



CITY COMMISSION MEETING AGENDA

CITY COMMISSION

DAYTON, OHIO

JULY 22, 2020

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

II. CITY MANAGER RECOMMENDATIONS (Item #8 above)

The following recommendations are offered for City Commission approval.

A. Purchase Orders, Agreements and Contracts:

(All contracts are valid until delivery is complete or through December 31st of the current year).

1. Purchase Orders:

FIRE

- A1. Clarke Power Services, Inc.** (parts supplies and repair services as needed through 12-31-20) **\$25,000.00**

1. (Cont'd):

POLICE

B1. A. E. David's Uniform Company (regulation uniforms as needed through 12-31-20) **\$12,514.30**

PROCUREMENT, MANAGEMENT AND BUDGET

C1. Whistleblower Security, Inc. (whistleblower services as needed through 12-31-22) **21,851.06**

PUBLIC WORKS

D1. ACME Spring, Inc. (heavy duty equipment suspension repair parts and services as needed through 12-31-20) **20,000.00**

D2. Boone's Power Equipment, Inc. (mower parts supplies and related items as needed through 12-31-20) **20,000.00**

D3. Rush Truck Centers of Ohio, Inc. (truck parts supplies and related items as needed through 12-31-20) **35,000.00**

D4. Truck Country of Indiana, Inc. dba Stoops Freightliner (Freightliner and Autocar brand parts and repair services as needed through 12-31-20) **30,000.00**

D5. CHWR, Inc. dba CHW Mechanical Services (heating ventilation and air conditioning preventative maintenance and repairs) **10,000.00**

D6. Lake Erie Construction Company (guardrails attenuators parts materials and supplies including installation and repair services as needed through 12-31-20) **201,370.00**

WATER

E1. Rumpke of Ohio, Inc. (garbage trash removal and disposal services as needed through 12-31-20) **30,000.00**

-Depts. of Fire, Police, Procurement, Management and Budget, Public Works, and Water **Total: \$405,735.36**

D. Neighborhood Grants:

2. **CityWide Development Corporation – Development Agreement** – to provide economic and community development services in West Dayton – Dept. of Economic Development. **\$150,000.00**
(Thru 12-31-21)

**COMMISSIONER
SHAW**

3. **Techmetals, Inc. – Development Agreement** – to assist in the expansion of their business in Dayton – Dept. of Economic Development **\$150,000.00**
(Thru 12-31-26)

IV. LEGISLATION:

Ordinance – First and Second Reading:

4. **No. 31826-20** Authorizing the City Manager to Execute a Contract for Right of Entry and Grant Permanent Highway Easements to the Montgomery County Transportation Improvement District for the Construction of a Highway on Parcels of Land Located at the Dayton International Airport, and Declaring an Emergency.

**COMMISSIONER
FAIRCHILD**

VI. MISCELLANEOUS:

ORDINANCE NO. 31827-20

RESOLUTION NO. 6520-20

IMPROVEMENT RESOLUTION NO. 3598-20

INFORMAL RESOLUTION NO. 979-20



City Manager's Report

From 2730 – PMB/Procurement

Date July 22, 2020

Expense Type Purchase Order

Total Amount \$405,735.36

Supplier, Vendor, Company, Individual

Name See Below

Address See Below

2020 Purchase Orders

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

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

Description

FIRE

(A1) P0200053 – CLARKE POWER SERVICES, INC., HUBER HEIGHTS, OH

- Parts, supplies and repair services as needed through 12/31/2020.
- 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 \$25,000.00 for a total not to exceed \$35,000.00 and therefore requires City Commission approval.
- The Department of Fire recommends approval of this order.

Fiscal Year	Fund Source(s)	Fund Code(s)	Fund Amount(s)
2020	Other Equipment Maintenance	67000-6330-1167-71	\$25,000.00

Signatures/Approval

Approved by City Commission

Clerk

Date

Melinda A. Wilson, CPPB

Division

Daniel Pharam 7.14.2020

Department

[Signature]

City Manager

POLICE(B1) P0200990 – A. E. DAVID’S UNIFORM COMPANY, DAYTON, OH

- Regulation uniforms as needed through 12/31/2020.
- These goods are required to provide uniforms to the new recruit class.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB S16060 with firm pricing through 3/31/2021.
- A. E. David’s Uniform Company qualifies as a Dayton local entity.
- The Department of Police recommends approval of this order.

Fiscal Year	Fund Source(s)	Fund Code(s)	Fund Amount(s)
2020	Supplies and Materials	10000-6221-1301-71	\$12,514.30

PROCUREMENT, MANAGEMENT AND BUDGET – MANAGEMENT AND BUDGET(C1) P0200991 – WHISTLEBLOWER SECURITY, INC., WEST VANCOUVER, BC

- Whistleblower services as needed through 12/31/2020.
- These services are required to anonymously disclose concerns regarding theft, fraud, or abuse for the City.
- An RFP was solicited and zero responses were received; therefore, this purchase was negotiated through Quote #18031PMB.
- The Department of Procurement, Management and Budget requests additional authority of \$14,711.06 through 6/30/2022.
- The Department of Procurement, Management and Budget recommends approval of this order.

Fiscal Year	Fund Source(s)	Fund Code(s)	Fund Amount(s)
2020	Other Professional Services	10000-2720-1159-51	\$7,140.00
2021	Other Professional Services	10000-2720-1159-51	\$7,282.80
2022	Other Professional Services	10000-2720-1159-51	\$7,428.26

PUBLIC WORKS – FLEET MANAGEMENT(D1) P0200054 – ACME SPRING, INC., DAYTON, OH

- Heavy duty equipment suspension repair parts and services as needed through 12/31/2020.
- These goods and services are required to repair the City's heavy duty fire equipment.
- Rates are in accordance with the City of Dayton's existing price agreement IFB U16022 with pricing extended through 4/30/2021.
- This amendment increases the previously authorized amount of \$20,000.00 by \$20,000.00 for a total not to exceed \$40,000.00 and therefore requires City Commission approval.
- Acme Spring, Inc. qualifies as a Dayton local entity.
- The Department of Public Works recommends approval of this order.

<u>Fiscal Year</u>	<u>Fund Source(s)</u>	<u>Fund Code(s)</u>	<u>Fund Amount(s)</u>
2020	Other Equipment Maintenance	61000-6470-1167-99	\$20,000.00

(D2) P0200067 – BOONE'S POWER EQUIPMENT, INC., BROOKVILLE, OH

- Mower parts, supplies, and related items as needed through 12/31/2020.
- These goods are required to replenish inventory used to maintain City streets, parks and vacant lots.
- Rates are in accordance with the City of Dayton's existing price agreement IFB JL18009 with pricing through 12/31/2021.
- This amendment increases the previously authorized amount of \$40,000.00 by \$20,000.00 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.

<u>Fiscal Year</u>	<u>Fund Source(s)</u>	<u>Fund Code(s)</u>	<u>Fund Amount(s)</u>
2020	Inventory	61000-6470-1350-99	\$20,000.00

(D3) P0200245 – RUSH TRUCK CENTERS OF OHIO, INC., VANDALIA, OH

- Truck parts, supplies and related items as needed through 12/31/2020.
- These goods are required to 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 \$20,000.00 by \$35,000.00 for a total not to exceed \$55,000.00 and therefore requires City Commission approval.
- The Department of Public Works recommends approval of this order.

<u>Fiscal Year</u>	<u>Fund Source(s)</u>	<u>Fund Code(s)</u>	<u>Fund Amount(s)</u>
2020	Inventory	61000-6470-1350-99	\$10,000.00
2020	Other Equipment Maintenance	61000-6470-1167-99	\$25,000.00

PUBLIC WORKS – FLEET MANAGEMENT (CONTINUED)(D4) P0200535 – TRUCK COUNTRY OF INDIANA, INC. dba STOOPS FREIGHTLINER, HUBER HEIGHTS, OH

- Freightliner and Autocar brand parts and repair services as needed through 12/31/2020.
- These goods and services are required to maintain and repair City-owned vehicles.
- Truck Country of Indiana, Inc. dba Stoops Freightliner is recommended as the authorized distributor; therefore, this purchase was negotiated.
- This amendment increases the previously authorized amount of \$180,000.00 by \$30,000.00 for a not to exceed \$210,000.00 and therefore requires City Commission approval.
- The Department of Public Works recommends approval of this order.

<u>Fiscal Year</u>	<u>Fund Source(s)</u>	<u>Fund Code(s)</u>	<u>Fund Amount(s)</u>
2020	Other Equipment Maintenance	61000-6470-1167-99	\$30,000.00

PUBLIC WORKS – PROPERTY MANAGEMENT(D5) P0200441 – CHWR, INC. dba CHW MECHANICAL SERVICES, SPRING VALLEY, OH

- Heating, ventilation, and air conditioning preventative maintenance and repairs.
- These services are required for repairs for facilities throughout the City.
- Rates are in accordance with the City of Dayton's existing price agreement IFB 17021D with firm pricing extended through 4/20/2021.
- This amendment increases the previously authorized amount of \$30,000.00 by \$10,000.00 for a total not to exceed \$40,000.00 and therefore requires City Commission approval.
- The Department of Public Works recommends approval of this order.

<u>Fiscal Year</u>	<u>Fund Source(s)</u>	<u>Fund Code(s)</u>	<u>Fund Amount(s)</u>
2020	Other Maintenance of Facilities	10000-6480-1172-54	\$10,000.00

PUBLIC WORKS – STREET MAINTENANCE(D6) P0200981 – LAKE ERIE CONSTRUCTION COMPANY, NORWALK, OH

- Guardrails, attenuators, parts, materials, and supplies including installation and repair services as needed through 12/31/2020.
- These goods and services are required for highway maintenance of guardrail safety barriers.
- Lake Erie Construction Company is recommended based on past proven performance with guardrail safety barrier installation and repairs services; therefore, this purchase was negotiated.
- The Department of Public Works recommends approval of this order.

<u>Fiscal Year</u>	<u>Fund Source(s)</u>	<u>Fund Code(s)</u>	<u>Fund Amount(s)</u>
2020	Supplies and Materials	21100-6430-1301-54	\$201,370.00

WATER – WATER RECLAMATION(E1) P0200255 – RUMPKE OF OHIO, INC., DAYTON, OH

- Garbage, trash removal, and disposal services as needed through 12/31/2020.
- These services are required for proper removal and disposal of grit, screening, grease and related material from the Division of Water Reclamation Facilities.
- Rates are in accordance with the City of Dayton's existing price agreement per RFP 15012U with pricing extended through 3/31/2021.
- This amendment increases the previously authorized amount of \$80,000.00 by \$30,000.00 for a total not to exceed \$110,000.00 and therefore requires City Commission approval.
- The Department of Water recommends approval of this order.

Fiscal Year	Fund Source(s)	Fund Code(s)	Fund Amount(s)
2020	Waste Disposal – Tipping Fee	55000-3460-1122-54	\$30,000.00

The aforementioned departments recommend approval of this order.



City Manager's Report

2.

From **2600 - Economic Development**

Date **July 22, 2020**

Expense Type **Development Agreement**

Supplier, Vendor, Company, Individual

Total Amount **\$150,000.00 thru 12-31-2021**

Name **CityWide Development Corporation**

Address **8 North Main Street
Dayton, Ohio 45402**

Fund Source(s)	Fund Code(s)	Fund Amount(s)
West Dayton Development	22502-2600-1223-41	\$150,000.00

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

Description

Professional Services Agreement

The Department of Economic Development requests approval to enter into a Professional Services Agreement with CityWide Development Corporation in an amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000.00) to provide economic and community development services in West Dayton. The services to be provided include, without limitation:

1. Assisting the development of community projects and events.
2. Providing strategic direction for the revitalization of West Dayton neighborhoods including implementation of the West Dayton Strategic Framework and leading comprehensive community development.
3. Engaging and building productive relationships with residents, businesses, and other community stakeholders and participating in community meetings.
4. Collaborating with the City to identify additional financial resources and strategic partnerships for project development, strategic demolition, and other community development activities.
5. Attending meetings related to economic development, community redevelopment and real estate activities in the neighborhoods outlined in the adopted Greater West Dayton Framework strategy.

The West Dayton Development Trust Fund Advisory Board has reviewed the proposed services and recommends funding this Agreement.

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

A Certificate of Funds is attached.

Signatures/Approval

Approved by City Commission

Division _____

Ford P. Weber

Department _____

John Paulino

City Manager

Clerk _____

Date _____

CERTIFICATE OF FUNDS

CT20-2612

SECTION I - to be completed by User Department

NO DRAFT DOCUMENTS PERMITTED

New Contract
 Renewal Contract
 Change Order

Contract Start Date	upon execution
Expiration Date	12/31/2021
Original Commission Approval	\$ 150,000.00
Initial Encumbrance	\$ 150,000.00
Remaining Commission Approval	\$ -
Original CT/CF	
Increase Encumbrance	\$ -
Decrease Encumbrance	\$ -
Remaining Commission Approval	\$ -

Required Documentation

<input checked="" type="checkbox"/>	Initial City Manager's Report
<input checked="" type="checkbox"/>	Initial Certificate of Funds
<input checked="" type="checkbox"/>	Initial Agreement/Contract
<input type="checkbox"/>	Copy of City Manager's Report
<input type="checkbox"/>	Copy of Original Certificate of Funds

Amount: <u>\$ 150,000.00</u> Fund Code <u>22502 - 2600 - 1223 - 41 - - -</u> <small style="display: block; text-align: center;">Fund Org Acct Prog Act Loc</small>	Amount: _____ Fund Code <u>XXXXX - XXXX - XXXX - XX - XXXX - XXXX</u> <small style="display: block; text-align: center;">Fund Org Acct Prog Act Loc</small>
Amount: _____ Fund Code <u>XXXXX - XXXX - XXXX - XX - XXXX - XXXX</u> <small style="display: block; text-align: center;">Fund Org Acct Prog Act Loc</small>	Amount: _____ Fund Code <u>XXXXX - XXXX - XXXX - XX - XXXX - XXXX</u> <small style="display: block; text-align: center;">Fund Org Acct Prog Act Loc</small>

Attach additional pages for more FOAPALs

Vendor Name: City Wide Development Corp

Vendor Address: 8 N. Main Street Dayton Ohio 45402
Street City State Zipcode + 4

Federal ID: 31-0821189

Commodity Code: 95605

Purpose: Professional Services Agreement to to provide economic and community development services in West Dayton.

