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: Development Update – 4:30 pm
   https://www.daytonohio.gov/govtv
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:

   CIVIL SERVICE BOARD
   A1. Premier Health Partners (professional services to perform medical
       examinations as needed through 12/31/21) $30,000.00
1. (Cont’d):

<table>
<thead>
<tr>
<th>FIRE</th>
<th>Carroll Wuertz Tire Company (tires, tubes and related goods and services as needed though 12/31/21)</th>
<th>20,000.00</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>HUMAN RESOURCES</th>
<th>Police Management Solutions, Inc. (police chief recruitment and evaluation services)</th>
<th>$14,000.00</th>
</tr>
</thead>
</table>

| POLICE          | Peak Credibility Assessment Training Center (polygraph training and certification for two police officers) | 11,000.00 |

| D1.             | Liberty Coral Investments LLC dba Hampton by Hilton (hotel accommodations for sixty-eight (68) nights for two police officers) | 10,942.62 |

<table>
<thead>
<tr>
<th>PROCUREMENT, MANAGEMENT &amp; BUDGET</th>
<th>USI Midwest LLC (Ambulance Errors and Omissions Liability insurance)</th>
<th>83,032.00</th>
</tr>
</thead>
</table>

| WATER                           | Cemen Tech, Inc. (one 2022 cement batch truck with cement mixer) | 215,037.36 |

- Depts. of Civil Service, Fire, Human Resources Police, Procurement Management and Budget and Water. **Total:** 384,011.98

2. Fifth Third Bank, Huntington National Bank, KeyBank, U.S. Bank – Service Agreement – depository agreements with local financial institutions - Department of Finance. **N/A**

3. CPM Enterprises, LLC – Contract Modification - Nuisance Abatement Program Residential and Commercial Securing 1-2020 – (20% MBE Participation Goal/100% MBE Participation Achieved) – Department of Planning, Neighborhoods and Development. **$15,000.00** (Thru 12/31/21)

4. Sisense, Inc. - Contract Modification – fourth renewal and amendment to the end user license agreement – Department of Information Technology. **$70,499.20** (Thru 8/23/22)
5. **STEPCG, LLC. – Service Agreement** – to purchase Extreme Networks brand hardware and professional services to replace the existing facility wired core network gear at 46 locations throughout the City – Department of Information Technology. $585,306.01 (Thru 12/30/22)

6. **St. Peter Partners LLC– Grant Agreement** – to assist with the implementation of the East Third Street Gateway Project – Department of Planning, Neighborhoods and Development. $40,000.00 (Thru 12/31/22)

**B. Construction Contract:**

7. **Saturn Electric Inc. – Award of Contract** – Dayton International Airport Cargo Road Lights – PSA to Guard Shack (10% SBE and 5% Participation Goal/10% SBE & 8.25% Participation Achieved - Department of Aviation. $217,631.00 (Thru 12/31/22)

**C. Revenue to the City:**

8. **Karen Gagel – Other** - special use permit to install a 6’ x 9’ patio with iron gate and rails along the front sidewalk of Bozack’s Bar at 142 East Third Street - Department of Public Works. $200.00 (Paid to the City)

**IV. LEGISLATION:**

**Emergency Ordinances – First and Second Reading**

9. **No. 31909-21** 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.

10. **No. 31910-21** Authorizing and Approving an Energy Project Cooperative Agreement and Special Assessment Agreement; and Declaring an Emergency.
Emergency Resolution – First and Second Reading

11. **No. 6598-21** Declaring the Intention to Appropriately Real Property Interest in Parcel 12SH & T in Connection with the Siebenthaler and Philadelphia Signal Upgrade Project, and Declaring an Emergency.

Ordinance – First Reading

12. **No. 31911-21** To Vacate the Alley East of June Street (Tulsa Lane) from 78 Feet South of the Alley South of East Fourth Street to 25 Feet North of the Norfolk Southern Railroad Right of Way.

