitants of the City.

Section 6. Allocation of Costs of Project Among City and Owner. That pursuant to and subject to the provisions of a valid Petition signed by the owners of one hundred percent (100%) of the Property, the entire cost of the Project shall be paid by the Special Assessments levied against the Property, which is the benefited property. The provisions of the Project Petition are ratified, adopted, approved and incorporated into this Resolution as if set forth in full in this Resolution. The portion of the costs of the Project allocable to the City will be zero percent (0%). The City does not intend to issue securities in anticipation of the levy or collection of the Special Assessments.

Section 7. Assessment Method. That the method of levying the Special Assessments shall be in proportion to the benefits received from the financing of the Project, allocated among the parcels constituting the Property as set forth in the Project Petition and Supplemental Plan.

Section 8. Property. That the lots or parcels of land to be assessed for the Project shall be the Property, described in Exhibit A to the Project Petition, all of which lots and lands are determined to be specially benefited by the financing of the Project.

Section 9. Assessment Schedule. That the Special Assessments shall be levied and paid in thirty-eight (38) semi-annual installments pursuant to the list of estimated Special Assessments set forth in the Project Petition, and the Owner has waived its option to pay the Special Assessment in cash within thirty (30) days after the passage of the assessing ordinance.

The aggregate amount of Special Assessments estimated to be necessary to pay the costs of the Project is $5,057,325.00. Each semi-annual Special Assessment payment represents payment of a portion of the principal of and interest on obligations issued to pay the costs of the Project and of administrative expenses. The interest portion of the Special Assessments, together with amounts used to pay administrative expenses, are
determined to be substantially equivalent to the fair market rate or rates of interest that would have been borne by securities issued in anticipation of the collection of the Special Assessments if such securities had been issued by the City. In addition to the Special Assessments, the Auditor of Montgomery County, Ohio may impose a special assessment collection fee with respect to each semi-annual payment, which amount will be added to the Special Assessments by the Auditor of Montgomery County, Ohio.

Section 10. Director of the Department of Finance to File Estimate of Special Assessments. That the Director of the Department of Finance or the Director of the Department of Finance’s designee is authorized and directed to prepare and file in the office of the Clerk of the Commission the estimated Special Assessments for the cost of the Project in accordance with the method of assessment set forth in the Project Petition, the Supplemental Plan, and this Resolution, showing the amount of the assessment against each lot or parcel of land to be assessed.

Section 11. Notice to Property Owner. That upon the filing of the estimated Special Assessments with the Clerk of the Commission, notice of the adoption of this Resolution and the filing of the estimated Special Assessments shall be served upon the Owner of the Assessed Property, as provided in Ohio Revised Code Section 727.13. The appropriate officials of the City shall also comply with the applicable procedural requirements of Ohio Revised Code Chapter 727.

Section 12. Collection of Special Assessments. That the Director of the Department of Finance or the Director of the Department of Finance’s designee is authorized, pursuant to Ohio Revised Code Section 727.12, to cause the Special Assessments to be levied and collected at the earliest possible time including, if applicable, prior to the completion of the acquisition and construction of the Project.

Section 13. Appropriation of Special Assessments. That the Special Assessments will be used by the City to provide the Authorized Improvements in cooperation with the ESID in any manner, including assigning the Special Assessments actually received by the City to the ESID or to another party the City deems appropriate, and the Special Assessments are appropriated for such purposes.

Section 14. Acceptance of Waiver of Process. That this Commission accepts and approves the waiver of all further notices, hearings, claims for damages, rights to appeal and other rights of property owners under the law, including but not limited to those specified in the Ohio Constitution, Ohio Revised Code Chapter 727, Ohio Revised Code Chapter 1710, and the Charter of the City of Dayton, Ohio, and consents to the immediate imposition of the Special Assessments upon the Property. This waiver encompasses, but is not limited to, waivers by the Owner of the following rights:

(i) The right to notice of the adoption of the Resolution of Necessity under Ohio Revised Code Sections 727.13 and 727.14;

(ii) The right to limit the amount of the Special Assessments under Ohio Revised Code Sections 727.03 and 727.06;
(iii) The right to file an objection to the Special Assessments under Ohio Revised Code Section 727.15;
(iv) The right to the establishment of, and any proceedings by and any notice from an Assessment Equalization Board under Ohio Revised Code Sections 727.16 and 727.17;
(v) The right to file any claim for damages under Ohio Revised Code Sections 727.18 through 727.22 and Ohio Revised Code Section 727.43;
(vi) The right to notice that bids or quotations for the Project may exceed estimates by 15%;
(vii) The right to seek a deferral of payments of Special Assessments under Ohio Revised Code Section 727.251;
(viii) The right to notice of the passage of the assessing resolution or ordinance under Ohio Revised Code Section 727.26; and
(ix) Any and all procedural defects, errors, or omissions in the Special Assessment process.

Section 15. Agreements. That the City is authorized to enter into agreements by and among the City, the ESID, and such other parties as the City may deem necessary or appropriate in order to provide the Authorized Improvements, and that the City Manager, the Economic Development Director, and the Commission President, or any of them, is authorized to execute, on the City’s behalf, such agreements.

Section 16. Compliance with Open Meetings Requirements. That this Commission finds and determines that all formal actions of this Commission concerning and relating to the passage of this legislative resolution were adopted in an open meeting of this Commission, and that all deliberations of this Commission and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Ohio Revised Code Section 121.22.
Section 17. Effective Date. That for the reasons stated in the preamble hereof, this Resolution is declared to be an emergency measure and shall take effect immediately upon its adoption.

ADOPTED BY THE COMMISSION........JULY 14........, 2021

SIGNED BY THE MAYOR.............JULY 14...........2021

MAYOR OF THE CITY OF DAYTON, OHIO

ATTEST:
Regina D. Blackstock
Clerk of the Commission

APPROVED AS TO FORM:

City Attorney
EXHIBIT A

PROJECT PETITION AND SUPPLEMENTAL PLAN

[See Attached]
PETITION FOR SPECIAL ASSESSMENTS FOR
SPECIAL ENERGY IMPROVEMENT PROJECTS AND AFFIDAVIT

A PETITION TO THE CITY OF DAYTON, OHIO SEEKING THE IMPOSITION OF SPECIAL ASSESSMENTS AGAINST REAL PROPERTY OWNED BY THE PETITIONER TO PAY CERTAIN COSTS OF VARIOUS SPECIAL ENERGY IMPROVEMENT PROJECTS, THE FINANCING OF WHICH WILL SPECIALLY BENEFIT SUCH REAL PROPERTY, INCLUDING A WAIVER OF ALL RIGHTS TO NOTICES, HEARINGS AND APPEALS RESPECTING THE REQUESTED SPECIAL ASSESSMENTS

To: The City Manager and Commission of the City of Dayton, Ohio

130 West 2nd Street LLC, a Massachusetts limited liability company (the Petitioner) is the owner of 100% of the property described on Exhibit A attached hereto (the Property).

The Board of Directors of the Centerville, Dayton, Kettering, Oakwood, Riverside, Springboro, Washington Township Regional Energy Special Improvement District, Inc. doing business under the registered trade name the Dayton Regional Energy Special Improvement District, Inc. (the Corporation), an Ohio nonprofit corporation formed to govern the Dayton Regional Energy Special Improvement District (the District), initially created within the boundaries of the City of Dayton, Ohio has approved a plan (the Program Plan) for the purpose of developing and implementing special energy improvement projects as defined in Ohio Revised Code Section 1710.01(1). The Program Plan is attached to this Petition as Exhibit C. The Corporation’s Amended Articles of Incorporation are attached to this Petition as Exhibit D.

Pursuant to the Program Plan, the Corporation has caused special energy improvement projects to be provided from time to time. In accordance with Ohio Revised Code Chapter 1710 and the Program Plan, the Program Plan may be amended from time to time by supplemental plans (the Supplemental Plans) (the Program Plan and every Supplemental Plan together constituting the Plan) to provide for additional special energy improvement projects, and the District may be enlarged from time to time to include additional property so long as at least one special energy improvement project is designated for each parcel of real property within the additional territory added to the District.

The Board of Directors of the Corporation has received or will receive the Supplemental Plan attached to this Petition as Exhibit B, including the description of the special energy improvement projects proposed to be constructed or installed on the Property (the Authorized Improvements), and related materials in support of the expansion of the District to include the Property.

As required by Ohio Revised Code Section 1710.02, the Petitioner, as the owner of the Property, being 100% of the area proposed to be added to the District and 100% of the area proposed to be assessed for the Authorized Improvements, hereby (a) petitions the City Commission (the Commission) of the City of Dayton, Ohio (the City) to (i) approve the addition
of the Property to the District and (ii) approve an amendment and supplement to the Plan by the Supplemental Plan attached as Exhibit B to include the Authorized Improvements and (b) requests that (i) the Authorized Improvements be undertaken by the District, and (ii) the total cost of those Authorized Improvements be assessed on the Property in proportion to the special benefits that will result from the financing of the Authorized Improvements.

The Petitioner hereby advises the City that the Petitioner is considering pursuing financing for the costs of the Authorized Improvements through the Ohio Air Quality Development Authority (the “OAQDA”). If pursued by the Petitioner and approved by the OAQDA, it is anticipated that the Special Assessments (or a portion of the Special Assessments) will be used to provide security and repayment for revenue bonds to be issued by the OAQDA to finance costs of the Authorized Improvements, and the Authorized Improvements will constitute “air quality facilities” within the meaning of Chapter 3706 of the Ohio Revised Code. In connection with the financing of “air quality facilities” the OAQDA may certify that certain related property is exempt from taxes and assessments, including, without limitation, real property taxes and assessments and sales and use taxes, all under Section 3706.041 of the Ohio Revised Code. If the Petitioner pursues financing through the issuance of OAQDA revenue bonds and the OAQDA approves such financing and issues such revenue bonds, the OAQDA may certify that all or any portion of the Authorized Improvements are exempt from taxes and assessments, including, without limitation, real property taxes and assessments and sales and use taxes under Section 3706.041 of the Ohio Revised Code.

In connection with this Petition and in furtherance of its purposes, the Petitioner acknowledges that it has reviewed or caused to be reviewed (i) the Program Plan and the Supplemental Plan, (ii) the plans, specifications and profiles for the Authorized Improvements, (iii) the estimate of cost for the Authorized Improvements included in the Supplemental Plan and (iv) the schedule of estimated special assessments to be levied for the Authorized Improvements also included in the Supplemental Plan. The Petitioner acknowledges that the estimated special assessments are in proportion to the benefits that may result from the financing of the Authorized Improvements.

Accordingly, the Petitioner hereby petitions for the approval of the Authorized Improvements identified in this Petition and the Supplemental Plan attached to this Petition as Exhibit B, as authorized under Ohio Revised Code Chapter 1710, and for the imposition of the special assessments identified in this Petition and authorized under Ohio Revised Code Chapters 727 and 1710 (the Special Assessments) to pay the costs of the Authorized Improvements, in the amount set forth on Exhibit B. The Petitioner hereby certifies, represents, and warrants to the District and the City that the actual costs of the Authorized Improvements have been ascertained. The Petitioner further agrees that it will be solely responsible for any costs of the Authorized Improvements in excess of the amount set forth on Exhibit B.

In the event that at any time following the date of this Petition the Property is combined or subdivided into permanent parcels in the records of the County Auditor of Montgomery County, Ohio then the Petitioner hereby requests that the Special Assessments be allocated among the resulting parcels in proportion to the acreage of the existing parcels that are contained in each resulting parcel that contains a portion of an existing parcel. The Petitioner hereby
certifies, represents, and warrants to the District and the City that the portion of the Special Assessments allocated to each resulting parcel as described above are in proportion to, and do not exceed, the special benefits to be conferred on the resulting parcel or resulting parcels by the Authorized Improvements identified in this Petition.

In consideration of the City’s acceptance of this Petition and the imposition of the requested Special Assessments, the Petitioner consents and agrees that the Property as identified in Exhibit A shall be assessed for all of the costs of the Authorized Improvements, including any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, surveying, testing and inspection costs; costs of labor and material; the amount of any damages resulting from the Authorized Improvements and the interest on such damages; the cost of purchasing and otherwise acquiring any real estate or interests in real estate; the costs incurred in connection with the preparation, levy and collection of the Special Assessments; expenses of legal services; trustee fees and other financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued or incurred to provide a loan or to secure an advance of funds to the Petitioner or otherwise to pay costs of the Authorized Improvements in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued, including any credit enhancement fees, trustee fees, program administration fees, financing servicing fees, and District administrative fees and expenses; an amount to reflect interest on unpaid Special Assessments which shall be treated as part of the cost of the Authorized Improvements for which the Special Assessments are made at an interest rate which shall be determined by the District to be substantially equivalent to the fair market rate that would have been borne by notes or bonds if notes or bonds had been issued by the District or another issuer of notes or bonds to pay the costs of the Authorized Improvements; together with all other necessary expenditures.