Contact Person: Jill Bramini Economic Development 7/10/2020
Department/Division Date

Originating Department Director's Signature: *Fred P. Weber*

SECTION II - to be completed by the Finance Department

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

[Signature]
Finance Director Signature

[Signature]
CF Prepared by

Date

7/14/2020

Date

CT20-2612
CF/CT Number

7/14/2020
[Signature]

July 10, 2020

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

LaShea Lofton, Director
Finance Department

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

SUBJECT: Request for Approval – Professional Services Agreement with
CityWide Development Corporation

Attached for City Commission approval is a Professional Services Agreement (Agreement) with CityWide Development Corporation (CityWide) in the amount of \$150,000.00. This Agreement is funded by the West Dayton Development Trust Fund. The West Dayton Development Trust Fund Advisory Board has reviewed the proposed services and recommends funding this Agreement. CityWide will provide comprehensive economic and community development services in West Dayton including strategic direction for implementing the West Dayton Strategic Framework and engaging businesses, residents, and other stakeholders in West Dayton.

This Agreement is important because the services to be provided further the strategic revitalization of West Dayton.

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

FPW

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into between Citywide Development Corporation, a not-for-profit corporation organized and existing under the laws of the State of Ohio, currently located at 8 North Main Street, Dayton, Ohio 45402 (“Consultant”), and the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio, (“City”).

WITNESSETH THAT:

WHEREAS, The purpose of the West Dayton Development Trust Fund (“WDDTF”) is to fund projects that primarily benefit and enhance the growth and development of the West Dayton area, which is defined as the Innerwest and Southwest Planning Districts; and,

WHEREAS, The Greater West Dayton Framework Strategy, adopted by the City Commission on February 25, 2015 emphasizes redevelopment to support, link, and leverage existing assets in order to become a more sustainable community; and,

WHEREAS, The Greater West Dayton Corridor Plan, adopted by the City Commission on July 26, 2017 provides a guide that integrates the City’s asset and place-based economic and transportation strategies to impact and improve overall community confidence in the future of the City; and,

WHEREAS, City desires certain professional services related to economic development, community redevelopment and real estate activities in the neighborhoods identified in West Dayton Strategic Framework; and,

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

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

ARTICLE 1. SERVICES TO BE PERFORMED BY THE CONSULTANT

The Consultant will work with residents, businesses, and community groups to design and implement projects to improve the community (“Economic and Community Development Services”), which shall include, without limitation, the following:

1. Assisting the development of community gardens, art/murals, landscaping projects, wellness programs, streetscape enhancements (banners, lighting, trees, etc.) and community events.
2. Providing strategic direction for the revitalization of West Dayton neighborhoods including implementation of the West Dayton Strategic Framework and leading comprehensive community development including fieldwork, resident engagement, planning, project development and implementation.
3. Engaging and building productive relationships with residents, businesses, and other community stakeholders and participating in community meetings and events designed to improve West Dayton neighborhoods.

4. Collaborating with the City to identify additional financial resources and strategic partnerships for project development, strategic demolition, and other community development activities within the district.
5. Attending meetings related to economic development, community redevelopment and real estate activities in the neighborhoods outlined in the adopted Greater West Dayton Framework strategy.

Consultant shall document the matching funds and in-kind services for the projects undertaken pursuant to this Agreement and report the same to the Department of Economic Development on a quarterly basis. The parties contemplate that projects should have a 1:1 match, and that volunteer time shall generally be valued at Ten Dollars and Zero Cents (\$10.00) per hour with exceptions being allowed for skilled services. Consultant's in-kind skilled service are valued at Seventy-Five to One Hundred Dollars and Zero Cents (\$75-100.00) per hour depending on the staff assigned.

ARTICLE 2. TERM AND TERMINATION

This Agreement is effective upon execution by the City and will expire December 31, 2021, unless extended or terminated by mutual agreement of the parties.

In the event of substantial failure by Consultant in performance of this Agreement, or for the City's convenience, the City may terminate this Agreement upon giving written notice to Consultant. If substantial failure is the basis for termination, then Consultant will have fifteen (15) calendar days from the date of termination notice to cure or to submit a plan for cure acceptable to the City. If a plan for cure is not accepted, then this Agreement will terminate immediately and the City shall pay Consultant for those services rendered to the City. If termination is for the City's convenience, the City shall pay Consultant for all accepted services performed prior to termination. In either event, Consultant shall terminate the Services according to a schedule acceptable to the City.

ARTICLE 3. COMPENSATION

Total remuneration for the Economic and Community Development Services performed pursuant to this Agreement shall not exceed One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00). The City may request cost estimates in advance of any activities undertaken pursuant to this Agreement.

Consultant shall invoice City on a quarterly basis for the Economic and Community Development Services performed. The invoice(s) shall state the invoice period, state the total amount requested, detail the work and/or services performed, and contain such records, detailed summary reports, information, and/or documentation to substantiate the invoice amount. Unless disputed, City shall disburse payment within thirty (30) days from receipt of the invoice.

ARTICLE 4. PROFESSIONAL QUALIFICATIONS, SERVICES, AND STANDARDS

The Consultant represents that it is qualified and permitted by law to perform the services required hereunder and that it has, and will maintain, adequate facilities and sufficient personnel to perform the services. The Consultant represents and warrants that all personnel engaged in the performance of the services to be provided are qualified and permitted to do the work assigned. The Consultant shall furnish the City, upon request, a resume outlining the technical qualifications and the general and specific experience in the area(s) of community economic development, planning, and community organizing, together with other substantiating information as to the Consultant and its agents' and employees' qualifications and experience.

The Consultant and its employees, agents, and/or contractors performing the services under this Agreement shall exercise the same degree of care, skill, and diligence in the performance of the services as is ordinarily possessed and exercised by the profession under like or similar circumstances. All work is to be completed in accordance with applicable local, state, or federal regulations.

ARTICLE 5. LIABILITY AND IDEMNIFICATION

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

The parties hereto specifically agree, notwithstanding any other provision in the Agreement to the contrary, that the City will not, under any circumstances, be liable or responsible for any acts, errors, or omissions of the Consultant, nor will the City, under any circumstances as a result of meetings and consultations and decisions resulting therefrom, be liable or responsible for any damages or additional costs incurred by the failure of the Consultant to perform its duties as set forth in the Agreement; nor will the City, by participating in meetings and consultations with the Consultant and the decisions resulting therefrom be, in any degree or to any extent, liable for technical decisions of any kind or nature, such responsibility remains that of the Consultant.

Regardless of completion of services, obligations, and duties provided for in this Agreement, or if this Agreement is terminated for any reason, the terms and conditions of this Article will survive.

ARTICLE 6. OWNERSHIP OF WORK PRODUCT

All documents, including without limitation, all writings, drawings, pictures, recordings, notes, data reports computer or machine-reusable data, all copies or reproductions thereof, or other information received and generated in the performance of this Agreement will be considered work made for hire and exclusive property of the City. The Consultant shall not is the documents now or in the future for any purpose without the prior written permission of an authorized City employee.

The Consultant shall deliver the documents to the City and shall maintain the documents as strictly confidential. The Consultant shall not disclose the document to others, including individuals, corporations, or government agencies, either before or after their termination of this Agreement, except as expressly authorized in writing by the City or compelled by law.

ARTICLE 7. INDEPENDENT CONSULTANT

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

Consultant, its employees and any subcontractor performing the duties and responsibilities under this Agreement are not City employees, and therefore, such persons shall not be entitled to, nor will they make a claim for, any of the emoluments of employment with the City. Further, Consultant shall be responsible

to withhold and pay, or cause such agents and subcontractors to withhold and pay, all applicable local, state, and federal taxes.

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

ARTICLE 8. EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION.

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

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

ARTICLE 9. POLITICAL CONTRIBUTIONS.

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

ARTICLE 10. RECORDS AND RETENTION.

Company shall use Generally Accepted Accounting Principles (“GAAP”) or the Income Tax Accounting Method in recording and documenting all costs and expenditures related in whole or part to the Project. All costs and expenditures for the Project for which Company will be reimbursed hereunder shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers or other accounting documents and other evidence (collectively, “Records”). All Records shall be clearly identified and readily accessible. At any time during normal business hours and as often as City may reasonably request, Company shall make available to City, the Auditor of the State of Ohio, the federal government and any of its departments and agencies, and any of their designees, all of its Records related to this Agreement and the Project. Company shall permit City, the Auditor of the State of Ohio, the federal government and any of its departments and agencies and any of their designees to audit, examine, and make excerpts or transcripts from such Records and to have audits made of all contracts, invoices, materials, payrolls, personnel records, conditions of employment and other data pertaining in whole or in part to matters covered by this Agreement.

All Records, including any and all supporting documentation for invoices submitted to City, shall be retained by Company and made available for review by City, the Auditor of the State of Ohio, the federal government and any of its departments and agencies, and any of their designees for a minimum of three (3) years after the termination or expiration of this Agreement. Notwithstanding the foregoing, if there is litigation, claims, audits, negotiations or other actions that involve any of the Records pertaining to this Agreement, which commences prior to the expiration of the three-year period, Company shall retain such Records until completion of the actions and resolution of all issues or the expiration of the three year period, whichever occurs later.

ARTICLE 11. TAX REPRESENTATION.

Company certifies that, as of the date of execution, it does not owe any delinquent taxes to the City of Dayton and/or does not owe delinquent taxes for which Company is liable under Chapter 5733, 5735, 5739, 5741, 5743, 5747, or 5753 of the Ohio Revised Code or, if such delinquent taxes are owed, Company currently is paying such delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, or Company filed a petition in bankruptcy under 11 U.S.C. Section 101. et seq., or such a petition has been filed against Company. For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.

ARTICLE 12. GENERAL PROVISIONS.

- A. Conflict of Interest. Company represents that to the best of its knowledge it has no interest that would undermine the impartiality of either party because of the conflict between the party’s self-interest and this agreement or public interest in any manner or degree. Company further covenants that it will not acquire any such interest, directly or indirectly during the term of this Agreement.
- B. Entire Understanding. This Agreement represents the entire and integrated agreement between the parties. This Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreements or contracts, whether oral or written, relating to the subject matter of this Agreement.
- C. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws. Any arbitration, litigation or other legal matter regarding this Agreement or performance by either party must be brought in a court of competent jurisdiction in Montgomery County, Ohio.
- D. Amendment. The parties may amend this Agreement, provided that no such amendment shall be effective unless it is reduced to a writing, which makes specific reference to this Agreement, is executed by a duly authorized representative of each party to this Agreement and, if required or applicable, is approved by the Commission of the City of Dayton, Ohio.
- E. Waiver. A waiver by City of any breach of this Agreement shall be in writing. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it is given and shall not affect City’s rights with respect to any other or further breach.
- F. Relationship. This Agreement is not intended to be, nor shall it be construed, as creating a partnership, joint venture, corporation, or other relationship between the parties with respect to the Project or any activities to be completed by Company.
- G. Communications. Any notice, demand, or other communication required under the Agreement by one party to the other party shall be sufficiently given, if it is sent by certified U.S. mail, postage prepaid, return receipt requested or delivered personally, and addressed as follows:

For City: Ford P. Weber, Director
Department of Economic Development
City of Dayton
P.O. Box 22, 101 W. Third Street
Dayton, OH 45401

For Consultant: Brian Heitkamp, President
Citywide Development Corporation
8 North Main Street
Dayton, OH 45402

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

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

CITYWIDE DEVELOPMENT CORPORATION

By: [Signature]

Its: ASST SECRETARY

By: [Signature]

Its: Citywide Development

CITY OF DAYTON, OHIO

City Manager

Date

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]
City Attorney

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

_____, 2020

Min. / Bk. _____ Pg. _____

Clerk of the Commission



City Manager's Report

3

From **2600 - Economic Development**

Date **July 22, 2020**

Expense Type **Development Agreement**

Supplier, Vendor, Company, Individual

Total Amount **\$150,000.00 thru 12-31-2026**

Name **Techmetals, Inc.**

Address **345 Springfield Street
Dayton, Ohio 45403**

Fund Source(s)	Fund Code(s)	Fund Amount(s)
Development Fund	16300-2600-1224-41	\$30,000.00
Economic Dev ED/GE Projects	28310-2600-1224-41-EDG083	\$120,000.00

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

Description

Development Agreement

The Department of Economic Development requests approval to enter into a Development Agreement with Techmetals, Inc. to assist in the expansion of their business in Dayton. Techmetals will invest approximately Two Million One Hundred Fifty Thousand Dollars (\$2,250,000.00) in building improvements, machinery, and equipment for their campus at 345 Springfield Street. The company is pledging to create approximately 25 new jobs and retain 200 existing jobs with an average salary of \$42,500.00 over the next three years.

The City is contributing \$30,000.00 of grant funding from the Development Fund along with a Montgomery County Economic Development/Government Equity Program (ED/GE) grant in the amount of \$120,000.00. This Agreement makes the funds available to the company on a reimbursement basis as eligible expenses are incurred for the project. The incentives are necessary to address gap funding and special conditions related to the urban location.

The Agreement will commence upon execution and expire on December 31, 2026. The Agreement includes a "clawback" provision, in the event that the pledged payroll growth is not achieved.

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

Two Certificates of Funds and a map are attached.