Resolutions – First Reading

13. **No. 6599-21** Honorably Naming Stone Street Between South Jefferson Street and South Patterson Boulevard as “Land of Funk Way.”

14. **No. 6600-21** Honorably Naming Auto Club Drive Between Perry Street and South Patterson Boulevard as “Linda Kramer Way.”

VI. MISCELLANEOUS:

**ORDINANCE NO. 31912-21**

**RESOLUTION NO. 6601-21**

**IMPROVEMENT RESOLUTION NO. 3599-21**

**INFORMAL RESOLUTION NO. 992-21**
CIVIL SERVICE BOARD

(A1) P0210263 – PREMIER HEALTH PARTNERS, DAYTON, OH

- Professional services to perform medical examinations as needed through 12/31/2021.
- These services are required to perform pre-employment medical screenings.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 19005JL with pricing through 12/31/2022.
- Premier Health Partners qualifies as a Dayton local entity.
- This amendment increases the previously authorized amount of $50,000.00 by $30,000.00 for a total not to exceed $80,000.00 and therefore requires City Commission approval.
- The Civil Service Board 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>10000-1300-1159-62</td>
<td>$30,000.00</td>
</tr>
</tbody>
</table>
FIRE

(B1) P0210061 – CARROLL WUERTZ TIRE COMPANY, DAYTON, OH
- Tires, tubes and related goods and services as needed through 12/31/2021.
- These goods and services are required to maintain the Department’s fleet vehicles.
- Rates are in accordance with the State of Ohio Term Schedule #RS902819 and Index #GPC027 with pricing through 3/31/2024.
- Carroll Wuertz Tire Company qualifies as a Dayton local entity.
- This amendment increases the previously authorized amount of $40,000.00 by $20,000.00 for a total not to exceed $60,000.00 and therefore requires City Commission approval.
- The Department of Fire recommends approval of this order.

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<thead>
<tr>
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<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>Fire Fleet Management</td>
<td>67000-6330-1301-71</td>
<td>$20,000.00</td>
</tr>
</tbody>
</table>

HUMAN RESOURCES

(C1) P0211087 – POLICE MANAGEMENT SOLUTIONS, INC., FAIRBORN, OH
- Police Chief recruitment and evaluation services.
- This service is required to aide in the fulfillment of the Police Chief position through recruitment, testing and assessment services.
- Police Management Solutions, Inc. is recommended due to the education, experience, diversity and background of the provider; therefore, this purchase was negotiated.
- The Department of Human Resources and the Department of Police recommends approval of this order.

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<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<tbody>
<tr>
<td>2021</td>
<td>General Fund</td>
<td>10000-5610-1159-62</td>
<td>$14,000.00</td>
</tr>
</tbody>
</table>

POLICE

(D1) P0211079 – PEAK CREDIBILITY ASSESSMENT TRAINING CENTER, LAFAYETTE, IN
- Polygraph training and certification for two Police Officers.
- This service is required to support the daily operations of the Department.
- Peak Credibility Assessment Training Center is accredited by the American Polygraph Association and by the Ohio Association of Polygraph Examiners; therefore, this purchase was negotiated.
- The Department of Police recommends approval of this order.

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<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>General Fund</td>
<td>10000-6210-1111-71</td>
<td>$11,000.00</td>
</tr>
</tbody>
</table>
POLICE CONTINUED

(D2) P0211080 – LIBERTY CORAL INVESTMENTS LLC DBA HAMPTON BY HILTON, CAPE CORAL, FL
- Hotel accommodations for sixty-eight nights for two Police Officers.
- This service is required for lodging during the nine-week training program for polygraph certification.
- Liberty Coral Investments LLC dba Hampton by Hilton is recommended lodging for attendees of the Peak Credibility Assessment Training Center’s training and certification classes; therefore, this purchase was negotiated.
- 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>10000-6210-1111-71</td>
<td>$10,942.62</td>
</tr>
</tbody>
</table>