In consideration of the Authorized Improvements, the Petitioner, for itself and its grantees and other successors with respect to the Property, agrees to pay promptly all Special Assessments as they become due, and agrees that the determination by the Commission of the Special Assessments in accordance with the terms hereof will be final, conclusive and binding upon the Petitioner and the Property. In further consideration of the Authorized Improvements, the Petitioner covenants and agrees to disclose, upon the transfer of the Property or any portion of the Property to be special assessed for the actual costs of the Authorized Improvements set forth in Exhibit B, in the deed to the transferee or in a separate instrument recorded with respect to the Property the existence of any outstanding Special Assessments for the Authorized Improvements and to require that transferee covenant to disclose that information in any subsequent deed or in a separate instrument recorded with respect to the Property at the time of the subsequent transfer so long as the Special Assessments remain unpaid. As a condition to each subsequent transfer while the Special Assessments remain unpaid, the Petitioner further covenants and agrees to provide expressly in the deed to any transferee or in a separate instrument recorded with respect to the Property at the time of the subsequent transfer (a) for the acquisition by the transferee of the Property subject to any outstanding Special Assessments and the transferee’s assumption of responsibility for payment thereof and for the waiver by the transferee of any rights that the Petitioner has waived pursuant to this Petition, and (b) the requirement that each transferee from time to time of the Property covenant to include in the
deed to any subsequent transferee or in a separate instrument recorded with respect to the Property at the time of the subsequent transfer the conditions described in clause (a) so long as the Special Assessments remain unpaid.

The Petitioner further acknowledges and confirms that the Special Assessments set forth in this Petition and in the Supplemental Plan attached as Exhibit B are in proportion to, and do not exceed, the special benefits to be conferred on the Property by the Authorized Improvements identified in this Petition. The Petitioner further consents to the levying of the Special Assessments against the Property by the City. The Petitioner acknowledges that these Special Assessments are fair, just and equitable and being imposed at the Petitioner’s specific request.

The Petitioner hereby waives notice and publication of all resolutions, legal notices and hearings provided for in the Ohio Revised Code with respect to the Authorized Improvements and the Special Assessments, particularly those in Ohio Revised Code Chapters 727 and 1710 and consents to proceeding with the Authorized Improvements. Without limiting the foregoing, the Petitioner specifically waives any notices and rights under the following Ohio Revised Code Sections:

- The right to notice of the adoption of the Resolution of Necessity under Ohio Revised Code Sections 727.13 and 727.14;
- The right to limit the amount of the Special Assessments under Ohio Revised Code Sections 727.03 and 727.06, including the right to consider the Special Assessments authorized by this Petition within the limitations contained in Ohio Revised Code Sections 727.03 and 727.06 applicable to the Special Assessments and any other special assessments properly levied now or in the future;
- The right to file an objection to the Special Assessments under Ohio Revised Code Section 727.15;
- The right to the establishment of, and any proceedings by and any notice from an Assessment Equalization Board under Ohio Revised Code Sections 727.16 and 727.17;
- The right to file any claim for damages under Ohio Revised Code Sections 727.18 through 727.22 and Ohio Revised Code Section 727.43;
- The right to notice that bids or quotations for the Authorized Improvements may exceed estimates by 15%;
- The right to seek a deferral of payments of Special Assessments under Ohio Revised Code Section 727.251; and
- The right to notice of the passage of the Assessing Ordinance under Ohio Revised Code Section 727.26.

The Petitioner, in accordance with Ohio Revised Code Section 1710.02(A), further agrees that the Property may be included in more than one district formed under Ohio Revised Code Chapter 1710. The Petitioner further agrees not to take any actions, or cause to be taken any actions, to place any of the Property in an agricultural district as provided for in Ohio Revised Code Chapter 929, and if any of the Property is in an agricultural district, the Petitioner, in accordance with Ohio Revised Code Section 929.03, hereby grants permission to collect any Special Assessments levied against such Property.
The Petitioner further agrees and consents to the Commission promptly proceeding with all actions necessary to facilitate the acquisition, installation, equipment, and improvement of the Authorized Improvements and to impose the Special Assessments.

The Petitioner acknowledges that the Special Assessments set forth in this Petition and in the Exhibits to this Petition are based upon an estimate of costs, and that the final Special Assessments shall be calculated in the same manner, which, regardless of any statutory limitation on the Special Assessments, may be more or less than the respective estimated assessments for the Authorized Improvements. In the event the final assessments exceed the estimated assessments, the Petitioner, without limitation of the other waivers contained in this Petition, also waives any rights it may now or in the future have to object to those assessments, any notice provided for in Ohio Revised Code Chapters 727 and 1710, and any rights of appeal provided for in such Chapters or otherwise. The Petitioner further acknowledges and represents that the respective final assessments may be levied at such time as determined by the City and regardless of whether or not any of the parts or portions of the Authorized Improvements have been completed.

The Petitioner further acknowledges that the final Special Assessments for the Authorized Improvements, when levied against the Property, will be payable in cash within 30 days from the date of passage of the ordinance confirming and levying the final assessments and that if any of such assessments are not paid in cash they will be certified to the County Auditor of Montgomery County, Ohio, as provided by law, to be placed on the tax list and duplicate and collected as other taxes are collected. Notwithstanding the foregoing, however, the Petitioner hereby waives the right to pay the final assessments for the Authorized Improvements in cash within 30 days from the passage of the ordinance confirming and levying the final assessments and requests that the unpaid final assessments for the Authorized Improvements shall be payable in 38 semi-annual installments, together with interest at the maximum rate of 10.00% and with collection commencing on the earliest date permitted by said County Auditor, but in no event sooner than the semiannual installment payment of first-half real property taxes for tax year 2021 due in 2022 with respect to the Property.

Pursuant to Ohio Revised Code Section 1710.03(C), the Petitioner hereby appoints the duly elected members of the Board of Directors of the District as its designee to carry out the rights and responsibilities of District members under Ohio Revised Code Chapter 1710 or such representative as may be duly appointed by the Petitioner from time to time, which designation shall not expire unless and until the Petitioner shall notify the Secretary of the District that said designation is no longer in effect or that Petitioner has made a new designation to replace said designation.

The Petitioner further waives any and all questions as to the constitutionality of the laws under which Authorized Improvements shall be acquired, installed, equipped, and improved or the proceedings relating to the acquisition, installation, equipment, and improvement of the Authorized Improvements, the jurisdiction of the City acting in connection with the acquisition, installation, or construction of the Authorized Improvements, all irregularities, errors and defects, if any, procedural or otherwise, in the levying of the assessments or the undertaking of the Authorized Improvements, and specifically waives any and all rights of appeal, including any
right of appeal as provided in Ohio Revised Code Title 7, and specifically but without limitation, Ohio Revised Code Chapters 727 and 1710, as well as all such similar rights under the Constitution of the State of Ohio, and the Charter of the City of Dayton, Ohio. The Petitioner represents that it will not contest, in a judicial or administrative proceeding, the undertaking of the Authorized Improvements, the estimated assessments, the final assessments and any Special Assessments levied against the Property for the Authorized Improvements, or any other matters related to the foregoing.

The Petitioner acknowledges and understands that the City and the Corporation will be relying upon this Petition in taking actions pursuant to it and expending resources. This Petition therefore shall be irrevocable and shall be binding upon the Petitioner, any successors or assigns of the Petitioner, the Property, and any grantees, mortgagees, lessees, or transferees of the Property. The Petitioner acknowledges that it has had an opportunity to be represented by legal counsel in this undertaking and has knowingly waived the rights identified in this Petition.
IN WITNESS WHEREOF, the Petitioner has caused this Petition to be executed by its undersigned duly authorized signatory.

PETITIONER:

130 WEST 2nd STREET LLC

By: [Signature]

Name: Brian Lash

Title: Manager

Address for notices to Property Owner: 130 West 2nd Street, Suite 1700

Dayton, Ohio 45402

Attn: Ken Werling

STATE OF Massachusetts )
COUNTY OF Suffolk )

SS:

The foregoing Petition was acknowledged before me this 2nd day of July, 2021, by Brian Lash, the Manager of 130 West 2nd Street LLC, a Massachusetts limited liability company, on behalf of such company. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signee with regard to the notarial act certified to hereby.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

[SEAL]

Notary Public

James Murly

Exp: 2/10/2023
EXHIBIT A

DESCRIPTION OF PROPERTY

The real property subject to this Petition and owned by the Petitioner is located at the commonly used mailing address 130 West 2nd Street, Dayton, Ohio 45402, with Montgomery County Auditor Parcel ID No. R72 00203 8001 and the following legal description:

Real property in the City of Dayton, County of Montgomery, State of Ohio, and is described as follows:

PARCEL I:

The Lessee's interest as originally described in a Lease between James P. Kosta and James P. Kosta, Jr. and The First National Bank, Dayton dated December 15, 1970 and recorded on December 16, 1970, as Microfiche No. 70-523 A01 and Deed Book 2535 Page 417 relating to the following real estate:

Located in the City of Dayton, County of Montgomery, State of Ohio and being the Westerly Twenty-seven and 00/100 (27.00) feet of Lot Number 116 of the revised and consecutive numbers of lots on the plat of said City of Dayton, Ohio, and including part of a Four and 30/100 (4.30) foot strip of land acquired in Court Case No. 14730 of the Common Pleas Court Records as recorded in Book 52, Page 638 and recorded in Plat Book 10, Page 4, both of the records of Montgomery County, Ohio, and being more particularly described as follows:

Beginning at the Northwest corner of said Lot 116, said Northwest corner being the intersection of the South line of West Second Street with the original East line of Wilkinson Street;

Thence Eastwardly with the South line of said West Second Street and the North line of said Lot 116 for Twenty-seven and 00/100 (27.00) feet to a point in the North line of said Lot 116;

Thence Southwardly along a line parallel with the East line of said Lot 116 and making an interior angle with the last mentioned course of Eighty-nine degrees Fifty-five minutes Thirty seconds (89° 55' 30") for One Hundred Thirty-one and 80/100 (131.80) feet to a point, which point is the Northeast corner of land conveyed to Dayton Division Telco Federal Credit Union by deed recorded in Deed Book 1883, Page 713 of the Montgomery County, Ohio Records;

Thence Westwardly parallel to and Sixty-seven and 00/100 (67.00) feet Northwardly from the South line of said Lot No. 116 and making an interior angle with the last mentioned course of Ninety degrees Four minutes Thirty seconds (90° 04' 30") for Thirty-one and 30/100 (31.30) feet to the West line of said Four and 30/100 (4.30) foot strip of ground established by said Common Pleas Court Case No. 14730;

Thence Northwardly Four and 30/100 (4.30) feet Westwardly from and parallel to the West line of said Lot No. 116 and being the West line of said Four and 30/100 (4.30) foot strip of ground and making an interior angle with the last-mentioned course of Eighty-nine degrees Fifty-five minutes Thirty seconds (89° 55' 30") for One Hundred Thirty-one and 80/100 (131.80) feet to the Northwest corner of said four and 30/100 (4.30) foot strip of ground said corner being in the Westward extension of the North line of said Lot No. 116;

Thence Eastwardly with the North line of said Four and 30/100 (4.30) foot strip of ground and
the South line of said West Second Street and making an interior angle with the last mentioned course of Ninety degrees Four minutes Thirty seconds (90° 04' 30") for Four and 30/100 (4.30) feet to the point of beginning, being the same more or less.

PARCEL II:

The Lessee's interest as originally described in a Lease between Wolfe W. Marcus and The First National Bank, Dayton dated December 15, 1970 and recorded on December 16, 1970, as Microfiche No. 70-523 E06 and Deed Book 2535 Page 470 relating to the following real estate:

Located in the City of Dayton, County of Montgomery, State of Ohio and being the West One-half of Lot 115 of the revised and consecutive numbers of lots on the plat of said City of Dayton, and being more particularly described as follows:

Beginning on the South line of West Second Street at the Northwest corner of said Lot 115;

Thence Eastwardly with the South line of said West Second Street and the North line of said Lot 115, for Forty-nine and 60/100 (49.60) feet to the Northwest corner of the East One-half of said Lot 115;

Thence Southwardly with a line parallel with the West line of said Lot 115 and making an interior angle with the last mentioned course of Eighty-nine degrees Fifty-five minutes Thirty seconds (89° 55' 30") for One Hundred Ninety-eight and 80/100 (198.80) feet to the Southwest corner of the East One-half of said Lot 115

Thence Westwardly along the South line of said Lot 115, said South line being the North line of a Sixteen and 50/100 (16.50) foot alley, and making an interior angle with the last mentioned course of Ninety degrees Four minutes Thirty seconds (90° 04' 30") for Forty-nine and 60/100 (49.60) feet to the Southwest corner of said Lot 115;

Thence Northwardly with the West line of Lot 115 and making an included angle with the last-mentioned course of Eighty-nine degrees Fifty-five minutes Thirty seconds (89° 55' 30") for one Hundred Ninety-eight and 80/100 (198.80) feet to the point of beginning, said last mentioned course making an interior angle with the first mentioned course of ninety degrees four minutes thirty seconds (90° 04' 30") be the same more or less.