Signatures/Approval

Division _____

Department _____

City Manager _____

Approved by City Commission

Clerk _____

Date _____

CERTIFICATE OF FUNDS

CT20-2614

SECTION I - to be completed by User Department

NO DRAFT DOCUMENTS PERMITTED

 x New Contract Renewal Contract Change Order

Contract Start Date	upon execution
Expiration Date	12/31/2026
Original Commission Approval	\$ 120,000.00
Initial Encumbrance	\$ 120,000.00
Remaining Commission Approval	\$ -
Original CT/CF	
Increase Encumbrance	\$ -
Decrease Encumbrance	\$ -
Remaining Commission Approval	\$ -

Required Documentation

<u> x </u>	Initial City Manager's Report
<u> x </u>	Initial Certificate of Funds
<u> x </u>	Initial Agreement/Contract
<u> </u>	Copy of City Manager's Report
<u> </u>	Copy of Original Certificate of Funds

Amount: <u> \$ 120,000.00 </u> Fund Code <u>28310 - 2600 - 1224 - 41 - EDG083 -</u> <div style="display: flex; justify-content: space-between; font-size: small;"> FundOrgAcctProgActLoc </div>	Amount: <u> </u> Fund Code <u>XXXX - XXX - XXXX - XX - XXXX - XXXX</u> <div style="display: flex; justify-content: space-between; font-size: small;"> FundOrgAcctProgActLoc </div>
Amount: <u> </u> Fund Code <u>XXXXX - XXXX - XXXX - XX - XXXX - XXXX</u> <div style="display: flex; justify-content: space-between; font-size: small;"> FundOrgAcctProgActLoc </div>	Amount: <u> </u> Fund Code <u>XXXX - XXX - XXXX - XX - XXXX - XXXX</u> <div style="display: flex; justify-content: space-between; font-size: small;"> FundOrgAcctProgActLoc </div>

Attach additional pages for more FOAPALS

Vendor Name: Techmetals, Inc.

Vendor Address: 345 Springfield Street Dayton Ohio 45403

StreetCityStateZipcode + 4

Federal ID: 31-0826775

Commodity Code: 91849

Purpose: ED/GE agreement to assist with building expansion.

Contact Person: Jill Bramini Economic Development 12/2/2019

Department/DivisionDate

Originating Department Director's Signature: *Ford P. Weber*

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.

<u><i>Jill Bramini</i></u>	<u>7/14/2020</u>	
Finance Director Signature	Date	
<u><i>Jessica Maslow</i></u>	<u>7/14/2020</u>	<u>CT20-2614</u>
CF Prepared by	Date	CF/CT Number

7/14/2020
[Signature]

July 10, 2020

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

LaShea Lofton, Director
Finance Department

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

SUBJECT: Request for Certificate of Funds – Techmetals, Inc.

Attached please find two Certificate of Funds and related materials for a Development Agreement with Techmetals, Inc. The project will support the expansion of an essential business during the current emergency. As such, the Department of Economic Development finds it appropriate to enter into the agreement at this time.

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

FPW/jkb

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio (“City”), and Techmetals, Inc., a corporation in the State of Ohio, currently located at 345 Springfield Street, Dayton, Ohio 45403 (“Company”).

WITNESSETH THAT:

WHEREAS, City desires to improve its job base by attracting businesses to Dayton and encouraging expansion of existing businesses that benefit and enhance the growth and development in the City; and,

WHEREAS, Company pledges to create and retain full-time permanent employment positions in the City of Dayton; and,

WHEREAS, The Project (as described herein) will create approximately twenty-five (25) new full-time equivalent jobs and retain approximately two hundred (200) full-time equivalent jobs while improving and expanding operations at the Facility, as defined below; and,

WHEREAS, City finds it beneficial and in its best interests to provide support to Company for the Project as defined herein under the terms and conditions set forth herein.

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

ARTICLE 1. DEFINITIONS.

For the purposes this Agreement, the following words and phrases shall have the following meanings ascribed to them respectively, regardless of whether or not the words and phrases are capitalized:

Development Grant. A grant provided hereunder by the City of Dayton for the purpose of growing the City’s tax base by assisting Company in the creation and/or retention of jobs in the City of Dayton.

ED/GE Grant. A grant provided hereunder by the Montgomery County Economic Development/Government Equity program to assist the Company in the creation and/or retention of jobs in the City of Dayton.

Project Grant. The total grant amount including funds awarded by the Montgomery County, Ohio, ED/GE Grant and the City of Dayton Development Grant, totaling an amount of One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00).

Eligible Project Costs. The expenses actually incurred by Company for and/or the value of (i) Capital Improvements to the Facility; and (ii) the cost of acquiring the Machinery and Equipment for the Facility.

Capital Improvements. Expenditures by the Company for the design and construction of improvements to buildings, parking lots, driveways, utilities and other components of their facilities.

Machinery and Equipment. Expenditures by the Company for the acquisition, delivery and installation of specialized machines, tools or other equipment for the production of goods and materials.

Employment Commitment. The number of full-time permanent employment positions, both retained and new, Company promises as a material condition of this Agreement as measured and provided in Article 4.

Facility. The Company's operations located at and around 345 Springfield Street, Dayton, OH 45403, including the acquisition, renovation, new construction and any associated utilities necessary to operational improvements and enhanced production capacity.

Full-time Employee. An employee working an average of at least thirty-five (35) hours per week/annually. This does not include seasonal or contract employees.

Full-time Equivalent Employee. Two (2) part-time employees working a total of at least thirty-five (35) hours per week on an annual basis. This does not include seasonal or contract employees.

New Job. Any full-time equivalent position not yet in existence in the City of Dayton at the time of the Agreement that will be created and filled by Company.

ARTICLE 2. PROJECT.

Company will invest approximately Two Million Two Hundred Fifty Thousand Dollars and Zero Cents (\$2,250,000.00) in the Project as follows: Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) in building improvements/renovations; and Two Million Fifty Thousand Dollars and Zero Cents (\$2,050,000.00) in machinery and equipment; (collectively, the "Project Costs") to expand their existing business operations ("Project").

Company shall commence the Project within one hundred eighty (180) days of Agreement execution and complete the Project on or before December 31, 2022, unless such commencement and/or completion date(s) is/are extended upon mutual written agreement between the parties to this Agreement. All construction activities and other work required to complete the Project shall be performed and completed in accordance with all applicable federal, state, and local laws, rules, regulations, and orders, including all applicable building, zoning, well field, and fire code requirements.

ARTICLE 3. FUNDING.

The City of Dayton is the recipient of a ED/GE Grant for the project on behalf of Company in the amount of up to One Hundred Twenty Thousand Dollars and Zero Cents (\$120,000.00). The terms of the ED/GE Grant agreement are incorporated herein and attached as **Exhibit A**, noting

that the current scope of the Project varies in minor details deemed acceptable to the City and the County. This portion of the Project Grant is restricted to reimbursement of documented expenditures associated with the Project's Capital Improvements.

City will also provide Company a Development Grant from the City's Development Fund in an amount of up to Thirty Thousand Dollars and Zero Cents (\$30,000.00). This portion of the Project Grant is restricted to reimbursement of documented expenditures for Machinery and Equipment.

The ED/GE Grant and the Development Grant provide a total of up to One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00) (hereinafter collectively referred to as the "Project Grant").

The Project Grant represents approximately Six and Sixty-Seven One-Hundredths percent (6.67%) ("*Reimbursement Percentage*") of the total Project Costs contemplated in Article 2 above. The City shall not disburse ED/GE Grant or Development Grant funds for the reimbursement of Eligible Project Costs at a proportion in excess of the Reimbursement Percentage. Further, the total disbursement for Machinery and Equipment shall not exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00). Company is solely responsible for any and all Project Costs and other expenses in excess of the funding provided by City hereunder. Company shall comply with all applicable laws and regulations and pay, if applicable, state and local prevailing wage rates.

Company shall use the Development Grant for reimbursement of Eligible Project Costs actually and directly incurred by Company during the term of this Agreement. Company shall submit its initial Request for Disbursement of the Development Grant at its discretion, and no more frequently than quarterly thereafter, utilizing a form substantially similar to that attached hereto and incorporated as **Exhibit B**. The final Request for Disbursement shall be submitted no later than ninety (90) days following completion of the Project. All Requests for Disbursement shall include documentation setting forth the Project Costs incurred from December 13, 2018 throughout the term of this Agreement and specify the Eligible Project Costs. This documentation shall include the period during which the Project Costs and Eligible Project Costs were incurred, the total amount of the disbursement requested, details regarding the work and/or services performed, evidence of payment of the of the Project Costs and Eligible Project Costs, and such records, information, and/or documentation to substantiate the Project Costs and Eligible Project Costs. Appropriate City personnel will verify the Eligible Project Costs and Project Costs. Unless disputed, and subject to the Reimbursement Percentage, City will disburse payment within forty-five (45) days from receipt of the Request for Disbursement.

ARTICLE 4. EMPLOYMENT AND WAGE WITHHOLDING TAXES COMMITMENT

A. Income Tax Withholding Taxes Due to City. The parties acknowledge and understand that Company's commitment to grow Dayton's tax base by creating and/or retaining job in the City of Dayton is the consideration upon which this Agreement is based. Company therefore agrees that by establishing and maintaining the employment figures as contemplated, Company shall pay annual minimum income taxes (based on the current 2.50% applicable tax rate) to City from Company's employee wages subject to withholding in the amounts stated below ("Committed Employee Wage Withholding Taxes") each year.

Year of Agreement	Committed Employee Wage Withholding Taxes to be Paid**
2020	\$212,500.00
2021	\$217,813.00
2022	\$223,125.00
2023	\$228,438.00
2024	\$233,750.00
2025	\$239,063.00

** The Committed Employee Wage Withholding Taxes to be Paid are subject to and shall be adjusted for changes in (i) the City’s Income Tax rate and/or (ii) the deductions from the gross wages paid that would impact the Committed Employee Wage Withholding Taxes to be Paid. The Committed Employee Wage Withholding Taxes shall also include the City income taxes paid by employment agencies on behalf of employees that work at Facility.

For any year after the Development Grant is distributed in which the annual wage withholding taxes paid to City by Company fall below the amount stated in the “Committed Employee Wage Withholding Taxes to be Paid” for the corresponding year, Company shall pay such deficiency to City by February 1st of the following year. [By way of example, if the total amount of wage withholding taxes paid by Company to City in 2020 is \$208,500.00, Company shall pay the deficiency of \$4,000 to City no later than February 1, 2021.] The Company however shall not be required to pay in total more than Development Grant paid to the Company pursuant to this Agreement.

Optional Withholding Schedule: However, due to the 2020 Public Health Emergency associated with COVID19, the City will permit the Company to delay the terms of Committed Employee Wage Withholding Taxes by one year, as follows:

Year of Agreement	Committed Employee Wage Withholding Taxes to be Paid**
2021	\$212,500.00
2022	\$217,813.00
2023	\$223,125.00
2024	\$228,438.00
2025	\$233,750.00
2026	\$239,063.00

The Company may elect this option by notifying the City in writing on or before January 15, 2021.

- B. Credit for Income Tax Withholding. For any given year, Company shall not receive a monetary credit for exceeding the amount of wage withholding taxes paid to City. [By way of example, if Company pays the City \$222,000.00 in wage withholding taxes in 2020, it will not receive a monetary credit of \$4,000.00 for exceeding the projected figure of \$216,500.00] The wage withholding taxes paid by Company for each year of this Agreement must stand on its own.

ARTICLE 5. SPECIFIC CONDITIONS.

- A. Company shall comply with all applicable federal, state, and local laws, including applicable prevailing wage laws, rules, regulations, and orders governing receipt and use of municipal and other public funds for the Project. All construction activities and other work required to complete the Project shall be performed and completed in accordance with all applicable federal, state, and local laws, rules, regulations, and orders, including all building, zoning and fire code requirements. Company shall assume full and complete responsibility for any alleged or actual violation of the foregoing, including payment of any penalty imposed and/or repayment of improperly expended funds, if any, and shall defend, indemnify, and hold harmless City and its elected officials, officers, agents, and employees therefrom.
- B. Company shall establish and maintain a working relationship with City-designated job placement and employment organizations, including the Montgomery County Job Center, to assist with employment recruitment and satisfaction of the employment commitment set forth above. In satisfying the New Job portion of the employment commitment set forth above, Company shall submit a listing of all available employment positions to Montgomery County Job Center or other job referral and placement agencies.
- C. Company shall make every reasonable effort to hire residents of the City of Dayton to fill the new employment positions to be created hereunder.
- D. Company expressly authorizes the City of Dayton Division of Revenue & Taxation to release specific tax records to the Department of Economic Development, for payroll verification as it applies to this Agreement. Such records will be kept confidential, shall only be used for the purposes stated herein, and returned to the City of Dayton Division of Revenue & Taxation once review is complete.
- E. It is the City of Dayton's commitment to encourage the greatest participation possible of Minority- and Women-owned, Small, and Local Businesses on all projects, joint agreements, and bid opportunities through City's Procurement Enhancement Program ("PEP") and other initiatives. To the extent Company makes capital improvements to the Facility, Company (and/or their General Contractor) shall make good faith efforts to hire qualified and City of Dayton Human Relations Council (HRC) PEP certified contractors, and particularly those suppliers located in the City of Dayton, to complete work and services associated with the Project:

PEP Participation Goals. Company agrees that the City's Procurement Enhancement Plan ("PEP") participation goals for certified Small Business Enterprises ("SBEs"), Minority Business Enterprises ("MBEs"), Women's Business Enterprises ("WBEs"), and

Dayton Local Small Businesses (“DLSBs”) apply to the capital improvements portion of the Project. The PEP participation goals are:

MBE 17%
SBE: 5%
WBE 5%

F. Counting Toward Goals.

(i) To count toward the Project’s PEP Participation Goals, a company contracting on the Project must be certified with the City’s Human Relations Council (“HRC”) and must be certified to perform the proposed work. The City encourages Company and Company’s construction contractors to review the list of PEP-certified companies at <https://citybots.com/Home/Links> (click on the “PEP Certification List” button) and to obtain a copy of each PEP-certified firm’s Certification Letter.

(ii) If a company is not currently PEP-certified, it may apply for PEP certification at any time; however, once a company is certified, only the portion of work performed on or after the company’s PEP certification date shall count toward the Project’s PEP Participation Goals. If a company’s PEP certification expires, only the portion of work performed while the company’s PEP certification was active shall count toward the Project’s PEP Participation Goals.

