I. AGENDA SCHEDULE

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

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

II. CITY MANAGER RECOMMENDATIONS (Item #8 above)

The following recommendations are offered for City Commission approval.

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

1. Purchase Orders:

   AVIATION

   A1. **John Jones Automotive Dealerships, Inc.** (Two 2021 model Dodge Durango Pursuits)

   $78,182.00
1. (Cont’d):

**MUNICIPAL COURT**

- **B1. Aerobiotix, Inc.** (HEPA air filter cartridges as needed through 12/31/23) $70,710.00

**POLICE**

- **C1. Gall’s LLC** (police uniforms and related items as needed through 07/31/25) $90,869.22

**C2. Parr Public Safety Equipment** (vehicle up-fitting parts and services for 20 2021 model Dodge Durango Pursuit Sport Utility Vehicles) $315,538.20

**PUBLIC WORKS**

- **D1. Boone’s Power Equipment, Inc.** (mower parts, supplies, and related items as needed through 12/31/21) $15,000.00

**WATER**

- **E1. CEM Holding Corporation dba CEM Corporation** (One Mars6 microwave digestion system) $27,843.00

- **E2. Electrical Power Systems International Inc.** (electrical testing and inspection services as needed through 12/31/25) $471,000.00

- Depts. of Aviation, Municipal Court, Police, Public Works, and Water.

  Total: $1,069,142.42

2. **Jody Bonansinga – Service Agreement** – professional support services for the Dayton Mediation Center’s Juvenile Court Mediation Program and various other Mediation Center projects- Department of Planning, Neighborhoods and Development.

  $50,000.00

  (Thru 07/31/23)

3. **Ohio Energy Project – Service Agreement** – second amendment to facilitate the development and implementation of a curriculum for Dayton Public Schools that assists DPS in meeting the Ohio Learning Standards for Science - Department of Planning, Neighborhoods and Development.

  $50,000.00

  (Thru 08/31/22)
C. Revenue to the City:

4. **United Ground Lease – Lease Agreement** – for a ground service equipment facility located at 10392 Freight Drive – Department of Aviation. $39,375.00 (Thru 7/28/24) (Paid to the City)

D. Development Agreement:

5. **Boys and Girls Club of Dayton, Inc. – Development Agreement** – for the redevelopment of headquarters located at 1828 West Stewart Street – Department of Planning, Neighborhoods and Development. $250,000.00 (Thru 12/31/23)

IV. LEGISLATION:

Emergency Ordinances – First and Second Reading

6. No. 31904-21 Authorizing the Grant of a Stormwater Drainage and Pipeline Easement for the Benefit of Parcels of Land Located at the Dayton International Airport and Declaring an Emergency.

7. No. 31905-21 Determining to Proceed with the Acquisition, Construction and Improvement of Certain Public Improvements in the City of Dayton, Ohio in Cooperation with the Dayton Regional Energy Special Improvement District and Declaring an Emergency.

8. No. 31906-21 Levying Special Assessments for the Purpose of Acquiring, Constructing, and Improving Certain Public Improvements in the City of Dayton in Cooperation with the Dayton Regional Energy Special Improvement District, and Declaring an Emergency.

### Ordinances – Second Reading

<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>10.</strong> No. 31901-21</td>
<td>Authorizing the City of Dayton, Ohio to Furnish Water to the City of Brookville, Ohio and Authorizing the City Manager to Execute the Water Service Agreement and Any Documents and Agreements Related Thereto.</td>
</tr>
<tr>
<td><strong>11.</strong> No. 31902-21</td>
<td>To Vacate Shelby Avenue from Kling Drive to 100 Feet East of Kling Drive.</td>
</tr>
<tr>
<td><strong>12.</strong> No. 31903-21</td>
<td>To Vacate South Orchard Avenue from Home Avenue to US Route 35 Right of Way.</td>
</tr>
</tbody>
</table>

### VI. MISCELLANEOUS:

- **ORDINANCE NO.** 31908-21
- **RESOLUTION NO.** 6596-21
- **IMPROVEMENT RESOLUTION NO.** 3599-21
- **INFORMAL RESOLUTION NO.** 992-21
City Manager’s Report

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

Date: July 28, 2021
Expense Type: Purchase Order
Total Amount: $1,069,142.42

2021 Purchase Orders

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

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

Description

AVIATION

(A1) P0211045 – JOHN JONES AUTOMOTIVE DEALERSHIPS, INC., CORYDON, IN

- Two (2) 2021 model Dodge Durango Pursuits.
- These vehicles are required to support the daily operations of the Department of Aviation’s Division of Police and will replace Units #5508 and #5563 which will be disposed of in the best interest of the City.
- John Jones Automotive Dealerships, Inc. is recommended having stock on-hand and delivery capability.
- The Department of Aviation recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>DIA Airport Operations</td>
<td>51000-3224-1412-43</td>
<td>$78,182.00</td>
</tr>
</tbody>
</table>

Signatures/Approval

Approved by City Commission

Melissa Wilson, CMB
Division
Diane S. Potter 7/20/21
Department
J. Smith
City Manager

FORM NO. M5-16

Updated 06/2016
MUNICIPAL COURT

(B1) P0211043 – AEROBIOTIX, INC., MIAMISBURG, OH
- Hepa air filter cartridges as needed through 12/31/2021.
- These goods are required to clean, sanitize, and remove dangerous bacteria from the air at the City’s Municipal Court.
- Aerobiotix, Inc. is the Original Equipment Manufacturer (OEM) of products ensuring consistent quality, compatibility, and operational continuity with existing equipment; therefore, this purchase was negotiated.
- The Municipal Court requests additional authority of $50,000.00 through 12/31/2023.
- The Municipal Court recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>Municipal Court Special Proj. Fund</td>
<td>22117-2510-1301-74</td>
<td>$20,710.00</td>
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<tr>
<td>2022</td>
<td>Municipal Court Special Proj. Fund</td>
<td>22117-2510-1301-74</td>
<td>$25,000.00</td>
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<tr>
<td>2023</td>
<td>Municipal Court Special Proj. Fund</td>
<td>22117-2510-1301-74</td>
<td>$25,000.00</td>
</tr>
</tbody>
</table>

POLICE

(C1) P0211039 – GALL’S LLC, LEXINGTON, KY
- Police uniforms and related items.
- These goods are required to provide uniforms for the Department of Police.
- Eleven (11) possible vendors were solicited and two (2) responses were received. This order establishes a price agreement per IFB N21021 with pricing through 7/31/2025.
- The Department of Police requests additional authority of $72,000.00 through 7/31/2025.
- The Department of Police recommends acceptance of the lowest and best response.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<tr>
<td>2021</td>
<td>General Fund</td>
<td>10000-6221-1301-71-PD0320</td>
<td>$18,869.22</td>
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<tr>
<td>2022</td>
<td>General Fund</td>
<td>10000-6221-1301-71-PD0320</td>
<td>$20,000.00</td>
</tr>
<tr>
<td>2023</td>
<td>General Fund</td>
<td>10000-6221-1301-71-PD0320</td>
<td>$20,000.00</td>
</tr>
<tr>
<td>2024</td>
<td>General Fund</td>
<td>10000-6221-1301-71-PD0320</td>
<td>$20,000.00</td>
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<tr>
<td>2025</td>
<td>General Fund</td>
<td>10000-6221-1301-71-PD0320</td>
<td>$12,000.00</td>
</tr>
</tbody>
</table>
POLICE (CONTINUED)

(C2) P0211042 – PARR PUBLIC SAFETY EQUIPMENT, GALLOWAY, OH

- Vehicle up-fitting parts and services for twenty (20) 2021 model Dodge Durango Pursuit Sport Utility Vehicles (SUVs).
- These goods and services are required to place the vehicles into service for the Department of Police’s daily operations.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 18034JL with pricing through 4/30/2022 and State of Ohio Contract pricing #MMA7607 and Index #MMA845.
- The Department of Police recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>General Fund</td>
<td>10000-6210-1412-71</td>
<td>$115,538.20</td>
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<tr>
<td>2021</td>
<td>Public Safety Photo Enforcement</td>
<td>16122-6210-1412-71</td>
<td>$200,000.00</td>
</tr>
</tbody>
</table>

PUBLIC WORKS – FLEET MANAGEMENT

(D1) P0210395 – BOONE’S POWER EQUIPMENT, INC., BROOKVILLE, OH

- Mower parts, supplies, and related items as needed through 12/31/2021.
- 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 $20,000.00 by $15,000.00 for a total not to exceed $35,000.00 and therefore requires City Commission approval.
- The Department of Public Works recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>Fleet Management</td>
<td>61000-6470-1350-99</td>
<td>$15,000.00</td>
</tr>
</tbody>
</table>

WATER – WATER RECLAMATION

(E1) P0211047 – CEM HOLDING CORPORATION dba CEM CORPORATION, MATHEWS, NC

- One (1) Mars6 microwave digestion system.
- This good is required for solubilizing metals preceding analysis on the Inductively Coupled Plasma Mass Spectrometer (ICP-MS).
- CEM Holding Corporation dba CEM Corporation is recommended as the OEM and sole source supplier of the Mars6 digestion system; therefore, this purchase was negotiated.
- The Department of Water recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>Sanitary Sewer Operating</td>
<td>55000-3460-1411-54</td>
<td>$27,843.00</td>
</tr>
</tbody>
</table>
WATER – WATER SUPPLY AND TREATMENT

(E2) P0211037 – ELECTRICAL POWER SYSTEMS INTERNATIONAL INC., CINCINNATI, OH

- Electrical testing and inspection services as needed through 12/31/2021.
- These services are required by the National Fire Protection Agency (NFPA) to maintain the safety and reliability of the City’s high voltage electrical switchgears.
- Fourteen (14) possible vendors were solicited and four (4) bids were received. This order establishes a price agreement per IFB 21033N with pricing through 6/30/2025.
- The Department of Water requests additional authority of $420,000.00 through 6/30/2025.
- The Department of Water recommends acceptance of the lowest and best bid.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<tr>
<td>2021</td>
<td>Water Operating</td>
<td>53000-3430-1159-54</td>
<td>$51,000.00</td>
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<tr>
<td>2022</td>
<td>Water Operating</td>
<td>53000-3430-1159-54</td>
<td>$120,000.00</td>
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<tr>
<td>2023</td>
<td>Water Operating</td>
<td>53000-3430-1159-54</td>
<td>$120,000.00</td>
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<tr>
<td>2024</td>
<td>Water Operating</td>
<td>53000-3430-1159-54</td>
<td>$120,000.00</td>
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<tr>
<td>2025</td>
<td>Water Operating</td>
<td>53000-3430-1159-54</td>
<td>$60,000.00</td>
</tr>
</tbody>
</table>

The aforementioned departments recommend approval of this order.
City Manager’s Report

From: 2360 - Planning, Neighborhoods & Dev. / Mediation Center
Name: Jody Bonansinga
Address: 22742 Westwood Drive, Strongsville, Ohio 44149

Date: July 28, 2021
Expense Type: Service Agreement
Total Amount: $50,000.00 (thru 7/31/2023)

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Fund</td>
<td>16702-2360-1159-33</td>
<td>50,000.00</td>
</tr>
</tbody>
</table>

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

Description:

Professional Services Agreement - Jody Bonansinga

The Department of Planning, Neighborhoods and Development requests permission to enter into a Professional Services Agreement in the amount of $50,000.00 with Jody Bonansinga to provide professional support services for the Dayton Mediation Center’s Juvenile Court Mediation Program and various other Mediation Center projects.

This Agreement shall commence upon execution and it shall terminate on July 31, 2023.

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

This Agreement is funded using General Funds—Mediation Center Funds.

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

Signatures/Approval

Approved by City Commission

Division

Department

City Manager

FORM NO. MS-16

Updated 10/2019
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
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<tr>
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<tbody>
<tr>
<td>New Contract</td>
<td></td>
<td>Renewal Contract</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Change Order</td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

Contract Start Date: 
Expiration Date: 07/31/23
Original Commission Approval: $50,000.00
Initial Encumbrance: $14,000.00
Remaining Commission Approval: $36,000.00

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

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

Amount: $14,000.00

Fund Code: 16702 - 2360 - 1159 - 33 - XXXX - XXXX

Amount:

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

Attach additional pages for more FOAPALS

Vendor Name: Jody Bonansinga
Vendor Address: 22742 Westwood Drive Strongsville, OH 44149
Federal ID: [Redacted]
Commodity Code: 952-23
Purpose: Professional Services Agreement to support the Mediation Center's Juvenile Court Mediation Program.

Contact Person: Michelle Zaremba
Planning, Neighborhoods & Development/ Mediation Center
Department/Division
Date: 7/15/2021

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: [Signature]
Date: 7/19/2021

CF Prepared by: [Signature]
Date: 7/19/21
CF/CT Number: CT21-3022

October 18, 2011
PROFESSIONAL SERVICES AGREEMENT

This Agreement is entered into this __________ day of ______________________, 2021 between the CITY OF DAYTON, OHIO, a municipal corporation in and of the State of Ohio ("City"), and JODY BONANSINGA, 22742 Westwood Drive, Strongsville, OH 44149 ("Consultant").

ARTICLE I. SCOPE OF SERVICES.

Consultant shall provide ongoing professional support services for the City’s Dayton Mediation Center Juvenile Court Mediation Project and provide such other miscellaneous general professional support for other Dayton Mediation Center projects, as specified in Attachment A, which is attached hereto and hereby incorporated (the "Services").

ARTICLE II. TERM OF AGREEMENT.

This Agreement shall commence upon execution by the City, and shall terminate on July 31, 2023.

ARTICLE III. PAYMENTS TO CONSULTANT.

Consultant shall be paid the sum of TWENTY-THREE DOLLARS AND ZERO CENTS ($23.00) per hour for the Services actually performed in accordance with this Agreement. The total sum shall not exceed FIFTY THOUSAND DOLLARS AND ZERO CENTS ($50,000.00) for all Services provided pursuant to this Agreement. Consultant shall submit an invoice, not more frequently than monthly, for payment. Said invoices shall state the total amount requested, the number of hours actually devoted to the performance of the Services during the invoice period and provide a listing of the Services provided during the invoice period. Consultant shall also provide such other information and documentation as the City may request to substantiate any invoice submitted. All invoices shall be verified by appropriate City staff prior to payment. Unless disputed, the City shall tender payment of the approved invoices within thirty (30) days from receipt.

ARTICLE IV. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION.

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

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

Consultant shall defend, indemnify and save harmless the City and its officers, employees, and representatives from and against all expenses, damages, claims, suits, or liabilities (including attorney fees) of every kind whatsoever by reason of, arising out of, or in any way connected with the performance or non-performance of this Agreement and/or Services, including any alleged violation by Consultant of any federal, state or local law, regulation or order.

Throughout the entire term of this Agreement, Consultant shall maintain the following insurance with an insurance company authorized to conduct business in the State of Ohio and having at least an “A” rating from A.M. Best:

a) Professional Liability Insurance, with a minimum Five Hundred Thousand Dollars ($500,000) annual aggregate;

b) Automobile Liability Insurance, with a combined single limit of at least One Hundred Thousand Dollars ($100,000) for each occurrence and Three Hundred Thousand Dollars ($300,000) in the aggregate. All policies shall contain the requirement that it cannot be canceled without a minimum of thirty (30) days’ written notice to the City.

Consultant shall procure and maintain Workers’ Compensation Insurance in such amounts as required by law. Upon execution of this Agreement, Consultant shall furnish to the City certificates and/or proof of each form of insurance required by this Article. Upon request, Consultant shall furnish complete copies of the insurance policies.

ARTICLE VI. INDEPENDENT CONTRACTOR.

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

Consultant understands and agrees that she is not a City employee, and therefore, shall not be entitled to, nor will he make a claim for, any of the emoluments of employment with the City of Dayton. Consultant is not a “Public Employee” for the purpose of Ohio Public Employees Retirement System membership. Further, Consultant shall be solely responsible to withhold and pay all applicable local, state and federal taxes. Consultant further acknowledges and agrees that none of her employees are public employees for the purpose of membership and/or participation in the Ohio Public Employees Retirement System (OPERS).
ARTICLE VII. TERMINATION.

This Agreement may be terminated by either party upon giving written notice of termination to the other party at least thirty (30) days prior to the effective date of such termination. If this Agreement is terminated, the City shall not be obligated to pay for any services performed by Consultant subsequent to the effective date of termination.

ARTICLE VIII. GENERAL PROVISIONS.

A. Amendment or Modification

City or Consultant may request to amend or modify this Agreement, but such amendment or modification shall not be effective unless it is reduced to writing, referencing this Agreement, and is executed by a duly authorized representative of City and Consultant, and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.

B. Entire Agreement/Integration

This Agreement represents the entire and integrated Agreement between the City and Consultant. 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. Severability

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

D. Waiver

A waiver by the 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 the City’s rights with respect to any other or further breach.

E. Meetings and Evaluation

Consultant shall attend all necessary meetings to insure the continuity of Services is maintained, which includes attendance of weekly status meetings. Consultant shall also meet with the City at such other times requested by the City to review and discuss performance of this Agreement and/or Services required hereunder. Consultant shall cooperate with the City in all respects concerning the review and monitoring of Consultant’s performance of the Services under this Agreement.
F. Notice/Communications

Any written notice or other communication required or permitted by this Agreement shall be made in writing and shall be delivered personally or via certified mail or first class U.S. mail, postage pre-paid, to the Consultant’s addresses first set forth above, and to the City at the following address:

    City of Dayton, Ohio
    Department of Planning and Community Development
    Dayton Mediation Center
    Attn: Manager
    101 W. Third Street, P.O. Box 22
    Dayton, Ohio 45402

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

G. Records

Consultant shall maintain records related to the Services to be provided hereunder, including such records reflecting the number of hours expended in the performance of such Services. At any time during normal business hours and as often as the City may deem necessary, Consultant shall make available to the City all of its records related to this Agreement. Consultant shall also permit the City to audit, examine and make excerpts or transcripts from such records and other documents pertaining in whole or part to matters covered by this Agreement.

H. Ownership of Documents and Work Product

All documents, research, analysis, compilations of data and work product prepared by Consultant as part of the Services, which are not of a confidential nature, shall become the property of the City upon payment. Additionally, all documents, research, analysis, data and other information furnished by the City to Consultant to assist in the completion of the Services shall remain the sole and exclusive property of the City.

I. Reports

Consultant will prepare and submit quarterly reports to the City’s Department of Planning and Community Development’s Division of Citizen Participation/Dayton Mediation Center. These quarterly reports will provide a detailed summary of the Services and project, and shall include hours worked and type of services provided or activities performed.

J. Political Contributions

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

CITY OF DAYTON, OHIO

__________________________
City Manager

CONSULTANT

__________________________
Jody Bonansinga

APPROVED AS TO FORM AND CORRECTNESS:

5/14/2021

X  John Musto for

__________________________
City Attorney

Signed by: Musto, John

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

__________________________, 2021

Min. / Bk. _____ Pg. _____

__________________________
Clerk of the Commission
ATTACHMENT A

CITY OF DAYTON, DAYTON MEDIATION CENTER
JODY BONANSINGA

SCOPE OF SERVICES

Consultant shall provide the following Services pursuant to this Agreement:

1. Mediation services.

2. Case management services, including intake, making contact with citizens, apprising citizens of mediation services and alternatives, identifying time and place for mediation and conducting follow-up interviews.