PARCEL III:

The Lessee's interest as originally described in a Lease between Harry S. Nikides and Mary H. Nikides and The First National Bank, Dayton dated December 15, 1970 and recorded on December 16, 1970, as Microfiche No. 70-523 C03 and Deed Book 2535 Page 443 relating to the following real estate:

Located in the City of Dayton, County of Montgomery, State of Ohio and being the Easterly 72.21 feet of Lot 116 of the revised and consecutive numbers of lots on the plat of said City of Dayton, Ohio, and being more particularly described as follows:

Beginning at the Northwest corner of said Lot 116, said Northwest corner being the intersection of the South line of West Second Street with the original East line of Wilkinson Street;

Thence Eastwardly with the South line of side West Second Street and the North line of said Lot 116 for Twenty-seven and 00/100 (27.00) feet to the true place of beginning for the tract herein described;
Thence continuing Eastwardly with the South line of said West Second Street and the North line of said Lot 116 for the Seventy-two and 21/100 (72.21) feet to the Northeast corner of said Lot 116;

Thence Southwardly along the East line of said Lot 116 and making an interior angle with the last-mentioned course of Eighty-nine degrees Fifty-five minutes Thirty seconds (89° 55' 30") for one Hundred Ninety-eight and 80/100 (198.80) feet to the Southeast corner of said Lot 116;

Thence Westwardly along the South line of said Lot 116, said South line being the North line of a Sixteen and 50/100 (16.50 foot alley), and making an interior angle with the last mentioned course of Ninety degrees Four minutes Thirty seconds (90° 04' 30") for a distance of Seventy-two and 21/100 (72.21) feet to a point;

Thence Northwardly along a line parallel to the Easterly line of said Lot 116, and making an interior angle with the last mentioned course of Eighty-nine degrees Fifty-five minutes Thirty seconds (89° 55' 30") for One Hundred Ninety-eight and 80/100 (198.80) feet to the true place of beginning for the tract herein described, be the same more or less.

PARCEL IV:

The Lessee's interest as originally described in a Lease between Louis S. Goldman, Trustee for Lynn Carol Goldman, Beth Alaine Goldman and Sue Ellen Goldman under Trust Agreement dated May 12, 1972 and First Dayton Development, an Ohio partnership consisting of Arthur Rubloff & Co., an Illinois corporation and Lake Michigan Properties, Inc. an Illinois corporation, as assignee of The First National Bank, Dayton, Ohio dated March 1, 1973 and recorded on May 17, 1973, as Microfiche No. 73-254 A01 (with short form in Deed Book 2320 Page 654) and Deed Book 2535 Page 471 relating to the following described real estate;

Located in the City of Dayton, County of Montgomery, State of Ohio and being parts of Lots 114 and 115 of the revised and consecutive numbers of lots on the plat of said City of Dayton, Ohio and being a tract of land described as follows:

Beginning at the Northwest corner of the East half of said Lot 115, said Northwest corner being in the South line of West Second Street; Thence Eastwardly with the North line of said Lot 115 and its Eastwardly extension said extension being the North line of said Lot 114 and said South line; for Sixty-seven and 33/100 (67.33) feet to a point in the line of the West face of the Hulman Building;

Thence Southwardly with the West face of said Hulman Building and making an interior angle with the last-mentioned course of Ninety degrees Seven minutes Twenty second (90° 07' 20") for One Hundred Ninety-eight and 80/100 (198.80) feet to a point in the South line of said Lot 114, said South line being the North line of a Sixteen and 5/10 (16.5) foot alley;

Thence Westwardly with the South line of said Lot 114 and its Westwardly extension and the North line of said 16.5 foot alley and making an interior angle with the last-mentioned course of Eighty-nine degrees Fifty-two minutes Forty seconds (89° 52' 40") for Sixty-eight and 01/100 (68.01) feet to the Southwest corner of the East half of said Lot 115;

Thence Northwardly with the West line of said East half of Lot 115 and making an interior angle with the last-mentioned course of Eighty-nine degrees Fifty-five minutes Thirty seconds (89° 55' 30") for One Hundred Ninety-eight and 80/100 (198.80) feet to the point of beginning, said last-mentioned course making an interior angle with the first-mentioned course of Ninety degrees.
Four minutes Thirty seconds (90° 04' 30'').

The Parcels I through IV of real estate individually described above are also collectively described as follows: Located in the City of Dayton, County of Montgomery, State of Ohio, and being a part of Lot Nos. 114 and 116, and part of Lot No. 115, said lot numbers being of the Revised and Consecutive Numbers of Lots as shown on the Plat of the City of Dayton, Ohio, and being a tract of land described as follows:

Beginning at the intersection of the East line of Wilkinson St. with the South line of W. Second St.;

Thence along the South line of said Second St. North Seventy-eight degrees Six minutes no seconds (78° 06' 00'') East for Two Hundred Twenty-two and 71/100 (222.71) feet to the Northwest corner of land conveyed to Cen Dan Office Co. by deed recorded in Microfiche No. 79-131D02 of the Deed Records of Montgomery County, Ohio;

Thence leaving the South line of said Second St. along the West line of said Cen Dan Land South Eleven degrees Forty-nine minutes Thirty seconds (11° 49' 30'') East for One Hundred Ninety-eight and 80/100 (198.80) feet to the Southwest corner thereof, said point also being on the North line of a 16.50 feet wide alley;

Thence along the North line of said alley South Seventy-eight degrees Six minutes no seconds (78° 06' 00'') West for One Hundred Ninety-one and 41/100 (191.41) feet to the Southeast corner of land conveyed to Robert Half by deed recorded in Microfiche No. 85-19A02 of the Deed Records of Montgomery County, Ohio;

Thence along the East line of said Robert Half land North Eleven degrees Forty-nine minutes Thirty seconds (11° 49' 30'') West for Sixty Seven and 00/100 (67.00) feet to the Northeast corner thereof;

Thence along the North line of said Robert Half land South Seventy-eight degrees Six minutes no seconds (78° 06' 00'') West for Thirty-one and 30/100 (31.30) feet to the Northwest corner thereof, said point also being on the East line of Wilkinson St.;

Thence along the East line of said Wilkinson St. North eleven degrees Forty-nine minutes Thirty seconds (11° 49' 30'') West for One Hundred Thirty-one and 80/100 (131.80) feet to the point of beginning.

That building and improvements as located on Parcels I-IV as shown above.

R72-00203-8001 and R72-00203-0001 and R72-00203-0002, 0003 and R72-00203-0004 and R72-00203-0005, 0006, 0007
EXHIBIT B

DAYTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT
PROGRAM PLAN

SUPPLEMENT TO PLAN FOR 130 W. 2ND STREET, DAYTON, OHIO PROJECT

As more fully provided by the Dayton Regional Special Improvement District Program Plan (the Program Plan), the Dayton Regional Energy Special Improvement District (the District) has undertaken the administration of a property assessed clean energy (PACE) program (the Program). The Program will provide financing secured by special assessments on real property for special energy improvement projects.

Through a Petition submitted in connection with this Supplemental Plan, 130 West 2nd Street LLC (the Property Owner), has requested and consented to certain special assessments by City of Dayton, Ohio (the City) in cooperation with the District with respect to certain real property owned by the Property Owner and located on Montgomery County Auditor Parcel ID Number R72 00203 8001, as more fully described on Exhibit 1 (the Property).

A proposed schedule of maximum special assessments to be assessed against the Property to pay the costs of the Authorized Improvements is attached hereto as Exhibit 2. The Property Owner hereby consents and agrees that the maximum schedule of special assessments represents the final hard costs of the Authorized Improvements described below, together with an assumed rate of interest on those costs in excess of the rate of interest expected to be available for financing the costs of the Authorized Improvements. The Property Owner hereby consents and agrees that the final rate of interest will be determined before the City levies the special assessments, and hereby authorizes the City to levy the special assessments in amounts which, in aggregate, are less than or equal to the aggregate amount of the special assessments shown on Exhibit 2, and are in the amounts necessary to pay the costs of financing the Authorized Improvements. The Property Owner hereby certifies, represents, and warrants to the City and the District that the actual hard costs of the Authorized Improvements have been ascertained. The special assessments shall be allocated among the parcels that make up the Property as follows:

<table>
<thead>
<tr>
<th>Parcel Number</th>
<th>Proportion of Total Special Assessments</th>
</tr>
</thead>
<tbody>
<tr>
<td>R72 00203 8001</td>
<td>100%</td>
</tr>
</tbody>
</table>

In the event that at any time following the date of this Supplement to the Plan the Property is combined or subdivided into permanent parcels in the records of the County Auditor of Montgomery County, Ohio then the Property Owner requested in the Petition that the Special Assessments be allocated among the resulting parcels in proportion to the acreage of the existing parcels that are contained in each resulting parcel that contains a portion of an existing parcel. The Property Owner further certified, represented, and warranted to the District and the City in the Petition that the portion of the Special Assessments allocated to each resulting parcel as described above are in proportion to, and do not exceed, the special benefits to be conferred on
the resulting parcel or resulting parcels by the Authorized Improvements identified in this Supplement to the Plan.

The Property Owner hereby certifies, represents, and warrants to the City and the District that the actual costs of the Authorized Improvements have been ascertained. The Authorized Improvements applicable to the Property will include the acquisition, construction, installation, improvement, and equipping of LED lighting, chillers, a cooling tower, energy efficient window tinting, BAS controls upgrades, an AHU system, and related improvements. As required by Ohio Revised Code Sections 1710.01(I) and (K), said Authorized Improvements are anticipated to reduce or support the reduction of energy consumption, allow for reduction in demand, or support the production of clean, renewable energy. A detailed description of the Authorized Improvements is attached to this Supplemental Plan as Exhibit 3. The Property Owner hereby acknowledges and agrees that the special benefit to be provided to the Property under this Supplemental Plan is the consummation of financing to pay the costs of the Authorized Improvements, which shall be conferred immediately upon the consummation of the financing, and that the benefits are in proportion to and do not exceed the amount of the special assessments to be levied to pay the costs of the financing.

The Property Owner will cause this Supplemental Plan to be promptly filed with the Board of Directors of the District and with the Clerk of the City Commission of the City of Dayton, Ohio.

The undersigned owner of real property to be located within the District acknowledges that the District and the City are subject to Ohio public records laws, including Ohio Revised Code Section 149.43 et seq. The undersigned property owner agrees to the disclosure of certain property owner information by the District or the City to the extent required by law.

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BY EXECUTING THIS SUPPLEMENTAL PLAN, THE PROPERTY OWNER IDENTIFIED BELOW HEREBY AUTHORIZES AND CONSENTS TO THIS SUPPLEMENTAL PLAN, AND ALL DISTRICT DOCUMENTS (AS DEFINED IN THE PLAN) AND AGREES TO PERFORM THE OBLIGATIONS OF THE PROPERTY OWNER CONTAINED IN THIS SUPPLEMENTAL PLAN.

Date: _____________________________

Property Owner:

130 WEST 2nd STREET LLC

By: ________________________________

Name: ______________________________

Title: ________________________________

Address for notices to Property Owner: 130 West 2nd Street, Suite 1700

Dayton, Ohio 45402

Attn: Ken Werling

[Property Owner Consent to Supplemental Plan]
EXHIBIT 1

DESCRIPTION OF PROPERTY

The real property subject to this Supplemental Plan and owned by 130 West 2nd Street LLC is located at the commonly used mailing address 130 West 2nd Street, Dayton, Ohio 45402, with Montgomery County Auditor Parcel ID No. R72 00203 8001 and the following legal description:

Real property in the City of Dayton, County of Montgomery, State of Ohio, and is described as follows:

PARCEL I:

The Lessee's interest as originally described in a Lease between James P. Kosta and James P. Kosta, Jr. and The First National Bank, Dayton dated December 15, 1970 and recorded on December 16, 1970, as Microfiche No. 70-523 A01 and Deed Book 2535 Page 417 relating to the following real estate:

Located in the City of Dayton, County of Montgomery, State of Ohio and being the Westerly Twenty-seven and 00/100 (27.00) feet of Lot Number 116 of the revised and consecutive numbers of lots on the plat of said City of Dayton, Ohio, and including part of a Four and 30/100 (4.30) foot strip of land acquired in Court Case No. 14730 of the Common Pleas Court Records as recorded in Book 52, Page 638 and recorded in Plat Book 10, Page 4, both of the records of Montgomery County, Ohio, and being more particularly described as follows:

Beginning at the Northwest corner of said Lot 116, said Northwest corner being the intersection of the South line of West Second Street with the original East line of Wilkinson Street;

Thence Eastwardly with the South line of said West Second Street and the North line of said Lot 116 for Twenty-seven and 00/100 (27.00) feet to a point in the North line of said Lot 116;

Thence Southwardly along a line parallel with the East line of said Lot 116 and making an interior angle with the last mentioned course of Eighty-nine degrees Fifty-five minutes Thirty seconds (89° 55' 30") for One Hundred Thirty-one and 80/100 (131.80) feet to a point, which point is the Northeast corner of land conveyed to Dayton Division Telco Federal Credit Union by deed recorded in Deed Book 1883, Page 713 of the Montgomery County, Ohio Records;

Thence Westwardly parallel to and Sixty-seven and 00/100 (67.00) feet Northwardly from the South line of said Lot No. 116 and making an interior angle with the last mentioned course of Ninety degrees Four minutes Thirty seconds (90° 04' 30") for Thirty-one and 30/100 (31.30) feet to the West line of said Four and 30/100 (4.30) foot strip of ground established by said Common Pleas Court Case No. 14730;

Thence Northwardly Four and 30/100 (4.30) feet Westwardly from and parallel to the West line of said Lot No. 116 and being the West line of said Four and 30/100 (4.30) foot strip of ground and making an interior angle with the last-mentioned course of Eighty-nine degrees Fifty-five minutes Thirty seconds (89° 55' 30") for One Hundred Thirty-one and 80/100 (131.80) feet to the Northwest corner of said Four and 30/100 (4.30) foot strip of ground said corner being in the Westward extension of the North line of said Lot No. 116;

Thence Eastwardly with the North line of said Four and 30/100 (4.30) foot strip of ground and
the South line of said West Second Street and making an interior angle with the last mentioned course of Ninety degrees Four minutes Thirty seconds (90° 04' 30") for Four and 30/100 (4.30) feet to the point of beginning, being the same more or less.