PROCUREMENT, MANAGEMENT & BUDGET

(E1) P0211075 – USI MIDWEST LLC, MIAMI TOWNSHIP, OH
- Ambulance Errors and Omissions liability insurance.
- This insurance is required to finance risks associated with the City’s Emergency Medical Service operations and the City’s paramedicine program.
- Six (6) possible providers were solicited and two (2) quotes were received.
- The Department of Procurement, Management and Budget and the Department of Fire 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>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>General Fund</td>
<td>10000-9980-1181-99</td>
<td>$83,032.00</td>
</tr>
</tbody>
</table>

WATER – WATER UTILITY FIELD OPERATIONS

(F1) P0211073 – CEMEN TECH, INC., INDIANOLA, IA
- One (1) 2022 cement batch truck with cement mixer.
- This vehicle is required to support the daily operations of the Department and will replace Unit #1026 which will be disposed of in the best interest of the City.
- Rates are in accordance with the Sourcewell Contract #052417-CTM.
- The Department of Water recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>Water Operating</td>
<td>53000-3445-1412-54</td>
<td>$215,037.36</td>
</tr>
</tbody>
</table>

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

From 5320 - Finance/Tax & Accounting

Supplier, Vendor, Company, Individual
Name See Below
Address Various

Date August 18, 2021
Expense Type Service Agreement
Total Amount $0.00

Fund Source(s) Fund Code(s) Fund Amount(s)
N/A N/A 0.00

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

Description
Depository Agreements

The Department of Finance requests City Commission approval to enter into Depository Agreements with local financial institutions. These Agreements will enable the City to invest City active funds (checking account) and interim funds (certificates of deposit) at the institutions on a competitive basis. Each Agreement specifies a term of five years, and all deposits will be collateralized.

In July of 2021, five (5) banks were solicited by written communication and four (4) responded. The amounts applied for by the institutions represent the maximum possible deposits; however, the City’s Investment Policy restricts the amount a public depository may hold on deposit. A single institution with the highest credit rating would be able to hold no more than 10% of the City’s portfolio in active and interim funds.

Institution Active Funds Interim Funds Term Ending
Fifth Third Bank 30% of Bank’s assets 30% of Bank’s assets August 23, 2026
Huntington National Bank $25,000,000 $25,000,000 July 20, 2026
KeyBank $50,000,000 $50,000,000 August 24, 2026
U.S. Bank 30% of Bank’s assets 30% of Bank’s assets August 22, 2026

The Department of Law has reviewed and approved each agreement for form and correctness. A Certificate of Funds is not required.

Signatures/Approval
Approved by City Commission

Clerk
Date
Updated 06/2016
August 10, 2021

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

FROM: C. LaShea Lofton, Acting Director  
Department of Finance

SUBJECT: Depository Agreements with Local Banks

The Department of Finance is requesting City Commission approval to enter into Depository Agreements with various local banks. Depository Agreements are required by Chapter 135 of the Ohio Revised Code and must be renewed every five (5) years. Depository Agreements enable the City to invest City active funds (checking account) and interim funds (certificates of deposit) at institutions on a competitive basis. Each agreement specifies a term of five years.

In July of 2021, five (5) banks were solicited by written communication to submit Depository Agreements (Fifth Third Bank, Huntington National Bank, KeyBank, PNC Bank, and U.S. Bank) and one (1) bank, PNC Bank, did not respond. The maximum dollar amount of City funds each bank requested to hold on deposit, as well as the five-year term ending date, is as follows:

<table>
<thead>
<tr>
<th>Institution</th>
<th>Active Funds</th>
<th>Interim Funds</th>
<th>Term Ending</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fifth Third Bank</td>
<td>30% of Bank’s assets</td>
<td>30% of Bank’s assets</td>
<td>August 23, 2026</td>
</tr>
<tr>
<td>Huntington National Bank</td>
<td>$25,000,000</td>
<td>$25,000,000</td>
<td>July 20, 2026</td>
</tr>
<tr>
<td>KeyBank</td>
<td>$50,000,000</td>
<td>$50,000,000</td>
<td>August 24, 2026</td>
</tr>
<tr>
<td>U.S. Bank</td>
<td>30% of Bank’s assets</td>
<td>30% of Bank’s assets</td>
<td>August 22, 2026</td>
</tr>
</tbody>
</table>

These maximum amounts are deposit authorizations and do not relate to the amount of cash the City may have on deposit at a given time. The City’s Investment Policy restricts the amount a public depository may hold in deposits. A single institution with the highest credit rating would be able to hold no more than 10% of the City’s portfolio in active and interim funds.

The Department of Law has reviewed the Agreements for form and correctness. Please contact me at ext. 3578 or Brian Smith at ext. 3503 if you have any questions.

CLL/bss

Attachments

C: Mr. John  
Ms. Brown  
Mr. Smith
AGREEMENT FOR DEPOSIT OF PUBLIC FUNDS

THIS AGREEMENT FOR DEPOSIT OF PUBLIC FUNDS (this “Agreement”) is made as of ______________ by and between Fifth Third Bank, National Association (the “Financial Institution”) and City of Dayton ___________________________ (the “Customer”).

WITNESSETH:

WHEREAS, the Financial Institution has accepted for deposit and safekeeping deposits from the Customer and may be providing certain other services for the Customer, or has proposed to do so;

WHEREAS, the Financial Institution has provided the Customer with a copy of the Financial Institution’s balance sheet information as of the date of the latest report filed by the Financial Institution with one or more of its banking regulatory agencies;

WHEREAS, pursuant to the Uniform Depository Act of Ohio (the “Depository Act”) and in accordance with the rules promulgated under the Depository Act, such proposal requires the Financial Institution to pledge and deposit with one or more qualifying trustees as security for the repayment of all public moneys to be deposited in the Financial Institution by the Customer security of the kinds specified in Section 135.18, Section 135.182 or any other section of the Ohio Revised Code specifying eligible security, as such may be amended from time to time, in a sum equal to or greater than the minimum amount of security required by the Treasurer of the State of Ohio (the “TOS”) pursuant to the Depository Act and the rules promulgated under the Depository Act, as such may be amended from time to time; and

WHEREAS, the Financial Institution intends to participate in the Ohio Pooled Collateral Program (the “OPCP”) pursuant to the Depository Act and rules of the TOS;

NOW, THEREFORE, in consideration of the services to be provided by the Financial Institution, including the retention and safekeeping of deposits of the Customer, and the Customer’s new or continued award of deposits with the Financial Institution, the Customer and the Financial Institution agree as follows:

1. Eligibility to Receive Funds. The Financial Institution represents that it is eligible to receive public funds pursuant to Ohio Revised Code Chapter 135. This agreement is subject to the Depository Act, all amendments or supplements thereto, and all rules promulgated and policies adopted pursuant thereto, as well as all other applicable laws and regulations.

2. Deposits Awarded and Accepted. The Customer awards to the Financial Institution, and the Financial Institution accepts, deposits of the Customer in such amounts and of such types as the Customer and the Financial Institution may agree from time to time. The Customer acknowledges having received pricing information and a copy of the terms and conditions of the accounts into which the Customer’s funds will be deposited (the “Accounts”) and agrees that the Account terms and conditions are incorporated herein by reference. To the extent the Account
terms and conditions are inconsistent with the express terms of this Agreement, this Agreement will control.

3. **Limit on Amount of Funds.** The Financial Institution agrees that the total amount of active, interim and inactive deposits to be deposited by the Customer will not cause the total of all public funds held by the Financial Institution to exceed the limit set by Section 135.03 of the Ohio Revised Code or rules promulgated under that Section.