(iii) For each PEP-certified firm, Company or Company’s construction contractor shall submit to the HRC an executed PEP Participation Form describing the work to be performed, the dollar amount of the PEP firm’s contract or subcontract, and the dollar amount to be counted toward the Project’s PEP Participation Goals. The HRC shall acknowledge receipt of each PEP Participation Form within two (2) business days, and shall attempt to verify the PEP firm’s participation within five (5) business days. A verified PEP firm’s participation shall be counted in every category (i.e., SBE, MBE, and/or WBE) in which the firm is certified.

G. If it becomes necessary for review, audit, or verification purposes, Company shall allow City to inspect applicable, confidential records relating to its obligations under this Agreement.

H. Company agrees to supply additional information upon request by the City of Dayton to verify its compliance with the terms of this Agreement and to cooperate in any audit or review of the funding provided hereunder.

ARTICLE 6. TERM AND TERMINATION.

This Agreement shall commence upon execution by City and it shall expire on December 31, 2026, unless extended to a later date by amendment of earlier terminated. This Agreement may be immediately terminated in the event of or under any of the following circumstances:

1. A receiver for Company’s assets is appointed by a court of competent jurisdiction.

2. Company is divested of its rights, powers, and privileges under this Agreement by operation of law.
3. Company's failure to comply with any term, covenant or condition of this Agreement to be kept, performed and observed by it, and the failure of Company to remedy such failure within thirty (30) days from the date of written notice from City.
4. Company's violation of any applicable federal, state, or local law applicable to the Project and construction thereof.
5. If, prior to the receipt of any funding from City hereunder and upon giving thirty (30) days prior written notice, Company desires to terminate this Agreement.

In the event of termination prior to Project completion and if City provided any funds to Company hereunder, Company shall repay to City within thirty (30) business days from the effective date of termination all funds provided hereunder and, upon such repayment, Company shall be released from its obligations hereunder. This obligation to remit repayment of funding shall survive termination of this Agreement until such funds are actually received by City. If no funds were provided, the parties shall be immediately relieved of their obligations hereunder. The City may terminate this Agreement at any time and without cause upon giving Company thirty (30) days prior written notice

ARTICLE 7. INDEMNIFICATION.

Company shall defend, indemnify, and hold harmless City and its elected officials, officers, employees, and agents from and against all claims, losses, damages, and expenses (including reasonable attorneys' fees) of whatsoever kind and nature, to the extent that such claims, losses, damages, or expenses are caused by or arise out of the performance or non-performance of this Agreement and/or the acts, omissions or conduct of Company, and its agents, employees, contractors, sub-contractors, and representatives in undertaking and completing the Project, and/or Company's failure to comply with federal, state, and local laws, including (as applicable) those relating to the payment of prevailing wages.

ARTICLE 8. EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION.

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

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

ARTICLE 9. POLITICAL CONTRIBUTIONS.

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

ARTICLE 10. RECORDS AND RETENTION.

Company shall use Generally Accepted Accounting Principles (“GAAP”) or the Income Tax Accounting Method in recording and documenting all costs and expenditures related in whole or part to the Project. All costs and expenditures for the Project for which Company will be reimbursed hereunder shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers or other accounting documents and other evidence (collectively, “Records”). All Records shall be clearly identified and readily accessible. At any time during normal business hours and as often as City may reasonably request, Company shall make available to City, the Auditor of the State of Ohio, the federal government and any of its departments and agencies, and any of their designees, all of its Records related to this Agreement and the Project. Company shall permit City, the Auditor of the State of Ohio, the federal government and any of its departments and agencies and any of their designees to audit, examine, and make excerpts or transcripts from such Records and to have audits made of all contracts, invoices, materials, payrolls, personnel records, conditions of employment and other data pertaining in whole or in part to matters covered by this Agreement.

All Records, including any and all supporting documentation for invoices submitted to City, shall be retained by Company and made available for review by City, the Auditor of the State of Ohio, the federal government and any of its departments and agencies, and any of their designees for a minimum of three (3) years after the termination or expiration of this Agreement. Notwithstanding the foregoing, if there is litigation, claims, audits, negotiations or other actions that involve any of the Records pertaining to this Agreement, which commences prior to the expiration of the three-year period, Company shall retain such Records until completion of the actions and resolution of all issues or the expiration of the three year period, whichever occurs later.

ARTICLE 11. TAX REPRESENTATION.

Company certifies that, as of the date of execution, it does not owe any delinquent taxes to the City of Dayton and/or does not owe delinquent taxes for which Company is liable under Chapter 5733, 5735, 5739, 5741, 5743, 5747, or 5753 of the Ohio Revised Code or, if such delinquent taxes are owed, Company currently is paying such delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, or Company filed a petition in bankruptcy under 11 U.S.C. Section 101. et seq., or such a petition has been filed against Company. For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.

ARTICLE 12. GENERAL PROVISIONS.

- A. Conflict of Interest. Company represents that to the best of its knowledge it has no interest that would undermine the impartiality of either party because of the conflict between the party's self-interest and this agreement or public interest in any manner or degree. Company further covenants that it will not acquire any such interest, directly or indirectly during the term of this Agreement.
- B. Entire Understanding. This Agreement represents the entire and integrated agreement between the parties. This Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreements or contracts, whether oral or written, relating to the subject matter of this Agreement.
- C. Independent Contractor Status. By executing this Agreement, Company acknowledges and agrees that it will be working with the City as an "independent contractor." As an independent contractor for the City, Company shall be prohibited from representing or allowing others to construe the parties' relationship in a manner inconsistent with this subsection. Company 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.

Company, its employees and any approved subcontractors performing the duties and responsibilities under this Agreement are not City employees, and therefore, such persons shall not be entitled to, nor will they make a claim for, any of the emoluments of employment with the City. Further, Company shall be responsible to withhold and pay, or cause such agents and subcontractors to withhold and pay, all applicable local, state and federal taxes.

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

- D. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws. Any arbitration, litigation or other legal matter regarding this Agreement or performance by either party must be brought in a court of competent jurisdiction in Montgomery County, Ohio.
- E. Amendment. The parties may amend this Agreement, provided that no such amendment shall be effective unless it is reduced to a writing, which makes specific reference to this Agreement, is executed by a duly authorized representative of each party to this Agreement and, if required or applicable, is approved by the Commission of the City of Dayton, Ohio.
- F. Waiver. A waiver by City of any breach of this Agreement shall be in writing. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it is given and shall not affect City's rights with respect to any other or further breach.

- G. Relationship. This Agreement is not intended to be, nor shall it be construed, as creating a partnership, joint venture, corporation, or other relationship between the parties with respect to the Project or any activities to be completed by Company.
- H. Communications. Any notice, demand, or other communication required under the Agreement by one party to the other party shall be sufficiently given, if it is sent by certified U.S. mail, postage prepaid, return receipt requested or delivered personally, and addressed as follows:

For City: Ford Weber, Director
Department of Economic Development
City of Dayton
P.O. Box 22, 101 W. Third Street
Dayton, OH 45401

For Company: Phillip Brockman, President
Techmetals, Inc.
345 Springfield Street
Dayton, Ohio 45403

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

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

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

TECHMETALS, INC.

By: Phillip D. Brockman

Print name: Phillip Brockman

Its: President

CITY OF DAYTON, OHIO

City Manager

Date

**APPROVED AS TO FORM
AND CORRECTNESS:**

Andrew B. [Signature]
City Attorney RK

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

_____, 2020

Min. / Bk. _____ Pg. _____

Clerk of the Commission

EXHIBIT A

2018
MONTGOMERY COUNTY
ECONOMIC DEVELOPMENT/GOVERNMENT EQUITY (ED/GE)
PROGRAM PROJECT AGREEMENT

THIS AGREEMENT is entered into on the date(s) at the end hereof, by and between the BOARD OF COUNTY COMMISSIONERS OF MONTGOMERY COUNTY, OHIO, Montgomery County Administration Building, 451 West Third Street, Dayton, Ohio 45422, hereinafter referred to as the "Board," and the **CITY OF DAYTON**, MONTGOMERY COUNTY, OHIO, hereinafter referred to as the "Participant."

WITNESSETH:

WHEREAS, in October of 1989, O.R.C. Section 307.07 became effective, and granted the Board the authority to create an Office of Economic Development and to appoint a person to act as Director of said Office, referred to hereinafter as the Director; and

WHEREAS, O.R.C. Section 307.07 further constitutes a grant of authority to the Board to become actively involved in the development and execution of economic development in Montgomery County, Ohio; and

WHEREAS, on or about June 4, 1991, and pursuant to O.R.C. Section 307.07, the Board did create a Montgomery County Office of Economic Development and did appoint a Director of same; and

WHEREAS, O.R.C. Section 307.07 further authorizes the Board to use a portion of its sales tax revenues for the purpose of furthering and fostering economic development in Montgomery County, Ohio; and

WHEREAS, O.R.C. Section 307.07(B)(3) authorizes the Director, with the approval of the Board, to enter into Agreements with federal, state and local governmental agencies for the purpose of carrying out economic development functions of the Board relative to economic development; and

WHEREAS, the Board and the Participant are desirous of mutually cooperating in the funding of an economic development project situated within the boundaries of the **CITY OF DAYTON**, Montgomery County, Ohio, known as the **TECHMETALS** Project, hereinafter referred to as the "Project;" and

WHEREAS, the Board is willing to use some of its sales tax revenues to foster same; and

WHEREAS, the Board has been advised by the Director that the Project properly qualifies as an economic development project in the Montgomery County area; and

WHEREAS, the Participant has supplied the Board with proof that it possesses sufficient statutory/legal authority and management capability needed to assume the primary administration of the Project; and

WHEREAS, on December 13, 2018, by Resolution #18-1686, the Board awarded the **CITY OF DAYTON** an amount not to exceed **\$120,000**, or **5.3%** of total project cost, from the 2018 Primary Economic Development Fund, to provide funding support for the **TECHMETALS** Project.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and

agreements hereinafter set forth, the parties to this Agreement, with the intent to be legally bound, agree as follows:

1. The Participant agrees to assume the responsibility of administering the Project, which project is found specifically identified in the Scope of Work, which scope is attached hereto and made a part hereof as Exhibit "A," and a budget document for said project, which budget is attached hereto and made a part hereof, as Exhibit "B". The Board agrees to tender to the Participant the sum of **ONE HUNDRED TWENTY THOUSAND DOLLARS (\$120,000)** or **FIVE AND THREE TENTHS percent (5.3%)** of total project cost, whichever is less, of the Board's 2018 sales tax revenue to assist the Participant in conducting the Project.

2. The Participant agrees that the Board's sales tax revenues referred to in paragraph 1, above, will be used solely and exclusively by the Participant to offset the cost incurred by it in undertaking the Project, and further agrees that should any or all of Board's said sales tax revenues be used for any purpose other than that of the Project, the Participant will repay the Board the amount improperly expended, and will do so within fourteen (14) calendar days of written notice to it by the Board that such an improper expenditure has occurred, stating therein the amount which the Board believes has been misapplied.

3. Upon execution of this Agreement by both parties and certification by the Montgomery County Auditor, the Board agrees to tender the amount identified in paragraph 1 hereof to the Participant on a regular reimbursement basis as more fully explained in this paragraph. The Participant agrees to supply the Board with regular statements, or invoices, indicating therein the amount of monies expended by the Participant in the furtherance of the Project, this statement, or invoice, will also contain a statement therein identifying the date of each expenditure, the name of the person or business enterprise paid, and the goods or services provided

warranting the payment. The Board will, within thirty (30) calendar days of the receipt of such a statement, or invoice, reimburse the Participant the amount stated in the Participant's statement or invoice. Should the Board be of the opinion that any amount of monies identified in the Participant's invoice was expended for purposes other than the furtherance of the Project, the Board may, in its sole discretion, reduce such payment by the amount of the alleged misapplication, or seek reimbursement as same is provided in paragraph 2 hereof. The parties also agree that the Board, through its Office of Economic Development, has the authority to meet with the contractor, person or business entity employed by the Participant for the Project, and review documentation as it deems necessary to determine that the Board's sales tax revenues are being expended for Project purposes.

4. The Participant agrees that the Board's sales tax revenues are to be expended by the Board in its sole discretion, and that the Board's financial assistance to the Participant is voluntary and that the Participant has no legal or equitable claim to any of the Board's sales tax revenues.

5. The Participant acknowledges that part of the consideration for this Agreement emanates from the Board's sales tax revenues, and that as such, said consideration constitutes public funds, and the Participant acknowledges that the Board, the Montgomery County, Ohio Auditor and/or the Ohio Bureau of Inspection and Supervision of Public Offices (State Auditor's Office) is legally authorized to inspect and make copies of the Participant's books and audit the receipt and expenditure of said consideration. The Participant, therefore, agrees to allow either the Board, the Montgomery County, Ohio Auditor or his representative, or a representative of the State Auditor's Office, to enter upon its premises during regular business hours and to supply the Board, the Montgomery County, Ohio Auditor or his representative, the State Auditor's Office or its

representative, the books/financial records concerning the Participant's receipt and expenditure of the economic development funding received by the Participant pursuant to the Agreement.

6. The Participant agrees that all documentation, financial records and other evidence of project activity under this Agreement shall be maintained by the Participant, consistent with the records retention requirements of the Ohio Revised Code, for a period of three (3) years after the completion or termination of the Project. After this three (3) year retention period, the Participant must notify the Board, in writing, of its intent to destroy said records. The Board reserves the right to extend the retention period for such records, and if it decides to do so it will notify the Participant in writing, otherwise, the Board will issue to the Participant a written Certificate of Records Disposal, it being understood that no records in the Participant's possession will be destroyed until the Participant has received a Certificate of Records Disposal. The Participant also agrees to notify persons or business entities with which it does business in the prosecution of the work called for in the "Project" of the fact that such person or business entity is receiving public funds and that such funds may be audited by the County Auditor or the State Auditor even though they have been received by a private person or business entity.

7. The Participant agrees that, upon completion of said Project, Participant will deliver to the Board's Director of Economic Development a report certifying the Participant's expenditures for the total Project, including ED/GE funds and all other financial sources. In addition, the Participant agrees to provide to the Board's Director of Economic Development, upon the Director's request and at such intervals as requested by the Director, but not to exceed three years, a report certifying the jobs created/retained and the tax base enhanced/retained as a direct result of the Project.