3. Database maintenance for record keeping and statistics.

4. Completion and maintenance of project forms, including intake forms and all correspondences.

5. Consulting services to the Juvenile Court Mediation Program on:
   a. Individual cases;
   b. Appropriate conflict management interventions;
   c. Recommendations on appropriate interventions for situations where legalistic responses are not viable

6. Support in preparation of reports and other data, including a quarterly activity report.

7. Providing the City’s Dayton Mediation Center Coordinator with a periodic list of services provided for invoice purposes.

8. Providing and maintaining a referral source database, including establishing contact and rapport with referral agencies to facilitate future referrals.

9. Maintaining a record retention schedule for Dayton Mediation Center project/ programs in accordance with all applicable federal, state and/or local laws.

The City will provide the Consultant workspace and access to software and hardware used in case management, database maintenance and mediation services at the Dayton Mediation Center, as necessary to complete the Services.

Consultant shall not be permitted to bill the City for travel time or the costs of transportation or parking related to the Services to be performed under this Agreement.
"Prof Serv Agreement - Jody Bonansinga 2021-23 ljb edits 5-14"

History

Document created by Miranda Brooks (miranda.brooks@daytonohio.gov)
2021-07-16 - 12:25:12 PM GMT

Document emailed to Jody Bonansinga (jody.bonansinga@daytonohio.gov) for signature
2021-07-16 - 12:26:04 PM GMT

Email viewed by Jody Bonansinga (jody.bonansinga@daytonohio.gov)
2021-07-16 - 12:27:54 PM GMT

Document e-signed by Jody Bonansinga (jody.bonansinga@daytonohio.gov)
Signature Date: 2021-07-16 - 4:25:34 PM GMT - Time Source: server

Agreement completed.
2021-07-16 - 4:25:34 PM GMT
Second Amendment to Services Agreement

The Department of Planning, Neighborhoods & Development – Division of Development is requesting approval of a Second Amendment to Services Agreement with the non-profit Ohio Energy Project (OEP). City of Dayton received funding from the Dayton Power & Light Company (“DP&L Funding”) to facilitate the development and implementation of a curriculum for Dayton Public Schools (“DPS”) that assists DPS in meeting the Ohio Learning Standards for Science. This funding enabled OEP to provide curriculum to DPS for the past two years, and this amendment will utilize the DP&L Funds to provide funding for $50,000.00 in additional services in the upcoming school year.

OEP staff will provide an energy education program for 3rd, 4th, 5th, and 7th grade students during the 2021-2022 school year. The program will include professional development, curriculum, and teaching kits. The program will directly support teachers in meeting Ohio’s learning standards for science, required by the Ohio Department of Education. This brings the total agreement to $150,000.00.

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

The Amendment will be effective upon execution and will expire on August 31, 2022.

Funding source is the Special Revenue Fund - DP&L Settlement for Res. Energy Edu Fund.

A Certificate of Funds for $50,000.00 is attached.
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>New Contract</th>
<th>Renewal Contract</th>
<th>Change Order</th>
</tr>
</thead>
</table>

- **Contract Start Date**: 7/28/2019
- **Expiration Date**: 8/31/2022
- **Original Commission Approval**: $150,000.00
- **Initial Encumbrance**: $100,000.00
- **Remaining Commission Approval**: $50,000.00
- **Original CT/CF**: CT192317, CT202317
- **Increase Encumbrance**: $50,000.00
- **Decrease Encumbrance**: $-
- **Required Documentation**
  - Initial City Manager's Report
  - Initial Certificate of Funds
  - Initial Agreement/Contract
  - Copy of City Manager's Report
  - Copy of Original Certificate of Funds

<table>
<thead>
<tr>
<th>Amount: $50,000.00</th>
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<tbody>
<tr>
<td>Fund Code 22516 - 2600 - 1223 - 41 - __</td>
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</table>

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

Attach additional pages for more FOAPALs

- **Vendor Name**: Ohio Energy Project
- **Vendor Address**: 200 East Wilson Bridge Road Worthington OH 43085
- **Federal ID**: 31-1305046
- **Commodity Code**: 91838
- **Purpose**: To provide an energy education program for all Dayton Public Schools' during the 2021 - 2022 school year.

<table>
<thead>
<tr>
<th>Contact Person: Jill Bramini</th>
</tr>
</thead>
<tbody>
<tr>
<td>Planning, Neighborhoods &amp; Development/Development</td>
</tr>
<tr>
<td>Date 7/15/2021</td>
</tr>
</tbody>
</table>

Originating Department Director's Signature: [Signature]

SECTION II - to be completed by the Finance Department

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

| Finance Director Signature: [Signature] |
| Date 7/15/2021 |

CF Prepared By: [Signature] [Date 7/19/21] [CF/CT Number CT21-2317]
SECOND AMENDMENT TO SERVICES AGREEMENT

THIS SECOND AMENDMENT TO SERVICES AGREEMENT ("Amendment"), is made and entered into between the City of Dayton, Ohio, ("City") a municipal corporation in and of the State of Ohio and Ohio Energy Project ("OEP"), a non-profit corporation incorporated under the laws of the State of Ohio and having its principal offices located at 200 East Wilson Bridge Road, Worthington, OH 43004.

WHEREAS, The City of Dayton has received funding from the Dayton Power & Light Company ("DP&L Grant") to facilitate the development and implementation of a curriculum ("Curriculum") for Dayton Public Schools ("DPS") that will assist DPS in meeting the Ohio Learning Standards for Science; and,

WHEREAS, The City of Dayton and DPS have identified OEP as having the necessary capability to assist DPS in developing the Curriculum and providing the necessary professional training of DPS faculty to implement the Curriculum; and,

WHEREAS, OEP and DPS have agreed to the Scope of Services and Budget ("Scope of Services") set forth on Exhibit A attached hereto and incorporated herein; and,

WHEREAS, The City entered into a Services Agreement ("Agreement") with OEP which was approved by the Commission of the City of Dayton on July 10, 2019; and,

WHEREAS, The City entered into a First Amendment To Services Agreement ("First Amendment") with OEP which was approved by the Commission of the City of Dayton on July 29, 2020; and

WHEREAS, DPS is very pleased with the services OEP provided and wishes to continue to have OEP provide services for the upcoming academic year; and,

WHEREAS, The City has requested and OEP has agreed to provide additional services under the Agreement and City has sufficient DP&L Grant funds.

NOW THEREFORE, in consideration of the mutual promises herein, the parties have agreed to amend the Agreement as follows:

Section 1. Article 1, Scope of Services, is hereby deleted in its entirety and replaced with the following:

ARTICLE 1. SCOPE OF SERVICES

OEP shall perform the work and services set forth within the Scope of Work as revised May 14, 2021, attached hereto as ("Exhibit A, Scope of Services and Budget") and incorporated herein, on behalf of DPS.
Section 2. The first paragraph of Article 2, Term and Termination, is hereby deleted and replaced with the following:

This Agreement shall commence upon full execution by the City and it shall expire on August 31, 2022 unless terminated or amended by mutual written agreement.

Section 3. Article 3, Compensation, is hereby deleted in its entirety and replaced with the following:

ARTICLE 3. COMPENSATION

The services provided pursuant to this Agreement are solely funded by the DP&L Grant, and the total compensation under this Agreement shall not exceed One Hundred Fifty Thousand Dollars and Zero Cents ($150,000.00), and the portion of the funds to be spent between July 30, 2021 and August 31, 2022 shall be paid pursuant to the following schedule:

1. Purchase of STEM Classroom Kit Supplies $16,500.00
2. Purchase of Replacement Supplies for 3rd, 4th, 5th, and 7th Grade Teaching Kits & Supplies $3,800.00
3. Completion of Faculty Workshops/Education $5,000.00
4. Completion of First Semester of School Year $14,700.00
5. Submittal of Final Report $10,000.00

With respect to Item 2 in the above payment schedule, OEP, upon receipt of the materials from the vendor(s), shall inspect the same, provide written certification to City that the materials have been received and are of acceptable quantity and quality, and forward the invoice to City. Subject to City’s satisfaction with OEP’s certification, City shall issue a payment to OEP in the amount of the invoice(s) for said materials. There shall be no requirement that OEP pay such invoice(s) for the materials prior to the City making payment therefor. As the Faculty Workshops/Education, First Semester of the School Year, and Final Report in the above payment schedule are completed, OEP shall submit an invoice to City. City will issue payment to OEP upon receipt of certification from DPS that the services for which payment is invoiced have been satisfactorily performed. The invoice shall state the time period covered and include a report detailing the specific services provided.

The funding referred to above will be used solely and exclusively by OEP for the services set forth in the Scope of Services, and appropriate accounting procedures will be established to track the use of these funds.
Section 4. Except as amended herein, all other terms and conditions of this Agreement shall remain in full force and effect.

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

CITY OF DAYTON, OHIO

City Manager

APPROVED AS TO FORM AND CORRECTNESS:

7/16/2021

X Amelia N. Blankenship for

City Attorney
Signed by: Blankenship, Amelia

OHIO ENERGY PROJECT

By: Shauni Nix
Shauni Nix
Its: Executive Director

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO

_____________________, 2020

Min./Bk. _________Pg. _______

_____________________

Clerk of the Commission
City of Dayton Scope of Work
Dayton Energy Education Program
submitted by Ohio Energy Project
May 14, 2021

Scope of Work
Ohio Energy Project proposes the Scope of Work and Budget for the 2021-2022 school year.

Plan of Action/Timeline

1. Communicate with Dayton Public Schools Leadership: April 2021
   Bonnie Porter, Dayton Public Schools Science Curriculum Coordinator, verified interest in continuing their partnership with the Ohio Energy Project and identified utilizing STEM resources to support OEP’s ongoing partnership with DPS. The goal of the Year 3 program is to encourage students in the STEM design process and create maker space opportunities within the district.

2. Program Planning: May-June 2021
   The focus of OEP’s work with Dayton Public Schools will be providing resources for STEM and classroom teachers to facilitate hands-on, inquiry-based activities. Opportunities will be available for every school in the district. OEP will work with teachers previously involved in the program as well as new teachers at the middle and high schools.
   3rd Grade STEM Challenge: Renewable Energy Resources
   4th Grade STEM Challenge: Circuits, Climate Science & Thermal Energy
   5th Grade STEM Challenge: Forces & Motion
   Middle & High School STEM Challenge: KidWind Turbine Blade Building Challenge

3. Facilitate Professional Development Workshops and Faculty Education: July-October 2021
   Due to COVID-19 and the district’s shorten summer break, OEP will train most teachers during district professional development days and in Fall 2021. Training on the new STEM activities will be coordinated with Ms. Porter and her staff on district professional development days or after school. Training will be conducted both in-person and via Zoom.

   Additionally, we will offer two in-person professional development workshops for 3rd, 4th and 5th grade teachers new to their positions for the 2021-2022 school year on July 28-29. New teachers will receive the curriculum and training on the school teaching kits supplied to their buildings over the last two years.

4. STEM Supplies and Maker Space Resources: September 2021-March 2022
   Each participating school will receive grade-level specific supplies to facilitate STEM Design Challenge activities with their students. Additional resources will allow teachers to create Maker Spaces within their school or classroom.
5. **Follow-up and Evaluation Tools:** August 2021-May 2022

- Post-workshop pencil and paper evaluation to provide immediate feedback on the professional development workshop. July 2021
- Monthly communications and support to participating teachers via email and/or conference calls. September 2021-May 2022
- Student pre/post assessments to be used by the educators before and after their energy units to track student achievement. School Year 2021-2022
- Teachers will have the opportunity to enter student projects into an online contest for their grade level. January-April 2022
- Post-program online evaluation after completing the energy unit in the 2021-2022 school year to allow teachers to comment on the effectiveness of the curriculum, lessons and classroom teaching kit. May 2022

6. **Reporting to the City of Dayton:** December 2021-May 2022

- A progress report will be submitted following the summer/fall training workshops. December 2021
- OEP will submit a portfolio to the National Energy Education Development Project (NEED) for their annual competition recognizing outstanding programs in the nation. The portfolio will highlight the partnership between the City of Dayton, Dayton Public Schools and the Ohio Energy Project. April 2022
- Results from teacher evaluations and student pre vs post polls will be compiled and reported in the Final Project Report. May 2022
# Ohio Energy Project

**City of Dayton Budget 2021-2022 School Year**

<table>
<thead>
<tr>
<th></th>
<th>Number</th>
<th>Cost</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>School Kit Supplies</strong></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>STEM Classroom Kit Supplies for schools (kit for every school)</td>
<td>22</td>
<td>$750</td>
<td>$16,500</td>
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<tr>
<td>Replacement Supplies 3rd, 4th, 5th or 7th Grade Teaching Kits (per school)</td>
<td>19</td>
<td>$200</td>
<td>$3,800</td>
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<td><strong>Professional Development</strong></td>
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<td>Consumables for professional development training</td>
<td>4</td>
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<tr>
<td>Facility for professional development (due to covid protocols in district)</td>
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<td>$200</td>
<td>$400</td>
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<td><strong>Personnel (hours)</strong></td>
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<tr>
<td>Program planning and implementation</td>
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<td>$100</td>
<td>$20,000</td>
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<tr>
<td><strong>Travel</strong></td>
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<tr>
<td>OEP Staff Travel (meals, gas)</td>
<td>5</td>
<td>$150</td>
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<tr>
<td><strong>Substitute Costs and/or Teacher Stipends</strong></td>
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<td></td>
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</tr>
<tr>
<td>Substitute costs for professional development (if training is provided after school or virtually, sub costs will be used as an additional teacher stipend for attending the training)</td>
<td>55</td>
<td>$100</td>
<td>$5,500</td>
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<tr>
<td>Teacher stipends for submitting evaluation and student pre/post polls</td>
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<tr>
<td><strong>Sub Total</strong></td>
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<td>$47,750</td>
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<td><strong>Miscellaneous</strong></td>
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<td></td>
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<td>$50,000</td>
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</tr>
</tbody>
</table>
First Amendment to Services Agreement

The Department of Economic Development is requesting approval of a First Amendment to Services Agreement with the non-profit Ohio Energy Project (OEP). City of Dayton has received funding from the Dayton Power & Light Company ("DP&L Funding") to facilitate the development and implementation of a curriculum for Dayton Public Schools ("DPS") that will assist DPS in meeting the Ohio Learning Standards for Science. This funding enabled OEP to provide curriculum to DPS for last year, and this amendment will utilize the DP&L Funds to provide funding for $50,000.00 in additional services in the upcoming school year.

OEP staff will provide an energy education program for 3rd and 4th grade students in all of Dayton Public Schools’ elementary schools during the 2020-2021 school year. The program will include professional development, curriculum, and teaching kits. The program will directly support teachers in meeting Ohio’s learning standards for science, required by the Ohio Department of Education. This brings the total agreement to $100,000.00.

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

The Amendment will be effective upon execution and will expire on August 31, 2021.

A Certificate of Funds for $50,000.00 is attached.

Division

Department

City Manager

FORM NO. MS-16

Approved by City Commission

Clerk

Date

Updated 8/2016
CERTIFICATE OF FUNDS
CT20-2317

SECTION I - to be completed by User Department

Contract Start Date: 7/22/2019
Expiration Date: 8/31/2021
Original Commission Approval: $100,000.00
Initial Encumbrance: $50,000.00
Remaining Commission Approval: $50,000.00
Original CT/CF: CT192317
Increase Encumbrance: $50,000.00
Decrease Encumbrance: $-
Remaining Commission Approval: $-

NO DRAFT DOCUMENTS PERMITTED

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

<table>
<thead>
<tr>
<th>Amount: $50,000.00</th>
</tr>
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<tbody>
<tr>
<td>Fund Code: 22516 - 2800 - 1223 - 41 - Loc</td>
</tr>
<tr>
<td>Fund Code: XXXX - XXXX - XXXX - XX - XXXX - XXXX</td>
</tr>
</tbody>
</table>

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

Attach additional pages for more FOAPALs

Vendor Name: Ohio Energy Project
Vendor Address: 200 East Wilson Bridge Road, Worthington, OH 43085
Federal ID: 31-1305046
Commodity Code: 91838
Purpose: To provide an energy education program for all Dayton Public Schools during the 2020-2021 school year.

Contact Person: Jill Bramini
Economic Development Department/Division 7/15/2020

Originating Department Director's Signature:

SECTION II - to be completed by the Finance Department

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

Finance Director's Signature: 7/24/2020

CF/CT Number: 07/21/2020
FIRST AMENDMENT TO SERVICES AGREEMENT

THIS FIRST AMENDMENT TO SERVICES AGREEMENT ("Amendment"), is made and entered into between the City of Dayton, Ohio, ("City") a municipal corporation in and of the State of Ohio and Ohio Energy Project ("OEP"), a non-profit corporation incorporated under the laws of the State of Ohio and having its principal offices located at 200 East Wilson Bridge Road, Worthington, OH 43004.

WHEREAS, The City of Dayton has received funding from the Dayton Power & Light Company ("DP&L Grant") to facilitate the development and implementation of a curriculum ("Curriculum") for Dayton Public Schools ("DPS") that will assist DPS in meeting the Ohio Learning Standards for Science; and,

WHEREAS, The City of Dayton and DPS have identified OEP as having the necessary capability to assist DPS in developing the Curriculum and providing the necessary professional training of DPS faculty to implement the Curriculum; and,

WHEREAS, OEP and DPS have agreed to the Scope of Services and Budget ("Scope of Services") set forth on Exhibit A attached hereto and incorporated herein; and,

WHEREAS, The City entered into a Services Agreement ("Agreement") with OEP which was approved by the Commission of the City of Dayton on July 10, 2019; and,

WHEREAS, DPS is very pleased with the services OEP provided and wishes to continue to have OEP provide services for the upcoming academic year; and,

WHEREAS, The City has requested and OEP has agreed to provide additional services under the Agreement and City has sufficient DP&L Grant funds.

NOW THEREFORE, in consideration of the mutual promises herein, the parties have agreed to amend the Agreement as follows:

Section 1. Article 1, Scope of Services, is hereby deleted in its entirety and replaced with the following:

ARTICLE 1. SCOPE OF SERVICES

OEP shall perform the work and services set forth within the Scope of Work as revised June 23, 2020, attached hereto as ("Exhibit A, Scope of Services and Budget") and incorporated herein, on behalf of DPS.

Section 2. The first paragraph of Article 2, Term and Termination, is hereby deleted and replaced with the following:

This Agreement shall commence upon full execution by the City and it shall expire on August 31, 2021 unless terminated or amended by mutual written agreement.