4. **Collateral.** The Financial Institution and the Customer agree that until the Financial Institution commences participation in the OPCP, the Financial Institution will pledge eligible securities for the benefit of the Customer and all other public depositors whose money has been deposited with the Financial Institution and deposit these securities with one or more trustees qualified under the Depository Act and designated by the Financial Institution. The Financial Institution and the Customer further agree that upon the Financial Institution’s commencement of participation in the OPCP, the Financial Institution will pledge to the TOS and deposit with one or more trustees qualified under the Depository Act and designated by the Financial Institution, for the benefit of the Customer and all other public depositors whose money has been deposited with the Financial Institution, eligible securities. Notwithstanding the foregoing, if the charter of the Customer requires a pledge of specific collateral for the benefit of the Customer or applicable federal law designates the pledging of specific collateral for the Customer, the Customer and the Financial Institution will make a good faith effort to submit necessary documents with the TOS to apply for and establish a specific pledge account within the OPCP. The Financial Institution and the Customer will comply in all material respects with their respective duties and obligations under the Depository Act, the rules promulgated by the TOS pursuant to the Depository Act, and the terms, conditions, policies and other requirements of the TOS pursuant to the OPCP, as such laws, rules, terms, conditions, policies and other requirements may be amended from time to time. The terms and conditions of this Agreement are subject to the terms and conditions of any agreement or agreements by and between the Financial Institution and the TOS relating to the Accounts, which agreement or agreements are incorporated herein by reference.

5. **Amount of Collateral.** The Customer has the right to negotiate a “public unit negotiated collateral requirement” pursuant to Section 135.182 of the Ohio Revised Code. The Customer and the Financial Institution agree that the Financial Institution will pledge for the benefit of the Customer, in accordance with the OPCP, collateral equal in value to at least 102% of the amount of all deposits of the Customer on deposit with the Financial Institution that are not insured by the Federal Deposit Insurance Corporation.

6. **Trustee.** The Customer agrees that the Financial Institution may, in its sole discretion, select one or more trustees qualified under Section 135.182 of the Depository Act to hold collateral for all deposits of public fund depositors held by the Financial Institution, including but not limited to those deposits made by the Customer.

7. **Expenses.** Each of the Customer and the Financial Institution will be responsible for and assume its respective expenses incurred as a result of compliance with and participation in the OPCP and any successor program pursuant to Ohio Revised Code Section 135.182 or any amendment or successor provision of Ohio law.
8. **Termination of Participation in the OPCP.** Nothing set forth in this Agreement will require the Financial Institution to continue to participate in the OPCP. If for any reason the Financial Institution is no longer eligible to participate in the OPCP or chooses to opt out of such participation, the Financial Institution will promptly provide the Customer a notice of such event. Upon receipt of such notice, the Customer will provide notice to the Financial Institution within 30 days whether the Customer will withdraw all of its deposits from the Financial Institution or maintain the Customer’s deposits at the Financial Institution. If the Customer does not provide such notice to the Financial Institution within the time set forth above whether it intends to remove its deposits, the Customer will be deemed to have agreed to maintain the deposits at the Financial Institution, and the Financial Institution will pledge separate collateral for the deposits of the Customer held by the Financial Institution pursuant to the requirements applicable to separate pledging of collateral set forth in Ohio Revised Code Section 135.18 and in accordance with other applicable laws and regulations.

9. **Change in Laws.** The Financial Institution and the Customer agree that if any state or federal laws, rules or regulations are changed or amended during the term of the Financial Institution’s designation as a public depository, and the change of laws, rules, or regulations causes this Agreement to become unlawful, in whole or in part, then this Agreement will be limited so as not to extend beyond the date when such change becomes effective.

10. **Customer Privacy.** The Customer consents to the Financial Institution’s provision to the TOS of information supplied by the Customer to the Financial Institution, as may be required by the TOS or applicable laws, rules and policies in connection with the Accounts. The Financial Institution will not be liable to the Customer for, as a result of, or in connection with the provision of such information to the TOS nor any disclosure of such information by the TOS to any other person.