8. The parties acknowledge that this Agreement is made pursuant to the Montgomery County ED/GE program and that the distribution of funds provided for herein is made pursuant to that program and constitutes a distribution to the Participant thereunder. The parties agree that use of the funds distributed hereunder is subject to all terms and conditions of the Economic Development/Government Equity Participation Agreement previously entered into between the parties hereto.

9. The parties expressly agree that this Agreement shall not be assigned by the Participant without the prior written approval of the Board, which approval may be withheld in the sole discretion of the Board.

10. During the performance of this Agreement, the Participant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, handicap, age, political belief or place of birth. The Participant will ensure that applicants are employed and that employees are treated during employment without regard to race, color, religion, sex, national origin, ancestry, handicap, age, political belief or place of birth. Such action shall include, but is not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

The Participant, or any person claiming through the Participant agrees not to establish or knowingly permit any such practice or practices of discrimination or segregation in reference to anything relating to this Agreement, or in reference to any contractors or subcontractors of said Participant.

11. Either party may terminate this Agreement by serving written notice on the other party at least fourteen (14) calendar days before the effective date of such termination as is mentioned in the notice.

12. If any term or provision of this Agreement or the application thereof to any entity, person or circumstance shall, to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to entities, persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14. This instrument embodies the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either written or oral, between the parties to this Agreement. Also, this Agreement shall not be modified in any manner except by an instrument, in writing, executed by the parties to this Agreement and approved by proper Resolution of the parties, if necessary.

14. This Agreement and any modifications, amendments, or alterations, shall be governed, construed, and enforced under the laws of The State of Ohio.

15. Signatures hereon shall act as express representations that the signing agents are authorized to bind their respective principals to all rights, duties, remedies, obligations and responsibilities incurred by way of this Agreement.

- REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK -

IN WITNESS WHEREOF, the parties have hereunto set their hands this ____ day of _____, 20__.

Signed and acknowledged
in the presence of:

BOARD OF COUNTY COMMISSIONERS OF
MONTGOMERY COUNTY, OHIO

Witness

By: _____

Witness

By: _____

By: _____

OR

Witness

By: _____
Michael B. Colbert
County Administrator

AND

Witness

By: _____
Erik S. Collins, Director
Community & Economic Development

AND

Witness

Name

Title

Jurisdiction

Address

City State Zip

APPROVED AS TO FORM:
MATHIAS H. HECK, JR.
PROSECUTING ATTORNEY

BY: _____

Assistant Prosecuting Attorney

DATE: _____

EXHIBIT A
Work Program

Jurisdiction: CITY OF DAYTON

Project: TECHMETALS

This project will allow Techmetals, Inc, an advanced engineering and metal finisher, to construct a 12,000 square foot expansion to its manufacturing facility in the City of Dayton. The company projects the expansion will result in the creation of 25 new and retention of 200 jobs. Funds will be used for construction of the expansion.

Project Tasks:	Start Date:	End Date:
Utility Relocation	1/1/2019	6/30/2019
Building Expansion	1/1/2019	11/1/2019
Equipment	1/1/2019	3/31/2020

EXHIBIT B
Budget

Jurisdiction: CITY OF DAYTON

Project: TECHMETALS

It is expressly understood by the Board and the Participant that the Board will reimburse to the Participant only \$120,000, or 5.3% of total project cost, whichever is less. All costs, including those relating to salaries and benefits, shall be supported by documentation sufficient to support any claim for reimbursement under this Agreement.

Sources:	Amount:
ED/GE	\$120,000
Equity/Private Financing	\$2,100,000
City of Dayton	\$30,000
	\$2,250,000

Uses/Expenses:

Building
Equipment

ED/GE

-
-
-
-
-

\$	1,100,000.00
\$	1,150,000.00
Total:	\$ 2,250,000.00

EXHIBIT B

**City of Dayton
Department of Economic Development
Request for Disbursement**

DATE _____ VENDOR/ORGANIZATION _____

AMOUNT REQUESTED _____

The above-named vendor/organization hereby submits this request for reimbursement. We have reviewed our agreement with the City of Dayton and believe our request meets the eligibility requirements for reimbursement as detailed below.

_____ The expenses for which reimbursement is sought or which, if applicable, comprise project costs that are the basis of calculating the Reimbursement Percentage, were actually incurred as established by the attached documentation. (In the case of improvements to real property, this would most likely be invoices and proof of payment (i.e. copy of cancelled check) for construction and/or equipment/materials. For professional services agreements, this would most likely be a list of activities performed and the hours and wages that correlate thereto.)

_____ The expenses were incurred and/or services were performed during the eligible time frame set forth in the agreement.

_____ The expenses were incurred for eligible activities as set forth in the agreement.

_____ Activity reports have been duly submitted to the Department of Economic Development if required. (This generally pertains to professional services agreements.)

_____ The project is "completed" if required. Evidence of completion of the project (photos, Certificate of Use and Occupancy, etc.) is attached hereto.

_____ Organization has met all job creation and retention requirements if applicable or is on track to meet such requirements. (Detail job creation and retention requirements and status thereof below if appropriate.)

ADDITIONAL INFORMATION:

For more information, please feel free to contact me unless another person is identified below.

Submitted by:

Signature: _____

Title: _____

Phone: _____

Email: _____

Alternative contact for further information if applicable:

Name

Title

Email

Phone

BY: **Mr. Joseph**

NO..... **6399-19**

A RESOLUTION

Authorizing the City Manager to Accept Funding from the Economic Development/Government Equity Program, as Approved by the Board of County Commissioners of Montgomery County, Ohio, in an Amount Not to Exceed, One Hundred Twenty Thousand Dollars and Zero Cents (\$120,000.00) for Techmetals, Inc. on Behalf of the City of Dayton; and Declaring an Emergency.

WHEREAS, This Commission is committed to the welfare of the City of Dayton and the surrounding communities through the promotion of regional cooperation; and,

WHEREAS, The Board of Commissioners of Montgomery County, Ohio ("Board") established the Montgomery County Economic Development/Government Equity Program ("ED/GE") to enhance the local area's ability to compete successfully in a global economic marketplace by providing a significant fund of grant dollars to attract and retain jobs and tax base; and,

WHEREAS, Evidence of such cooperation has been demonstrated by the approval and formal execution of an agreement with the Board by each participating jurisdiction in Montgomery County; and,

WHEREAS, The Board of Commissioners of Montgomery County, Ohio ("Board") desires to provide One Hundred Twenty Thousand Dollars and Zero Cents (\$120,000.00) to the Techmetals Project as part of local funding to enhance the local area's ability to compete successfully in a global economic marketplace by providing a significant fund of grant dollars to attract and retain jobs and tax base; and,

WHEREAS, The City of Dayton supports the project and believes it is in the best interest of the City of Dayton to enter into an Intergovernmental Agreement regarding the grant funding provided by Montgomery County; and,

WHEREAS, To provide for the timely acceptance of the grant funds and allow for the commencement of the projects, and for the immediate preservation of the public peace, property, health and safety, it is therefore necessary that this Resolution take effect at the earliest possible date; now, therefore,

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

Section 1. That the City Manager is authorized, on behalf of the City of Dayton, to execute any and all documents and agreements necessary to accept the funding awarded by the Board of County Commissioners of Montgomery County, Ohio under the Montgomery County Economic Development/Government Equity Program ("ED/GE") for the following project(s) and in the following amount:

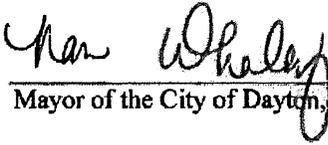
Techmetals Project

\$120,000.00

Section 2. That for the reasons stated in the preamble hereof, this Resolution is declared to be an emergency measure and shall take effect immediately upon its adoption.

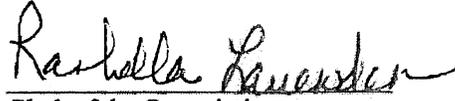
ADOPTED BY THE COMMISSION **March 20**, 2019

SIGNED BY THE MAYOR **March 20**, 2019



Mayor of the City of Dayton, Ohio

Attest:

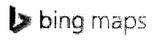


Clerk of the Commission

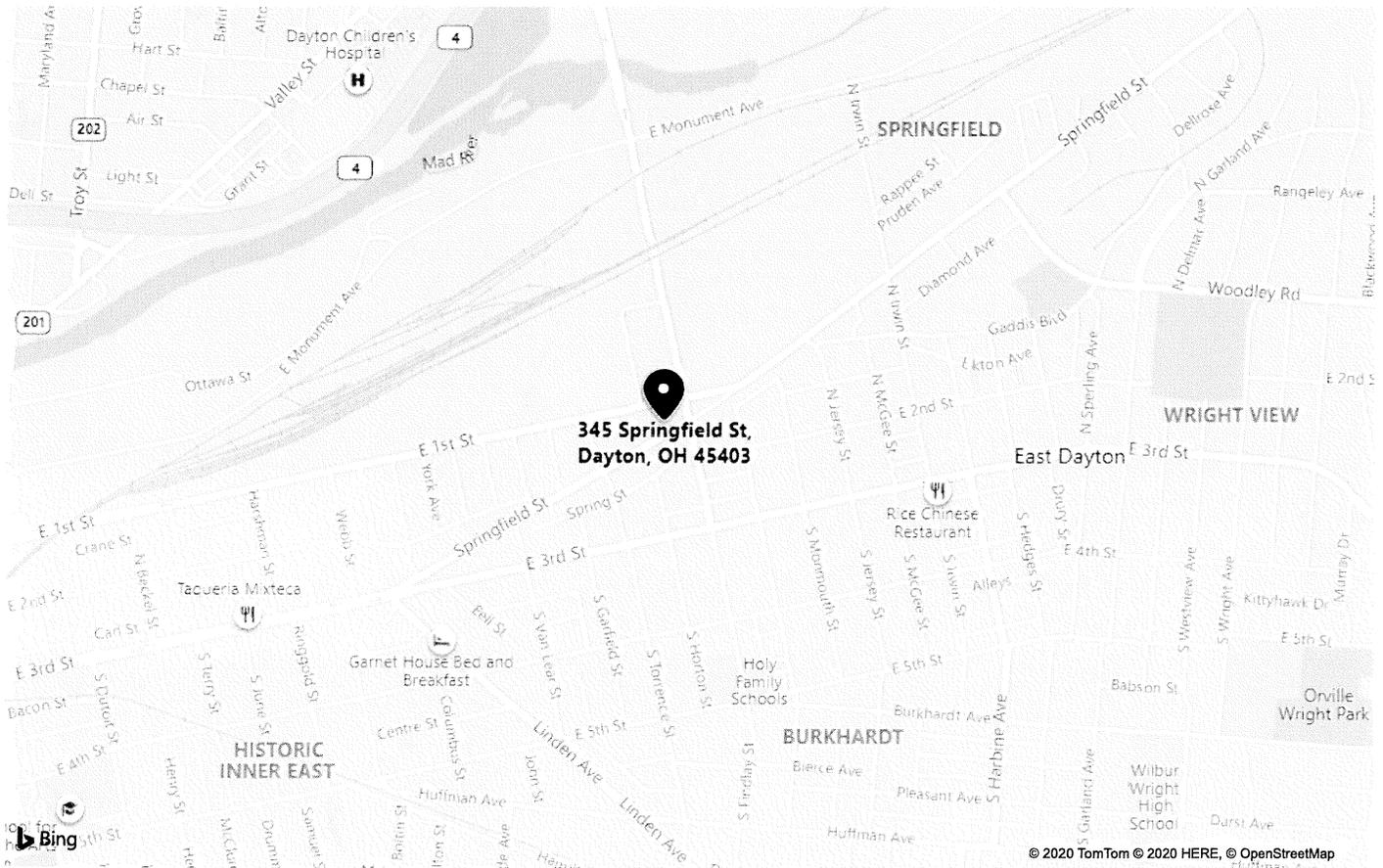
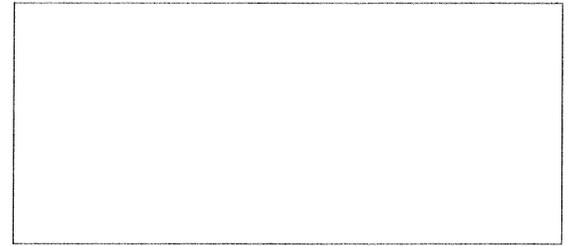
Approved as to form:



City Attorney



345 Springfield St, Dayton, OH 45403



 **Make Bing yours.** Get quick access to Bing with the Bing extension for Chrome Maybe later

18-1686

**RESOLUTION NO. 18-1686
DECEMBER 13, 2018**

**RESOLUTION APPROVING THE FALL 2018 ECONOMIC DEVELOPMENT
PROJECT FUNDING RECOMMENDATIONS FOR THE MONTGOMERY
COUNTY ECONOMIC DEVELOPMENT/GOVERNMENT EQUITY (ED/GE)
PROGRAM.**

WHEREAS, pursuant to the terms of the Economic Development/Government Equity (ED/GE) agreements entered into by the Board of County Commissioners and participating local governments, an ED/GE Advisory Committee was created; and

WHEREAS, that Advisory Committee has reviewed ED/GE project funding applications and recommended to the Board of County Commissioners of Montgomery County, Ohio, a package of economic development funding recommendations for the Fall 2018, ED/GE Program (Exhibit A); and

WHEREAS, pursuant to Ohio Revised Code, Section 307.07, the Economic Development Director of Montgomery County, Ohio has been appointed in order to design, implement, oversee and evaluate economic development programs and policies in the County; and

WHEREAS, the Economic Development Director has evaluated the attached recommendations of the ED/GE Advisory Committee and finds that those recommendations are consistent with the ED/GE Program guidelines and criteria;

NOW, THEREFORE, BE IT RESOLVED that the Fall 2018 economic development project funding for the Montgomery County Economic Development/Government Equity (ED/GE) Program, be and is hereby approved.

BE IT FURTHER RESOLVED that the Clerk of Commission certify this resolution and make an imaged copy of this resolution available on the Montgomery County, Ohio website at <http://www.mcoho.org>.