Section 3. Article 3, Compensation, is hereby deleted in its entirety and replaced with the following:

ARTICLE 3. COMPENSATION
The services provided pursuant to this Agreement are solely funded by the DP&L Grant, and the total compensation under this Agreement shall not exceed One Hundred Thousand Dollars and Zero Cents ($100,000.00), and the portion of the funds to be spent between August 31, 2020 and August 31, 2021 shall be paid pursuant to the following schedule:

1. Execution of Amendment $5,000.00
2. Purchase of 3rd and 4th Grade Teaching Kits & Supplies $28,000.00
3. Completion of Faculty Workshops/Education $5,000.00
4. Completion of First Semester of School Year $6,000.00
5. Submittal of Final Report $6,000.00

With respect to Item 2 in the above payment schedule, OEP, upon receipt of the materials from the vendor(s), shall inspect the same, provide written certification to City that the materials have been received and are of acceptable quantity and quality, and forward the invoice to City. Subject to City’s satisfaction with OEP’s certification, City shall issue a payment to OEP in the amount of the invoice(s) for said materials. There shall be no requirement that OEP pay such invoice(s) for the materials prior to the City making payment therefore. As the Faculty Workshops/Education, First Semester of the School Year, and Final Report in the above payment schedule are completed, OEP shall submit an invoice to City. City will issue payment to OEP upon receipt of certification from DPS that the services for which payment is invoiced have been satisfactorily performed. The invoice shall state the time period covered and include a report detailing the specific services provided.

The funding referred to above will be used solely and exclusively by OEP for the services set forth in the Scope of Services, and appropriate accounting procedures will be established to track the use of these funds.

Section 4. Except as amended herein, all other terms and conditions of this Agreement shall remain in full force and effect.

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

CITY OF DAYTON, OHIO

[Signature]
City Manager

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]
Receivable Signature

[Signature]
Amelia N. Blankenship
City Attorney
Signed by: Blankenship, Amelia

OHIO ENERGY PROJECT

[Signature]
Shauni Nix
By: Shauni Nix
Its: Executive Director

2
The services provided pursuant to this Agreement are solely funded by the DP&L Grant, and the total compensation under this Agreement shall not exceed One Hundred Thousand Dollars and Zero Cents ($100,000.00), and the portion of the funds to be spent between August 31, 2020 and August 31, 2021 shall be paid pursuant to the following schedule:

1. Execution of Amendment                      $ 5,000.00
2. Purchase of 3rd and 4th Grade Teaching Kits & Supplies $28,000.00
3. Completion of Faculty Workshops/Education         $ 5,000.00
4. Completion of First Semester of School Year        $ 6,000.00
5. Submittal of Final Report                        $ 6,000.00

With respect to Item 2 in the above payment schedule, OEP, upon receipt of the materials from the vendor(s), shall inspect the same, provide written certification to City that the materials have been received and are of acceptable quantity and quality, and forward the invoice to City. Subject to City’s satisfaction with OEP’s certification, City shall issue a payment to OEP in the amount of the invoice(s) for said materials. There shall be no requirement that OEP pay such invoice(s) for the materials prior to the City making payment therefore. As the Faculty Workshops/Education, First Semester of the School Year, and Final Report in the above payment schedule are completed, OEP shall submit an invoice to City. City will issue payment to OEP upon receipt of certification from DPS that the services for which payment is invoiced have been satisfactorily performed. The invoice shall state the time period covered and include a report detailing the specific services provided.

The funding referred to above will be used solely and exclusively by OEP for the services set forth in the Scope of Services, and appropriate accounting procedures will be established to track the use of these funds.

Section 4. Except as amended herein, all other terms and conditions of this Agreement shall remain in full force and effect.

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

CITY OF DAYTON, OHIO

City Manager

By: ___________________________
       Shaun Nix

APPROVED AS TO FORM AND CORRECTNESS:

                          7/14/2020

X Amelia N. Blankenship

City Attorney
Signed by: Blankenship, Amelia
APPROVED BY THE COMMISSION
OF THE CITY OF DAYTON, OHIO

July 29, 2020

Miul/Bk. I-11 Pg.

Rashella L. Winters
Clerk of the Commission
EXHIBIT A
Scope of Services and Budget
City of Dayton Scope of Work
Dayton Energy Education Program
submitted by Ohio Energy Project
Revised June 23, 2020

Scope of Work
Ohio Energy Project proposes the Scope of Work and Budget for the 2020-2021 school year.

Plan of Action/Timeline

1. **Communicate with Dayton Public Schools Leadership**: April 2020

   Bonnie Porter, Dayton Public Schools Science Curriculum Coordinator verified interest in continuing their partnership with the Ohio Energy Project and identified 3rd and 4th grade to provide training and resources.

2. **Develop Professional Development Plan & Dayton Specific Teaching Kits**: May-July 2020

   The focus of OEP’s work with Dayton Public Schools will be providing professional development training and curriculum for educators and teaching equipment kits for every elementary school. Targeted grades for 2020-2021 are 3rd and 4th. A portion of the budget has been allocated to provide replacement supplies for the 5th and 7th grade teaching equipment kits provided during the 2019-2020 school year.

   3rd Grade Content: 10 Sources of Energy, Renewable Energy Resources, Energy Efficiency
   4th Grade Content: Electricity & Circuits, Thermal Energy, Climate Change

3. **Facilitate Professional Development Workshops and Faculty Education**: July-September 2020

   OEP will facilitate professional development workshops for 3rd and 4th grade science educators. Every participating educator will receive curriculum and resources. Each school building will receive a kit of grade-level specific lab equipment and materials. Providing one kit per school will allow OEP to invest more materials in each building allowing for hands-on experiences for every student. The kit materials and equipment are non-consumable and have been designed and tested with the goal of selecting materials that can be used in the classroom for several years.

   Due to COVID-19, OEP will offer several methods to train educators and will include ideas to implement activities if students are distance learning in the fall.
   - Zoom professional development workshop on July 15, 2020. The workshop will be recorded so teachers unable to participate live can view it later.
   - In-person professional development on July 16 and August 5, 2020. The August 5th date is part of the district’s in-service training prior to the start of school.
   - During the school year, OEP will facilitate two live Zoom question and answer sessions for each grade-level to offer feedback and answer questions while teachers are facilitating the program with their students. Q & A sessions will be held in November 2020 and February 2021.
   - Supplies will be given to teachers attending the August 5th workshop date or delivered directly to schools if teachers attend one of the July dates.
• OEP will create videos of the 3rd and 4th grade activities and post them on OEP’s YouTube page. Videos of the activities can be used if distance learning extends into the 2020-21 school year.

4. **Follow-up and Evaluation Tools:** August 2020-May 2021

• Post-workshop pencil and paper evaluation to provide immediate feedback on the professional development workshop. August 2020
• Zoom Q & A sessions during the school year for teachers. November 2020 and February 2021
• Monthly communications and support to participating teachers via email and/or conference calls. September 2020-May 2021
• Student pre/post assessments to be used by the educators before and after their energy units to track student achievement. School Year 2020-2021
• Post-program online evaluation after completing the energy unit in the 2020-2021 school year to allow teachers to comment on the effectiveness of the curriculum, lessons and classroom teaching kit. May 2021

5. **Reporting to the City of Dayton:** December 2020-May 2021

• A progress report will be submitted following the summer/fall professional development. December 2020
• OEP will submit a portfolio to the National Energy Education Development Project (NEED) for their annual competition recognizing outstanding programs in the nation. The portfolio will highlight the partnership between the City of Dayton, Dayton Public Schools and the Ohio Energy Project. April 2021
• Results from teacher evaluations and student pre vs post polls will be compiled and reported in the Final Project Report. May 2021
# Ohio Energy Project
## City of Dayton Budget

<table>
<thead>
<tr>
<th>School Kit Supplies</th>
<th>Number</th>
<th>Cost</th>
<th>Total</th>
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<tbody>
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<td>Curriculum (per teacher)</td>
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</tr>
<tr>
<td>Teacher Supplies (per teacher)</td>
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<tr>
<td>3rd Grade Teaching Kits (per school)</td>
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<td>$9,750</td>
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<tr>
<td>4th Grade Teaching Kits (per school)</td>
<td>15</td>
<td>$700</td>
<td>$10,500</td>
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<tr>
<td>Replacement Supplies 5th Grade Teaching Kits (per school)</td>
<td>15</td>
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<td>$2,250</td>
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<td>Replacement Supplies 7th Grade Teaching Kits (per school)</td>
<td>4</td>
<td>$200</td>
<td>$800</td>
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<table>
<thead>
<tr>
<th>Professional Development</th>
<th></th>
<th></th>
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<tbody>
<tr>
<td>Consumables for professional development training</td>
<td>4</td>
<td>$200</td>
<td>$800</td>
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</table>

<table>
<thead>
<tr>
<th>Personnel (hours)</th>
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</thead>
<tbody>
<tr>
<td>Program planning and implementation</td>
<td>125</td>
<td>$75</td>
<td>$9,375</td>
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<table>
<thead>
<tr>
<th>Travel</th>
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<tbody>
<tr>
<td>OEP Staff Travel (meals, gas)</td>
<td>3</td>
<td>$120</td>
<td>$360</td>
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</table>

<table>
<thead>
<tr>
<th>Subsstitute Costs and/or Teacher Stipends</th>
<th></th>
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<tbody>
<tr>
<td>Substitute costs for professional development (if training is provided after school or virtually, sub costs will be used as an additional teacher stipend for attending the training) Teacher stipends for submitting evaluation and student pre/post polls</td>
<td>55</td>
<td>$150</td>
<td>$8,250</td>
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<table>
<thead>
<tr>
<th>Sub Total</th>
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<table>
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<tr>
<th>Indirect Costs</th>
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<th>$2,415</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>$50,000</td>
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</tbody>
</table>


City Manager's Report

From: 2600 - Economic Development
Supplier, Vendor, Company, Individual: Ohio Energy Project
Address: 200 East Wilson Bridge Road
Worthington, OH 43085

Date: July 10, 2019
Expense Type: Service Agreement
Total Amount: $50,000.00 thru 08-31-2020

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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</thead>
<tbody>
<tr>
<td>ED Energy Efficiency Fund</td>
<td>22516-2600-1221-41</td>
<td>$50,000.00</td>
</tr>
</tbody>
</table>

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

Description:

Services Agreement

The Department of Economic Development requests approval to enter into a Services Agreement with the non-profit Ohio Energy Project (OEP) in the amount of $50,000.00. OEP staff will provide an energy education program for 5th grade students in all of Dayton Public Schools' sixteen elementary schools and for 7th grade students in four additional schools, during the 2019-2020 school year. The program will include professional development, curriculum, and teaching kits. The program will directly support teachers in meeting Ohio's learning standards for science, required by the Ohio Department of Education.

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

The Agreement is effective as of the date of execution and will expire on August 31, 2020.

A Certificate of Funds for $50,000.00 is attached.

Signatures/Approval

Approved by City Commission: [Signature]
Date: July 10, 2019

Clerk: [Signature]
Date: [Signature]
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>New Contract</th>
<th>Renewal Contract</th>
<th>Change Order</th>
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</thead>
<tbody>
<tr>
<td>Contract Start Date</td>
<td>upon execution</td>
<td>Required Documentation</td>
</tr>
<tr>
<td>Expiration Date</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Original Commission Approval</td>
<td>$ 50,000.00</td>
<td>x</td>
</tr>
<tr>
<td>Initial Encumbrance</td>
<td>$ 50,000.00</td>
<td>x</td>
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<tr>
<td>Remaining Commission Approval</td>
<td>$</td>
<td></td>
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<tr>
<td>Original CT/CF</td>
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<tr>
<td>Increase Encumbrance</td>
<td>$</td>
<td></td>
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<tr>
<td>Decrease Encumbrance</td>
<td>$</td>
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<tr>
<td>Remaining Commission Approval</td>
<td>$</td>
<td></td>
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</tbody>
</table>

Amount: $ 50,000.00

Fund Code: 22516 - 2600 - 1221 - 41 - -

Vendor Name: Ohio Energy Project
Vendor Address: 200 East Wilson Bridge Road Worthington OH 43085
Federal ID: 31-1305046
Commodity Code: 81636
Purpose: To provide an energy education program for all Dayton Public Schools' during the 2019 - 2020 school year.

Contact Person: Ronelle Kinney

SECTION II - to be completed by the Finance Department

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

Finance Director's Signature: ____________________________

Date: 7-2-19

CF/CT Number: CT19-2317

Finance Department
SERVICES AGREEMENT

THIS SERVICES AGREEMENT ("Agreement") is made between the City of Dayton, Ohio ("City"), a municipal corporation in and of the State of Ohio, and Ohio Energy Project ("OEP"), a non-profit corporation incorporated under the laws of the State of Ohio and having its principal offices located at 200 East Wilson Bridge Road, Worthington, OH 43004.

WITNESSETH THAT:

WHEREAS, The City has received funding from the Dayton Power & Light Company ("DP&L Grant") to facilitate the development and implementation of a curriculum ("Curriculum") for Dayton Public Schools ("DPS") that will assist DPS in meeting the Ohio Learning Standards for Science; and,

WHEREAS, The City and DPS have identified OEP as having the necessary capability to assist DPS in developing the Curriculum and providing the necessary professional training of DPS faculty to implement the Curriculum; and,

WHEREAS, OEP and DPS have agreed to a Scope of Services and Budget ("Scope of Services").

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

ARTICLE 1. SCOPE OF SERVICES

OEP shall perform the work and services set forth within the Scope of Services, attached hereto and incorporated herein as Exhibit A, on behalf of DPS.

ARTICLE 2. TERM AND TERMINATION

This Agreement is effective upon execution by the City and will expire August 31, 2020, unless extended by mutual agreement by the parties in writing and as approved by the Commission of the City of Dayton as necessary.

Either party may terminate this Agreement at any time with or without cause upon giving the other party thirty (30) days advance written notice. The notice of termination shall be made by mailing written notice to the addresses listed below by certified mail to its usual place of business, with a copy thereof to Dayton Public Schools. If such termination occurs, OEP will be paid for the services actually performed and necessary expenses actually incurred up to the effective date of termination.

ARTICLE 3. COMPENSATION

The services provided pursuant to this Agreement are solely funded by the DP&L Grant, and the total compensation under this Agreement shall not exceed Fifty Thousand Dollars and Zero Cents ($50,000.00), which shall be paid pursuant to the following schedule:

1. Execution of Agreement $ 5,000.00
2. Purchase of 5th and 7th Grade Teaching Kits & Supplies $28,000.00
3. Completion of August Workshops $ 5,000.00
4. Completion of First Semester of the School Year $ 6,000.00
5. Submittal of Final Report $ 6,000.00
With respect to the 5th and 7th Grade Teaching Kits & Supplies in the above payment schedule, OEP, upon receipt of the materials from the vendor(s), shall inspect the same, provide written certification to City that the materials have been received and are of acceptable quantity and quality, and forward the invoice to City. Subject to City’s satisfaction with OEP’s certification, City shall issue a payment to OEP in the amount of the invoice(s) for said materials. There shall be no requirement that OEP pay such invoice(s) for the materials prior to the City making payment therefore. As the August Workshops, First Semester of the School Year, and the Final Report in the above payment schedule are completed, OEP shall submit an invoice to City. City will issue payment to OEP upon receipt of certification from DPS that the services for which payment is invoiced have been satisfactorily performed. The invoice shall state the time period covered and include a report detailing the specific services provided.

The funding referred to above will be used solely and exclusively by OEP for the services set forth in the Scope of Services, and appropriate accounting procedures will be established to track the use of these funds.

ARTICLE 4. LIABILITY AND INDEMNIFICATION

OEP shall defend, 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 OEP’s acts, errors, or omissions arising out of its performance herein.

The parties hereto specifically agree, notwithstanding any other provision in this Agreement to the contrary, that the City will not, under any circumstances, be liable or responsible for any negligent acts, errors, or omissions of OEP.

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

ARTICLE 5. COMMUNICATIONS

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

OEP: Shauni Nix
Executive Director
Ohio Energy Project
200 East Wilson Bridge Road
Suite 320
Worthington, OH 43080

The City: Ford P. Weber
Director
Department of Economic Development
City of Dayton, Ohio
101 West Third Street
Dayton, Ohio 45402

Copy to DPS: Dr. Elizabeth J. Lolli, Ph.D.
Superintendent
Dayton Public Schools
Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of OEP, DPS, and the City.

ARTICLE 6. EQUAL EMPLOYMENT OPPORTUNITY

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

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

ARTICLE 7. INDEPENDENT CONTRACTOR

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

OEP understands and agrees that any and all persons retained or hired to perform the duties and responsibilities under this Agreement are not the City’s employees and are not entitled to any of the emoluments of City employment. OEP acknowledges its employees are not public employees for purposes of Ohio Public Employees Retirement System (“OPERS”) membership. Further, OEP will be responsible to withhold and pay, or cause such agents, contractors, or subcontractors to withhold and pay, all local, state, and federal taxes.

ARTICLE 8. COUNTERPARTS

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

ARTICLE 9. INSURANCE

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

(1) General/Comprehensive liability insurance, with a combined single limit of One Million Dollars and Zero Cents ($1,000,000.00) for each occurrence and One Million Dollars and Zero Cents ($1,000,000.00) in the aggregate; and,

(2) Workers’ compensation insurance, in such amounts as required by Ohio law, and Employer’s liability; and, insurance with a limit of Five Hundred Thousand Dollars and Zero Cents ($500,000.00) for each occurrence.

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

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

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

ARTICLE 10. GENERAL PROVISIONS

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

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

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

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

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

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

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

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]
IN WITNESS WHEREOF, the City and OEP, each by a duly authorized representative, have executed this Agreement on the date below.

CITY OF DAYTON, OHIO

Shelby Dickstein
City Manager
Date: 7-28-19

APPROVED AS TO FORM AND CORRECTNESS:

City Attorney

OHIO ENERGY PROJECT

By: Shauni Nix
Its: Executive Director

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO

July 10, 2019
Min./Bk. 7-15 Pg. 0417

Rachelle Lavendar
Clerk of the Commission
Exhibit A

Scope of Services and Budget
Scope of Work
Dayton Public Schools Energy Education Program

Ohio Energy Project ("OEP") Staff will develop and deliver grade level professional development, curriculum and teaching kits for all of Dayton Public Schools' ("DPS") 16 elementary buildings and 4 schools with 7th grade classrooms during the 19-20 school year. OEP’s partnership in the district will directly support teachers in meeting Ohio’s Learning Standards for Science. These standards are required by the Ohio Department of Education. Each year, OEP will impact new teachers at targeted grade levels for professional development, in coordination with the elementary and junior/high school science coordinators.

Plan of Action/Timeline

1. Develop Professional Development Plan & Dayton Specific Teaching Kits: June 2019

2. Facilitate Professional Development Workshops: August 8, 2019

   OEP will offer two professional development workshops -- for grades 5 and 7. This will allow every grade-level science teacher the ability to participate at these two grades. By selecting two grade-levels, each school will receive a kit of materials allowing teachers to conduct hands-on activities engaging every student. These workshops will directly impact every 5th and 7th grade teacher in the district.