PARCEL II:

The Lessee's interest as originally described in a Lease between Wolfe W. Marcus and The First National Bank, Dayton dated December 15, 1970 and recorded on December 16, 1970, as Microfiche No. 70-523 E06 and Deed Book 2535 Page 470 relating to the following real estate:

Located in the City of Dayton, County of Montgomery, State of Ohio and being the West One-half of Lot 115 of the revised and consecutive numbers of lots on the plat of said City of Dayton, and being more particularly described as follows:

Beginning on the South line of West Second Street at the Northwest corner of said Lot 115;

Thence Eastwardly with the South line of said West Second Street and the North line of said Lot 115, for Forty-nine and 60/100 (49.60) feet to the Northwest corner of the East One-half of said Lot 115;

Thence Southwardly with a line parallel with the West line of said Lot 115 and making an interior angle with the last mentioned course of Eighty-nine degrees Fifty-five minutes Thirty seconds (89° 55' 30") for One Hundred Ninety-eight and 80/100 (198.80) feet to the Southwest corner of the East One-half of said Lot 115;

Thence Westwardly along the South line of said Lot 115, said South line being the North line of a Sixteen and 50/100 (16.50) foot alley, and making an interior angle with the last mentioned course of Ninety degrees Four minutes Thirty seconds (90° 04' 30") for Forty-nine and 60/100 (49.60) feet to the Southwest corner of said Lot 115;

Thence Northwardly with the West line of Lot 115 and making an inclined angle with the last mentioned course of Eighty-nine degrees Fifty-five minutes Thirty seconds (89° 55' 30") for one Hundred Ninety-eight and 80/100 (198.80) feet to the point of beginning, said last mentioned course making an interior angle with the first mentioned course of Ninety degrees four minutes Thirty seconds (90° 04' 30") be the same more or less.

PARCEL III:

The Lessee's interest as originally described in a Lease between Harry S. Nikides and Mary H. Nikides and The First National Bank, Dayton dated December 15, 1970 and recorded on December 16, 1970, as Microfiche No. 70-523 C03 and Deed Book 2535 Page 443 relating to the following real estate:

Located in the City of Dayton, County of Montgomery, State of Ohio and being the Easterly 72.21 feet of Lot 116 of the revised and consecutive numbers of lots on the plat of said City of Dayton, Ohio, and being more particularly described as follows:

Beginning at the Northwest corner of said Lot 116, said Northwest corner being the Intersection of the South line of West Second Street with the original East line of Wilkinson Street;

Thence Eastwardly with the South line of side West Second Street and the North line of said Lot 116 for Twenty-seven and 00/100 (27.00) feet to the true place of beginning for the tract herein described;
Thence continuing Eastwardly with the South line of said West Second Street and the North line of said Lot 116 for the Seventy-two and 21/100 (72.21) feet to the Northeast corner of said Lot 116;

Thence Southwardly along the East line of said Lot 116 and making an interior angle with the last-mentioned course of Eighty-nine degrees Fifty-five minutes Thirty seconds (89° 55' 30") for one Hundred Ninety-eight and 80/100 (198.80) feet to the Southeast corner of said Lot 116;

Thence Westwardly along the South line of said Lot 116, said South line being the North line of a Sixteen and 50/100 (16.50 foot alley), and making an interior angle with the last mentioned course of Ninety degrees Four minutes Thirty seconds (90° 04' 30") for a distance of Seventy-two and 21/100 (72.21) feet to a point;

Thence Northwardly along a line parallel to the Easterly line of said Lot 116, and making an interior angle with the last mentioned course of Eighty-nine degrees Fifty-five minutes Thirty seconds (89° 55' 30") for One Hundred Ninety-eight and 80/100 (198.80) feet to the true place of beginning for the tract herein described, be the same more or less.

PARCEL IV:

The Lessee's interest as originally described in a Lease between Louis S. Goldman, Trustee for Lynn Carol Goldman, Beth Alaine Goldman and Sue Ellen Goldman under Trust Agreement dated May 12, 1972 and First Dayton Development, an Ohio partnership consisting of Arthur Rubloff & Co., an Illinois corporation and Lake Michigan Properties, Inc. an Illinois corporation, as assignee of The First National Bank, Dayton, Ohio dated March 1, 1973 and recorded on May 17, 1973, as Microfiche No. 73-254 A01 (with short form in Deed Book 2320 Page 654) and Deed Book 2535 Page 471 relating to the following described real estate;

Located in the City of Dayton, County of Montgomery, State of Ohio and being parts of Lots 114 and 115 of the revised and consecutive numbers of lots on the plat of said City of Dayton, Ohio and being a tract of land described as follows:

Beginning at the Northwest corner of the East half of said Lot 115, said Northwest corner being in the South line of West Second Street; Thence Eastwardly with the North line of said Lot 115 and its Eastwardly extension said extension being the North line of said Lot 114 and said South line; for Sixty-seven and 33/100 (67.33) feet to a point in the line of the West face of the Hulman Building;

Thence Southwardly with the West face of said Hulman Building and making an interior angle with the last-mentioned course of Ninety degrees Seven minutes Twenty second (90° 07' 20") for One Hundred Ninety-eight and 80/100 (198.80) feet to a point in the South line of said Lot 114, said South line being the North line of a Sixteen and 5/10 (16.5) foot alley;

Thence Westwardly with the South line of said Lot 114 and its Westwardly extension and the North line of said 16.5 foot alley and making an interior angle with the last-mentioned course of Eighty-nine degrees Fifty-two minutes Forty seconds (89° 52' 40") for Sixty-eight and 01/100 (68.01) feet to the Southwest corner of the East half of said Lot 115;

Thence Northwardly with the West line of said East half of Lot 115 and making an interior angle with the last-mentioned course of Eighty-nine degrees Fifty-five minutes Thirty seconds (89° 55' 30") for One Hundred Ninety-eight and 80/100 (198.80) feet to the point of beginning, said last-mentioned course making an interior angle with the first-mentioned course of Ninety degrees.
Four minutes Thirty seconds (90° 04' 30")

The Parcels I through IV of real estate individually described above are also collectively described as follows: Located in the City of Dayton, County of Montgomery, State of Ohio, and being a part of Lot Nos. 114 and 116, and part of Lot No. 115, said lot numbers being of the Revised and Consecutive Numbers of Lots as shown on the Plat of the City of Dayton, Ohio, and being a tract of land described as follows:

Beginning at the intersection of the East line of Wilkinson St. with the South line of W. Second St.;

Thence along the South line of said Second St. North Seventy-eight degrees Six minutes no seconds (78° 06' 00") East for Two Hundred Twenty-two and 71/100 (222.71) feet to the Northwest corner of land conveyed to Cen Dan Office Co. by deed recorded in Microfiche No. 79-131D02 of the Deed Records of Montgomery County, Ohio;

Thence leaving the South line of said Second St. along the West line of said Cen Dan Land South Eleven degrees Forty-nine minutes Thirty seconds (11° 49' 30") East for One Hundred Ninety-eight and 80/100 (198.80) feet to the Southwest corner thereof, said point also being on the North line of a 16.50 feet wide alley;

Thence along the North line of said alley South Seventy-eight degrees Six minutes no seconds (78° 06' 00") West for One Hundred Ninety-one and 41/100 (191.41) feet to the Southeast corner of land conveyed to Robert Half by deed recorded in Microfiche No. 85-19A02 of the Deed Records of Montgomery County, Ohio;

Thence along the East line of said Robert Half land North Eleven degrees Forty-nine minutes Thirty seconds (11° 49' 30") West for Sixty Seven and 00/100 (67.00) feet to the Northeast corner thereof;

Thence along the North line of said Robert Half land South Seventy-eight degrees Six minutes no seconds (78° 06' 00") West for Thirty-one and 30/100 (31.30) feet to the Northwest corner thereof, said point also being on the East line of Wilkinson St.;

Thence along the East line of said Wilkinson St. North eleven degrees Forty-nine minutes Thirty seconds (11° 49' 30") West for One Hundred Thirty-one and 80/100 (131.80) feet to the point of beginning.

That building and improvements as located on Parcels I-IV as shown above.

R72-00203-0001 and R72-00203-00001 and R72-00203-0002, 0003 and R72-00203-0004 and R72-00203-0005, 0006, 0007
EXHIBIT 2

SCHEDULE OF SPECIAL ASSESSMENTS

The Property will be subject to special assessments for the Authorized Improvements in accordance with Ohio Revised Code Chapter 1710.

Total assessment costs: $5,057,325.00
Estimated semi-annual special assessments for 19 years: $133,087.50
Number of semi-annual assessments: 38
First semiannual installment due (approximately): February 15, 2022

The schedule of Special Assessments for the Authorized Improvements is as follows:

<table>
<thead>
<tr>
<th>Special Assessment Date *</th>
<th>Total Special Assessment Amount **</th>
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</thead>
<tbody>
<tr>
<td>February 15, 2022</td>
<td>$133,087.50</td>
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<td>July 15, 2022</td>
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<tr>
<td>July 15, 2040</td>
<td>133,087.50</td>
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</tbody>
</table>

* Pursuant to Ohio Revised Code Chapter 323, the Special Assessment Payment Dates identified in this Exhibit 2 are subject to adjustment by the Montgomery County Auditor under certain conditions.
** Pursuant to Ohio Revised Code Section 727.36, the Montgomery County Auditor may charge and collect a fee in addition to the amounts listed in the above schedule.
EXHIBIT 3

Description of Authorized Improvements

The Authorized Improvements are expected to consist of the following energy efficiency elements, the total costs of which are $2,491,072.00.

- LED lighting
- Chillers
- Cooling tower
- Energy efficient window tinting
- BAS controls upgrade
- AHU system
EXHIBIT C

DAYTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT PROGRAM PLAN

[See Attached]
DAYTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT
PROGRAM PLAN

The Dayton Regional Energy Special Improvement District (the “District”) will administer a property assessed clean energy (“PACE”) program (the “Program”). The Program will provide financing secured by special assessments on real property for special energy improvement projects. Pursuant to Section 1710.02(F) of the Ohio Revised Code, Tower Partners, LLC, as the initial owner of real property within the District (the “Owner”) authorizes, consents to, and submits to the City of Dayton, Ohio for approval this plan for the Program (as the same may be amended and supplemented from time to time as provided herein, the “Plan”) to provide for the Program’s administration and to set forth the terms and conditions of participation in the Program.

The District is established pursuant to the special energy improvement district provisions of Chapter 1710 of the Ohio Revised Code. This Plan refers to Chapter 1710 and any and all future amendments to the special energy improvement district provisions of Chapter 1710 as the “Act.” Any specific statutory reference contained in this Plan shall also refer to any succeeding or amending statutory provision.

Participation in the District’s Program is limited to property owners who have agreed to add their property to the District and who otherwise meet the Program’s terms and conditions. These terms and conditions are addressed in this Plan, and include, without limitation, an application, a petition, a schedule of assessments to be made on included property (“Assessment Schedule”), and the governing documents forming the District. The District’s governing documents include its Articles of Incorporation, Code of Regulations, resolutions duly adopted by the board of directors of the District, and the applicable resolutions and ordinances of the participating political subdivision where the real property is located (collectively, the “Governing Documents”). As a condition to participation in the District and the Program, each property owner must review and agree to the Governing Documents and further must review, agree to, and execute this Plan, an application, a petition, and an Assessment Schedule. The Governing Documents, this Plan, the applications, the petitions, and the Assessment Schedules are referred to herein collectively as the “District Documents.” In addition to the District Documents, property owners may be required to agree to and execute an agreement to impose special assessments as a condition to receiving financing of special energy improvement projects from the District.