PAGE 2
RESOLUTION NO. 18-1686
DECEMBER 13, 2018

Ms. Dodge moved the adoption of the foregoing resolution. It was seconded by Mr. Foley, and upon call of the roll the following vote resulted:

Ms. Dodge, aye; Mr. Foley, aye; Mrs. Lieberman, aye: Carried.

I hereby certify that the foregoing is a true and correct copy of a resolution duly adopted by the Board of County Commissioners of Montgomery County, Ohio, the 13th day of December, 2018.

THE BOARD OF COUNTY COMMISSIONERS HEREBY FINDS AND DETERMINES THAT ALL FORMAL ACTIONS RELATIVE TO THE ADOPTION OF THIS RESOLUTION WERE TAKEN IN AN OPEN MEETING OF THIS BOARD OF COUNTY COMMISSIONERS, AND THAT ALL DELIBERATIONS OF THIS BOARD OF COUNTY COMMISSIONERS, AND OF ITS COMMITTEES, IF ANY WHICH RESULTED IN FORMAL ACTION, WERE TAKEN IN MEETINGS OPEN TO THE PUBLIC, IN FULL COMPLIANCE WITH APPLICABLE LEGAL REQUIREMENTS, INCLUDING SECTION 121.22 OF THE REVISED CODE.


Emily Bradford, Clerk
Board of County Commissioners
Montgomery County, Ohio

**EXHIBIT A
PRIMARY ECONOMIC DEVELOPMENT PROJECTS**

Jurisdiction	Name of Project	Amount
Cities of Brookville, Dayton, and Union	"Project Nora"	\$ 250,000.00 (2018) \$ 150,000.00 (2019)
City of Brookville	Hofacker Precision Machining	\$ 56,250.00
City of Dayton	JJR Solutions, LLC	\$ 120,000.00
City of Dayton	Techmetals	\$ 120,000.00
City of Miamisburg	Excelitas Technologies Expansion	\$ 175,000.00
City of Moraine	Tyler Technologies	\$ 250,000.00
City of Trotwood	Robinson Janitorial & Floor Care	\$ 23,000.00
City of Vandalia	AxoGen	\$ 250,000.00
City of Vandalia	"Project Stop 8"	\$ 150,000.00

By.....

No.....

AN ORDINANCE

Authorizing the City Manager to Execute a Contract for Right of Entry and Grant Permanent Highway Easements to the Montgomery County Transportation Improvement District for the Construction of a Highway or Facility Incidental to a Highway on Parcels of Land Located at the Dayton International Airport, and Declaring an Emergency.

WHEREAS, The Montgomery County Transportation Improvement District has requested a right of entry and a permanent highway easement for the construction of a highway and related facilities on parcels of land located at the Dayton International Airport; and

WHEREAS, This Commission deems it in the public interest to grant said right of entry and easement; and

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

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

Section 1. That the City Manager, or her designee, is hereby authorized to execute a Contract for Right of Entry, substantially in form and substance to the documents attached to the original of this Ordinance, easements, and any other documents necessary to grant to the Montgomery County Transportation Improvement District the right to enter upon the City-owned land described in Exhibit A to the attached Contract for Right of Entry, for the primary purpose of the construction of a highway or facility incidental to a highway on parcels of land located at the Dayton International Airport.

Section 2. That the City Manager is authorized to accept the sum of Two Hundred Eight Thousand Three Hundred Thirty Dollars and Zero Cents (\$208,330.00) for the value of the easements.

Section 3. For the reasons stated in the preamble hereof, this Ordinance is declared to be an emergency measure and shall take effect immediately upon its passage.

PASSED BY THE COMMISSION....., 2020

SIGNED BY THE MAYOR....., 2020

Mayor of the City of Dayton, Ohio

ATTEST:

Clerk of the Commission

APPROVED AS TO FORM:

Amel M. B. [Signature]
City Attorney

July 10, 2020

TO: Shelley Dickstein
City Manager

FROM: Gilbert B. Turner, Director *GT*
Department of Aviation

SUBJECT: AN ORDINANCE - Authorizing the City Manager to Execute a Contract for Right of Entry and Grant Permanent Highway Easements to the Montgomery County Transportation Improvement District for the Construction of a Highway or Facility Incidental to a Highway on Parcels of Land Located at the Dayton International Airport, and Declaring an Emergency.

The Department of Aviation requests the attached Ordinance be placed on the July 22, 2020 City Commission calendar for approval.

The Ordinance authorizes the City Manager to sign a Contract for Right of Entry to permit the Montgomery County Transportation Improvement District to enter onto City-owned land for the purposes of highway improvements to US 40. Once the FAA approval process is complete, the City Manager will also be authorized by the Ordinance to grant easements for the highway improvements. The Department of Aviation will receive Two Hundred Eight Thousand Three Hundred Thirty Dollars and Zero Cents (\$208,330.00) in exchange for the easements, a value that was determined to be the fair market value by an appraisal.

The Department of Law has approved the Ordinance. If you have any questions or would like additional information please contact me at 454-8212.

CONTRACT FOR RIGHT OF ENTRY

The purpose of this Agreement is to allow the Montgomery County Transportation Improvement District to enter upon, occupy and have exclusive possession of the real property described in Exhibit A for the purposes of constructing a highway or facility incidental to the highway while the Parties work to obtain the anticipated final release from the Federal Aviation Administration ("FAA") necessary for the grant of a permanent easement covering the property described in Exhibit A.

This Agreement is by and between the Montgomery County Transportation Improvement District ("LPA") and the City of Dayton, Ohio ("Owner"). LPA and Owner are referred to collectively in this Agreement as "Parties."

In consideration of the mutual promises, agreements and covenants herein contained, the Parties contract as follows:

1. LPA shall pay to Owner the sum of \$208,330, which sum shall constitute the entire amount of consideration due to the Owner for granting to LPA the rights, interests and privileges described in this Agreement (the "Compensation").

Except as specified in this Agreement, in no event shall Owner be entitled to receive from LPA any interest, rent or other consideration of any kind for the period of time during which LPA occupies, possesses and uses the real property described in Exhibit A attached to this Agreement.

2. Until the earlier of: (a) the date that is twenty-four (24) months following the date this Agreement is signed by Owner, or (b) the date the Easement (as defined below) is recorded, LPA's employees, agents, consulting engineers, contractors, subcontractors, utility companies and any other representatives shall have the irrevocable right to enter upon, occupy and have

exclusive possession of the real property described in Exhibit A for the purposes of constructing a highway or a facility incidental to the highway.

For consideration of the payment of the Compensation, LPA shall have the right to physical possession of any land, and all buildings, houses, garages, sheds or any other types of structures, fixtures and other property, if any, located within or upon the real property described in Exhibit A.

The Parties acknowledge that a residential structure exists on real property adjacent to the property covered by this Agreement. In connection with the grant of the Easement, LPA will provide for and implement a landscape plan to screen the residence to a degree acceptable to Owner.

3. Owner affirms that Owner is the true and lawful owner of the fee simple of the real property described in Exhibit A and/or Owner has the right and full power to grant to LPA the rights, interests and privileges described in Exhibit A.

4. Owner shall notify LPA of any prospective transfer of any of Owner's rights, titles or interests in the property. This notification shall be in writing not less than 14 days prior to the date on which the transfer is to be closed or otherwise consummated. If the transfer will be closed or otherwise consummated less than 14 days after Owner agrees to such transfer, then Owner shall provide to LPA such notification in writing immediately.

5. Upon the written request of LPA following receipt of the final release of the property by the FAA, Owner will cooperate with LPA to grant to LPA or its designee a permanent highway easement covering the portion of the property necessary for the construction of the highway (the "Easement"). The Easement will be provided for no additional compensation.

6. Owner acknowledges that LPA has explained to Owner that no owner of property can be required to surrender possession of the same to LPA prior to:

- (i) the payment of the total, agreed upon purchase price by LPA; or
- (ii) in the case of an appropriation, the deposit by LPA with the court, for the benefit of the owner, an amount not less than LPA's approved appraisal of the fair market value of the property; or
- (iii) the court award of compensation in the appropriation proceeding for the property.

Notwithstanding the rights described above, Owner in executing this Agreement waives such rights and permits LPA to occupy, possess and use the property described in Exhibit A, and Owner will provide the easement as described above.

7. Except and unless otherwise specifically modified by the terms and conditions of this Agreement, any and all rights, privileges, titles and interests in or to the property described in Exhibit A are preserved and retained by Owner.
8. Any and all of the terms, conditions and provisions of this Agreement shall be binding upon and shall pass to the benefit of LPA and Owner and their respective successors and assigns.
9. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute but one and the same instrument.
10. This instrument contains the entire agreement between the Parties, and it is expressly understood and agreed that no promises, provisions, terms, warranties, conditions or obligations whatever, express or implied, other than herein set forth, shall be binding upon either LPA or Owner.
11. No amendment or modification of this Agreement shall be valid or binding upon the Parties unless it is made in writing, cites this Agreement and is signed by LPA and Owner.

[Remainder of Page Intentionally Blank. Signature Page Follows.]

IN WITNESS WHEREOF, the City of Dayton, Ohio has executed this Agreement on the date(s) indicated immediately below.

THE CITY OF DAYTON, OHIO

By: _____

Print Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM AND CORRECTNESS


CITY ATTORNEY

STATE OF OHIO, COUNTY OF Montgomery SS:

BE IT REMEMBERED, that on the _____ day of _____, _____, before me the subscriber, a Notary Public in and for said state and county, personally came the above named _____, the _____ of the City of Dayton, Ohio who acknowledged the foregoing instrument to be his or her voluntary act and deed.

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

NOTARY PUBLIC
My Commission expires: _____

**MONTGOMERY COUNTY TRANSPORTATION
IMPROVEMENT DISTRICT**

Steve Stanley

Executive Director

Date: _____

STATE OF OHIO, COUNTY OF Montgomery ss:

BE IT REMEMBERED, that on the _____ day of _____, _____, before me the subscriber, a Notary Public in and for said state and county, personally came the above named Steve Stanley, Executive Director of the Montgomery County Transportation Improvement District, who acknowledged the foregoing instrument to be his voluntary act and deed on behalf of the Montgomery County Transportation Improvement District.

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

NOTARY PUBLIC

My Commission expires: _____

EXHIBIT A

LPA RX 871 SH

Page 1 of 7

Rev. 06/09

Ver. Date 07/12/2019

PID 98794

**PARCEL 1-SH1
MOT-40-13.33
PERPETUAL EASEMENT FOR HIGHWAY PURPOSES
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS
IN THE NAME AND FOR THE USE OF THE
THE MONTGOMERY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT,
MONTGOMERY COUNTY, OHIO**

An exclusive perpetual easement for public highway and road purposes, including, but not limited to any utility construction, relocation and/or utility maintenance work deemed appropriate by the The Montgomery County Transportation Improvement District, Montgomery County, Ohio, its successors and assigns forever.

Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, reserves all existing rights of ingress and egress to and from any residual area (as used herein, the expression "Grantor/Owner" includes the plural, and words in the masculine include the feminine or neuter).

[Surveyor's description of the premises follows]

Situate in Section 13, T.5, R.5E. and Section 18, T.3, R.6E., in the City of Union, City of Vandalia, City of Dayton, and Butler Township, Montgomery County, State of Ohio, and being part of a 2 acre tract, a 2 acre tract, a 2.0 acre tract, a 2.19 acre tract, a 13.275 acre tract, a 7.689 acre tract, a 95.512 acre tract, a 5.008 acre tract, and a 95.512 acre tract of land as conveyed to CITY OF DAYTON by instruments as recorded in DMF 79-258C07, DMF 79-275D09, DMF 79-613D10, DMF 87-413C11, DMF 92-430A09, DMF 99-011C11, DMF 92-233A01, Deed Book 2375, page 251, and Deed Book 2377, page 321 of the Official Records of said county, part of said 5.008 acre tract and part of said 95.512 acre tract being part of Lot 81143 of the revised and consecutive numbers of lots on the plat of the James M. Cox Dayton International Airport as recorded in Plat Book 112 page 26, and being more particularly bounded and described, with Stations and offsets referenced to the centerline of W. National Rd., (US Route 40) and the centerline of Dog Leg Rd. (CR 24), as shown on the "MOT-40-13.33 Centerline Plat" as recorded in Platbook 234 pages 4A & 4 of the Montgomery County Plat Records, as follows:

EXHIBIT A

Beginning for reference at a 1" iron pin set in a monument box set at the intersection of the centerlines of W. National Rd. (US Route 40) (varies) and Dog Leg Rd. (CR 24) (varies) at W. National Rd. Station 728+67.33;

Thence with said W. National Rd. centerline South 84° 43' 29" West 2.66 feet to a 1" iron pin set in a monument box set at an angle point in said centerline at Station 728+64.67;

Thence with said centerline South 85° 05' 10" West 85.83 feet to a point at the southeast corner of said 95.512 acre tract at centerline Station 727+78.84, said point being THE TRUE POINT OF BEGINNING;

PARCEL 1-SH1

Thence with said centerline for the following three courses

1. South 85° 05' 10" West 1575.66 feet to a 1" iron pin set in a monument box set at an angle point in said centerline at Station 712+03.18;
2. South 84° 54' 36" West 915.97 feet to a 1" iron pin set in a monument box set at the intersection of the centerlines of W. National Rd. and Dog Leg Rd. at Station 702+87.22;
3. South 84° 54' 36" West 2538.02 feet to a point at the southwest corner of said 2 acre tract (DMF 79-258C07) at centerline Station 677+49.19;

Thence with said west line North 00° 29' 36" East, passing an iron pin set in the existing north right of way line at 40.19 feet, for a total of 48.23 feet to an iron pin set in the new north right of way line of W. National Rd., 48.00 feet left of centerline Station 677+53.89;

Thence with said new north line for the following 17 courses:

1. North 86° 28' 42" East 146.17 feet to an iron pin set 44.00 feet left of centerline Station 679+00.00;
2. North 84° 08' 46" East 150.01 feet to an iron pin set 46.00 feet left of centerline Station 680+50.00;