3. Follow-up and Evaluation Tools: August 2019-May 2020

   OEP will provide the following follow up and evaluation tools:
   - Post-workshop pencil and paper evaluation to provide immediate feedback on the professional development workshop. August 8, 2019
   - Monthly communications and support to participating teachers via email and/or conference calls. September 2019-May 2020
   - Student pre/post assessments to be used by the educators before and after their energy units to track student achievement. School Year 2019-20
   - Post-program online evaluation after completing the energy unit in the 2019-20 school year to allow teachers to comment on the effectiveness of the curriculum, lessons and classroom teaching kit. May 2020
   - In-person follow up evaluation meeting to document classroom experiences and provide feedback directly from educators. Spring 2020

4. Reporting to the City of Dayton: September 2019-May 2020

   OEP will report to the City of Dayton as follows:
   - A progress report will be submitted following the August 2019 professional development. September 2019
   - OEP will submit a portfolio to the National Energy Education Development Project (NEED) for their annual competition recognizing outstanding programs in the nation. The portfolio will
highlight the partnership between the City of Dayton, Dayton Public Schools and the Ohio Energy Project. April 2020

- Results from teacher evaluations and student pre vs post polls will be compiled and reported in the Final Project Report. May 2020

We, as representatives of the Ohio Energy Project and Dayton Public Schools, agree to the components in the Scope of Work for the Dayton Public Schools Energy Education Program.

Please sign below:  

Shauni Nix, Executive Director, Ohio Energy Project  
Date: 5/16/19

Bonnie Porter, Curriculum and Instruction Assessment Specialist, Science K-8  
Date: 6/14/19

Christopher Perkins, Academic Coordinator, Secondary Science.  
Date: 5/14/19
Ohio Energy Project
City of Dayton Budget

<table>
<thead>
<tr>
<th>School Kit Supplies*</th>
<th>Number</th>
<th>Cost</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Curriculum (per teacher)</td>
<td>25</td>
<td>$100</td>
<td>$2,500</td>
</tr>
<tr>
<td>Teacher Supplies (per teacher)</td>
<td>25</td>
<td>$200</td>
<td>$5,000</td>
</tr>
<tr>
<td>5th Grade Teaching Kits (per school)</td>
<td>16</td>
<td>$1,000</td>
<td>$16,000</td>
</tr>
<tr>
<td>7th Grade Teaching (per school)</td>
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<td>$1,750</td>
<td>$7,000</td>
</tr>
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</table>

<table>
<thead>
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<th>Breakfast/Lunch**</th>
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</thead>
<tbody>
<tr>
<td>Food for August 8 professional development</td>
<td>2</td>
<td>$250</td>
</tr>
<tr>
<td>Food for follow up/evaluation meeting</td>
<td>1</td>
<td>$250</td>
</tr>
</tbody>
</table>

| Personnel (hours) | | |
|-------------------|--------|
| Program planning and implementation | 110    | $75  | $8,250 |

| Travel | | |
|--------|--------|
| OEP Staff Travel (meals, gas) | 3      | $120 | $360 |

| Follow Up & | Developing Dayton reporting materials | $1,500 |

<table>
<thead>
<tr>
<th>Teacher Stipends***</th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Teacher stipends for submitting evaluation and student pre/post polls</td>
<td>25</td>
<td>$250</td>
</tr>
</tbody>
</table>

Sub Total | $47,610 |

<table>
<thead>
<tr>
<th>Indirect Costs</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td>$2,390</td>
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<table>
<thead>
<tr>
<th><strong>Revisions to Budget Narrative</strong></th>
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</thead>
<tbody>
<tr>
<td>*After meeting with DPS curriculum leaders, two grade levels were selected to implement the materials and training district-wide. Therefore, instead of providing individual teachers with supplies, a teaching kit will be provided for each school: 16 elementary buildings for 5th grade and 4 buildings for 7th grade.</td>
</tr>
<tr>
<td>**The professional development workshops will be held at a school facility donated by the district. Room rental charges were reallocated to provide a catered meal for teachers.</td>
</tr>
<tr>
<td>***The professional development workshop will be held on August 8, 2019. This is a required school day (without students) for teachers. Since school is not yet in session, costs allocated for substitute teacher costs will allow OEP to offer a stipend to educators returning post-program evaluation and student pre vs. post poll data to Ohio Energy Project.</td>
</tr>
</tbody>
</table>
LEASE AGREEMENT WITH UNITED GROUND EXPRESS

The Department of Aviation requests permission to enter into a Lease Agreement ("Lease") with United Ground Express, Inc., ("United Ground") for a ground service equipment facility located at 10392 Freight Drive ("Premises"). United Ground will use the Premises for maintenance of its ground service equipment at the Dayton International Airport ("Airport").

The term of the Agreement will begin upon execution and terminate July 28, 2024. Under this lease United Ground will pay the City $13,125.00 per year, which is based upon a rate of $5.00 per square foot on the 2,625 square foot space; for a total of $39,375.00 for the three-year period.

This Agreement was reviewed and approved as to form and correctness by the Department of Law. A Certificate of Revenue reflecting the full value of the Lease Agreement is attached.

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 8/2016
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name  United Ground Express
Address  United Ground Express, Inc.
City  Chicago  State  IL  Zip+4  60666
Customer #  330470365  Address Location #

Federal ID#  

Revenue Information: Fund  51000  Organization  3214  Revenue  23395  Program  43

Contract Information: Contract Start Date  7/28/2021  Contract Expiration Date  7/28/2024

Billing Information: Rate:  1093.75  Arrears  x  Pre-bill 

Monthly (1st month of billing)  July
Quarterly (1st month of quarter)  
Semi-annual (1st month of half)  
Annual (1st month of billing)  
Other (explain)  

Rate Change Date  
Rate Change Amount  

Description of Services (wording on invoice):  

Building Lease at the Dayton International Airport
2,625 Square feet at $5.00 per sq ft

Departmental Approval

TO BE COMPLETED BY FINANCE

Revenue Contract Number  10365  Auditor  D Billig  Date  7/19/2021

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

Director of Finance
LEASE AGREEMENT
(United Ground Express)

THIS LEASE AGREEMENT ("Lease"), is made and entered into this ___ day of __________, 20___, between the City of Dayton, Ohio ("Lessor"), a municipal corporation in and of the State of Ohio, and United Ground Express, Inc. ("Lessee"), a corporation organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of Ohio.

WITNESSETH THAT:

WHEREAS, Lessor owns and operates the improved real property, known and referred to as the James M. Cox Dayton International Airport ("Airport"), situated in the City of Dayton, Counties of Montgomery and Miami, State of Ohio;

WHEREAS, Lessor owns a building at the Airport having the address of 10392-10398 Freight Drive, Vandalia, Ohio;

WHEREAS, Lessee is engaged in the business of air transportation services and desires to lease the building having the address of 10392 Freight Drive from Lessor for office, warehouse and maintenance support uses; and

WHEREAS, Lessor deems it advantageous to itself and the operation of the Airport to lease said building and all improvements thereon to Lessee under the terms and conditions set forth herein.

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

ARTICLE I – DESCRIPTION OF LEASED PROPERTY

A. Lessor leases to Lessee the building having the address of 10392 Freight Drive and containing approximately 2,625 square feet of warehouse and office space, together with all other improvements and appurtenances situate thereon (hereinafter referred to as the "Premises"). The interior layout of the Premises is the cross-hatched section depicted in the attached and incorporated Exhibit A, with the general location of the Premises on the Airport depicted in the attached and incorporated Exhibit B.

B. Lessee represents that it has inspected the Premises and all appurtenances, equipment and fixtures therein and accepts same on an "as-is" basis. Lessor makes no representation or warranty as to such appurtenances, equipment and/or fixtures, their fitness for a particular purpose or merchantability or condition.
ARTICLE II – USE OF PREMISES

A. Lessee shall only use the Premises for warehouse, office and maintenance support for the benefit and use by Lessee. No other use of the Premises shall be permitted unless Lessor’s Director of Aviation approves such alternative use(s) in advance and in writing.

B. Lessee shall not at any time cause the Premises to become vacant for more than ninety (90) consecutive days without the prior written consent of Lessor.

C. Lessee shall not do or permit anything to be done on or about the Premises which will in any way conflict with any applicable law, ordinance, rule, or regulation issued by any competent governmental authority. Lessor shall not use or allow the Premises to be used for any improper, immoral or unlawful purpose.

ARTICLE III – FEDERAL REQUIREMENTS

Lessee shall comply with the following provisions:

A. Lessor reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of the Lessee and without interference or hindrance.

B. Lessor reserves the right, but shall not be obligated to the Lessee, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of the Lessee in this regard.

C. The Lease shall be subordinate to the provisions of and requirements of any existing or future agreements between Lessor and the United States, relative to the development, operation, or maintenance of the Airport.

D. Lessee agrees to comply with the notification and review requirements covered in Title 14 U.S. Code of Federal Regulations Part 77 (FAA Form 7460-1) in the event any future structure or building is planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises.

E. Lessor reserves unto itself, its successors, and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein leased. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Airport.
F. Lessee expressly agrees for itself, its successors and assigns that it will not construct nor permit to stand on said Premises any building, structure, poles, trees or other object, whether natural or otherwise, of a height in excess of Title 14 Code of Federal Regulations Part 77 standards and requirements regarding obstructions in navigable airspace.

G. Lessor reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of entry onto the real property herein conveyed to cut, remove or lower any building, structure, poles, trees or other object, whether natural or otherwise, of a height in excess of Title 14 Code of Federal Regulations Part 77 standards and requirements regarding obstructions in navigable airspace. This public right shall include the right to mark or light as obstructions to air navigation, any and all buildings, structures, poles, trees, or other object that may at any time project or extend above said surfaces.

H. Lessee expressly agrees for itself, its successors and assigns, to not hereafter use, nor permit, nor suffer use of the Premises in such a manner as to create electrical interference with radio communication between the installation upon the Airport and aircraft or as to make it difficult for fliers to distinguish between airport lights and others, or as to impair visibility in the vicinity of the Airport, or as otherwise to endanger the landing, taking off or maneuvering of aircraft.

I. Lessee expressly agrees for itself, its successors and assigns to not hereafter use, nor permit, nor suffer the use of the Premises in such a manner as to create a potential for attracting birds and other wildlife which may pose a hazard to aircraft.

**ARTICLE IV - RIGHTS AND OBLIGATIONS OF LESSEE**

A. Lessee shall have no right to conduct the carriage of passengers or cargo by air under this Lease. Any such right to use the airfield may only be granted through a separate written instrument between Lessor and Lessee.

B. Except as otherwise provided in Article VIII, Lessee shall, at its expense, provide for the maintenance of the Premises, which maintenance activities include, but are not limited to:

1. Complete interior maintenance, repair and janitorial service, including but not limited to all plumbing and electrical;
2. Maintenance and repair of all doors, including dock and overhead doors;
3. Maintenance, testing and repair of the fire alarm and fire suppression system.
4. Maintenance of heating and air conditioning systems that solely serve the Premises; and
5. Snow and ice removal from the entrance area (steps and sidewalk areas) on the exterior of the Premises and from any exclusive parking spaces.
C. As applicable, Lessee shall, at its expense, arrange for and ensure that its employees and agents are properly identified with an Airport Identification Badge and that said badge is prominently displayed at all times while such persons are in the SIDA, as defined by 49 CFR, Part 1542, any amendment or revision thereto, and/or the Airport's approved security program.

D. Lessee shall obtain from all authorities having jurisdiction over the business and operation of Lessee on the Premises, including, but not limited to, the U.S. Environmental Protection Agency (EPA), Ohio Environmental Protection Agency (OEPA), and state and local building and fire protection agencies, all licenses, certificates, permits or other authorizations that are lawfully required for the conduct of its business and operations upon the Premises or necessary to comply with the requirements of this Lease or in the exercise of any right or obligation granted herein. Lessee, however, shall not be deemed to have waived any right to exhaust administrative and/or judicial remedies that may be available to Lessee regarding any dispute or contest related to any authorizations required.

E. Lessee shall repair or pay for any and all damages to Lessor and its property caused by any wrongful or negligent act or omission of Lessee, its agents, employees and/or contractors arising out of the use or occupancy of the Premises or in the exercise of any right or obligation granted herein.

F. Lessee shall, at its expense, provide and use suitable covered receptacles for the storing of all trash, garbage and other refuse created in the conduct of its business or operations upon the Premises or arising from Lessee's exercise of any right or obligation under this Lease. Lessee shall, at its expense, provide for the complete, proper and routine removal and disposal away from the Airport of all refuse generated from the activities on the Premises. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner on or about the Premises is forbidden.

G. In addition to rents and fees, Lessee shall, at its expense, pay all taxes and assessments that are now and may be levied or imposed on any tangible personal property situated or placed upon the Premises during the term of this Agreement. If Lessor either willingly or unwillingly pays any such tax or assessment under this provision, then Lessor shall bill Lessee and Lessee shall pay the billed amount to Lessor, plus a fifteen percent (15%) administrative charge, on the due date specified on the bill.

H. Lessee shall have all utility accounts, exclusive of water and sewer utility services, that serve the Premises placed in its name and shall pay, while this Lease is effective, all utility charges attributable to the Premises (i.e., telephone, natural gas and electric) directly to the utility companies or municipalities providing such utility services or as otherwise required by the utility service provider. Lessee shall notify Lessor immediately upon termination of any utility account; and Lessor may, at its option, after fifteen (15) business days prior
written notice to Lessee, place such terminated utility account in its name. In the event Lessor, willingly or otherwise, assumes the responsibilities for providing natural gas or electric services to Lessee, Lessee shall pay to Lessor the actual cost incurred by Lessor in providing the utility service to Lessee, plus a fifteen percent (15%) administrative charge, which Lessee agrees to pay to Lessor on the due date specified on the bill.

The water and sewer services for the Premises are and must remain during the term of this Lease sub-metered. The rates and charges for the sub-metered water and sewer services for the Premises are included on Lessor’s master meter billing for the entire Airport. Accordingly, Lessor shall bill Lessee directly for its sub-metered water and sewer service for the Premises, which Lessee agrees to pay on the due date specified on the bill.

I. Lessee shall not erect, allow or permit to be maintained on the Premises, or upon the exterior of any improvement on the Premises, any billboards or advertising signs, except those which have the prior written approval of Lessor. Notwithstanding, Lessee may maintain on the exterior of the Premises a sign or signs bearing its name or trade name, in neatly arranged electric, neon or other type, with the size and type of sign or signs subject to Lessor’s prior written approval.

J. Lessee may make minor alterations and changes to the Premises and improvements constructed thereon as Lessee may, at any time during the term hereof, find necessary or convenient for its purpose, including, but not limited to, relocating, or adding outlets and light switches. Any additions, alterations, demolition or changes to the Premises and improvements of a material, substantial or structural nature, shall not be permitted under this Lease without Lessor’s prior written consent.

ARTICLE V - TITLE TO IMPROVEMENTS

A. Lessor owns the land and all improvements to the Premises. Title to any additional improvements made to and upon the Premises, excluding trade fixtures, shall vest in Lessor at such time as this Lease is terminated and/or expires. Upon termination or expiration of this Lease, Lessee shall surrender the Premises and the improvements thereon to Lessor in good condition subject to normal wear, tear and depreciation.

B. Lessee’s obligation to deliver the Premises and improvements in good condition shall survive the termination of this Lease.

ARTICLE VI - TERM

This Lease shall commence upon execution and shall expire Three (3) years following execution. Lessor may terminate this Lease, without cause, with thirty (30) days prior written notice. Lessee may terminate this Lease with a One Hundred Twenty (120) days prior written notice.
If mutually agreed upon, this Lease may be renewed for two (2) additional three (3) year periods (each a “Renewal Term”), exercisable by Lessee providing written notice to the Lessor, no less than 90 days prior to the conclusion of the previous Initial Term or Renewal Term.

ARTICLE VII - RENTAL

A. Lessee shall pay to Lessor annual rent in the amount of thirteen thousand one hundred twenty-five dollars ($13,125.00); which is based upon the rate of five dollars ($5.00) per square foot on the two thousand six hundred twenty-five (2,625) square foot space.

B. Without waiving any other right or action available to Lessor in the event of default in payment of rentals, fees or charges due to the Lessor hereunder, if Lessee is delinquent for a period of thirty (30) days or more in paying to Lessor any rental due and owing to Lessor pursuant to this Lease, Lessee shall pay to Lessor a late charge thereon calculated at the rate of two percent (2%) per month from the date such item was due and owing until full payment including late charges have been paid. Such late charges shall not occur with respect to disputed items being contested in good faith by Lessee.

C. The annual rent due under this Lease shall be paid in equal monthly installments, which shall be due on the first day of each month and paid without notice to Lessee, and sent to Lessor at the following address:

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

or at such other place as Lessor shall, in writing, direct.

ARTICLE VIII - RIGHTS AND OBLIGATIONS OF LESSOR

A. Lessor shall have the right to adopt and enforce reasonable rules and regulations, with respect to the use of the Airport and facilities thereon, which Lessee agrees to observe, obey, and enforce.

B. Lessor shall have the full and unrestricted right, at any and all times during normal business hours and at all other times upon reasonable advance notice to Lessee, to access and enter the Premises for the purpose of inspecting the Premises and doing any and all things which the Lessor is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport and in the exercise of the Lessor’s police power. This provision shall in no way limit or restrict Lessor’s right to enter upon the
Premises in the event of an emergency. Reasonable notice, as used in this subsection, shall in no event be interpreted to require more than twenty-four (24) hour notification.

C. Lessor warrants quiet enjoyment of the rights and privileges granted herein, during the term hereof, upon the performance of Lessee’s covenants contained herein and subject to Subsection B of this Article VIII.

D. Nothing contained herein shall prohibit Lessor from granting easements, utility or otherwise as long as said easements would not restrict Lessee’s use of the Premises for the purposes stated herein.

E. Lessor will be responsible for the payment of real property taxes assessed and/or levied upon the Premises.

F. Lessor agrees to maintain the roof, electrical system and structural components of the Premises. Structural components, as used herein, shall not include overhead, dock, entrance or interior doors. Lessor will provide general snow removal for the paved/asphalt parking area adjacent to the Premises in accordance with its snow operations schedule and will be responsible for the maintenance, repair and replacement of the paved/asphalt parking area and sidewalks. It is understood and agreed that Lessor shall have no obligation to modify the Premises for Lessee’s use, needs or convenience during the term hereof.

G. If Lessee fails to provide and maintain proper trash removal, mowing, snow removal or other required maintenance as set forth in Article IV, Subsection B, Lessor shall have the right, but not the obligation, to provide or perform said services and to bill Lessee for the actual cost to provide said services, plus a fifteen percent (15%) administrative fee, which Lessee agrees to pay on the due date specified on the bill.

H. Lessor shall, at its expense, operate and maintain the water, sanitary sewer and storm sewer system serving the Airport and to the lease line of the Premises. Lessor will provide general police and fire protection for the Premises as it does for other areas of the Airport.

ARTICLE IX - NON-DISCRIMINATION

A. Lessee, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that, in the event facilities are constructed, maintained or otherwise operated on the Premises described in this Lease for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provisions of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all
other requirements imposed pursuant to 49 CFR Part 21. Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended, superseded or modified.

B. Lessee, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities, (2) in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 and as said regulations as may be amended, superseded or modified.

C. In the event of breach of any of the above non-discrimination covenants, Lessor shall have the right to terminate this Lease and to re-enter and repossess the Premises and facilities thereon and hold the same as if said Lease had never been made or issued. Notwithstanding the foregoing, it is specifically agreed that nothing in this Article shall prevent Lessee from exhausting all administrative and/or judicial remedies available to Lessee in resisting or defending against any claims or claim of breach or default or noncompliance hereunder.