The District Documents establish the terms and conditions of the Program. The Program terms and conditions may be amended from time to time as described in Part X of this Plan. By agreeing to and executing the District Documents, each property owner consents to the terms and conditions of all District Documents.
I. Purpose of the Program

The Program is intended to assist property owners, whether private or public, who own real property within participating political subdivisions to obtain financing for special energy improvement projects, as that term is defined in the Act (the “Authorized Improvements”). Obligations, including but not limited to special assessment reimbursement agreements, special assessment revenue bonds and revenue notes, loan obligations or other evidences of indebtedness, and nonprofit corporation securities (collectively, the “Program Obligations”) may be issued by the District or on behalf of the District by a third party. Program Obligations or the proceeds from the sale of the Program Obligations may be used to finance Authorized Improvements that benefit properties within the District and any costs incurred by the District in connection with the issuance of Program Obligations. Participating political subdivisions shall levy special assessments on real property included in the District, the payment of which may pay the Program Obligations and the costs of administering the Program. Special assessment payments levied to finance Authorized Improvements will be due and payable by property owners at the same time real property taxes are due; provided, however, that certain Program Obligations may require special assessments to be due and payable by property owners only to the extent that such property owners fail to pay an obligation of the property owner secured by special assessments, such as a loan, in which case special assessments will only be due and payable by property owners if actually levied.

Nothing in this Plan shall be construed as a representation on the part of any participating political subdivision, the District, the board of directors of the District, or any of the directors, officers, agents, members, independent contractors, or employees of the District or board of directors that the Program is the best financing option available. Property owners are advised to conduct independent research to determine the best course of action.

II. The District’s Governance, Program Administrator, and Conduit Financing Entity

The District shall be governed, pursuant to the District Documents and the Act, by the Board of Directors (“Board”) of the Dayton Regional Energy Special Improvement District, Inc., a nonprofit corporation organized under the laws of the State of Ohio (the “Corporation”) to govern the District.

Pursuant to the Act, other Ohio law, and the Code of Regulations of the Corporation, the Board may from time to time, and under such conditions as the Board determines, delegate any or all of the authority contained in this Plan to its sub-committee or to an agent, independent contractor, or employee of the District or the Board.

This Plan specifically contemplates that, as authorized in the Act, the District may contract for the services of a “Program Administrator” and for the services of a “Conduit Financing Entity.”

The Program Administrator may provide, without limitation, the following services: (i) pursuant to Part III of this Plan, developing and administering eligibility guidelines, creating and
administering an application, setting criteria and developing a list of pre-approved contractors, procuring resources or cooperating with property owners to procure resources, and administering referrals; (ii) pursuant to Part IV of this Plan, marketing, program design, cooperating with property owners to implement Authorized Improvements, and other administrative services; and (iii) establishing and administering a revolving loan facility providing financing for certain special energy improvement projects.

The Conduit Financing Entity shall be the Dayton-Montgomery County Port Authority. The Conduit Financing Entity may provide, without limitation, the following services: (i) pursuant to Part III of this Plan, financing Authorized Improvements and cooperating with property owners to obtain financing for Authorized Improvements; (ii) pursuant to Part IV of this Plan, tracking and administering Program Obligations, administering special assessments, budgeting, and conducting or overseeing the audit process; and (iii) assisting with marketing efforts relating to the District.

III. Program Eligibility, Approvals, Financing, and Procurement

The Board is hereby authorized to create, administer, amend, and abolish a process by which property owners join the Program. The process by which property owners join the Program may include, without limitation, the following requirements:

(A) **Eligibility.** The Board is hereby authorized to create, administer, amend, and abolish eligibility requirements for the Program. The Board is further authorized to determine, in each individual case, whether property is eligible for participation in the Program.

To be eligible for participation in the Program, each property owner must file a petition with the Board requesting to add its property to the District and requesting the levy of special assessments to be used to pay or secure Program Obligations issued or used to finance Authorized Improvements. Each parcel of real property added to the District must have at least one Authorized Improvement. The petition to add property to the District shall be considered by the District in accordance with this Plan and the other District Documents. If the District approves the petition, it shall submit the petition to the executive officer and legislative body of the participating political subdivision in which the real property is located. A property owner may file more than one petition and may amend or withdraw any petition filed at any time before the petition is approved by the legislative body of the participating political subdivision in which the real property is located. Petitions shall conform to the requirements of Ohio Revised Code Chapter 1710 and any requirements of the Board.

To be eligible for participation in the Program, each property owner must agree to be bound by the terms of this Plan. The Plan for the District may be amended and supplemented from time to time in accordance with its terms, including, specifically, by supplements to the Plan which identify additional Authorized Improvements within the District to be subject to the Plan or add property to the
District and subject such additional property to the Plan. To be eligible for participation in the Program, each property owner, with the exception of the Owner, must file a supplement to this Plan (the “Supplemental Plan”) with the Board and the clerk of the legislative body of the participating political subdivision in which the real property is located identifying the Authorized Improvements to be undertaken as part of the Plan applicable to real property within the District or to be added to the district. Supplemental Plans shall include such other information as may be required by the Board. Supplemental Plans shall conform to the requirements of Ohio Revised Code Chapter 1710 and any requirements of the Board.

(B) **Application.** The Board is hereby authorized to create, administer, amend, and abolish an application, including a pre-application, for participation in the Program. The Board further may set the terms and conditions for the application’s use and evaluation.

(C) **Contractors.** The Board is hereby authorized to require property owners to complete Authorized Improvements through the work of pre-approved contractors. The Board is further authorized to create criteria for the approval of contractors and to determine which contractors meet the criteria and are approved. The Board may communicate which contractors have been pre-approved to property owners by any means the Board deems appropriate, and the Board shall determine whether property owners comply with its pre-approved contractor’s requirements.

**Nothing in this Plan or the District Documents shall be construed to be a recommendation or guarantee of reliability of pre-approved contractors by any participating political subdivision, the District, the Board, or any of the directors, officers, agents, members, independent contractors, or employees of the District or Board.**

(D) **Procurement and Referrals.** The Board is hereby authorized to procure supplies, services, contracts, financing, and other resources related to the completion of Authorized Improvements. The Board is further authorized to refer property owners to suppliers, service providers, contractors, lenders, and the providers of other resources related to the completion of Authorized Improvements and the administration of District activities.

Pursuant to the Act, the Board shall adopt written rules prescribing competitive bidding procedures for the District and for Authorized Improvements undertaken by the District on behalf of property owners, which competitive bidding procedures may differ from competitive bidding procedures applicable to the City or the procedures in Chapter 735 of the Ohio Revised Code and may specify conditions under which competitive bidding is not required. Except as specified in the Act and in this Plan, the District Documents shall not be construed to
eliminate or alter the competitive bidding procedures applicable to the City as a participating political subdivision.

(E) **Financing.** The Board is hereby authorized to finance Authorized Improvements through the use or issuance of Program Obligations. The Board may hire such legal and financial professionals as may be required to successfully finance Authorized Improvements through the use or issuance of Program Obligations.

### IV. Program Services

The Board is hereby authorized to provide ongoing services to the District, its property, and the property owners. All services provided under this Plan shall be deemed to be services provided in furtherance of Authorized Improvements provided under this Plan. Such services, without limitation, may include the following:

(A) **Program Design.** The Board is hereby authorized to design comprehensive services to establish and maintain the Program’s legal and programmatic framework.

(B) **Program Administration.** The Board is hereby authorized to educate the public on the Program and its purposes, market the program to the public, process applications, verify aspects of the Authorized Improvements, assure the Program’s overall quality and the quality of Authorized Improvements, serve customers, and assist property owners in the origination and closing processes.

(C) **Marketing.** The Board is hereby authorized to market the Program and promote the District’s image through means such as developing literature and brochures, conducting public relations, collecting data, managing information, cooperating with members, creating electronic and print marketing materials, and holding special events.

(D) **Authorized Improvement Implementation.** The Board is hereby authorized to cooperate with property owners for the implementation of Authorized Improvements, including cooperating with property owners for the addition of property to the District and the approval of petitions and Supplemental Plans by participating political subdivisions and the Board.

(E) **Tracking and Administration of Program Obligations.** The Board is hereby authorized to create, administer, amend, and abolish procedures for the tracking and administration of Program Obligations issued or used to finance Authorized Improvements. Without limitation, the administration of special assessments may include reporting delinquent special assessments, following-up with delinquent property owners, and coordinating with delinquent property owners. The Board may hire such professionals as may be required to successfully track and administer Program Obligations.
(F) **Administering Special Assessments.** The Board is hereby authorized to create, administer, amend, and abolish procedures for the administration of special assessments levied pursuant to the District Documents. Without limitation, the administration of special assessments may include calculating the amount of special assessments, preparing certifications of special assessments for the county auditor, billing the special assessments, and considering property owners’ claims regarding the calculation or billing of special assessments. The Board may hire such professionals as may be required to successfully administer special assessments.

(G) **Budgeting.** The Board shall provide for the production of an annual report describing the District’s budget, services delivered, revenues received, expenditures made, and other information about the District’s activities. The annual report shall be made available to the Board and to the District’s members. The Board may hire such professionals as may be required to successfully account for all District finances.

(H) **Auditing.** The Board is hereby authorized to provide for an audit of the District in such manner as the Board deems appropriate. The Board may hire such professionals as may be required to successfully audit the District.

(I) **Other Services.** The Board is hereby authorized to provide any other services authorized by the Act.

V. **Fees**

**Program Costs.** The Board is hereby authorized to charge to property owners, as costs of administering the Program, any costs permitted by the Act. Such costs may include, without limitation, the following:

(A) The cost of creating and operating the District, including creating and operating the Corporation, hiring employees and professional services, contracting for insurance, and purchasing or leasing office space or office equipment;

(B) The cost of planning, designing, and implementing Authorized Improvements or services under this Plan or any Supplemental Plan, including payment of architectural, engineering, legal, appraisal, insurance, consulting, energy auditing, and planning fees and expenses, and, for services under this Plan or any Supplemental Plan, the management, protection, and maintenance costs of public or private facilities;

(C) Any court costs incurred by the District in implementing this Plan or any Supplemental Plans;
(D) Any damages resulting from implementing this Plan or any Supplemental Plan;

(E) The costs of issuing, monitoring, paying interest on, and redeeming or refunding Program Obligations issued or used to finance Authorized Improvements or services under this Plan or any Supplemental Plan; and

(F) The costs associated with the sale, lease, lease with an option to purchase, conveyance of other interests in, or other contracts for the acquisition, construction, maintenance, repair, furnishing, equipping, operation, or improvement of the District’s territory, or between the District and any owner of property in the District on which an Authorized Improvement has been acquired, installed, equipped, or improved.

Pursuant to the Act, such Program costs may be included in the special assessments levied on real property within the District.

Application Fee. The Board is hereby authorized to set and charge an application fee for Program services provided by the District. The application fee may be non-refundable. The application fee may be credited to the cost of Authorized Improvements if the application is approved and an Authorized Improvement is made to the property for which application was made.

VI. Energy Efficiency and Renewable Energy Regulations and Requirements

Energy Efficiency Reporting Requirements. Ohio Revised Code Section 1710.061 requires the Board to submit a quarterly report to each electric distribution utility (“EDU”) with a District Authorized Improvement within the EDU’s certified territory. The quarterly report submitted to the EDU must include the total number and a description of each new and ongoing District Authorized Improvement that produces energy efficiency savings or reduction in demand and other additional information that the EDU needs to obtain credit under Ohio Revised Code Section 4928.66 for energy efficiency savings or reduction in demand from such projects. The Board is hereby authorized to submit quarterly reports due required under Ohio Revised Code Section 1710.061. Property owners shall comply with Board requirements for information gathering and reporting to ensure Board compliance with Ohio Revised Code Section 1710.061.

Energy Efficiency Credits. The Board is hereby authorized to adopt rules governing energy efficiency credits associated with Authorized Improvements financed with Program Obligations or the proceeds of Program Obligations. Property owners shall comply with Board requirements in furtherance of energy efficiency credit programs.

Renewable Energy Credits. The Board is hereby authorized to adopt rules governing renewable energy credits associated with Authorized Improvements financed with Program Obligations or the proceeds of Program Obligations. Property owners shall comply with Board requirements in furtherance of renewable energy credit programs.
Monetizing Other Energy Efficiency or Renewable Energy Attributes. The Board is hereby authorized to adopt rules governing the monetization of any energy efficiency or renewable energy attributes of any Authorized Improvements financed with Program Obligations or the proceeds of Program Obligations. Property owners shall comply with Board requirements in furtherance of the monetization of such attributes.

VII. Statutory Requirements

As provided in the District Documents:

(A) Additional territory may be added to the District in accordance with the Act and the rules established by the Board pursuant to Part III of this Plan.

(B) The District Documents may be amended or supplemented in accordance with their terms.

(C) As described in this Plan, the Board is authorized to implement and amend this Plan, any Supplemental Plan, and any other plans for Authorized Improvements, public improvements, and public services, all in accordance with the Act.