EXHIBIT A

Page 3 of 7

LPA RX 871 SH

Rev. 06/09

PARCEL 1-SH1 cont'd

3. North 81° 28' 35" East 100.18 feet to an iron pin set 52.00 feet left of centerline
Station 681+50.00;
4. North 86° 33' 51" East 34.65 feet to an iron pin set 51.00 feet left of centerline
Station 681+84.63;
5. North 83° 02' 55" East 215.48 feet to an iron pin set 58.00 feet left of centerline
Station 684+00.00;
6. North 84° 16' 41" East 90.65 feet to an iron pin set 59.00 feet left of centerline
Station 684+90.64;
7. North 82° 15' 40" East 259.64 feet to an iron pin set 71.00 feet left of centerline
Station 687+50.00;
8. North 86° 17' 06" East 125.04 feet to an iron pin set 68.00 feet left of centerline
Station 688+75.00;
9. North 82° 42' 35" East 124.97 feet to an iron pin set 72.80 feet left of centerline
Station 689+99.88;
10. North 84° 13' 21" East 100.13 feet to an iron pin set 74.00 feet left of centerline
Station 691+00.00;
11. North 87° 17' 46" East 120.10 feet to an iron pin set 69.00 feet left of centerline
Station 692+20.00;
12. North 82° 39' 37" East 280.22 feet to an iron pin set 80.00 feet left of centerline
Station 695+00.00;
13. North 87° 12' 02" East 100.08 feet to an iron pin set 76.00 feet left of centerline
Station 696+00.00;
14. North 81° 51' 26" East 150.21 feet to an iron pin set 84.00 feet left of centerline
Station 697+50.00;
15. North 83° 00' 02" East 150.05 feet to an iron pin set 89.00 feet left of centerline
Station 698+99.97;

EXHIBIT A

LPA RX 871 SH

Page 4 of 7

Rev. 06/09

PARCEL 1-SH1 cont'd

16. North 85° 08' 21" East 250.03 feet to an iron pin set 88.00 feet left of centerline Station 701+50.00;

17. North 58° 42' 56" East 79.66 feet to an iron pin set at the intersection of said new north line and the existing west right of way line of Dog Leg Rd. 123.16 feet left of centerline Station 702+21.48, said pin also being 77.52 feet left of said centerline of Dog Leg Rd. Station 880+18.57;

Thence with said existing west line North 00° 30' 12" East 181.43 feet to an iron pin set 77.66 feet left of Dog Leg centerline Station 882+00.00;

Thence perpendicular to said Dog Leg centerline South 89° 27' 08" East 77.66 feet to a 1" iron pin set in a monument box set in said centerline at Dog Leg Station 882+00.00;

Thence continuing perpendicular to said centerline South 89° 27' 08" East 50.00 feet to an iron pin set in the existing east right of way line of Dog Leg Road, 50.00 feet right of Dog Leg centerline Station 882+00.00;

Thence with said existing east line South 00° 32' 52" West 100.00 feet to an iron pin set at the intersection of said existing east line and the new east right of way line of Dog Leg Rd., 50.00 feet right of Dog Leg centerline Station 881+00.00;

Thence with said new east line South 26° 49' 48" East 63.06 feet to an iron pin set 79.00 feet right of Dog Leg centerline Station 880+44.00, being also 133.09 feet left of centerline Station 703+79.74;

Thence continuing with said east line South 68° 33' 06" East 69.60 feet to an iron pin set in the new north right of way line of W. National Rd., 102.00 feet left of said W. National Rd. centerline Station 704+42.00;

Thence with said new north line for the following seven courses:

1. North 84° 54' 36" East 378.00 feet to an iron pin set 102.00 feet left of centerline Station 708+20.00;
2. North 84° 59' 37" East 730.31 feet to an iron pin set 102.00 feet left of centerline Station 715+50.00;

EXHIBIT A

LPA RX 871 SH

Page 5 of 7

Rev. 06/09

PARCEL 1-SH1 cont'd

3. North 79° 56' 36" East 100.40 feet to an iron pin set 111.00 feet left of centerline Station 716+50.00;
4. North 83° 56' 25" East 150.03 feet to an iron pin set 114.00 feet left of centerline Station 718+00.00;
5. North 86° 48' 16" East 500.23 feet to an iron pin set 99.00 feet left of centerline Station 723+00.00;
6. North 83° 26' 58" East 140.06 feet to an iron pin set 103.00 feet left of centerline Station 724+40.00;
7. North 85° 51' 02" East 374.68 feet to an iron pin set at the intersection of said north line and the existing west right of way line of Concorde Drive Ext., said pin being the new southeast corner of said 95.512 acre tract, 98.00 feet left of centerline Station 728+14.64;

Thence with said existing west line South 26° 46' 19" West 68.16 feet to an iron pin set at the intersection of said existing west line and the existing north right of way line of W. National Rd., said iron pin being the existing southeast corner of said tract, 40.00 feet left of centerline Station 727+78.84;

Thence with said existing west line South 04° 54' 50" East 40.00 feet to the TRUE POINT OF BEGINNING, containing 10.654 acres (464,108 SF), more or less, subject to all legal easements and restrictions of record.

This description is based upon a field survey performed by LJB Inc. under the direction of James P. Benedict, Registered Surveyor Number 6583 in December, 2017 and January, 2018, with bearings based upon the Ohio State Plane Coordinates, South Zone, NAD83 (2011), by GPS utilizing ODOT VRS, and conventional surveying.

EXHIBIT A

LPA RX 871 SH

Page 6 of 7

Rev. 06/09

PARCEL 1-SH1 cont'd

This description was prepared by LJB Inc. under the direction of Harry G. Herbst III, Registered Surveyor Number 6596.

Monument Boxes referred as "set" are Centerline Monument Box assemblies to be set during construction, containing a 1" minimum diameter iron rod with no cap, to be set by the contractor's registered surveyor. All dimensions to Monument Boxes are to the iron rod set therein. Iron pins referred to as "set" shall be 3/4" by 30" reinforcing rod set by LJB Inc. with Aluminum cap stamped "ODOT R/W - PS 6596 - LJB INC" or "ODOT - PS 6596 - LJB INC".

Evidence of occupation supports the monumentation found in the field and the property lines recited in this description.

Grantor claims title through instrument of record in DMF 79-258C07, DMF 79-275D09, DMF 79-613D10, DMF 92-430A09, DMF 99-011C1, DMF 92-233A011, Deed Book 2240, Page 394, Deed Book 2375, Page 251, and Deed Book 2377, Page 321, Montgomery County Recorder's Office.

10.654 acres of the above described area is contained within Montgomery County Auditor's Permanent Parcel Numbers and FAA Numbers as listed below

Parcel Number	FAA #	GROSS (Ac.)	P.R.O (Ac.)
A01100106 0039	313	0.000	0.000
A01 00106 0039		0.000	0.000
A01100106 0033	181	0.000	0.000
A01 00106 0033		0.000	0.000
A01100106 0036	180	0.020	0.000
A01 00106 0036		0.131	0.131
A01100106 0030	179	0.016	0.000
A01 00106 0030		0.131	0.131
A01100106 0031	178	0.031	0.000
A01 00106 0031		0.132	0.132

EXHIBIT A

LPA RX 871 SH

Page 7 of 7
Rev. 06/09

Parcel Number	FAA #	GROSS (Ac.)	P.R.O (Ac.)
A01100106 0034	185	0.044	0.000
A01 00106 0034		0.133	0.133
A01100106 0032	184	0.065	0.000
A01 00106 0032		0.147	0.147
A01100106 0016	224	1.388	0.000
A01 00106 0016		1.537	1.537
A01100106 0026		0.066	0.000
A01100106 0053		0.015	0.015
A01 00106 0053		0.046	0.046
A01 00216 0025		0.536	0.536
R72717413 0001	75	3.422	0.046
A01 00216 0026		0.355	0.355
B02 01015 0004	75	0.433	0.433
B02 01015 0005		2.006	2.006
A01100106 0028	183	0.000	0.000
A01 00106 0028		0.000	0.000
Total:		10.654	5.648

Prepared by
LJB Inc.

By: _____
Harry G. Herbst III, Ohio PS No. 6596 Date _____

EXHIBIT A

Page 1 of 3

LPA RX 887 T

Rev. 07/09

Ver. Date 07/12/2019

PID 98794

**PARCEL 1-T
MOT-40-13.33
TEMPORARY EASEMENT FOR THE PURPOSE OF
PERFORMING THE WORK NECESSARY TO
CONSTRUCT A DRIVEWAY
FOR 24 MONTHS FROM DATE OF ENTRY BY THE
MONTGOMERY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT,
MONTGOMERY COUNTY, OHIO**

[Surveyor's description of the premises follows]

Situate in Section 18, Town 3, Range 6, in the City of Vandalia, Butler Township, Montgomery County, State of Ohio, and being part of Lot 81143 of the revised and consecutive numbers of lots on the plat of the James M. Cox Dayton International Airport as recorded in Plat Book 112 page 26, being part of a 5.008 acre tract of land as conveyed to CITY OF DAYTON by instrument as recorded in Deed Book 2375, page 251 of the Official Records of said county, and being more particularly bounded and described, with Stations and offsets referenced to the centerline of W. National Rd., (US Route 40), as shown on the "MOT-40-13.33 Centerline Plat" as recorded in Platbook 234 pages 4A & 4 of the Montgomery County Plat Records, as follows:

Beginning for reference at a 1" iron pin set in a monument box set at the intersection of the centerlines of W. National Rd. (US Route 40) (varies) and Dog Leg Rd. (CR 24) (varies), also known as Union Airpark Boulevard at Station 702+87.22;

Thence with said centerline North 84° 54' 36" East 567.46 feet to a point at the intersection of said centerline and the east line of said 5.008 acre tract at Station 708+54.68;

Thence with said east line North 17° 43' 26" West 104.51 feet to the intersection of said east line and the new north right of way line of W. National Rd., 101.98 feet left of centerline Station 708+31.82;

Thence with said new north line South 84° 59' 37" West 11.82 feet to an iron pin set 102.00 feet left of centerline Station 708+20.00, said iron pin being THE TRUE POINT OF BEGINNING;

EXHIBIT A

Page 2 of 3

LPA RX 887 T

Rev. 07/09

PARCEL 1-T

Thence with said new north line South 84° 54' 36" West 102.00 feet to a point 102.00 feet left of centerline Station 707+18.00;

Thence along new lines through said tract for the following four courses:

1. North 05° 05' 24" West 26.00 feet to a point 128.00 feet left of centerline Station 707+18.00;
2. North 29° 11' 49" East 26.63 feet to a point 150.00 feet left of centerline Station 707+33.00;
3. South 70° 56' 40" East 95.34 feet to a point 111.00 feet left of centerline Station 708+20.00;
4. South 05° 05' 24" East 9.00 feet to the TRUE POINT OF BEGINNING, containing 0.070 acres, (3034 SF), more or less, subject to all legal easements and restrictions of record.

This description is based upon a field survey performed by LJB Inc. under the direction of James P. Benedict, Registered Surveyor Number 6583 in December, 2017 and January, 2018, with bearings based upon the Ohio State Plane Coordinates, South Zone, NAD83 (2011), by GPS utilizing ODOT VRS, and conventional surveying.

This description was prepared by LJB Inc. under the direction of Harry G. Herbst III, Registered Surveyor Number 6596.

Monument Boxes referred as "set" are Centerline Monument Box assemblies to be set during construction, containing a 1" minimum diameter iron rod with no cap, to be set by the contractor's registered surveyor. All dimensions to Monument Boxes are to the iron rod set therein. Iron pins referred to as "set" shall be 3/4" by 30" reinforcing rod set by LJB Inc. with Aluminum cap stamped "ODOT R/W - PS 6596 - LJB INC" or "ODOT - PS 6596 - LJB INC".

EXHIBIT A

LPA RX 887 T

Page 3 of 3

Rev. 07/09

Parcel 1-T Cont'd

Evidence of occupation supports the monumentation found in the field and the property lines recited in this description.

Grantor claims title through instrument of record in 2375, Page 251, Montgomery County Recorder's Office.

0.070 acres of the above described area is contained within Montgomery County Auditor's Permanent Parcel Number R72717413 0001, also being FAA Number 80, of which the present road right of way occupies 0.000 acres, more or less.

Prepared by
LJB Inc.

By: _____
Harry G. Herbst III, Ohio PS No. 6596 Date _____

EXHIBIT A

LPA RX 871 SH

Page 1 of 3

Rev. 06/09

Ver. Date 07/12/2019

PID 98794

**PARCEL 1-SH2
MOT-40-13.33
PERPETUAL EASEMENT FOR HIGHWAY PURPOSES
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS
IN THE NAME AND FOR THE USE OF THE
THE MONTGOMERY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT,
MONTGOMERY COUNTY, OHIO**

An exclusive perpetual easement for public highway and road purposes, including, but not limited to any utility construction, relocation and/or utility maintenance work deemed appropriate by the The Montgomery County Transportation Improvement District, Montgomery County, Ohio, its successors and assigns forever.

Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, reserves all existing rights of ingress and egress to and from any residual area (as used herein, the expression "Grantor/Owner" includes the plural, and words in the masculine include the feminine or neuter).