**ARTICLE X - INSURANCE AND INDEMNITY**

A. Lessee shall defend, indemnify, save and hold harmless Lessor, its elected officials, officers, agents and employees, from and against any and all claims and actions, and all expenses incidental to the investigation and defense thereof, based upon or arising out of any accident or damage suffered by third persons and arising from, or in any way connected with, the use or occupancy of the Premises by Lessee, or any condition of the Premises created by Lessee, fixtures, structures, or other improvements thereon created by Lessee, or Lessee's exercise of any right granted herein, or Lessee's breach or default in the performance of any obligation to be performed pursuant to this Lease, or any wrongful or negligent act or omission of Lessee, its contractors and employees. Provided, however, that Lessor shall not be indemnified for such claims, actions and expenses that arise as a result of Lessor's negligent acts or omissions.

B. Lessee shall defend, indemnify, save and hold harmless Lessor, its elected officials, officers, agents and employees, from and against any mechanics or other lien or order for the payment of money filed against the Premises, Lessor or any property of Lessor, arising out of any act of Lessee, its tenants or subtenants or anyone claiming through or under
Lessee. Lessee shall, at Lessee's expense, cause the same to be cancelled or discharged of record and shall save and hold harmless Lessor from and against any and all costs, expense, claims, losses or damages including reasonable counsel fees resulting therefrom or by reason thereof. Provided, however, that Lessor shall not be indemnified for such liens or orders that arise as a result of Lessor's negligent acts or omissions.

C. Lessee shall, at its expense, maintain comprehensive general liability insurance in a sum of not less than One Million Dollars ($1,000,000) combined single limit for bodily injury and property damage.

D. Lessee shall, at its expense, keep all improvements constructed on the Premises to the full replacement value thereof against the perils insured by a Standard Fire Policy with an Extended Coverage endorsement and a Vandalism and Malicious Mischief endorsement.

E. Current certificate(s) of insurance for each policy or concurrent policies required to be maintained by Lessee hereunder shall be furnished to Lessor. All such policies of insurance required hereunder shall name the City of Dayton, its elected officials, officers and employees as additional insureds with regard to the general liability insurance required under this Agreement. Lessee or its insurance agent shall give written notice of cancellation or diminution of coverage to Lessor at least thirty (30) days prior to the effective date of such action, ten (10) days for non-payment of premium.

F. **ARTICLE XI - ASSIGNMENT AND SUBLETTING**

Lessee shall not sell, assign or transfer this Lease or sublet or underlet the Premises, or any portion thereof, except to its parent or sister corporation or any successor corporate entity resulting from acquisition or merger of Lessee or its parent corporation. Any assignment in violation hereof shall be void.

**ARTICLE XII - SUCCESSORS AND ASSIGNS BOUND BY COVENANTS**

All covenants, stipulations and agreements in this Lease shall extend to and bind the legal representatives, successors and assigns of the respective parties hereto.

**ARTICLE XIII – TERMINATION BY LESSEE**

In addition to all other remedies available to the Lessee under this Lease or at law, Lessee may terminate this Lease if Lessor defaults in the performance of any material covenant or agreement required to be performed by it herein, and Lessor fails to remedy such default, or to take prompt action to remedy such default, within a period of thirty (30) days after receipt of written notice.
from Lessee to remedy the same. However, if by reason of the nature of such default the same cannot be remedied within said thirty (30) day period, then Lessee may terminate this Lease only if the Lessor fails to commence the remedying of such default within the thirty (30) day period following Lessee's written notice, or having so commenced, fails thereafter to continue with diligence the remedying thereof.

ARTICLE XIV - TERMINATION BY LESSOR

A. In addition to all other remedies available to Lessor hereunder or at law, Lessor may terminate this Lease should any one or more of the following events occur:

1. If a receiver for Lessee's assets is appointed by a court of competent jurisdiction; or if Lessee shall be divested of its rights, powers and privileges under this Lease by operation of law and such action is not dismissed or withdrawn in sixty (60) days;

2. If Lessee fails to make any payments required of it hereunder at the times and in the amounts as required of it under this Lease and said default is not cured by tendering the full undisputed amounts due and owing within thirty (30) days after Lessor notifies Lessee in writing of the default in payment(s);

3. If Lessee shall fail to perform, keep and observe all of the covenants and conditions contained in this Lease to be performed, kept and observed by it (excluding non-payment of the rents, charges and fees), and said failure is not cured, or action taken to correct such failure, within thirty (30) days after Lessor notifies Lessee in writing of said failure. However, if by reason of the nature of such default, the same cannot be remedied within said thirty (30) day period, then Lessor shall have the right to terminate this Lease, if the Lessee fails to commence the remedying of such default within the thirty (30) days following Lessor's written demand, or having so commenced, shall fail thereafter to continue with diligence the remedying thereof; or

4. Violations by Lessee its agents or its employees of applicable laws, ordinances, codes, rules and regulations issued by any competent governmental authority, or revocations of permits or licenses required in the performance of this Lease, if the same shall not be corrected or action taken to correct, within thirty (30) days after Lessee's receipt of written notice, which shall state in detail the violation.

ARTICLE XV - HOLDING OVER

In the event that Lessee holds over and remains in possession of the Premises and rights granted herein after expiration of this Lease and without any written renewal thereof, such holding over
shall not be deemed to operate as a renewal or extension of this Lease but shall only create a month-to-month tenancy, which may be terminated at any time by Lessor or Lessee. Lessor will provide Lessee with thirty (30) days advance notice of any increase in the rental amount due during such holdover tenancy period in excess of 1/12th the rental amount for the immediately preceding 12-month period.

ARTICLE XVI - INVALID PROVISIONS

In the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision herein contained shall not constitute a material breach of this Lease; provided that the validity of any such covenant, condition or provision does not materially prejudice either Lessor or Lessee in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Lease.

ARTICLE XVII - WAIVER

A. No waiver by either party at any time of any of the terms, conditions, covenants or agreements of this Lease, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the other. Receipt by Lessor of rent with knowledge of the breach by Lessee of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by either party of any provisions of this Lease shall be deemed to have been made unless expressed in writing and signed by Lessor or Lessee as the case may be.

B. No option, right, power, remedy or privilege of either party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to each party by this Lease are cumulative and no one of them shall be exclusive of the other or exclusive of any remedies provided by law except as specifically provided herein and that the exercise of one right, power, option or remedy by either party shall not impair its right or any other right, power, option or remedy, except as specifically provided herein.

ARTICLE XVIII - GENERAL PROVISIONS

A. The term Lessor, as used in this Lease, means the City of Dayton, Ohio and where this Lease speaks of approval and consent by Lessor, such approval is understood to be manifested by act of Lessor's Director of Aviation, except as otherwise expressly stated in this Lease. Whenever in this Lease, the approval or consent of Lessor is required, such approval or consent will not be unreasonably withheld.
B. Notices to Lessor provided for in this Lease shall be sufficient if sent by certified mail, postage prepaid, addressed to:

James M. Cox Dayton International Airport
Department of Aviation
3600 Terminal Drive, Suite 300
Vandalia, Ohio 45377
Attn: Director of Aviation

or such other address as Lessor shall direct in writing.

C. Notices to Lessee provided for in this Lease shall be sufficient if sent by certified mail, postage prepaid, addressed to:

United Ground Express, Inc.
11555 W. Touhy Avenue
Chicago, IL 60666
Attn: Director Operations Planning

with a copy emailed to:

Contracts Manager
Carly Young
Carlyn.Young@united.com

or such other address as Lessee shall direct in writing.

D. This Lease merges all prior negotiations and understandings and there are no other agreements and understandings, oral or otherwise, between the parties pertaining to the Premises. This Lease and any written agreement hereafter made between the parties hereto shall be binding upon Lessee only when fully executed by an officer or authorized representative of both parties. A signed copy of this Lease shall be mailed or delivered to Lessee after execution thereof by Lessor.

E. This Lease 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.

F. Lessee represents that it has carefully reviewed the terms and conditions of this Lease and is familiar with such terms and conditions and agrees faithfully to comply with the same to the extent to which said terms and conditions apply to its activities as authorized and required by this Lease.
G. Neither Lessee nor any contractor, tenant and/or subtenant of Lessee shall be entitled to claim any exemption from sales or use taxes or similar taxes by reason of the Lessor's ownership of fee title to the Premises.
IN WITNESS WHEREOF, the Lessor and Lessee, each by a duly authorized representative, have executed this Lease as of the day and year first above written.

UNITED GROUND EXPRESS, INC.

By: ________________________________

Its: ________________________________

CITY OF DAYTON, OHIO

________________________________________
City Manager

APPROVED AS FOR FORM AND CORRECTNESS:

☐ Recoverable Signature

X Amelia N. Blankenship for

City Attorney

Signed by: Blankenship, Amelia

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

________________________________________, 20

Min./Bk. ___________________ Pg. ______________

Clerk of the Commission
City Manager’s Report

From 2600 - Planning, Neighborhoods & Dev./Development
Supplier, Vendor, Company, Individual
Name Boys and Girls Club of Dayton, Inc.
Address 1828 W. Stewart Street
Dayton, Ohio 45417

Date July 28, 2021
Expense Type Development Agreement
Total Amount $250,000.00 thru 12-31-2023

Fund Source(s) Fund Code(s) Fund Amount(s)
Special Revenue Fund 22502-2600-1224-41 $250,000.00

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

Description
West Dayton Development Trust Fund Agreement

The Department Planning, Neighborhoods & Development – Division of Development requests approval to enter into a Development Agreement with Boys and Girls Club of Dayton, Inc. ("BGCD"). BGCD is a nonprofit affiliate of Greater Dayton Premier Management (GDPM) created for the management of community development projects. BGCD plans to invest approximately $2,600,000.00 on the redevelopment of their headquarters at 1828 West Stewart Street. This project will help retain a critical youth development asset in the Miami Chapel community.

The Agreement will provide a $250,000.00 grant to BGCD to assist with funding interior and exterior building improvements; electrical, plumbing, and HVAC system upgrades; machinery and equipment; furniture and fixtures; lighting activities; playground equipment installation and ADA accessibility infrastructure upgrades for the 8,000 square foot property. Funding is being provided by the City Commission Discretionary portion of the West Dayton Development Trust Fund.

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

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

Funding source is the Special Revenue Fund - West Dayton Development Fund.

A map and a Certificate of Funds is attached.

Signatures/Approval

Approved by City Commission

Clerk

Date

FORM NO. MS-16 Updated 10/2019
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

**x** New Contract  
Renewal Contract  
Change Order:

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<td>Initial Agreement/Contract</td>
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| Amount: | $250,000.00 |
| Fund Code | Fund 22502 Org 2800 Acct 1224 Prog 41 Act  |

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

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**Attach additional pages for more FOAPALs**

**Vendor Name:** Boys and Girls Club of Dayton, Inc.

**Vendor Address:** 1828 W. Stewart Street  
Dayton, Ohio 45417

**Street**  
**City**  
**State**  
**Zipcode + 4**

**Federal ID:** 31-0536657

**Commodity Code:** 91849

**Purpose:** West Dayton Development Trust Fund Agreement for improving and equipping the Company's headquarters interior and exterior building improvements.

| Contact Person: | Jill Bramini |
| Planning, Neighborhoods & Development/Development | 7/15/2021 |
| Department/Division | Date |

**Originating Department Director's Signature:**

| Date: 7/15/2021 |
| CF/CT Number: CT21-3021 |

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SECTION II - to be completed by the Finance Department

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

| Finance Director Signature: | 7/18/2021 |
| CF Prepared by: | 7/19/21 |

Finance Department

October 18, 2011
WEST DAYTON DEVELOPMENT TRUST FUND AGREEMENT
Boys and Girls Club of Dayton, Inc.

THIS WEST DAYTON DEVELOPMENT TRUST FUND AGREEMENT ("Agreement") is made and entered into between Boys and Girls Club of Dayton, Inc., a not-for-profit corporation organized and existing under the laws of the State of Ohio, currently located at 1828 West Stewart Street, Dayton, Ohio 45417 ("Company"), and the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio ("City").

WITNESSETH THAT:

WHEREAS, The purpose of the West Dayton Development Trust Fund ("WDDTF") is to fund projects that primarily benefit and enhance the growth and development of the West Dayton area, which is defined as the West Land Use District; and,

WHEREAS, City desires to stimulate, promote and increase economic and community development activities that provide meaningful, long-term benefits and improvements to West Dayton residents; and,

WHEREAS, Company plans to rehabilitate a building that will become the new location for their business operations; and,

WHEREAS, City finds that the project as defined herein will benefit the community and further the purpose of the WDDTF and wishes to support the Company in carrying out the project under the terms and conditions set forth herein; and,

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

*West Dayton Development Trust Fund Grant.* A grant provided hereunder by the City of Dayton to assist Company in leveraging private investment and partnership opportunities in the West Land Use District and enhancing the quality of life therein.

*Facility.* The real property located at 1828 West Stewart Street, Dayton, Ohio. The Facility is in the Miami Chapel neighborhood.

*Project.* Improving and equipping the Facility for the Company’s headquarters, without limitation, interior and exterior building improvements: electrical, plumbing, and HVAC system upgrades; machinery and equipment; furniture and fixtures; masonry; flooring; drywall; doors; paint; signage; lighting; playground equipment installation and ADA accessibility infrastructure upgrades.
**Project Costs.** The costs Company incurs and pays in completing the Project, including those which may be prior to the term of this Agreement. Expenses for professional services and other “soft costs” are excluded from this definition.

**Eligible Project Costs.** Those Project Costs actually incurred and paid for by Company during the term of this Agreement.

**ARTICLE 2. PROJECT TIMELINE.**

Company shall commence the Project within one hundred eighty (180) days of Agreement execution and complete the Project on or before December 31, 2023, unless such time for commencement and/or completion is extended upon mutual written agreement between the parties to this Agreement. As further delineated herein, all construction activities and other work required to complete the Project shall be performed and completed in accordance with all applicable federal, state, and local laws, rules, regulations, and orders, including all applicable building, zoning, well field, and fire code requirements.

**ARTICLE 3. FUNDING.**

City will provide Company a West Dayton Development Trust Fund Grant to reimburse Company for Eligible Project Costs in an amount not to exceed the lesser of (i) Two Hundred Fifty Thousand Dollars and Zero Cents ($250,000.00) or (ii) the Grant Cap as defined herein. The parties contemplate that the Project Costs will be approximately Two Million Six Hundred Thousand Dollars and Zero Cents ($2,600,000.00). Rounding the decimal point up in favor of the Company, Two Hundred Fifty Thousand Dollars and Zero Cents ($250,000.00) is approximately ten percent (10.0%) (“Reimbursement Percentage”) of the Project Costs. Therefore, the Grant Cap shall be ten percent (10.0%) of the Project Costs (“Grant Cap”). (As an example, if the Project Costs are $200,000, the grant cap would be 10.0% of that amount ($20,000).

Company shall use the West Dayton Development Trust Fund Grant for reimbursement of Eligible Project Costs. All properly evidenced Project Costs may be included as Project Costs and factored into calculating the Grant Cap; however, only Eligible Project Costs are reimbursable. Company is solely responsible for all Project Costs in excess of the funding provided by City hereunder.

Company shall submit a Request for Reimbursement of the Project Grant periodically (no more than monthly) utilizing a cover form substantially similar to that attached hereto and incorporated herein as Exhibit A. Each Request for Reimbursement shall state the applicable time frame covered and the total amount requested; detail the work and/or services performed; and contain such records, information, and/or documentation to substantiate the Eligible Project Costs for which reimbursement is sought. Company shall also provide cancelled checks as evidence of payment of such costs. Expenses incurred as part of the Project Costs for purposes of calculating the Reimbursement Percentage and Grant Cap must be documented in substantially the same manner as Eligible Project Costs. Appropriate City inspection personnel will verify all Project Costs. Unless disputed, City will disburse payment within forty-five (45) days from receipt of the Request for Reimbursement.

**ARTICLE 4. SPECIFIC CONDITIONS.**

A. Company shall comply with all applicable federal, state, and local laws, including applicable rules, regulations, and orders governing receipt and use of municipal and other public funds for the Project. All construction activities and other work required to complete the Project shall be performed and completed in accordance with all applicable federal, state, and local laws, rules, regulations, and

Page 2 of 9
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. Developer agrees that the City’s Procurement Enhancement Plan ("PEP") participation goals for certified Small Business Enterprises ("SBEs"), Minority Business Enterprises ("MBEs"), Women’s Business Enterprises ("WBEs"), and Dayton Local Small Businesses ("DLSBs") apply to the Project. The Developer and any Developer Affiliates have the obligation to require individual company compliance with the PEP. The PEP participation goals are:

<table>
<thead>
<tr>
<th>Total PEP Participation</th>
<th>20%</th>
</tr>
</thead>
<tbody>
<tr>
<td>MBE:</td>
<td>15%</td>
</tr>
<tr>
<td>WBE:</td>
<td>5%</td>
</tr>
</tbody>
</table>

C. Counting Toward Goals.

(i) To count toward the Project’s PEP Participation Goals, a company contracting on the Project must be certified with the City’s Human Relations Council ("HRC") and must be certified to perform the proposed work. The City encourages 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 Certificate.

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

(iii) For each PEP-certified firm, 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 can be counted in any category (i.e., SBE, MBE, WBE, and/or DLSB) in which the firm is certified.

D. If it becomes necessary for review, audit, or verification purposes, Company shall allow City to inspect applicable, confidential records.

E. Company agrees to supply additional information upon reasonable request by the City and to cooperate in any audit or review of the funding provided hereunder.

F. Reimbursement to Company will be made proportionally to the percentage of Project funding provided hereunder by City and identified above.
ARTICLE 5. TERM AND TERMINATION.

A. This Agreement may be immediately terminated in the event of or under any of the following circumstances:

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

2. Company is divested of its rights, powers, and privileges under this Agreement by operation of law.

3. Company’s failure to comply with any term, covenant or condition of this Agreement to be kept, performed and observed by it, and the failure of Company to remedy such failure within thirty (30) days from the date of written notice from City.

4. Company’s violation of any applicable federal, state, or local law applicable to the Project and construction thereof.

5. If, prior to the receipt of any funding from City hereunder and upon giving thirty (30) days prior written notice, Company desires to terminate this Agreement.

In the event of termination prior to Project completion and if City provided any funds to Company hereunder, Company shall repay to City within forty-five (45) business days from the effective date of termination all funds provided hereunder and, upon such repayment, Company shall be released from its obligations hereunder. This obligation to remit repayment of funding shall survive termination of this Agreement until such funds are received by City. If no funds were provided, the parties shall be immediately relieved of their obligations hereunder.

ARTICLE 6. INDEMNIFICATION.

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

ARTICLE 7. EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION.

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

It is expressly agreed and understood that Section 35.14 of the Revised Code of General Ordinances of the City of Dayton constitutes a material condition of this Agreement as fully and as if specifically rewritten herein and that failure to comply therewith shall constitute a breach thereof entitling City to terminate this Agreement at its option.
ARTICLE 8. POLITICAL CONTRIBUTIONS.