(D) The public improvements to be provided by the District are the Authorized Improvements identified in the petition and Supplemental Plan. The area where the Authorized Improvements will be undertaken will be the area identified in each petition requesting formation of the District or in any petition requesting addition of real property to the District. The method of assessment shall be in proportion to the special benefits received by each property owner within the District as a result of Authorized Improvements.

(E) For the purpose of levying an assessment, the Board may combine levies for Authorized Improvements and public services into one special assessment to be levied against each specially benefited property in the District.

VIII. Changes in State and Federal Law

The ability to issue or use Program Obligations to finance Authorized Improvements is subject to a variety of state and federal laws. If these laws change after property owners have applied to the District for financing, the District may be unable to fulfill its obligations under this Plan. The District shall not be obligated to implement any provision of this Plan which is contrary to state or federal law. The District shall not be liable for any inability to finance Authorized Improvements as a result of state and federal law or any changes in state and federal law which reduce or eliminate the effectiveness of financing Authorized Improvements through the District’s Program.
IX. Releases and Indemnification

The District has been created with the approval of the City of Dayton, Ohio, as a participating political subdivision, for the purposes of implementing this Plan and administering the Program. The District and any participating political subdivision shall be neither responsible nor liable for the installation, operation, financing, refinancing, or maintenance of Authorized Improvements. Property owners will be solely responsible for the installation, operation, financing, refinancing, and maintenance of the Authorized Improvements. Participation in the Program does not in any way obligate the District or any participating political subdivision to ensure the viability of Authorized Improvements. Owners of assessed real property must pay the special assessments regardless of whether the Authorized Improvements are properly installed or operate as expected.

By agreeing to and executing this Plan, each owner of real property included in the District (other than any political subdivision that owns real property included in the District) agrees to release, defend, indemnify, and hold harmless the District and the participating political subdivisions, including their directors, officers, members, agents, independent contractors, and employees, from and against any claims, actions, demands, costs, damages or lawsuits, arising out of or connected with participation in the Program. Any political subdivision that owns real property included in the District agrees to release and hold harmless the District and the participating political subdivisions, including their directors, officers, members, agents, independent contractors, and employees, from and against any claims, actions, demands, costs, damages or lawsuits, arising out of or connected with the political subdivision’s participation in the Program in its capacity as a property owner.

X. Changes in the Program Terms; Severability

Participation in the Program is subject to the District Documents’ terms and conditions in effect from time to time during participation. The District reserves the right to change this Plan and the terms and conditions of the District Documents at any time without notice. No such change will affect a property owner’s obligation to pay special assessments as set forth in the District Documents.

If any provision of the District Documents is determined to be unlawful, void, or for any reason unenforceable, that provision shall be severed from these District Documents and shall not affect the validity and enforceability of any remaining provisions.

XI. Disclosure of Property Owner Information

The District and any participating political subdivision may disclose information of the District to any agent of the District or to third parties when such disclosure is essential either to the conduct of the District’s business or to provide services to property owners, including but not limited to where such disclosure is necessary to (i) comply with the law (ii) enable the District
and participating political subdivisions and their agents to provide services or otherwise perform
their duties, and (iii) obtain and provide credit reporting information. In order to receive funding
for the Program and to enable communication regarding the State of Ohio’s energy programs,
property owners’ names and contact information may be disclosed to their current electric
utilities. Property owners’ names, contact information, and utility usage data further may be
disclosed to the District and its agents for the purpose of conducting surveys and evaluating the
Program. The District shall not disclose personal information to third parties for telemarketing,
e-mail, or direct mail solicitation unless required to by law or court order.

Each owner of real property located within the District acknowledges that the District is
subject to Ohio public records laws, including Ohio Revised Code Section 149.43 et seq.
Each property owner that executes this Plan agrees to the disclosure of certain property
owner information as stated in this Part.

XII. Initial Authorized Improvements

The Owner has requested and consented to certain special assessments by the District with
respect to certain real property owned by the Owner and located at 40 North Main Street,
Dayton, Ohio, 45423 (the “Property”), which Property is described more specifically in Exhibit
A attached to this Plan. A schedule of special assessments to be levied on the Property to pay the
costs of the Authorized Improvements is attached to this Plan in Exhibit B.

The Authorized Improvements applicable to the Property will include: the replacement of
lighting fixtures to increase energy efficiency, the installation of variable frequency drives on air-
handling-unit motors and dampers, the refurbishment of building automation controls, the
installation of a new condensing boiler to gain efficiency over existing non-condensing boilers,
the replacement of outdoor air intake controls, and the improvement of the energy efficiency of a
water storage tank. As required by Ohio Revised Code Section 1710.01(K), said Authorized
Improvements are anticipated to reduce or support the reduction of energy consumption, allow
for reduction in demand, or support the production of clean, renewable energy. A detailed
description of the Authorized Improvements is attached to this Plan in Exhibit B.
BY EXECUTING THIS PLAN, THE PROPERTY OWNER IDENTIFIED BELOW HEREBY AUTHORIZES AND CONSENTS TO THIS PLAN AND AGREES TO PERFORM THE OBLIGATIONS OF THE PROPERTY OWNER CONTAINED IN THIS PLAN.

Date: 5-18-15

Property Owner:
TOWER PARTNERS, LLC

By: Jerry Brunswick, Director of the Dayton-Montgomery County Port Authority, the Attorney-in-Fact of Tower Partners, LLC

Address for notices to Property Owner: Tower Partners, LLC
80 Skyline Drive, Suite 303
Plainview, New York 11803

[Property Owner Consent to Plan]
PLAN—EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

The Property subject to this Agreement is commonly known as Kettering Tower, located at the commonly used address 40 North Main Street, Dayton, Ohio, 45423, with Montgomery County Auditor Parcel ID Nos. R72-00208-0006, R72-00208-0011, R72-00208-0014, and R72-00208-0018 and with the following legal description:

Situated in the County of Montgomery, State of Ohio and in the City of Dayton and being part of Lots Numbered One Hundred Five (105), One Hundred Six (106), One Hundred Seven (107), and One Hundred Eight (108) of the consecutive numbers of Lots on the revised Plat of the City of Dayton, and more particularly described as follows:

Parcel No. 1 Located in the City of Dayton, County of Montgomery, State of Ohio and being part of Lot Nos. 106 and 107, of the40 North Second Street, and the North Line of said Lot No. 107 and its eastward extension, said extension being the North Line of said Lot No. 106 and making an interior angle with the West line of said Lot No. 107, of ninety degrees four minutes thirty seconds (90° 04' 30") for two hundred ninety-seven and 60/100 (297.60) feet to the Northwest corner of said Lot No. 106, thence southwesterly with the East line of said Lot No. 106 and making an interior angle with the last mentioned course of eighty-nine degrees fifty-five minutes thirty seconds (89° 55' 30") for one hundred eighty-one and 40/100 (181.40) feet to a point located one hundred sixty-five and 20/100 (165.20) feet southeasterly from the southwest corner of said Lot No. 106; thence northeasterly along the North line of said Lot No. 106 and making an interior angle with the last mentioned course of ninety-one degrees forty minutes and thirty seconds (91° 40' 30") for one hundred seventy-seven and 70/100 (177.70) feet in a point in the West line of said Lot No. 106, said West line being the East line of North Main Street; thence northerly with the said West line and said East line and making an interior angle with the last mentioned course of fifty-two degrees forty minutes thirty seconds (52° 40' 30") for eighty-two and 94/100 (82.94) feet to the point of beginning.

Parcel Nos. R72-00208-0006, 0007, 0008, 0009, 0105, 0019, 0051, 0052, 0053

Parcel No. 2 Located in the City of Dayton, County of Montgomery, State of Ohio and being a part of Lot No. 108 of the revised and consecutive numbers of Lots on the plat of said City of Dayton, Ohio, and being a part of land described as follows: Beginning at a point in the South line of East Second Street, and point of beginning being the Northwest corner of said Lot 108; thence northeasterly with the South line of said East Second Street and the North line of said Lot No. 108 and making an interior angle with the West line of said Lot No. 106 of ninety degrees four minutes thirty seconds (90° 04' 30") for eighty-one and 66/100 (81.66) feet; thence southerly, leaving said south line and closing north line and making an interior angle with the last-mentioned course of eighty-nine degrees fifty-five minutes thirty seconds (89° 55' 30") for eighty and 74/100 (80.74) feet; thence southeasterly and making an interior angle with the last-mentioned course of two hundred seventy...
degrees four minutes thirty seconds (27° 04' 30") for southeasterly and 34/100 (13.25) feet to a point in
the said line and said West line and making an interior angle with the last-mentioned course of
eighty-nine degrees fifty minutes thirty seconds (89° 55' 30") for southeasterly 34/100 (13.25)
feet. Thence was run, leaving said West line and said East line and making an interior angle with
the last-mentioned course of ninety degrees four minutes thirty seconds (90° 04' 30") for ninety-nine
and 20/100 (20.00) feet to a point in the West line of said Lot No. 105; Thence southerly with said
West line and making an interior angle with the last-mentioned course of eighty-niner degrees fifty
minutes thirty seconds (89° 55' 30") for one hundred ninety-nine and 18/100 (199.18) feet to the point
of beginning.

Parcel No. 3: Located in the City of Dayton, County of Montgomery, State of Ohio and being a part
of Lot No. 105 of the several and consecutive numbers of Lots on the plat of said City of Dayton, Ohio,
and being a tract of land described as follows: Beginning at the Southeast corner of said Lot No. 105,
and Northeast corner being the intersection of the South line of East Second Street with the West line
of North Jefferson Street, Thence southerly with the West line of North Jefferson Street and the East
line at said Lot No. 105 and making an interior angle with the North line of said Lot No. 105 of eighty-
nine degrees fifty minutes thirty seconds (89° 55' 30") for forty and 24/100 (40.24) feet. Thence
westerly, leaving said West line and said East line and making an interior angle with the last-
mentioned course of ninety degrees four minutes thirty seconds (90° 04' 30") for seventeen and 34/100
(17.34) feet; Thence southerly and making an interior angle with the last-mentioned course of eighty-
nine degrees fifty minutes thirty seconds (89° 55' 30") for thirty and 24/100 (30.24) feet to a point in
the North line of said Lot No. 105 and the South line of said East Second Street; Thence westerly
with said North line and said South line and making an interior angle with the last-mentioned course of ninety
degrees four minutes thirty seconds (90° 04' 30") for seventeen and 34/100 (17.34) feet to the point
of beginning.

Also parts of Lots No. 105, 106 and 107 of the several and consecutive numbers of Lots on the plat
of said City of Dayton, Ohio, and being a tract of land described as follows: Beginning at the Southeast
corner of said Lot No. 105, said Southeast corner being the intersection of the South line of Arts Lane
and the East line of Lot No. 105 and the North line of North Jefferson Street; Thence westerly with said
West line and making an interior angle with the West line of said Lot No. 105 of ninety-nine
and 20/100 (99.20) feet; Thence southerly, parallel to the West line of said Lot No. 106 and making an
interior angle with the last-mentioned course of eighty-nine degrees fifty minutes thirty seconds
(89° 55' 30") for ninety-nine and 20/100 (99.20) feet to a point in the South line of said Lot No. 106;
Thence southerly with the North line of said Lot No. 106 and its southerly extension and making an
interior angle with the last-mentioned course of ninety degrees four minutes thirty seconds (90° 04'
30") for one hundred ninety-nine and 20/100 (199.20) feet to a point in the East line of said Lot No. 106
and the West line of said Lot No. 105; Thence southerly with said East line and said West line and
making an interior angle with the last-mentioned course of ninety degrees four minutes thirty seconds
(90° 04' 30") for ninety-nine and 20/100 (99.20) feet to a point in the West line of said Lot No. 105 and
the East line of said Lot No. 105 and its southerly extension and making an interior angle with the last-
mentioned course of ninety degrees four minutes thirty seconds (90° 04' 30") for ninety-nine and 20/100
(99.20) feet to a point in the East line of said Lot No. 106 and the West line of said Lot No. 105; Thence
southerly with said East line and said West line and making an interior angle with the last-mentioned course of eighty-nine degrees fifty minutes thirty seconds (89° 55' 30") for twenty and 08/100 (20.08) feet; Thence southerly, parallel to the
North line of said Lot No. 105 and making an interior angle with the last-mentioned course of two
hundred seventy degrees four minutes thirty seconds (270° 04' 30") for ninety-nine and 20/100
(99.20) feet to the point of beginning.
(99.20) feet to a point in the East line of said Lot No. 143 and the West line of said North Jefferson Street; thence southeasterly with said East line and said West line and making an interior angle with the last mentioned course of eighty-nine degrees fifty-five minutes thirty seconds (89° 55' 30") for seventy-nine and 33/100 (33.3) feet to the point of beginning.Parcel Nos. B-75-300-58:021, 002, 003.