[Surveyor's description of the premises follows]

Situate in Section 13, Town 5, Range 5, in Butler Township, Montgomery County, State of Ohio, and being part of a 2.146 acre tract of land as conveyed to CITY OF DAYTON by instrument as recorded in DMF 92-430A11, part of a 1.007 acre tract of land a conveyed to CITY OF DAYTON by instrument as recorded in DMF 88-048E08, part of a 1.083 acre tract of land as conveyed to CITY OF DAYTON by instrument as recorded in DMF 88-048E08, part of a 2.75 acre tract of land as conveyed to CITY OF DAYTON by instrument as recorded in DMF 92-524B08, part of a 2.00 acre tract of land as conveyed to CITY OF DAYTON by instrument as recorded in DMF 92-014E08, part of a 0.97 acre tract of land as conveyed to CITY OF DAYTON by instrument as recorded in DMF 92-430A07, and part of a 1.03 acre tract of land as conveyed to CITY OF DAYTON by instrument as recorded in DMF 92-232E11 of the Official Records of said county, and being more particularly bounded and described, with Stations and offsets referenced to the centerline of W. National Rd., (US Route 40), as shown on the "MOT-40-13.33 Centerline Plat" as recorded in Platbook 234 Page 4A & 4 of the Montgomery County Plat Records, as follows:

Beginning for reference at a 1" iron pin set in a monument box set at the intersection of the centerlines of W. National Rd. (US Route 40) (varies) and Dog Leg Rd. (CR 24) (varies), (also known as Airpark Boulevard), Station 702+87.22;

EXHIBIT A

LPA RX 871 SH

Page 2 of 3

Rev. 06/09

Thence with said centerline South 84° 54' 36" West 748.02 feet to the northeast corner of said 1.03 acre tract at Station 695+39.20, said point being the TRUE POINT OF BEGINNING;

PARCEL 1-SH2

Thence with the east line of said tract South 00° 14' 38" West 52.23 feet to an iron pin set at the new south right of way line of W. National Rd., 52.00 feet right of centerline Station 695+34.34;

Thence with said new south line for the following six courses:

1. North 88° 19' 41" West 84.93 feet to an iron pin set 42.00 feet right of centerline Station 694+50.00;
2. South 84° 20' 14" West 100.00 feet to an iron pin set 43.00 feet right of centerline Station 693+50.00;
3. South 83° 11' 30" West 200.09 feet to an iron pin set 49.00 feet right of centerline Station 691+50.00;
4. South 88° 54' 51" West 100.24 feet to an iron pin set 42.00 feet right of centerline Station 690+50.00;
5. South 82° 54' 20" West 200.12 feet to an iron pin set 49.00 feet right of centerline Station 688+50.00;
6. South 85° 58' 36" West 268.63 feet to an iron pin set in the west line of said 2.146 acre tract, 44.00 feet right of centerline Station 685+81.42;

Thence with said west line North 00° 39' 43" East, passing an iron pin set in the existing south right of way line of W National Rd. at 4.02 feet, for a total of 44.22 feet to the northwest corner of said tract at centerline Station 685+85.85;

Thence with said centerline North 84° 54' 36" East 953.35 feet to the TRUE POINT OF BEGINNING, containing 1.001 acres, (43,582 SF), more or less, subject to all legal easements and restrictions of record.

EXHIBIT A

LPA RX 871 SH

Page 3 of 3

Rev. 06/09

Parcel 1-SH2 Cont'd

This description is based upon a field survey performed by LJB Inc. under the direction of James P. Benedict, Registered Surveyor Number 6583 in December, 2017 and January, 2018, with bearings based upon the Ohio State Plane Coordinates, South Zone, NAD83 (2011), by GPS utilizing ODOT VRS, and conventional surveying.

This description was prepared by LJB Inc. under the direction of Harry G. Herbst III, Registered Surveyor Number 6596.

Monument Boxes referred as "set" are Centerline Monument Box assemblies to be set during construction, containing a 1" minimum diameter iron rod with no cap, to be set by the contractor's registered surveyor. All dimensions to Monument Boxes are to the iron rod set therein. Iron pins referred to as "set" shall be 3/4" by 30" reinforcing rod set by LJB Inc. with Aluminum cap stamped "ODOT R/W - PS 6596 - LJB INC" or "ODOT - PS 6596 - LJB INC".

Evidence of occupation supports the monumentation found in the field and the property lines recited in this description.

Grantor claims title through instrument of record in DMF 92-430A11, DMF 88-048E08, DMF 92-524B08, DMF 92-014E08, DMF 92-430A07, and DMF 92-232E11 Montgomery County Recorder's Office.

The 1.001 acres described above is contained within Montgomery County Auditor's Permanent Parcel Numbers and FAA Numbers as listed below:

APN	FAA	Area (Ac.)	PRO (Ac.)
A01 00106 0012	195	0.210	0.183
A01 00106 0013	186a	0.108	0.089
A01 00106 0037	186b	0.102	0.088
A01 00106 0035	194	0.244	0.215
A01 00106 0014	193	0.171	0.153
A01 00106 0027	192	0.077	0.072
<u>A01 00106 0043</u>	<u>312</u>	<u>0.089</u>	<u>0.076</u>
Total:		1.001	0.876

Prepared by
LJB Inc.

By: _____ Date _____
Harry G. Herbst III, Ohio PS No. 6596

EXHIBIT A

LPA RX 871 SH

Page 1 of 3

Rev. 06/09

Ver. Date 10/17/2019

PID 98794

**PARCEL 1-SH3
MOT-40-13.33
PERPETUAL EASEMENT FOR HIGHWAY PURPOSES
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS
IN THE NAME AND FOR THE USE OF THE
THE MONTGOMERY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT,
MONTGOMERY COUNTY, OHIO**

An exclusive perpetual easement for public highway and road purposes, including, but not limited to any utility construction, relocation and/or utility maintenance work deemed appropriate by the The Montgomery County Transportation Improvement District, Montgomery County, Ohio, its successors and assigns forever.

Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, reserves all existing rights of ingress and egress to and from any residual area (as used herein, the expression "Grantor/Owner" includes the plural, and words in the masculine include the feminine or neuter).

[Surveyor's description of the premises follows]

Situate in Section 18, Town 3, Range 6, in the City of Vandalia, Butler Township, Montgomery County, State of Ohio, and being part of a 14.48 acre tract of land as conveyed to CITY OF DAYTON by instrument as recorded in DMF 72-124A09 of the Official Records of said county, and being more particularly bounded and described, with Stations and offsets referenced to the centerline of Dog Leg Rd., (CR 24), as shown on the "MOT-40-13.33 Centerline Plat" as recorded in Platbook 234 pages 4A & 4of the Montgomery County Plat Records, as follows:

Beginning for reference at a 1" iron pin set in a monument box set at the intersection of the centerlines of W. National Rd. (US Route 40) (varies) and Dog Leg Rd. (CR 24) (varies), at Dog Leg Rd. station 853+25.00;

Thence with said centerline of Dog Leg Rd. South 01° 21' 16" West 393.23 feet to the southwest corner of the Dog Leg Rd. right-of-way as dedicated in the Concorde Subdivision, PB 229 page 49, being Dog Leg centerline station 849+31.77and the TRUE POINT OF BEGINNING;

EXHIBIT A

Page 2 of 3

LPA RX 871 SH

Rev. 06/09

PARCEL 1-SH3

Thence with the south line of said dedication South 88° 45' 30" East 65.26 feet to an iron pin set in the new east right of way line of Dog Leg Rd. 65.26 feet right of Dog Leg centerline Station 849+31.90;

Thence with said new east line South 35° 16' 12" West 45.27 feet to an iron pin set at the intersection of said new east line and the south line of said 14.48 acre parcel 40.00 feet right of Dog Leg centerline Station 848+94.33;

Thence with the south line of said parcel North 89° 57' 01" West 40.01 feet to the southwest corner of said 14.48 acre tract, at Dog Leg centerline station 848+93.42;

Thence with the east line of said tract and said centerline North 01° 21' 16" East 38.35 feet to the TRUE POINT OF BEGINNING, containing 0.046 acres, (1991 SF), more or less, subject to all legal easements and restrictions of record.

This description is based upon a field survey performed by LJB Inc. under the direction of James P. Benedict, Registered Surveyor Number 6583 in December, 2017 and January, 2018, with bearings based upon the Ohio State Plane Coordinates, South Zone, NAD83 (2011), by GPS utilizing ODOT VRS, and conventional surveying.

This description was prepared by LJB Inc. under the direction of Harry G. Herbst III, Registered Surveyor Number 6596.

Monument Boxes referred as "set" are Centerline Monument Box assemblies to be set during construction, containing a 1" minimum diameter iron rod with no cap, to be set by the contractor's registered surveyor. All dimensions to Monument Boxes are to the iron rod set therein. Iron pins referred to as "set" shall be 3/4" by 30" reinforcing rod set by LJB Inc. with Aluminum cap stamped "ODOT R/W - PS 6596 - LJB INC" or "ODOT - PS 6596 - LJB INC".

Evidence of occupation supports the monumentation found in the field and the property lines recited in this description.

Grantor claims title through instrument of record in DMF 72-124A09, Montgomery County Recorder's Office.

EXHIBIT A

LPA RX 871 SH

Page 3 of 3

Rev. 06/09

PARCEL 1-SH3 cont'd

0.046 acres of the above described area is contained within Montgomery County Auditor's Permanent Parcel Number B02 01015 0014, of which the present road right of way occupies 0.018 acres, more or less.

Prepared by
LJB Inc.

By: _____ Date _____
Harry G. Herbst III, Ohio PS No. 6596

EXHIBIT A

LPA RX 871 SH

Page 1 of 3

Rev. 06/09

Ver. Date 10/17/2019

PID 98794

**PARCEL 1-SH4
MOT-40-13.33
PERPETUAL EASEMENT FOR HIGHWAY PURPOSES
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS
IN THE NAME AND FOR THE USE OF THE
THE MONTGOMERY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT,
MONTGOMERY COUNTY, OHIO**

An exclusive perpetual easement for public highway and road purposes, including, but not limited to any utility construction, relocation and/or utility maintenance work deemed appropriate by the The Montgomery County Transportation Improvement District, Montgomery County, Ohio, its successors and assigns forever.

Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, reserves all existing rights of ingress and egress to and from any residual area (as used herein, the expression "Grantor/Owner" includes the plural, and words in the masculine include the feminine or neuter).

[Surveyor's description of the premises follows]

Situate in Section 18, Town 3, Range 6, in the City of Vandalia, Butler Township, Montgomery County, State of Ohio, and being part of a 14.48 acre tract of land as conveyed to CITY OF DAYTON by instrument as recorded in DMF 72-124A09 of the Official Records of said county, and being more particularly bounded and described, with Stations and offsets referenced to the centerline of W. National Rd. (US Route 40) and the centerline of Dog Leg Rd., (CR 24), as shown on the "MOT-40-13.33 Centerline Plat" as recorded in Platbook 234 pages 4A & 4 of the Montgomery County Plat Records, as follows:

Beginning for reference at a 1" iron pin set in a monument box set at the intersection of the centerlines of W. National Rd. (US Route 40) (varies) and Concorde Dr. (100'), at W. National Rd. station 728+69.33;

Thence with said centerline of W. National Rd North 84° 43' 29" East 113.86 feet to a point along said at the intersection of the east right of way line of Dog Leg Rd. and said W. National Rd. centerline station 729+83.19; said point being the TRUE POINT OF BEGINNING;

EXHIBIT A

Page 2 of 3

LPA RX 871 SH

Rev. 06/09

PARCEL 1 -SH4

Thence with said centerline and the north line of said tract North 84° 43' 29" East 1180.00 feet to a MAG nail set at the northeast corner of 14.48 acre said tract, at W. National Rd. centerline Station 741+63.19;

Thence with the east line of said tract South 02° 49' 14" West 40.40 feet to an iron pin set in the south right of way line of W. National Road, 40.00 feet right of W. National Rd. centerline Station 741+57.50;

Thence with said existing south right of way line South 84° 43' 29" West 1137.50 feet to an iron pin set at the intersection of said existing south line and the new south right of way line of W. National Road, 40.00 feet right of centerline Station 730+20.00;

Thence with new lines through said parcel for the following four courses:

1. South 79° 00' 51" West 30.15 feet to an iron pin set at the intersection of said new south line of W. National Rd. with the new east right of way line of Dog Leg Rd., said pin being 43.00 feet right of W. National Road centerline Station 729+90.00 and 126.81 feet right of Dog Leg Rd. centerline of Station 852+96.45;
2. South 43° 54' 09" West 76.62 feet to an iron pin set 75.00 right of centerline Station 852+40.00;
3. South 01° 39' 22" West 190.00 feet to an iron pin set 74.00 feet right of centerline Station 850+50.00
4. South 05° 35' 12" West 118.43 feet to an iron pin set at an angle point in the east right of way line of Dog Leg Road as dedicated in Plat Book 229 page 49, 65.26 feet right of centerline Station 849+31.90;

Thence with said existing east right of way line North 01° 35' 44" East 314.08 feet to an iron pin set 66.58 feet right of centerline Station 852+45.97;

Thence continuing with said existing east right of way line North 46° 35' 44" East 74.81 feet to an iron pin set at the intersection of said existing east line of Dog Leg Rd. and said existing south line of W. National Rd., 119.70' right of Dog Leg Rd. centerline Station 852+98.64, also being 40.00 feet right of W. National Rd. centerline Station 729+83.19;

EXHIBIT A

Page 3 of 3

LPA RX 871 SH

Rev. 06/09

PARCEL 1 -SH4 cont'd

Thence with said east line of Dog Leg Rd. North 05° 16' 31" West 40.00 feet to the TRUE POINT OF BEGINNING, containing 1.145 acres, (49876 SF), more or less, subject to all legal easements and restrictions of record.

This description is based upon a field survey performed by LJB Inc. under the direction of James P. Benedict, Registered Surveyor Number 6583 in December, 2017 and January, 2018, with bearings based upon the Ohio State Plane Coordinates, South Zone, NAD83 (2011), by GPS utilizing ODOT VRS, and conventional surveying.

This description was prepared by LJB Inc. under the direction of Harry G. Herbst III, Registered Surveyor Number 6596.

Monument Boxes referred as "set" are Centerline Monument Box assemblies to be set during construction, containing a 1" minimum diameter iron rod with no cap, to be set by the contractor's registered surveyor. All dimensions to Monument Boxes are to the iron rod set therein. Iron pins referred to as "set" shall be 3/4" by 30" reinforcing rod set by LJB Inc. with Aluminum cap stamped "ODOT R/W - PS 6596 - LJB INC" or "ODOT - PS 6596 - LJB INC".

Evidence of occupation supports the monumentation found in the field and the property lines recited in this description.

Grantor claims title through instrument of record in DMF 72-124A09, Montgomery County Recorder's Office.

1.1.145 acres of the above described area is contained within Montgomery County Auditor's Permanent Parcel Number B02 01015 0014, also being FAA Number 31, of which the present road right of way occupies 1.081 acres, more or less.

Prepared by
LJB Inc.

By: _____
Harry G. Herbst III, Ohio PS No. 6596 Date