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

ARTICLE 9. RECORDS AND RETENTION.

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

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

ARTICLE 10. TAX REPRESENTATION.

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

ARTICLE 11. GENERAL PROVISIONS.

A. Conflict of Interest. Company represents that to the best of its knowledge it has no interest that would undermine the impartiality of either party because of the conflict between the party’s self-interest and this agreement or public interest in any manner or degree. Company further covenants that it will not acquire any such interest, directly or indirectly during the term of this Agreement.
B. **Entire Understanding.** This Agreement represents the entire and integrated agreement between the parties. This Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreements or contracts, whether oral or written, relating to the subject matter of this Agreement.

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

D. **Amendment.** The parties may amend this Agreement, provided that no such amendment shall be effective unless it is reduced to a writing, which makes specific reference to this Agreement, is executed by a duly authorized representative of each party to this Agreement and, if required or applicable, is approved by the Commission of the City of Dayton, Ohio.

E. **Waiver.** A waiver by City of any breach of this Agreement shall be in writing. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it is given and shall not affect City’s rights with respect to any other or further breach.

F. **Relationship.** This Agreement is not intended to be, nor shall it be construed, as creating a partnership, joint venture, corporation, or other relationship between the parties with respect to the Project or any activities to be completed by Company.

G. **Communications.** Any notice, demand, or other communication required under the Agreement by one party to the other party shall be sufficiently given, if it is sent by certified U.S. mail, postage prepaid, return receipt requested or delivered personally, and addressed as follows:

   **For City:** Veronica Morris  
   Department of Planning, Neighborhoods, and Development  
   City of Dayton  
   P.O. Box 22, 101 W. Third Street  
   Dayton, OH 45401

   **For Company:** Tara Marlow  
   Boys and Girls Club of Dayton, Inc.  
   1828 West Stewart Street  
   Dayton, OH 45417

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

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

BOYS AND GIRLS CLUB OF DAYTON, INC.

By: [Signature]

Print name: Tara Marlow

Its: Chief Executive Officer

CITY OF DAYTON, OHIO

City Manager

Date

APPROVED AS TO FORM
AND CORRECTNESS:

7/9/2021

X Amelia N. Blankenship for

City Attorney
Signed by: Blankenship, Amelia

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

_________________________, 2021

Min. / Bk. _______ Pg. _______

________________________

Clerk of the Commission
Exhibit A

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:

__________________________________________

__________________________________________

__________________________________________

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

Submitted by:

Signature: ____________________________

Title: _________________________________

Phone: _______________________________

Email: ________________________________

Alternative contact for further information if applicable:

_________________________  __________________________
Name                      Title

_________________________  __________________________
Email                     Phone
Aerial and Street Map
Boys and Girls Club – 1828 W. Stewart Street
AN ORDINANCE

Authorizing the Grant of a Stormwater Drainage and Pipeline Easement for the Benefit of Parcels of Land Located at the Dayton International Airport, and Declaring an Emergency.

WHEREAS, The City and NP Dayton Chewy, LLC executed a Stormwater Drainage and Pipeline Easement dated January 9, 2019 ("Easement Agreement") pursuant to which the City granted to NP Dayton Chewy, LLC a perpetual, non-exclusive easement, privilege, and right of use in, to, over, under, upon, through, and across the real estate described in Exhibit A attached to the Easement Agreement and depicted in Exhibit B attached to the Easement Agreement (the "Existing Stormwater Drainage Easement Area"), for stormwater detention and drainage and for constructing, installing, operating, maintaining, repairing, replacing, and removing stormwater drainage infrastructure including, but not limited to, a stormwater pipeline, box culvert, outfall structure, and emergency spillways, as necessary (the "Facilities"); and

WHEREAS, The City subsequently conveyed the property burdened by the easement to ET Dayton Owner; and

WHEREAS, The City, NP Dayton Chewy, LLC and ET Dayton Owner desire to amend the Easement Agreement and the location of the Drainage and Detention Area in the Record Plan to relocate the Drainage Easement Area and the Facilities to the real property legally described in Exhibit A and depicted in Exhibit B, each attached hereto and incorporated herein (the "Relocated Drainage and Detention Area"), for the benefit of NP Dayton Chewy, LLC and/or ET Dayton Owner, as provided for in this Amendment; 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 is hereby authorized to execute an amendment identical in form and substance to the document attached to the original of this Ordinance, and any other documents necessary to grant a relocated drainage and pipeline easement to NP Dayton Chewy, LLC and/or ET Dayton Owner.
Section 2. 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 ........................................ 2021

SIGNED BY THE MAYOR ................................................ 2021

Mayor of the City of Dayton, Ohio

ATTEST:

Clerk of the Commission

APPROVED AS TO FORM:

City Attorney
AMENDMENT TO STORMWATER DRAINAGE AND PIPELINE EASEMENT

THIS AMENDMENT TO STORMWATER DRAINAGE AND PIPELINE EASEMENT ("Amendment") is made and entered into this _____ day of __________, 2021, by and between ET Dayton Owner, LLC, a Delaware limited liability company ("ET Dayton Owner"), the City of Dayton, an Ohio municipal corporation ("City," and together with ET Dayton Owner, collectively, "Grantor"), and NP Dayton Chewy, LLC, a Missouri limited liability company ("Grantee") (Grantor and Grantee are collectively referred to as the "Parties").

WHEREAS, the City and Grantee executed a certain Stormwater Drainage and Pipeline Easement (the "Easement Agreement") dated January 9, 2019, recorded on January 22, 2019 as Instrument Number 2019-00003705 in the Recorder’s Office of Montgomery County, Ohio, pursuant to which Grantor granted to Grantee a perpetual, non-exclusive easement, privilege, and right of use in, to, over, under, upon, through, and across the real estate described in Exhibit A attached to the Easement Agreement and depicted in Exhibit B attached to the Easement Agreement (the "Existing Stormwater Drainage Easement Area"), for stormwater detention and drainage and for constructing, installing, operating, maintaining, repairing, replacing, and removing stormwater drainage infrastructure including, but not limited to, a stormwater pipeline, box culvert, outfall structure, and emergency spillways, as necessary (the "Facilities");

WHEREAS, pursuant to that certain Record Plan Dayton-Airport-Lightner Road Subdivision recorded on January 16, 2019 in Plat Book 233, Pages 6, 6A, and 6B in the Recorder’s Office of Montgomery County, Ohio (the “Record Plan”), the City granted an easement for stormwater drainage and detention to the current and future owners of Lots 85079, 85080, and 85081 over that certain portion of Lot 85079 (the “Burdened Property”) designated as “Drainage & Detention Area” on the Record Plan (the “Drainage and Detention Area,” and together with the Existing Stormwater Drainage Easement Area, collectively, the “Drainage Easement Area”):

WHEREAS, the City subsequently conveyed fee title to the Burdened Property to ET Dayton Owner; and
WHEREAS, the Parties desire to amend the Easement Agreement and the location of the Drainage and Detention Area in the Record Plan to relocate the Drainage Easement Area and the Facilities to the real property legally described in Exhibit A and depicted in Exhibit B, each attached hereto and incorporated herein (the "Relocated Drainage and Detention Area"), as provided for in this Amendment.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and obligations contained in this Amendment and for other valuable considerations, the sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. Relocation of Drainage Easement Area.
   a. Exhibit A attached to the Easement Agreement is hereby deleted in its entirety and replaced with Exhibit A attached to this Amendment.
   b. Exhibit B attached to the Easement Agreement is hereby deleted in its entirety and replaced with Exhibit B attached to this Amendment.
   c. The location of the Drainage and Detention Area depicted in the Record Plan is hereby deleted and replaced with the Relocated Drainage and Detention Area legally described in Exhibit A attached to this Amendment and depicted in Exhibit B attached to this Amendment.

2. Amendment Controls; Ratification and Affirmation. In the event that the terms of this Amendment and the Easement Agreement or the Record Plan are held to be inconsistent, the terms of this Amendment shall control. The parties each agree and warrant that, in all other respects, the Easement Agreement and the Record Plan are unmodified, in full force and effect, and each party hereby ratifies and affirms the Easement Agreement and the Record Plan and any terms contained therein not otherwise modified by this Amendment.

3. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.

This Instrument Prepared By:
Levy Craig Law Firm
Attn: Scott Seitter
4520 Main Street, Suite 1600
Kansas City, Missouri 64111

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]
IN WITNESS WHEREOF, Grantor has entered into this Amendment the day and year first above written.

GRANTOR:

ET DAYTON OWNER, LLC,
a Delaware limited liability company

By: _______________________________________________________
Name: Jason Ridgway
Title: Senior Vice President

STATE OF ________________________ )
COUNTY OF ____________________ ) ss.

The foregoing instrument was acknowledged before me this ___ day of __________, 2021 by Jason Ridgway, Senior Vice President of ET Dayton Owner, LLC, a Delaware limited liability company, on behalf of the limited liability company.

________________________________________
Notary Public

My commission expires:
GRANTOR:

THE CITY OF DAYTON, OHIO

__________________________
City Manager

ATTEST:

__________________________
Name:

__________________________
STATE OF )
) SS:
) COUNTY OF

The foregoing instrument was acknowledged before me this ___ day of __________, 2021 by ____________________, the City Manager of the City of Dayton, Ohio, an Ohio municipal corporation, on behalf of the corporation.

__________________________
Notary Public

My commission expires:
IN WITNESS WHEREOF, Grantee has entered into this Amendment the day and year first above written.

GRANTEE:

NP DAYTON CHEWY, LLC,
a Missouri limited liability company

By: ________________
    Howard Huang, Vice President

STATE OF ________________  )
    ) ss.
COUNTY OF ________________  )

The foregoing instrument was acknowledged before me this ___ day of __________, 2021 by Howard
Huang, Vice President of NP Dayton Chewy, LLC, a Missouri limited liability company, on behalf of the
limited liability company.

___________________________
Notary Public

My commission expires:

___________________________
This Instrument Prepared By:
Levy Craig Law Firm
Attn: Scott Seitter
4520 Main Street, Suite 1600
Kansas City, Missouri 64111
EXHIBIT A
LEGAL DESCRIPTION OF RELOCATED DRAINAGE AND DETENTION AREA

BEING A DRAINAGE EASEMENT OVER, THROUGH, AND ACROSS A PART OF LOT NUMBER 85079 OF THE CONSECUTIVE LOT NUMBERS IN THE CITY OF DAYTON, MONTGOMERY COUNTY, OHIO AS SHOWN ON PLAT BOOK 233, PAGES 5, 6A AND 6B AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Beginning at the northeast corner of 85079 and being on the south right-of-way line of Lightner Road and the west line of Lot 85080;
thence, South 00°00'37" West, 1176.13 feet, along the west line of Lot 85080 to a point;
thence, South 90°00'00" West, 405.67 feet, to a point;
thence, South 89°36'42" West, 1031.80 feet, to a point on the east right-of-way line of Peters Pike;
thence, North 00°27'04" East, 360.33 feet, along the east right-of-way line of Peters Pike to a point;
thence, North 90°00'00" East, 157.90 feet, to a point;
thence, South 00°00'00" East, 134.69 feet, to a point;
thence, South 47°13'56" East, 198.35 feet, to a point;
thence, South 89°59'26" East, 1089.61 feet, to a point;
thence, North 36°24'19" East, 53.31 feet, to a point;
thence, North 00°02'35" East, 635.52 feet, to a point;
thence, North 04°23'16" West, 231.76 feet, to a point;
thence, North 34°56'07" West, 136.69 feet, to a point;
thence, North 00°00'00" East, 71.10 feet, to a point on the south right-of-way line of Lightner Road;
thence, South 89°50'20" East, 105.58 feet, along the south right-of-way line of Lightner Road to the principal place of beginning.

Containing 4.665 acres more or less and all being subject to any legal highways and easements of record. The bearings are based on NAD 83 CORS 2011 adjustment, Ohio South Zone, ODOT VRS CORS Network.

The above description was prepared by Allen J. Bertke, Ohio Professional Surveyor Number 8629, based on a field survey performed under his direct supervision and dated May 19, 2021.
EXHIBIT B
DEPICTION OF RELOCATED DRAINAGE AND DETENTION AREA

(See attached)
July 19, 2021

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

FROM: Gil B. Turner, Director
Department of Aviation

SUBJECT: AN ORDINANCE - Authorizing the Grant of a Stormwater Drainage and Pipeline Easement for the Benefit of Parcels of Land Located at the Dayton International Airport, and Declaring an Emergency.

The Department of Aviation requests you please place the attached Ordinance on the July 28, 2021 Commission calendar. The Commission granted NorthPoint Development, LLC (“NorthPoint”) an easement on City of Dayton Lot 85079 by passage of Ordinance No. 31696-18. The parties now desire to amend the easement.

The building NorthPoint intends to construct on Lot 85079 encroaches upon the existing “Drainage & Detention Area” shown on the Record Plan and the “Stormwater Detention Easement Area” described in the Stormwater Drainage and Pipeline Easement. The Amendment to Stormwater Drainage and Pipeline Easement is necessary to relocate the “Drainage & Detention Area” shown on the Record Plan and the “Stormwater Detention Easement Area” described in the Stormwater Drainage and Pipeline Easement to a different location on Lot 85079 that is consistent with NorthPoint’s development plans for the property.

If you have any questions, please contact me at 454-8212.

Attachments
AN ORDINANCE

Determining to Proceed with the Acquisition, Construction, and Improvement of Certain Public Improvements in the City of Dayton, Ohio in Cooperation with the Dayton Regional Energy Special Improvement District, and Declaring an Emergency.

WHEREAS, The Commission ("Commission") of the City of Dayton, Ohio (the "City") duly adopted Resolution No. 6594 on July 21, 2021 (the "Resolution of Necessity"), (i) declaring the necessity of acquiring, constructing, and improving the special energy improvement Project defined in the Resolution of Necessity as the Project, located on real property owned First Barclay, LLC (the "Owner") at 137 N. Main Street within the City (the "Property", as more fully described in Exhibit A to the Project Petition); (ii) providing for the acquisition, construction, and improvement of the Project by the Owner, as set forth in the Owners’ Project Petition and Supplemental Plan (each as defined in the Resolution of Necessity), including by levying and collecting the Special Assessments (as defined in the Resolution of Necessity) to be assessed upon the Property in an amount sufficient to pay the costs of the Project, which is estimated to be $2,794,140.40, together with other related costs of financing the Project, which include, without limitation, the payment of principal of and interest on nonprofit corporate obligations issued to pay the costs of the Project and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and Dayton Regional Energy Special Improvement District ("ESID") administrative fees and expenses; and (iii) determining that the Project will be treated as a special energy improvement project to be undertaken cooperatively by the City and the ESID; and,

WHEREAS, The claims for damages alleged to result from and objections to the Project have been waived by one hundred percent (100%) of the affected property owners and no claims for damages have been filed with this Commission; and,

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

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

Section 1. Definitions. That each capitalized term not otherwise defined in this Ordinance or by reference to another document shall have the meaning assigned to it in the Resolution of Necessity.
Section 2. Determination to Proceed. That this Commission declares that its intention is to proceed with the acquisition, construction, and improvement of the Project described in the Project Petition and the Resolution of Necessity. The Project shall be made in accordance with the provisions of the Resolution of Necessity and with the plans, specifications, profiles, and estimates of cost previously approved and now on file with the Director of the Department of Finance and the Clerk of the Commission.

Section 3. Special Assessments. That the Special Assessments to pay costs of the Project, which are estimated to be $2,794,140.40, together with other related financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued to provide a loan to the Owner and its affiliates or otherwise to pay costs of the Authorized Improvements in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued, including any credit enhancement fees, trustee fees, and ESID administrative fees and expenses, shall be assessed against the Property in the manner and in the number of semi-annual installments provided in the Project Petition and the Resolution of Necessity. Each semi-annual Special Assessment payment represents the payment of a portion of the principal of and interest on obligations issued to pay the costs of the Project and the scheduled amounts payable as the ESID administrative fee. The Special Assessments shall be assessed against the Property commencing in tax year 2022 for collection in calendar year 2023 and shall continue through tax year 2041 for collection in calendar year 2042. In addition to the Special Assessments, the Auditor of Montgomery County, Ohio may impose a special assessment collection fee with respect to each semi-annual payment, which amount, if imposed, will be added to the Special Assessments by the Auditor of Montgomery County, Ohio.

Section 4. Amount of Assessments. That the estimated Special Assessments for costs of the Project prepared and filed in the office of the Clerk of the Commission and in the office of the Finance Director, in accordance with the Resolution of Necessity, are adopted.

Section 5. Certification to County Auditor. That in compliance with Ohio Revised Code Section 319.61, the Clerk of the Commission is directed to deliver a certified copy of this Ordinance to the Auditor of Montgomery County, Ohio within fifteen (15) days after the date of its passage.

Section 6. Contracts. That all contracts for the construction of the Project will be let in the manner provided by law, subject to the provisions of the Ohio Revised Code, the Project Petition, and the Supplemental Plan, and the costs of the Project shall be financed as provided in the Resolution of Necessity.

Section 7. Compliance with Open Meetings Requirements. That this Commission finds and determines that all formal actions of this Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this Commission, and that all deliberations of this Commission and of any of its committees
that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Ohio Revised Code Section 121.22.

Section 8. Effective Date. That 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.........................., 2021

SIGNED BY THE MAYOR.............................., 2021

______________________________
MAYOR OF THE CITY OF DAYTON, OHIO

ATTEST:

______________________________
Clerk of the Commission

APPROVED AS TO FORM:

______________________________
City Attorney
RECEIPT OF COUNTY AUDITOR FOR
LEGISLATION DETERMINING TO
PROCEED WITH ACQUISITION, CONSTRUCTION,
AND IMPROVEMENT OF CERTAIN PUBLIC
IMPROVEMENTS IN THE CITY OF DAYTON
IN COOPERATION WITH THE DAYTON REGIONAL
ENERGY SPECIAL IMPROVEMENT DISTRICT

I, Karl L. Keith, the duly elected, qualified, and acting Auditor in and for
Montgomery County, Ohio hereby certify that a certified copy of Ordinance No.
_____ duly adopted by the City Commission of the City of Dayton, Ohio on _____
_____, 2021, determining to proceed with the acquisition, construction, and
improvement of certain public improvements in the City of Dayton in cooperation
with the Dayton Regional Energy Special Improvement District, was filed in this
office on __________, 2021.

WITNESS my hand and official seal at Dayton, Ohio on __________,
2021.

[SEAL]

Auditor
Montgomery County, Ohio
July 19, 2021

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

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

SUBJECT: Three Emergency Ordinances to Include 137 N. Main Street in the Dayton Regional Energy Special Improvement District

The Department of Planning, Neighborhoods & Development – Division of Development is requesting adoption of the attached three Ordinances approving the inclusion of 137 N. Main Street in the Dayton Regional Energy Special Improvement District (ESID) and establishing the special assessments. This will enable the property owners to finance energy efficiency improvements for their property.