Parcel No. 4 (Parking): Located in Section 4, Town 1, Range 7, Between the Miami, City of Dayton, County of Montgomery, State of Ohio and being part of Lot 136 and part of Lot 135 of the Revised and Corrective Numbers of Lots on the Plat of said City of Dayton, Ohio, and being a tract of land described as follows: Beginning at a point on the Southeast corner of said City Community Redevelopment Corporation by deed recorded in Book No. 355, Page 9 of the Old Records of Montgomery County, Ohio. Said corner being in the South line of Lot 135 and the North line of East Third Street (109.35 feet wide); said corner being located 135.36 feet westwardly from the intersection of the North line of East Third Street (109.34 feet wide) and the West line of North Jefferson Street (99 feet wide); thence with the East line of said City Community Redevelopment Corporation land; North ten degrees forty-six minutes forty-four seconds (10° 46' 44") West for two hundred twenty-two and 12/100 (222.12) feet to an iron pin found at the Northeast corner thereof; said corner being in the North line of Lot 135 and the South line of East Third Street (16.47 feet); thence with the South line of North Jefferson and the North line of Lot 135 and its extended excursion, said excursion being the North line of Lot 136; North seventy-nine degrees eight minutes twenty-four seconds (79° 08' 24") East for sixty-three and 39/100 (63.39) feet to a point in the North line of Lot 135; thence southeasterly on a new division line through Lot 135 and Lot 134, said new division line being located 16 feet East of and parallel to the back face of existing building, for the following seven (7) courses: South ten degrees forty-two minutes six seconds (10° 42' 06") East for twenty-seven and 31/100 (27.31) feet; thence north seventy-nine degrees seventeen minutes fifty-four seconds (79° 17' 54") East for thirty-three and 43/100 (33.43) feet; thence South ten degrees forty-two minutes six seconds (10° 42' 06") East for eighty and 29/100 (80.29) feet; thence south seventy-nine degrees seventeen minutes fifty-four seconds (79° 17' 54") West for thirty and 20/100 (30.20) feet; thence South ten degrees forty-two minutes six seconds (10° 42' 06") East for twenty-seven and 96/100 (27.96) feet; thence South seventy-nine degrees six minutes forty-six seconds (79° 06' 46") West for one hundred and 14/100 (100.14) feet; thence South ten degrees forty-two minutes forty-four seconds (10° 42' 44") West for one hundred and 14/100 (100.14) feet; thence South seventy-nine degrees eight minutes twenty-four seconds (79° 08' 24") West for forty-five and 32/100 (45.32) feet to the point of beginning, containing 1,241 square feet. Note: The above described tract of land is part of the remaining land conveyed to City Community Redevelopment Corporation by deed recorded in Book No. 355, Page 9 of the Old Records of Montgomery County, Ohio. Note: The above description was based on field surveys made by Wolfson Consultants in December, 1979. Parcel No. 5 (Parking): Located in Section 4, Town 1, Range 7, Between the Miami, City of Dayton, County of Montgomery, State of Ohio and being part of Lot 136 and part of Lot 135 of the Revised and Corrective Numbers of Lots on the Plat of the said City of Dayton, Ohio, and being a tract of land described as follows: Beginning in a cross set at the Southeast corner of Lot 136, said corner being the intersection of the North line of East Third Street (169.35 feet wide) and the West line of North Jefferson Street (99 feet wide); thence with the North line of East Third Street and the South line of Lot 136 and its extended excursion, said excursion being the South line of Lot 135 South seventy-nine
degrees eight minutes twenty-four seconds (79° 08' 24") East for sixty-three and 39/100 (63.39) feet to a point in the North line of Lot 135; thence southeasterly on a new division line through Lot 135 and Lot 134, said new division line being located 16 feet East of and parallel to the back face of existing building, for the following seven (7) courses: South ten degrees forty-two minutes six seconds (10° 42' 06") East for twenty-seven and 31/100 (27.31) feet; thence north seventy-nine degrees seventeen minutes fifty-four seconds (79° 17' 54") East for thirty-three and 43/100 (33.43) feet; thence South ten degrees forty-two minutes six seconds (10° 42' 06") East for eighty and 29/100 (80.29) feet; thence south seventy-nine degrees seventeen minutes fifty-four seconds (79° 17' 54") West for thirty and 20/100 (30.20) feet; thence South ten degrees forty-two minutes six seconds (10° 42' 06") East for twenty-seven and 96/100 (27.96) feet; thence South seventy-nine degrees six minutes forty-six seconds (79° 06' 46") West for one hundred and 14/100 (100.14) feet; thence South ten degrees forty-two minutes forty-four seconds (10° 42' 44") West for one hundred and 14/100 (100.14) feet; thence South seventy-nine degrees eight minutes twenty-four seconds (79° 08' 24") West for forty-five and 32/100 (45.32) feet to the point of beginning, containing 1,241 square feet. Note: The above described tract of land is part of the remaining land conveyed to City Community Redevelopment Corporation by deed recorded in Book No. 355, Page 9 of the Old Records of Montgomery County, Ohio. Note: The above description was based on field surveys made by Wolfson Consultants in December, 1979. Parcel No. 5 (Parking): Located in Section 4, Town 1, Range 7, Between the Miami, City of Dayton, County of Montgomery, State of Ohio and being part of Lot 136 and part of Lot 135 of the Revised and Corrective Numbers of Lots on the Plat of the said City of Dayton, Ohio, and being a tract of land described as follows: Beginning in a cross set at the Southeast corner of Lot 136, said corner being the intersection of the North line of East Third Street (169.35 feet wide) and the West line of North Jefferson Street (99 feet wide); thence with the North line of East Third Street and the South line of Lot 136 and its extended excursion, said excursion being the South line of Lot 135 South seventy-nine
degrees eight minutes twenty-four seconds (79° 08' 24") West for one hundred twenty and 00/100 (120.00) feet to a point in the South line of Lot 135; thence due Northwesterly on a new division line through Lot 135 and Lot 136, said new division line being located 0.10 feet East of and parallel to the East face of an existing building, for the following seven (7) courses: North ten degrees forty-six minutes forty-two seconds (10° 46' 42") West for one hundred fifty-eight and 61/100 (158.61) feet; thence North seventy-nine degrees sixty minutes forty-four seconds (79° 46' 44") East for eighteen and 12/100 (18.12) feet; thence North ten degrees forty-two minutes six seconds (10° 42' 06") West for twenty-seven and 50/100 (27.50) feet; thence North seventy-nine degrees seventeen minutes fifty-four seconds (79° 47' 54") East for three and 20/100 (3.20) feet; thence North ten degrees forty-two minutes six seconds (10° 42' 06") West for eight and 29/100 (8.29) feet; thence South seventy-nine degrees seventeen minutes fifty-four seconds (79° 47' 54") West for three and 47/100 (3.47) feet; thence North ten degrees forty-two minutes six seconds (10° 42' 06") West for twenty-seven and 31/100 (27.31) feet to a point in the North line of Lot 135 and the South line of Artz Lane (26.57) feet; thence with the South line of Artz Lane and the North line of Lot 135 and its eastward extension, said extension being the North line of Lot 136 North seventy-nine degrees eight minutes twenty-four seconds (79° 08' 24") East for one hundred two and 01/100 (102.01) feet to a corner at the Northwest corner of said Lot 136; said corner being the intersection of the South line of Artz Lane and the West line of North Jefferson Street; thence with the East line of Lot 136 and the West line of North Jefferson Street South ten degrees forty-six minutes forty-four seconds (10° 46' 44") East for two hundred twenty and 12/100 (222.12) feet; to the point of beginning, containing 25,493 square feet, more or less. Note: The above description of the land is part of the land conveyed to Gem Savings Association by deeds recorded in Deed Microfilm Numbers 811B03, 811B04, and 811B05 and part of the remaining land conveyed to Gem City Savings Association by deeds recorded in Deed Microfilm Numbers 794B03 and 794B09 all of the Deed Records of Montgomery County, Ohio. Note: The above description was based on field surveys made by Waudby Consultants in December 1979, on December 13, 1983 and on September 20, 1985.

Parcel Nos.: R72-002008-00/06, R72-002008-00/11, R72-002008-00/14, R72-002008-00/23, R72-002008-00/18, R72-002008-00/56

Commonly known as: 45 North Main Street, Dayton, Montgomery County, Ohio
PLAN—EXHIBIT B

DESCRIPTION OF INITIAL AUTHORIZED IMPROVEMENTS AND SCHEDULE OF SPECIAL ASSESSMENTS

The real property owned by Tower Partners, LLC at 40 North Main Street, Dayton, Ohio, 45423 is the location at which the special energy improvements described below shall be constructed and installed, and shall exist (the “Project”). The legal description of the property is set forth on the attached Exhibit A. The property will be subject to special assessments for energy improvements in accordance with Ohio Revised Code Chapter 1710.

The Project is expected to consist of the following energy efficiency elements:

1. Replacement of existing T12 lighting fixtures with new light emitting diode (LED) fixtures; estimated annual savings—$72,381.98
2. Installation of VFDs on Air-Handling-Unit (AHU) motors and manual dampers on each floor; estimated annual savings—$198,942.00 (energy savings plus operational savings).
3. Refurbishment of costly pneumatic and Andover building automation controls with additional DDC controls; estimated annual savings—$99,781.00.
4. Installation of new condensing boiler to gain efficiency over existing non condensing boilers installed in 1971; estimated annual savings—$20,833.00.
5. Installation of an Enthalpy Based Economizer Control to replace the current outdoor air intake control, which will achieve efficiencies by accounting for the temperature and humidity of the outdoor air; estimated annual savings—$13,334.00.
6. Installation of a DHW Motor/VFD/Storage Tank to prevent the motor from running at full speed when no water is being used; estimated annual savings—$7,949.00.

Total estimated annual savings—$413,220.00
Total estimated savings during assessment term—$4,132,209.80

Total assessment costs—$2,814,700.50
Estimated average annual special assessments for 9 years: $284,284.75
Number of semi-annual assessments: 20
First annual installment due: January 31, 2016

[Balance of Page Intentionally Left Blank]
The schedule of Special Assessments for the Project is as follows:

<table>
<thead>
<tr>
<th>Special Assessment Payment Date</th>
<th>Special Assessment Installment Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 31, 2016</td>
<td>143,347.75</td>
</tr>
<tr>
<td>July 31, 2016</td>
<td>141,236.00</td>
</tr>
<tr>
<td>January 31, 2017</td>
<td>144,122.75</td>
</tr>
<tr>
<td>July 31, 2017</td>
<td>141,908.75</td>
</tr>
<tr>
<td>January 31, 2018</td>
<td>144,701.25</td>
</tr>
<tr>
<td>July 31, 2018</td>
<td>142,372.50</td>
</tr>
<tr>
<td>January 31, 2019</td>
<td>140,043.75</td>
</tr>
<tr>
<td>July 31, 2019</td>
<td>142,715.00</td>
</tr>
<tr>
<td>January 31, 2020</td>
<td>140,265.00</td>
</tr>
<tr>
<td>July 31, 2020</td>
<td>142,815.00</td>
</tr>
<tr>
<td>January 31, 2021</td>
<td>140,243.75</td>
</tr>
<tr>
<td>July 31, 2021</td>
<td>142,672.50</td>
</tr>
<tr>
<td>January 31, 2022</td>
<td>139,980.00</td>
</tr>
<tr>
<td>July 31, 2022</td>
<td>142,287.50</td>
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<tr>
<td>January 31, 2023</td>
<td>144,473.75</td>
</tr>
<tr>
<td>July 31, 2023</td>
<td>141,538.75</td>
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<tr>
<td>January 31, 2024</td>
<td>143,591.25</td>
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<tr>
<td>July 31, 2024</td>
<td>140,522.50</td>
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<tr>
<td>January 31, 2025</td>
<td>142,453.75</td>
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<tr>
<td>July 31, 2025*</td>
<td>374,263.75</td>
</tr>
</tbody>
</table>

*The 10% Primary Reserve will be applied by the Bond Trustee to the final semiannual assessment on July 31, 2025. If never called upon to cure a monthly payment default, the Primary Reserve of $261,500 will be applied to the final semiannual payment, and $112,763.75 will be the difference owed by Tower Partners, LLC.
EXHIBIT D

AMENDED ARTICLES OF INCORPORATION
OF DAYTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT

[See Attached]
BRICKER & ECKLER LLP
ATTN: CHRISTINA MILLER
100 SOUTH THIRD STREET
COLUMBUS, OH 43215

STATE OF OHIO
CERTIFICATE
Ohio Secretary of State, Jon Husted
2417642
It is hereby certified that the Secretary of State of Ohio has custody of the business records for
DAYTON, KETTERING REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.
and, that said business records show the filing and recording of:

Document(s)
DOMESTIC/AMENDMENT TO ARTICLES
Effective Date: 03/20/2017

Witness my hand and the seal of the Secretary of State at Columbus, Ohio this 22nd day of March, A.D. 2017.

Ohio Secretary of State

D-2
Certificate of Amendment
(Nonprofit, Domestic Corporation)
Filing Fee: $50

Check the appropriate box:

- [ ] Amendment to existing Articles of Incorporation by Members pursuant to Ohio Revised Code Section 1702.38(C) (128-AMD)
- [ ] Amended and Restated Articles by Members pursuant to Ohio Revised Code section 1702.38(D) or by Directors pursuant to Ohio Revised Code section 1702.38(E) (126-AMAN) - The following articles supersede the existing articles and all amendments thereto.