11. **Term.** The term of this Agreement shall end on August 23, 2026. Notwithstanding the foregoing, the parties to this Agreement may agree to renew the Agreement for a new term or change the terms and conditions set forth on Exhibit A without execution of a new agreement by execution and delivery of a writing signed by both parties or by delivery of a written notice of changed terms and conditions by the Financial Institution to the Customer to which the Customer does not deliver written notice of objection to the Financial Institution within 30 days after delivery of the notice from the Financial Institution to the Customer. If neither party notifies the other in writing at least 30 days before the end of the then current term of its intention to renew or terminate this Agreement or to change the terms and conditions of the Agreement for a new term, this Agreement shall automatically renew for a term of two years with the same terms and conditions as in effect immediately before the renewal.

12. **Notices.** All notices, requests and communications to a party under this Agreement must be in writing and will be deemed given if delivered personally, by facsimile, by electronic mail or by registered or certified mail (return receipt requested) to such party at its address as set forth below or such other address as such party may specify by notice to the other party.
To the Financial Institution:  
Fifth Third Bank, National Association  
ATTN: Amber Carter  
38 Fountain Square Plaza  
MD: 10903C  
Cincinnati, OH 45263  
E-mail: amber.carter@53.com  
Phone: 513-534-5967  

To the Customer:  
City of Dayton  
ATTN:  
E-mail:  
Phone:  

13. **Governing Law and Venue.** The internal laws of the State of Ohio will govern the interpretation, construction, and enforcement of this Agreement and all transactions and agreements contemplated by the Agreement, notwithstanding any state’s choice of law rules to the contrary, except to the extent federal law governs. The parties agree that the sole and exclusive venue for any legal action arising out of, in connection with, or relating to this Agreement and/or the transactions and relationships between the parties contemplated by this Agreement, will be the federal district court for the Southern District of Ohio, Cincinnati Division, or any court of general jurisdiction of Hamilton County, Ohio. The parties consent to the jurisdiction of such courts and waive any claim of lack of personal jurisdiction, improper venue, and forum non conveniens.

14. **Assignment.** This Agreement may not be assigned by either party without prior written consent of the other party. Notwithstanding the foregoing, neither a merger of the Financial Institution into another financial institution, nor a sale of the Accounts to another financial institution eligible to receive public funds pursuant to Ohio Revised Code Chapter 135, along with an assignment of this Agreement, will be deemed to be an assignment.

15. **Waivers.** The waiver by either party of a breach of any provision of this Agreement by the other party or its assignee will not operate or be construed as a waiver of any subsequent breach by the breaching party. A waiver by either party will only be valid if it is in writing and signed by an authorized officer of the party making the waiver.

16. **Execution and Delivery.** The execution of this Agreement or any amendment to this Agreement in one or more counterparts and the delivery of copies and of scanned or photocopied signature pages by facsimile, electronic mail or other electronic delivery will constitute effective execution and delivery of this Agreement or any amendment.

17. **Agreements Superseded.** With respect to the subject matter of this Agreement, to the extent that there is any inconsistency between this Agreement and any other agreement between the Customer and the Financial Institution, the terms of this Agreement supersede all previous agreements. For purposes of clarification, with respect to any previous agreement between the Financial Institution and the Customer regarding the types and maximum amount of deposits to be received by the Financial Institution from the Customer, compliance with the Depository Act, and participation by the Financial Institution and the Customer in the OPCP, this Agreement supersedes all previous oral and written agreements.
18. **Contact Persons.** Designated Signer(s) (referred to as Authorized Signer(s) on Signature Card) are authorized to view, submit or otherwise access information submitted to the Ohio Pooled Collateral System with respect to this Agreement. The Designated Signer(s) may designate substitute contact persons and authorized representatives as the Customer deems necessary or appropriate in the Ohio Pooled Collateral System. The Customer will promptly notify their Relationship Manager of such substitutions and changes. Additional paperwork may be required to make necessary changes to Designated Signer(s).