We are requesting two readings at one meeting of each ordinance at the July 28, 2021 City Commission meeting in the following order:

1. “Determining to Proceed with the Acquisition, Constructing, and Improving Certain Public Improvements…”
2. “Levying Special Assessments for the Purpose of Acquiring, Constructing, and Improving Certain Public Improvements…”
3. “Authorizing and Approving an Energy Project Cooperative Agreement and Special Assessment Agreement…”

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

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

CJL

c: Todd Kinskey
AN ORDINANCE

Leving Special Assessments for the Purpose of Acquiring, Constructing, and Improving Certain Public Improvements in the City of Dayton in Cooperation with the Dayton Regional Energy Special Improvement District, and Declaring an Emergency.

WHEREAS, This Commission of the City of Dayton, Ohio (the “City”) duly adopted Resolution No. 594-21 on June 21, 2021 (the “Resolution of Necessity”), and declared the necessity of acquiring, constructing, improving and installing special energy improvement projects defined as the Project, as described in the Resolution of Necessity, and as set forth in the Project Petition, requesting those improvements; and,

WHEREAS, This Commission duly passed Ordinance No. __________ on ____________, 2021, and determined to proceed with the Project and adopted the estimated Special Assessments (as defined in the Resolution of Necessity) filed with the Clerk of the Commission and the Director of the Department of Finance pursuant to the Resolution of Necessity; and,

WHEREAS, It is necessary for the immediate preservation of public peace, property, health and safety, that this Ordinance take effect at the earliest possible date in order to allow First Barclay, LLC (the “Owner”) to begin work on the special energy improvement project on the Property, and the Dayton Regional Energy Special Improvement District (“ESID”) to take advantage of financing available to it for a limited time; now, therefore,

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

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

Section 2. Special Assessments. That the list of Special Assessments to be levied and assessed on the Property in an amount sufficient to pay the costs of the Project, $2,794,140.40, together other related financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued to provide a loan to the Owner and its affiliates or otherwise to pay costs of the Authorized Improvements in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued, including any credit enhancement fees, trustee fees, and ESID administrative fees and expenses, which costs were set forth in the Project Petition.
and previously reported to this Commission and are now on file in the offices of the Clerk of the Commission and the Director of the Department of Finance, is adopted and confirmed, and that the Special Assessments are levied and assessed on the Property. The interest portion of the Special Assessments, together with amounts used to pay administrative expenses, are determined to be substantially equivalent to the fair market rate or rates of interest that would have been borne by securities issued in anticipation of the collection of the Special Assessments if such securities had been issued by the City.

The Special Assessments are assessed against the Property commencing in tax year 2022 for collection in calendar year 2023 and shall continue through tax year 2041 for collection in calendar year 2042. The semi-annual installment of the Special Assessments shall be collected in each calendar year equal to a maximum semi-annual amount of Special Assessments as shown in Exhibit A attached to and incorporated into this Ordinance.

The Special Assessments shall be allocated among the parcels constituting the Property as set forth in the Project Petition and the List of Special Assessments attached to and incorporated into this Ordinance as Exhibit A.

Section 3. Amount of Special Assessments. That this Commission finds and determines that the Special Assessments are in proportion to the special benefits received by the Property through the financing of the Project as set forth in the Project Petition and are not in excess of any applicable statutory limitation.

Section 4. Waiver of Cash Settlement. That the Owner has waived its right to pay the Special Assessments in cash, and all Special Assessments and installments of the Special Assessments shall be certified by the Director of the Department of Finance to the Auditor of Montgomery County, Ohio as provided by the Project Petition and Ohio Revised Code Section 727.33 to be placed by him or her on the tax list and duplicate and collected with and in the same manner as real property taxes are collected and as set forth in the Project Petition.

Section 5. Appropriation of Special Assessments. That the Special Assessments will be used by the City to provide the Authorized Improvements in cooperation with the ESID in any manner, including assigning the Special Assessments actually received by the City to the ESID or to another party the City deems appropriate, and the Special Assessments are appropriated for such purposes.

Section 6. Special Assessments File. That the Director of the Department of Finance shall keep the Special Assessments on file in the Office of the Director of the Department of Finance.

Section 7. Certification to County Auditor. That in compliance with Ohio Revised Code Section 319.61, the Clerk of the Commission is directed to deliver a certified copy of this Ordinance to the Auditor of Montgomery County, Ohio within twenty (20) days after its passage.
Section 8. Compliance with Open Meetings Requirements. That this Commission finds and determines that all formal actions of this Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this Commission, and that all deliberations of this Commission and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Ohio Revised Code Section 121.22.

Section 9. Effective Date. That for the reasons stated in the preamble hereof, this ordinance shall be declared an emergency measure and shall take effect immediately upon its passage.

PASSED BY THE COMMISSION........................................, 2021

SIGNED BY THE MAYOR..........................................., 2021

MAYOR OF THE CITY OF DAYTON, OHIO

ATTEST:

Clerk of the Commission

APPROVED AS TO FORM:

City Attorney
EXHIBIT A

LIST OF SPECIAL ASSESSMENTS AND
SCHEDULE OF SPECIAL ASSESSMENTS

LIST OF SPECIAL ASSESSMENTS

535 EAST THIRD STREET PROJECT

<table>
<thead>
<tr>
<th>Name</th>
<th>Assessed Properties Description</th>
<th>Portion of Benefit and Special Assessment</th>
<th>Amount of Special Assessments</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Barclay, LLC</td>
<td>R72 00202 0037*</td>
<td>100%</td>
<td>$2,794,140.40</td>
</tr>
</tbody>
</table>

*As identified in the records of the Auditor of Montgomery County, Ohio as of July 9, 2021.
SCHEDULE OF SPECIAL ASSESSMENTS

The following schedule of Special Assessment charges shall be levied in forty (40) semi-annual installments with respect to first-half and second-half real property taxes in calendar years 2023 through 2042:

<table>
<thead>
<tr>
<th>Special Assessment Date **</th>
<th>Special Assessment Amount ***</th>
</tr>
</thead>
<tbody>
<tr>
<td>February 15, 2023</td>
<td>$69,853.51</td>
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</tr>
<tr>
<td>February 15, 2041</td>
<td>69,853.51</td>
</tr>
</tbody>
</table>
** Pursuant to Ohio Revised Code Chapter 323, the Special Assessment Payment Dates identified in this Schedule of Special Assessments are subject to adjustment by the Montgomery County Auditor under certain conditions.

*** The Auditor of Montgomery County, Ohio may impose a special assessment collection fee with respect to each semi-annual Special Assessment payment. If imposed, this special assessment collection fee will be added by the Auditor of Montgomery County, Ohio to each semi-annual Special Assessment payment.

<table>
<thead>
<tr>
<th>Date</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
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<td>February 15, 2042</td>
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<tr>
<td>July 15, 2042</td>
<td>69,853.51</td>
</tr>
</tbody>
</table>
RECEIPT OF COUNTY AUDITOR FOR LEGISLATION LEVYING SPECIAL ASSESSMENTS FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING, AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS IN THE CITY OF DAYTON IN COOPERATION WITH THE DAYTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT

I, Karl L. Keith, the duly elected, qualified, and acting Auditor in and for Montgomery County, Ohio hereby certify that a certified copy of Ordinance No. _______, duly adopted by the Commission of the City of Dayton, Ohio on _______, 2021, levying special assessments for the purpose of acquiring, constructing, and improving certain public improvements in the City of Dayton, Ohio in cooperation with the Dayton Regional Energy Special Improvement District, including the List of Special Assessments and Schedule of Special Assessments, which Special Assessment charges are levied in forty (40) semi-annual installments with respect to real property taxes due in calendar years 2023 through 2042, was filed in this office on _______, 2021.

WITNESS my hand and official seal at Dayton, Ohio on _______, 2021.

______________________________
Auditor

[SEAL]

Montgomery County, Ohio
AN ORDINANCE

Authorizing and Approving an Energy Project Cooperative Agreement and Special Assessment Agreement; and Declaring an Emergency.

WHEREAS, First Barclay, LLC (the “Owner”) has submitted to the City Commission of the City of Dayton, Ohio (the “City”) a Petition for Special Assessments for Special Energy Improvement Projects and Affidavit (the “Project Petition”), together with a Supplement to Plan for 137 N. Main Street, Dayton, Ohio Project (the “Supplemental Plan”) in order to provide for the completion of a special energy improvement project on real property owned by the Owner and located at 137 N. Main Street within the City (the “Project Site”); and,

WHEREAS, On ___________ July 21_______, 2021, this Commission approved the Project Petition and the Supplemental Plan; and,

WHEREAS, On ___________ July 21_______, 2021, this Commission duly adopted a resolution declaring the necessity of acquiring, constructing, and improving certain public improvements in the City in cooperation with the Dayton Regional Energy Special Improvement District (the “ESID”) (the “Resolution of Necessity”), with each capitalized term or definition not otherwise defined in this Ordinance or by reference to another document having the meaning assigned to it in the Resolution of Necessity; and,

WHEREAS, On ___________ July 28_______, 2021, this Commission passed an ordinance determining to proceed with the Project and adopted the estimated Special Assessments filed with the Clerk of the Commission and pursuant to the Resolution of Necessity; and,

WHEREAS, Under an ordinance passed by this Commission on ___________ July 28_______, 2021, the City has levied special assessments to pay costs of the special energy improvement projects described in the Supplemental Plan (the “Special Assessments”); and,
WHEREAS, The City intends to enter into (i) an Energy Project Cooperative Agreement by and among the Owner, the City, the ESID, and Twain Community Partners II LLC (together with its affiliates and permitted assigns, the “Investor”), and (ii) a Special Assessment Agreement by and among the Treasurer of Montgomery County, Ohio (the “County Treasurer”), the City, the Investor, the ESID, and the Owner (the “Special Assessment Agreement” and, together with the Energy Project Cooperative Agreement, the “Agreements”); and,

WHEREAS, To provide for the security for amounts made available by the Investor to the Owner (the “Project Advance”), which shall be used by the Owner to pay costs of the Project (as further described in the Project Petition and the Agreements), and for administration of payments on the Project Advance and related matters, the City intends to enter into the Agreements; and,

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

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

Section 1. Agreements. That this Commission hereby approves the Agreements, a copy of each of which is on file in the office of the Clerk of the Commission. The City Manager or her designee shall sign and deliver, in the name and on behalf of the City, the Agreements, in substantially the forms as are now on file with the Clerk of the Commission. The Agreements are approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the City Manager or her designee on behalf of the City, all of which shall be conclusively evidenced by the signing of the Agreements or amendments thereto.

Section 2. Other Agreements. That the City is authorized to enter into such other agreements that are not inconsistent with the Resolution of Necessity and this Ordinance and that are approved by the City Manager or her designee on behalf of the City, all of which shall be conclusively evidenced by the signing of such agreements or any amendments thereto.

Section 3. Compliance with Open Meetings Requirements. That this Commission finds and determines that all formal actions of this Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this Commission, and that all deliberations of this Commission and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Ohio Revised Code Section 121.22.
**Section 4.** Effective Date. That for the reasons stated in the preamble hereof, this ordinance shall be declared an emergency measure and shall take effect immediately upon its passage.

PASSED BY THE COMMISSION........................................, 2021

SIGNED BY THE MAYOR............................................., 2021

MAYOR OF THE CITY OF DAYTON, OHIO

ATTEST:

______________________________
Clerk of the Commission

APPROVED AS TO FORM:

______________________________
City Attorney
AN ORDINANCE

Authorizing the City of Dayton, Ohio to
Furnish Water to the City of Brookville, Ohio
and Authorizing the City Manager to Execute
the Water Service Agreement and Any
Documents and Agreements Related Thereto.

WHEREAS, The City of Dayton has the resources and capacity to provide water
to residents, businesses and governmental entities located outside the Dayton municipal
corporation boundaries; and

WHEREAS, Brookville desires to acquire and purchase water from Dayton for
use by itself, and the residents, institutions and businesses located within and adjacent to
Brookville’s municipal corporation boundaries; and,

WHEREAS, The City of Dayton has determined that surplus water is available
for sale to the City of Brookville to serve the Brookville Water Service Area, as described
herein; and,

WHEREAS, the “Brookville Water Service Area” shall be the comprised of the
entire municipal corporation limits of the City of Brookville, Ohio, including any area(s)
as may be annexed thereto during the term of this Agreement, plus any area located
outside, but adjoining, the municipal corporation limits of the City of Brookville; and;

WHEREAS, the Water Service Agreement sets forth the terms and conditions
under which the City of Brookville will have non-exclusive right to obtain and provide
the City of Dayton’s water for a period of fifteen (15) years with one (1) renewal period
with a term that shall not exceed ten (10) years; and,

WHEREAS, On June 15, 2021, the City of Brookville City Council
recommended approval authorization for the City Manager’s execution of the Water
Service Agreement between the City of Dayton and the City of Brookville; now,
therefore,

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

Section 1. That the Dayton City Commission accepts the terms and conditions of
the Water Service Agreement which was approved by the City of Brookville on June 15,
2021, and the City of Dayton does hereby agree to carry out the terms and conditions
therein set forth.
Section 2. That the City Manager or her designee is authorized to execute on behalf of the City of Dayton, the Water Service Agreement, a copy of which is attached hereto as Exhibit A, and any and all other documents, agreements or contracts related thereto and necessary for the City of Dayton to provide potable water to the City of Brookville.

Passed by the Commission............................................., 2021

Signed by the Mayor...................................................., 2021

Mayor, City of Dayton, Ohio

Attest:

Clerk of the Commission

Approved as to form:

City Attorney
July 9, 2021

TO: Shelley Dickstein, City Manager

FROM: Michael Powell, Director
Department of Water

SUBJECT: City of Brookville Water Service Agreement

Attached for your review is an Ordinance authorizing the City of Dayton to furnish water to the City of Brookville, Ohio. We request that the Ordinance and Agreement be presented for Commission approval at your earliest convenience. The City of Brookville’s Commission approved the Water Service Agreement on June 15, 2021 and the City of Dayton Law Department has approved the Agreement and Ordinance as to form and correctness. The Water Service Agreement stipulates that annual water rates will be established using the Cost of Service Model.

If you have any questions or need any additional information, please contact Kena Crist at 333-4236.

Attachments – Ordinance & Copy of Water Service Agreement

Copy: Joseph Parlette, Deputy City Manager
LaShea Lofton, Deputy City Manager & Acting Finance Director
Aaron Zonin, Deputy Director, Department of Water
Rosalind Bertolo, Special Projects Administrator, Department of Water
WATER SERVICE AGREEMENT

This Agreement is dated this ___ day of ______________, 2021 between the City of Dayton, Ohio (“Dayton”) and the City of Brookville, Ohio (“Brookville”), both municipal corporations in and existing under the laws of the State of Ohio.

WITNESSETH THAT:

WHEREAS, Dayton has the resources and capacity to provide water to residents, businesses and governmental entities located outside the Dayton municipal corporation boundaries; and

WHEREAS, Brookville desires to acquire and purchase water from Dayton for use by itself, and the residents, institutions and businesses (hereinafter referred to as “User” or “Users”) located within and adjacent to Brookville’s municipal corporation boundaries; and

WHEREAS, Dayton has determined that surplus water is available for sale to Brookville to serve the Brookville Water Service Area, as described herein.

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereby agree as follows:

SECTION 1. WATER SERVICE AREA

A. For purposes of this Agreement, the “Brookville Water Service Area” shall be the comprised of the entire municipal corporation limits of the City of Brookville, Ohio, including any area(s) as may be annexed thereto during the term of this Agreement, plus any area located outside, but adjoining, the municipal corporation limits of the City of Brookville. The Brookville Water Service Area is more specifically defined within Exhibit A, which is attached thereto and incorporated herein.

It is understood and agreed that Brookville will have the non-exclusive right to obtain and provide Dayton’s water for the portion of the Brookville Water Service Area located outside its municipal corporation limits. Notwithstanding the foregoing sentence, it is agreed that nothing contained herein shall prevent or impede Dayton from negotiating and executing a water service agreement(s) to provide Dayton water directly to the area(s) outside the Brookville municipal corporation limits.

B. The parties hereby agree that the Brookville Water Service Area may be modified only by mutual written agreement between the parties, and subject to the ability of Dayton to supply its water to serve the expanded or additional territory.

SECTION 2. TERM

This Agreement shall commence upon the first full billing cycle following approval by the
Commission of the City of Dayton, Ohio and approval by the Council of the City of Brookville, Ohio and remain in effect for a period of fifteen (15) years ("Initial Term"). This Agreement may be renewed by mutual agreement of the parties for one additional renewal period and the term for the renewal shall not exceed ten (10) years. No renewal will be effective unless it is reduced to writing, executed by duly authorized representatives for each party and approved by the Commission of the City of Dayton, Ohio and Council of the City of Brookville, Ohio.

SECTION 3. BROOKVILLE WATER SYSTEM

For purposes of this Agreement, the “Brookville Water System” shall be all mains, distribution and transmission lines situate inside the Brookville municipal corporation limits, now existing or as may be added in the future. The Brookville Water System shall also include all mains, distribution and transmission lines and infrastructure constructed by Brookville to supply water to Users situate outside the Brookville municipal corporation boundaries, whether existing now or added in the future.

At the time of execution of this Agreement, Brookville hereby represents and warrants to Dayton that the Brookville Water System existing at the time of this Agreement provides Dayton water to the existing Users in the Brookville Water Service Area.

During the term of this Agreement and any renewal hereof, Brookville shall submit to Dayton’s Director of Water for consent and approval prior to actual construction, all plans and specifications for any additional mains, laterals, transmission and/or distribution lines for the Brookville Water System. Dayton’s Director of Water shall review said plans and specifications for adequate flow, volume and other system needs, with said consent and approval not to be unreasonably withheld. Further, Brookville agrees that all Brookville Water System planning, construction, installation and inspection(s) shall be performed in accordance with Dayton’s specifications, rules, regulations and inspection requirements for similar work now existing or as amended, and all applicable federal and state laws, regulations, standards or orders.

SECTION 4. DISTRIBUTION OF WATER

A. During the term of this Agreement, Dayton shall endeavor to use its best efforts equivalent to that effort used to provide water to Dayton residents to furnish an adequate supply of water to Brookville for resale by Brookville to the Users within the Brookville Water Service Area subject to such interruption of supply as may arise from natural causes, failure or insufficiency of equipment or water lines or causes reasonably beyond Dayton’s control. All water supplied under this Agreement, including water supplied for municipal facilities, shall be individually metered.

B. During the term of this Agreement, Dayton shall endeavor to use its best efforts so that
the water pressure and volume of water to be provided under this Agreement will not be reduced within the Brookville Water System, subject to emergency failure of pressure due to supply line breaks, insufficient water mains or equipment, power failure, acts of God or other events beyond the control of Dayton. In the event of a restriction in flow or pressure due to drought conditions or other causes which significantly affect the entire Dayton water system, Dayton shall endeavor to use its best efforts so that the reduction in flow or pressure to the Brookville Water Service Area will not be proportionally greater than applied to other users of Dayton water outside Dayton’s municipal boundaries. Dayton shall have no responsibility for water pressure or volume problems and conditions arising in the Brookville Water System, not designed and built by Dayton.