Complete the following information:

Name of Corporation: Dayton Regional Energy Special Improvement District, Inc.

Charter Number: 2417642

A copy of the resolution of amendment must be attached to this document.

Note: If amended and restated articles were adopted, amended articles must set forth all provisions required in original articles other than with respect to the initial directors pursuant to Ohio Revised Code section 1702.38(A). In the case of adoption of the resolution by the directors, a statement of the basis for such adoption shall be provided.
Required
Must be signed by an authorized officer of the Corporation pursuant to the Ohio Revised Code section 1702.38(G).

If authorized representative is an individual, then they must sign in the "signature" box and print their name in the "Print Name" box.

If authorized representative is a business entity, not an individual, then please print the business name in the "signature" box. an authorized representative of the business entity must sign in the "By" box and print their name in the "Print Name" box.

Signature

By (if applicable)

Jerome J. Brunswick, Chairperson
Print Name

Signature

By (if applicable)

Print Name
ACTION BY UNANIMOUS WRITTEN CONSENT
OF THE MEMBERS OF
DAYTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.

Pursuant to Section 1702.25, Ohio Revised Code and Section 1.08 of the Code of Regulations of the Dayton Regional Energy Special Improvement District, Inc. (the "Corporation") and in lieu of a meeting of Members of the Corporation for such purposes, the undersigned, being all of the Members of the Corporation entitled to notice of such meeting, do hereby waive such notice of such meeting and hereby take and authorize by unanimous written consent each and all of the following actions for amendment of the Articles of Incorporation of the Corporation and transaction of all such other business as hereinafter set forth:

Approval of Amendment to Articles of Incorporation:

RESOLVED, that Article First of the Articles of Incorporation of the Corporation, attached to these resolutions as Appendix 1 (the "Articles of Incorporation") is hereby amended to read as follows:

FIRST Name of Corporation: The name of the Corporation shall, at any time and from time to time be the unique proper name only of each participating political subdivision, as defined in Ohio Revised Code ("ORC") Section 1710.02(E), of the special improvement district governed by the Board of Directors of the Corporation, separated by commas, and followed by the words "Regional Energy Special Improvement District, Inc." For demonstration purposes, as of the adoption of this Article First, the name of the Corporation shall be "Dayton, Kettering Regional Energy Special Improvement District, Inc."

FURTHER RESOLVED; that Article Third of the Articles of Incorporation is hereby amended to read as follows:

THIRD The purpose for which the Corporation is formed shall be:

(A) To govern the Dayton, Kettering Regional Energy Special Improvement District, a special improvement district (as the same shall from time to time be named in accordance with Article First of these Articles of Incorporation, the "District") created pursuant to ORC Chapter 1710. The District's purpose is to enhance the value of properties within the District and improve the environment by developing and assisting in developing within the District special energy improvement projects. The
The District will be authorized to provide special energy improvement projects pursuant to ORC Chapter 1710 that will benefit property and the environment within the boundaries of the District. The District will be authorized to take any other actions pursuant to ORC Chapter 1710 that may be taken by a special improvement district organized for the purpose of developing and implementing plans for special energy improvement projects. The City of Dayton, Ohio ("Dayton") and the City of Kettering, Ohio ("Kettering") are each a "participating political subdivision," as that term is defined in ORC Section 1710.01(E), that will be authorized to levy a special assessment on each property within their respective territorial within the District to pay for such improvements, based on the benefits those special energy improvement projects confer.

(B) To engage in any lawful act, activity, or business not contrary to, and for which a nonprofit corporation may be formed under, the laws of the State of Ohio.

(C) To have and exercise all powers, rights, and privileges conferred by the laws of the State of Ohio on nonprofit corporations or on special improvement districts, including, but not limited to, buying, leasing, or otherwise acquiring and holding, using or otherwise enjoying and selling, leasing or otherwise disposing of any interest in any property, real or personal, of whatever nature and wherever situated, and buying and selling renewable energy credits, stocks, bonds, or any other security of any issuer as the Corporation by action of its Board may, at any time and from time to time, deem advisable.

(D) The reasons for establishing the District include enhancing the value of properties within the District and improving the environment. The District will enhance the public health, safety, peace, convenience, and welfare by developing and assisting in developing special energy improvement projects that reduce the territory's carbon footprint, promote the District as a location for green technology job creation, benefit property within the District, and improve the environment.

FURTHER RESOLVED, that Article Sixth of the Articles of Incorporation is hereby amended to read as follows:

SIXTH The Corporation shall be controlled and managed under the direction of the Board. The Board shall at all times consist of at least five (5) individuals (individually a "Director").

(A) The municipal executive, as defined in ORC Section 1710.01(D), of each participating political subdivision of the District or an employee of each participating political subdivision who is involved with
its planning or economic development functions and who shall be
appointed by and serve at the pleasure of such participating political
subdivision's municipal executive each shall serve as a Director.

(B) A person appointed by and serving at the pleasure of the
legislative authority of each participating political subdivision of the
District each shall serve as a Director.

(C) The remaining Directors shall be Members or executive
representatives of Members elected, designated, or appointed by the
Members as described in the Code of Regulations of the Corporation.

The Board of Directors of the Corporation from time to time shall
constitute the Board of Directors of the Corporation under ORC Chapter
1710.

FURTHER RESOLVED, that Article Seventh of the Articles of Incorporation is hereby
amended to read as follows:

SEVENTH The territory within the District shall be described generally as that portion
of the participating political subdivisions consisting of property owned by
each property owner within a participating political subdivision that has
petitioned the participating political subdivision for the development of a
special energy improvement project, as that term is defined in ORC
Section 1710.01(l). As provided in ORC Section 1710.02(A), the territory
in the District may be noncontiguous if at least one special energy
improvement project is designated for each parcel of real property
included in the District. As further provided in Section 1710.02(A),
additional territory may be added to the District for the purpose of
developing and implementing plans for special energy improvement
projects if at least one special energy improvement project is designated
for each parcel of real property included within such additional territory
and the addition of territory is authorized by the plan for the District under
Chapter 1710. The addition of such territory shall be authorized in the plan
for the District.

FURTHER RESOLVED, that Article Eleventh of the Articles of Incorporation is hereby
amended to read as follows:

ELEVENTH The District is hereby authorized to use the trade name "Dayton Regional
Energy Special Improvement District," and the Corporations is hereby
authorized to use the trade name "Dayton Regional Energy Special
Improvement District, Inc."
There being no further business to be taken by the undersigned Members pursuant to this action by unanimous written consent, each of the Members has signed this action as of the date indicated below, and this action by unanimous consent shall be filed with or otherwise entered in the minutes or other appropriate records of this Corporation.

TOWER PARTNERS, LLC

Name: [Signature]
Title: [Position]

3/8/2017

THIRTY TWO WEBSTER STREET LLC

Name: [Signature]
Title: [Position]

3/14/2017

DELCOR LOFTS, LLC

Name: [Signature]
Title: [Position]

2017
There being no further business to be taken by the undersigned Members pursuant to this action by unanimous written consent, each of the Members has signed this action as of the date indicated below, and this action by unanimous consent shall be filed with or otherwise entered in the minutes or other appropriate records of this Corporation.

TOWER PARTNERS, LLC

______________________________
Name: [Signature]
Title: [Position]

3/8, 2017

THIRTY TWO WEBSTER STREET LLC

______________________________
Name: [Signature]
Title: [Position]

3/8, 2017

DELCO LOFTS, LLC

By: First Street Acquisition, LLC
Its: Managing Member

______________________________
Name: [Signature]
Title: [Position]

3/19, 2017
CERTIFICATE

The undersigned Secretary-Treasurer of the Dayton, Kettering Regional Energy Special Improvement District, Inc. hereby certifies that the foregoing resolutions were duly adopted by the majority of the voting members of the Corporation present in person, by use of authorized communications equipment, by mail, or by proxy at a meeting of the members held for that purpose, at which a quorum was present.

DATE: 3/17/17

[Signature]
Secretary-Treasurer
Dayton, Kettering Regional Energy Special Improvement District, Inc.
APPENDIX I
ARTICLES OF INCORPORATION
OF
DAYTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.

[See Attached]
STATE OF OHIO
CERTIFICATE

Okie Secretary of State, Jon Husted
147540

This is hereby certified that the Secretary of State of Ohio has certified an application for
DAYTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.
and, that said certificate has been filed and recorded.

Document:
DOMESTIC NONPROFIT CORP. ARTICLES
Date Filed: 09/20/2018

Witness my hand and the seal of the Secretary of State at Columbus, Ohio this 6th day of August, A.D. 2018.

[Signature]
Okie Secretary of State
Office of the Secretary of State

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EXHIBIT A
SPECIAL IMPROVEMENT
ARTICLES OF INFORMATION
OF
DAYTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.

PREAMBLE
The purpose for which the Corporation is formed shall be

(1) To promote the Dayton Regional Energy Special Improvement District, a special improvement district (the "District") created pursuant to Ohio Revised Code ("ORC") Chapter 1537. The District's purpose is to enhance the value of properties located within the District and improve the environment by developing within the District energy improvement projects. The District will be authorized to acquire, improve, develop, maintain and operate energy improvement projects pursuant to ORC Chapter 1726 in the interest and benefit of the public and the environment within the District. The District will be authorized to acquire any other suitable property or ORC Chapter 1726 may be taken by a special improvement district created pursuant to the purpose of developing and implementing plans for energy improvement projects. The City of Dayton, Ohio ("City") is a "qualified local Public Authority" as defined in ORC Section 1530.085, that will be authorized to levy a special assessment on each property inside the territorial boundaries of the City within the District to pay for such improvements, based on the benefit these special energy improvement projects confer.

(2) To engage in any lawful act, activity, or business and carry on, in and for which a monopoly corporation may be formed under the laws of the State of Ohio.

(3) To hold and exercise all powers, rights, and privileges conferred by the laws of the State of Ohio or any other corporation or entity within the District, including, but not limited to, holding, leasing, or otherwise assigning or subletting, using or otherwise enjoying and selling, leasing or otherwise disposing of any interest in any property, and or personal, of whatever kind and description, and buying and selling mortgage, trust deeds, and other security of any kind as the Corporation may, at any time and from time to time, deem advisable.

(4) To exercise the power of eminent domain for the purpose of acquiring for the benefit of the District any property, and or personal, of whatever kind and description, and holding and selling mortgage, trust deeds, and other security of any kind as the Corporation may, at any time and from time to time, deem advisable.

The purpose for which the District is formed shall be achieving the value of properties within the District and improving the environment. The District will enhance the overall quality of life, safety, and comfort within the District by developing and establishing a special energy improvement projects that reduce the utility's energy consumption, promote the District as a leader in green technology, job creation, and benefit property values within the District, and improve the environment.
...
the person shall be disqualified from being a Director of the Corporation because he or she is or may be a party to, and no Director of the Corporation shall be disqualified from serving in any capacity, or in any other connection to which the Corporation is a party or may be a party.

No contract, action, or other transaction shall be void or invalid for the reason that any Director or officer or other agent of the Corporation is a party to the contract, action, or transaction, or disinterested in the contract, action, or transaction, or for the reason that any interested director or officer or other agent of the Corporation in addition to the director, officer, or transaction is or may be a party to the contract, action, or transaction, or in the event that any interested director or person or other agent of the Corporation who is a party to the contract, action, or transaction, or in the event that any interested director or officer or other agent of the Corporation in addition to the director, officer, or transaction is or may be a party to the contract, action, or transaction, or in the event that any interested Director or person or other agent of the Corporation who is a party to the contract, action, or transaction is or may be a party to the contract, action, or transaction.

The material facts as to such interest and as to the contract, action, or transaction are disclosed or are otherwise known to the Director or officer or other agent of the Corporation as a party to the contract, action, or transaction in the event that any interested director or officer or other agent of the Corporation in addition to the director, officer, or transaction is or may be a party to the contract, action, or transaction.

The material facts as to such interest and as to the contract, action, or transaction are disclosed or are otherwise known to the Director or officer or other agent of the Corporation as a party to the contract, action, or transaction in the event that any interested director or officer or other agent of the Corporation who is a party to the contract, action, or transaction is or may be a party to the contract, action, or transaction.

The material facts as to such interest and as to the contract, action, or transaction are disclosed or are otherwise known to the Director or officer or other agent of the Corporation as a party to the contract, action, or transaction in the event that any interested director or officer or other agent of the Corporation who is a party to the contract, action, or transaction is or may be a party to the contract, action, or transaction.

The material facts as to such interest and as to the contract, action, or transaction are disclosed or are otherwise known to the Director or officer or other agent of the Corporation as a party to the contract, action, or transaction in the event that any interested director or officer or other agent of the Corporation who is a party to the contract, action, or transaction is or may be a party to the contract, action, or transaction.

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resolution of the legislative authority of each participating political subdivision, and
the other filing the approved amendment and resolution with the Ohio Secretary of
State, provided that each amendment shall be consistent with the applicable
provisions of OBC Chapters 1781 and 1782.