(Signatures on following page)
IN WITNESS WHEREOF, the undersigned have caused this Agreement for the Deposit of Public Funds to be executed by their authorized officers as of the day and year first above written.

FIFTH THIRD BANK,  
NATIONAL ASSOCIATION

By: ___________________________  By: ___________________________
Signature
Kelly Wolski
Name
Vice President
Title

By: ___________________________  By: ___________________________
Signature
Name
Title

Approved as to form and correctness  
CITY ATTORNEY

Approved by the Commission  
of the City of Dayton, Ohio

Min. Book  Page

CLERK OF THE COMMISSION
EXHIBIT A

Current Account Numbers:
See Attached.

Customer Primary Contact for Ohio Pooled Collateral System as indicated as an Authorized Signer on Signature Card for the Customer:

<table>
<thead>
<tr>
<th>Name</th>
<th>Email Address</th>
<th>Phone Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brian Smith</td>
<td><a href="mailto:brian.smith@daytonohio.gov">brian.smith@daytonohio.gov</a></td>
<td>937-333-3503</td>
</tr>
<tr>
<td>Bejoy John</td>
<td><a href="mailto:bejoy.john@daytonohio.gov">bejoy.john@daytonohio.gov</a></td>
<td>937-333-3510</td>
</tr>
<tr>
<td>LaShea Lofton</td>
<td><a href="mailto:lashea.lofton@daytonohio.gov">lashea.lofton@daytonohio.gov</a></td>
<td>937-333-3600</td>
</tr>
</tbody>
</table>

Customer Representatives Authorized and Administered by Primary Contact to access Ohio Pooled Collateral System Information:

<table>
<thead>
<tr>
<th>Name</th>
<th>Email Address</th>
<th>Phone Number</th>
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</table>
AGREEMENT FOR DEPOSIT OF PUBLIC FUNDS - OHIO

This Agreement for Deposit of Public Funds – Ohio (the “Agreement”) is entered into as of the date last executed below, by and between The Huntington National Bank (hereafter “Huntington”) and City of Dayton (hereafter the “Public Entity”).

WHEREAS, Huntington is a public depository providing deposit products in accordance with Ohio Revised Code (ORC) Section 135, et seq.;
WHEREAS, the Public Entity wishes to deposit active, interim and/or inactive funds with Huntington; and
WHEREAS, Huntington agrees to provide the deposit services to the Public Entity as more fully described herein.

NOW THEREFORE, for consideration the receipt and sufficiency of which is hereby acknowledged, Huntington and the Public Entity agree as follows:

Deposit Amounts
For the period commencing on 7/21/2021 and through 7/20/2026, the Public Entity designates Huntington as an approved depository and Huntington will accept for deposit the following:

A. Active Deposits: Up to the maximum sum of ........................................ $25,000,000
B. Interim Deposits: Up to the maximum sum of ........................................ $25,000,000
C. Inactive Deposits: Up to the maximum sum of ........................................
D. Total sum of Active, Interim and Inactive Deposits will not exceed ................. $50,000,000

Security
Huntington participates in the Ohio Pooled Collateral Program (OPCP). Huntington provides collateral for each account at the collateral floor as set by the Ohio Treasurer’s office, or as otherwise noted on Exhibit A.

Huntington’s Business Deposit Account Agreement: the Proposal: Entire Agreement
The Business Deposit Account Agreement (formerly known as the “Rules and Regulations”) as published from time to time by Huntington shall govern the accounts established by the Public Entity, except as expressly provided herein, or as provided in the proposal as published by Huntington and accepted by the Public Entity.

Terms
Capitalized terms not defined in this Agreement shall have the meanings set forth in ORC 135, et. seq.