C. The use and consumption of water by Users within the Brookville Water Service Area shall be subject at all times to such rules and regulations, specifically including those concerning excessive use, as Dayton may establish and as are generally applicable to other users of Dayton water outside Dayton’s municipal boundaries. Such rules and regulations applicable to the operation of, and consumption and distribution from the Water Works of Dayton shall, as may be practicable and applicable, govern and apply to similar situations within the Brookville Water Service Area. Fire hydrants shall be used only by Brookville’s Fire Department or for normal system flushing, except that special permits for hydrant use (such as pool use, street sweeping, construction) may be obtained in accordance with Dayton’s Department of Water Rules and Regulations. Private fire hydrants may be set in accordance with Dayton’s Department of Water Rules and Regulations.

D. Nothing contained herein shall prevent Brookville from establishing such similar or additional rules and regulations governing the consumption and use of water to be provided under this Agreement. However, any such rules and regulations established by Brookville shall not establish requirements or set standards which conflict with and/or fall below those rules, regulations, standards, conditions, or restrictions set forth in Dayton’s Department of Water Rules and Regulations, and shall be consented to by Dayton.

SECTION 5. WATER METERS AND TAPS

A. Dayton shall furnish and install all meters necessary to measure the use of water furnished to the Users within the Brookville Water Service Area and shall make all service taps on the distribution system, including the Brookville Distribution System. Service charges for installing and setting the meters, cost of the meters and other special charges will be at the rates in effect at the time of execution of this Agreement or may be hereinafter established by Dayton, plus a ten percent (10%) surcharge. All meters installed shall remain the sole property of Dayton.

B. Taps shall only be made after a Dayton permit has been obtained by a plumber, who shall be licensed and bonded with Dayton. The plumber shall first obtain and remit
payment for all required permits from Brookville, if any, prior to seeking a Dayton permit. The Dayton permit shall set forth the plumber’s name, address and the address and size of the tap to be made. Dayton’s charge for the permit will be the same as the charge for a permit within the municipal boundaries of Dayton, plus a ten percent (10%) surcharge. Dayton’s charge for the tap will be the same as the charge for a tap within the municipal boundaries of Dayton, plus a ten percent (10%) surcharge.

C. Service taps will only be made in the sizes currently offered and permitted under the Dayton Department of Water Rules and Regulations. Prices for taps two inches (2”) in diameter and smaller shall be at the standard rates charged within Dayton, plus a 10% surcharge. Prices for taps over four inches (4”) in diameter will only be provided upon plumber’s request, and will be based upon the requisite tapping charge and estimate of the actual cost(s) to Dayton for labor and materials, plus a ten percent (10%) surcharge.

D. All tapping fees and permit fees or charges shall be paid by the plumber seeking to obtain the Dayton permit(s), with payment to be made directly to the municipality imposing said fee or charge. Dayton agrees that it shall be responsible for the billing and collection of its tapping and permit fee(s) or charge(s). The plumber shall be responsible for all excavations, as Dayton will not excavate in any street outside its corporate limits. Once a Dayton permit is issued, Dayton shall install the specified tap. Despite payment of tapping fees and permit fees to Dayton, the tap and all service lines from the tap to the curb stop shall become the sole property of Brookville, and Brookville shall be responsible for maintenance, service and replacement of same.

SECTION 6. WATER PAYMENT AND USER BILLING

A. Dayton will read all meters within the Brookville Water Service Area and furnish Brookville with a quarterly billing statement for all water usage within the Brookville Water Service Area. Dayton shall also provide Brookville with quarterly billing information in electronic format evidencing Dayton's charges for each individual User served within the Brookville Water Service Area. However, only the electronic information shall be in such format as to be readily usable by Brookville for individual billing to Users within the Brookville Water Service Area.

The quarterly billing statement shall form the basis for a water payment to Dayton, for the water furnished and consumed by Users within the Brookville Water Service Area. Brookville shall remit to Dayton the aforesaid quarterly billing payment in full within thirty (30) days of receipt of bill. Beginning five (5) years following commencement of this agreement, any amount not paid in full within thirty (30) days of receipt of bill is subject to a ten percentage (10%) penalty. Dayton reserves the right to change to a monthly billing statement based on mutual agreement with Brookville. An amendment addressing monthly billing terms to this Agreement shall be issued if monthly billing is implemented.

B. The rates or charges to be paid by Brookville to Dayton for water supplied under this
Agreement and under any special permits shall be rates equal to the rates now established within Dayton’s Water Service Agreement Cost of Service Financial Model. The model accounts for an allocation of the City’s total water utility costs (operating and capital) and projected water production and consumption across the City’s customer classes. The resulting outputs are the rates and fees necessary to generate the needed revenue for the City to properly operate the utility and serve all customers. The Cost of Service Financial Model follows the “Utility Method” of rate setting and follows the methodology defined in Principles of Water Rates, Fees, and Charges, Manual of Water Supply Practices, American Water Works Association M1, Latest Edition. Under the utility method, revenue requirements are recovered through several cost components, operation and maintenance (O&M) expenses, depreciation, and rate of return on assets. Time frames and additional details are explained in Exhibit B.

C. If any meter or other measuring device fails to function, the compensation or charges during such period of failure shall be based upon estimated quantities to be determined and fixed by Dayton’s Director of Water after consultation with Brookville for this meter’s typical usage.

D. Brookville shall be responsible to bill all Users within the Brookville Water Service Area for all Dayton water provided under this Agreement, at such rates and charges as Brookville may establish from time to time. It is agreed and understood that Dayton shall not be responsible for any User billing errors or failure by User to remit payment. If a User dispute arises, whereby a User seeks to challenge the amount of water consumed and Brookville desires Dayton’s involvement, Brookville shall immediately contact Dayton concerning such dispute and Dayton shall take such actions within sixty (60) days as reasonably necessary to investigate same under its existing policies and procedures for such disputes. Regardless of whether Brookville has credited or taken such other action to resolve the dispute Dayton shall not be bound by such resolution, absent consent from Dayton’s Director of Water.

SECTION 7. MAINTENANCE, LEAK DETECTION AND BACKFLOW

A. Brookville, except as provided for in Section 5, shall assume all maintenance, repair, replacement, and service responsibilities and costs for the Brookville Water System.

B. Dayton shall assume all maintenance, repair and replacement responsibilities for the water meters.

C. In the event that Brookville fails to repair service or replace any portion of the Brookville Water System within twenty-four (24) hours after Dayton’s Director of Water notifies Brookville to so do, Dayton shall cause such repair, service or replacement, and Brookville shall reimburse Dayton for any and all costs reasonably related thereto.
D. Brookville shall coordinate with Dayton for a complete Brookville Water System leak detection survey every five (5) years that this Agreement is effective. The scope of said leak detection survey(s) in the Brookville Water Services Area shall include all then existing water pipe of the Brookville Water System. Dayton and Brookville shall coordinate to determine the date of the first survey as part of Dayton’s leak detection efforts.

Notwithstanding the foregoing, if twenty percent (20%) or greater of the annual amount of Dayton water supplied through the Brookville Water System is not accounted for based upon the consumption by the Brookville Water Service Area Users, Dayton’s Director of Water will provide written notice to Brookville of the area(s) deemed to require a leak detection survey or the necessity for a more involved Brookville Water System leak detection survey. If Brookville fails to undertake or cause the limited or complete leak detection survey(s) within one hundred and eighty days (180) from the date of the notice or such other period as Dayton and Brookville may mutually agree upon, Dayton shall have the right to conduct said leak detection survey(s) in the Brookville Water Service Area.

Dayton shall also retain the right to make such emergency leak detection survey(s) as may be deemed necessary by Dayton’s Director of Water, after consultation with Brookville.

If Dayton conducts any leak detection survey, Brookville shall be responsible to reimburse Dayton for the actual costs of same and shall provide assistance during the leak detection survey, including, but not limited to, making valves accessible, operating the valves and repairing leaks. Should Brookville fail to provide said assistance, Brookville shall be responsible to reimburse Dayton for all costs and overhead expenses reasonably incurred for performing same. Brookville shall be responsible to provide such drawings of the Brookville Water System and appurtenance locations, as may be requested by Dayton’s Director of Water.

E. Brookville shall protect the public water supply in the Brookville Water Service Area, and shall implement and maintain a backflow prevention and cross connection control program in compliance with the laws of the State of Ohio and in accordance with Dayton’s Department of Water Rules and Regulations, which are in effect at the time of execution of this Agreement or as may be amended, modified or enacted.

SECTION 8. DEFAULT

If Brookville defaults in its water payment to Dayton as required under Section 6 of this Agreement and said default is not cured within twenty-one (21) days from written notice thereof, Dayton may, at its option, continue to furnish water to the Brookville Water Service Area through the Brookville Water System, including main(s) and distribution lines then existing, maintain and operate the entire Brookville Water Service Area water system, and bill all Users at rates equal to the rates now obtaining or hereafter established for comparable users within Dayton’s corporation limits, plus a surcharge not to exceed thirty five percent (35%) of the amount billed to the User. Dayton shall also be entitled to directly bill and
collect all meter installation fees, service fees, permit fees and tap fees chargeable to Users by Brookville under this Agreement, and to recover from Brookville all remaining costs for the complete operation of the water system, all without any obligation to reimburse Brookville for the use of the entire Brookville Water Service Area water system during said period of default.

ARTICLE 9. TERMINATION

This Agreement may be terminated by Dayton upon written notice in the event of substantial failure by Brookville to perform in accordance with the terms of this Agreement for any reason other than default which is addressed in Section 8 herein. Brookville shall have fifteen (15) calendar days from the date of the termination notice to submit a plan to remedy the substantial failure acceptable to the City.

Dayton or Brookville may terminate or suspend performance of this Agreement for convenience upon one (1) year prior written notice to the other party. In the event of termination hereunder, Brookville will pay the City for all usage and fees incurred up to the date of termination.

SECTION 10. REPRESENTATIONS

A. Brookville hereby represents and agrees that nothing contained herein shall be construed or accepted, directly or indirectly, as conferring upon Brookville the right to extend any water distribution or service line or main outside the Brookville Water Service Area for the purposes of supplying any other municipality, political Subdivision, or other governmental entity with Dayton water.

B. Brookville hereby represents and agrees that the Brookville Water System shall not be supplied or serviced with other water under any contract or agreement with any other governmental or private water supply system during the term of this Agreement. However, Brookville shall have the right to develop emergency inter-connections with other sources of water supply, which may be used only in emergency situations and upon notice to and consent by Dayton.

SECTION 11. GENERAL PROVISIONS

A. Consent. Whenever in this Agreement consent is to be given by Dayton or Brookville, such consent shall not be unreasonably withheld. For purposes of this Agreement, consent by Dayton shall be manifested by action of its Director of Water.

B. Integration. 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. **Severability.** If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect. The parties further agree that in such instances, the parties will act in good faith to mutually agree to an acceptable substitute provision.

D. **Waiver.** A waiver by Dayton or Brookville 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 the party’s rights with respect to any other or further breach.

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

F. **Independent Contractor.** The parties hereby agree that at all times, the relationship between the parties shall be that of an independent contractor. At no time shall the relationship between the parties under this Agreement be construed, held out or considered as a joint venture, principal-agent or employer-employee.

G. **Assignment.** Assignment of this Agreement for the benefit of bond holders or other debt holders of some or all of the water facilities to be constructed and installed as described herein, including all contracts, agreements and/or franchises, and all right, title, and interest in real and personal property for the purposes of financing the water service enhancements, is specially approved and permitted. No other assignment of this Agreement is permitted or authorized without the express written consent of both parties.

H. **Amendment.** This Agreement may be amended by the parties, provided that any such amendment or modification makes specific reference to this Agreement, is executed in writing, signed by a duly authorized representative of Dayton and Brookville, and, if required or applicable, approved by the Commission of the City of Dayton, Ohio and Council of the City of Brookville, Ohio.

I. **Notices.** Notice required or permitted herein shall be sufficient if hand-delivered or sent by certified U.S. Mail, return receipt requested, to the respective Parties at the following addresses:

**To Dayton:**
City of Dayton, Ohio
320 West Monument
Dayton, OH 45401
Attn: Director of Water

**To Brookville:**
City of Brookville, Ohio
301 Sycamore Street, P.O. Box 10
Brookville, OH 45309-0010
Attn: City Manager
[Remainder of this page intentionally left blank.]
IN WITNESS WHEREOF, Brookville and Dayton, each by a duly authorized representative and intending to be legally bound, have executed this Agreement as of the day and date written above.

THE CITY OF DAYTON, OHIO

City Manager

APPROVED AS TO FORM, AND CORRECTNESS:

6/8/2021

X

Amelia N. Blankenship for

City Attorney
Signed by: Blankenship, Amelia
City of Dayton, Ohio

APPROVED AS TO FORM:

Rodney

Law Director
City of Brookville, Ohio

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

_________________________, 2021

Min./Bk._____ Pg._____
EXHIBIT A
BROOKVILLE WATER SERVICE AREA

The Brookville Water Service Area shall be the following described geographic area:

SEE ATTACHED MAP
EXHIBIT B
Determination of Rates and Charges

The Financial Cost of Service Model will be updated on an annual basis unless both City of Dayton and the City of Brookville agree to other terms. Model data will be updated according to the process below:

- The City shall update the Model each calendar year during the Term of the Agreement to determine the rates and fees to be charged to Brookville.
- On or before November 1st of each year, the City shall deliver to Brookville the City’s determination of the next year’s rates and fees to be charged to Brookville based upon the annually updated Model.
- The Rates charged to Brookville shall be comprised of a base charge and a volumetric rate.

The 2021 base charge is $134,238 per year, payable quarterly at $33,559.62 per quarter.

The 2021 volumetric rate is $26.83/1,000 CF.
AN ORDINANCE

To Vacate Shelby Avenue from Kling Drive to 100 Feet East of Kling Drive.

WHEREAS, The City Commission did on the 19th day of May, 2021, by Resolution No. 6574-21, declare its intention to vacate Shelby Avenue from Kling Drive to 100 Feet East of Kling Drive; and

WHEREAS, The Board of Revision of Assessments, after a hearing regularly held for the purpose of consideration of objections to said proposed vacation, as provided by the Charter of the City of Dayton, has recommended that Shelby Avenue from Kling Drive to 100 Feet East of Kling Drive; vacated; and

WHEREAS, The City Plan Board has approved said vacation; and

WHEREAS, The vacation of Shelby Avenue from Kling Drive to 100 Feet East of Kling Drive described herein will enable the abutting property owner to develop this property; and

WHEREAS, The Commission is satisfied that there is good cause for said vacation and that it will serve the public interest and welfare and should be made; now, therefore,

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

Section 1. That Shelby Avenue from Kling Drive to 100 Feet East of Kling Drive being more particularly bounded and described in as follows:

Being all of the 50 foot Shelby Avenue from the 50 foot Kling Drive to 100 feet east of Kling Drive

is hereby vacated. The vacation shall be subject to the following conditions:

A. AES Ohio shall retain a ten foot diagonal easement over, under, and through Shelby Avenue for its existing aerial electric facilities. With written consent from AES Ohio these facilities may be relocated or abandoned at the expense of the applicant.
B. The City of Dayton Department of Water shall retain an easement over, under, and through the vacated area for its existing six inch water main, and eight inch sanitary sewer. With written consent from City of Dayton Department of Water these facilities may be relocated or abandoned at the expense of the applicant.

Passed by the Commission .............................................., 2021

Signed by the Mayor ......................................................, 2021

Mayor of the City of Dayton, Ohio

Attest:

Clerk of the Commission

Approved as to form:

City Attorney
July 7, 2021

TO: Shelley Dickstein
    City Manager

FROM: Joseph Weinel, Chief Engineer
      Division of Civil Engineering

SUBJECT: The Vacation Shelby Avenue from Kling Drive to 100 Feet East of Kling Drive

Attached is the ordinance to vacate the subject property. Please present this legislation to the City Commission for their action.

Petition No. 21538 requesting the vacation was received from Nicholas Ungard on March 29, 2021. Resolution No. 6574-21 declaring the Commission’s intention to vacate was adopted on May 19, 2021. The Board of Revision of Assessments recommended the vacation on June 23, 2021. The vacation will enable the abutting property owners to safeguard this property.

If you have any additional questions, please contact Joe Weinel at extension 4218.

JRW

Attachments

cc: Mr. Parlette
    Ms. Lofton
    Mr. Stovall
    Department of Planning
    Department of Law
    Clerk of Commission
    Secretary / Board of Revision of Assessments
VACATION: SHELBY AVENUE
KLING AVE TO 100-FT EAST
AN ORDINANCE

To Vacate South Orchard Avenue from Home Avenue to US Route 35 Right of Way.

WHEREAS, The City Commission did on the 19th day of May, 2021, by Resolution No. 6575-21, declare its intention to vacate South Orchard Avenue from Home Avenue to US Route 35 Right of Way; and

WHEREAS, The Board of Revision of Assessments, after a hearing regularly held for the purpose of consideration of objections to said proposed vacation, as provided by the Charter of the City of Dayton, has recommended that South Orchard Avenue from Home Avenue to US Route 35 Right of Way; vacated; and

WHEREAS, The City Plan Board has approved said vacation; and

WHEREAS, The vacation of South Orchard Avenue from Home Avenue to US Route 35 Right of Way described herein will enable the abutting property owner to develop this property; and

WHEREAS, The Commission is satisfied that there is good cause for said vacation and that it will serve the public interest and welfare and should be made; now, therefore,

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

Section 1. That South Orchard Avenue from Home Avenue to US Route 35 Right of Way being more particularly bounded and described in as follows:

Being all of the 50 foot South Orchard Avenue from the 100 foot Home Avenue to the US Route 35 Right of Way

is hereby vacated. The vacation shall be subject to the following conditions:

A. The area shall be marked in a manner acceptable to the Division of Civil Engineering to indicate that it is not public right-of-way.

B. The street opening at Home Avenue shall be removed and replaced with curb and walk, or a driveway shall be constructed. All work shall be completed within 90 days of the vacation and to City of Dayton standards.
C. The City of Dayton Department of Water shall retain an easement over, under, and through the vacated area for its existing 113” X 72” storm sewer, six inch water main, and thirty inch sanitary sewer. With written consent from City of Dayton Department of Water these facilities may be relocated or abandoned at the expense of the applicant.

Passed by the Commission ............................................, 2021

Signed by the Mayor ...................................................., 2021

Mayor of the City of Dayton, Ohio

Attest:

Clerk of the Commission

Approved as to form:

City Attorney
July 7, 2021

TO: Shelley Dickstein
   City Manager

FROM: Joseph Weinle, Chief Engineer
      Division of Civil Engineering

SUBJECT: The Vacation of South Orchard Avenue from Home Avenue to US Route 35 Right of Way.

Attached is the ordinance to vacate the subject property. Please present this legislation to the City Commission for their action.

Petition No. 21539 requesting the vacation was received from Randall E. Lucas on April 1, 2021. Resolution No. 6575-21 declaring the Commission’s intention to vacate was adopted on May 19, 2021. The Board of Revision of Assessments recommended the vacation on June 23, 2021. The vacation will enable the abutting property owners to develop this property.

If you have any additional questions, please contact Joe Weinle at extension 4218.

JRW

Attachments

cc: Mr. Parlette
    Ms. Lofton
    Mr. Stovall
    Department of Planning
    Department of Law
    Clerk of Commission
    Secretary / Board of Revision of Assessments