Assignment
Neither Huntington nor the Public Entity may assign or transfer this Agreement without the written consent of the other. Notwithstanding the foregoing, Huntington may assign or transfer this Agreement to any successor, subsidiary, parent or affiliate, or pursuant to any merger, sale, consolidation or other internal reorganization of Huntington.

Severability
If at any time any portion of this Agreement shall be held by any court of competent jurisdiction to be illegal, void or unenforceable, such portion shall be of no force and effect, but the illegality or unenforceability of such portion shall have no effect upon and shall not impair the enforceability of any other part of this Agreement.
Notices
All notices, requests, demands or other communications and deliveries required or authorized under this Agreement shall (a) be in writing, and (b) be sent by certified mail, private courier with return receipt or sufficient tracking to evidence delivery, or electronically; and, addressed to the attention of the signatories below, or as otherwise designated in writing to the other party. Such notice shall be effective upon confirmed receipt and a reasonable time to act.

Termination
Notwithstanding the period of time set forth above, Huntington or the Public Entity may terminate this Agreement by giving notice at least thirty (30) days prior to the effective date of termination. This Agreement may terminate, and/or become null and void, prior to the end of the designated time period stated above if an amendment of law or regulation causes this Agreement to be unlawful.

Amendment
This Agreement may not be amended or modified except in a writing executed by Huntington and the Public Entity.

Execution and Counterparts
This Agreement may be executed electronically and in any number of counterparts, each of which shall be an original and all of which taken together shall constitute one and the same Agreement. Delivery of an executed signature page counterpart to this Agreement via telescopier facsimile transmission or other method of electronic transmission (including, without limitation, a “pdf” file, email or other electronic signature and delivery technology) shall be effective as if it were delivery of a manually delivered, original, executed counterpart thereof.

Huntington and the Public Entity, by and through their respective duly authorized representatives, hereby enter into this Agreement for Deposit of Public Funds - Ohio.

CITY OF DAYTON

By: ________________________________
LaShea Lofton
Its: Deputy City Manager

Date: ________________________________

Address:
101 West Third St.
Dayton, OH 45402-1814

THE HUNTINGTON NATIONAL BANK

By: Patrick McCarthy, Senior Vice President
By: Bryan White, Vice President

Address:
41 South High Street
HC0511
Columbus, OH 43287

[Signature]
CITY ATTORNEY

[Signature]
APPROVED AS TO FORM AND CORRECTNESS

APPROVED BY THE COMMISSION
OF THE CITY OF DAYTON, OHIO

V20200520
EXHIBIT A
AGREEMENT FOR DEPOSIT OF PUBLIC FUNDS - OHIO

Between Huntington National Bank and

CITY OF DAYTON

Secure deposits at an agreed upon rate. Additional charges applicable.

OPCP Collateral Percentage: 102.00%
MEMORANDUM OF AGREEMENT
ACTIVE AND INTERIM DEPOSITS

This Memorandum of Agreement ("Agreement"), is made as of __26__ day of __July__, 20__21__, between KeyBank National Association, (KeyBank” or “Bank”) and the __City of Dayton__ (the “Depositor” or “Public Unit”). Depositor hereby confirms that it has designated KeyBank as a Public Depository for its Active and Interim deposits for the period of designation from __23__rd August__, 20__21__, through __24__th August__, 20__26__, both dates inclusive, in the total amount of $ 50,000,000.00. This Agreement supersedes and replaces any and all prior agreements between the parties, relative to the subject matter of this Agreement, as of the date first referenced hereinafter.

ACTIVE DEPOSITS

Bank agrees to accept active deposits during the period of designation subject to the Bank’s posted rules and regulations from time to time in effect for commercial accounts. Bank agrees to keep such sums on deposit pending payment by depositor.

Bank agrees that the sums deposited to the credit of Depositor’s active commercial accounts may be drawn against and paid by check executed by such authorized persons. Depository must be notified in writing if designated persons change.

Bank agrees to supply Depositor’s Treasurer each month, only during the period of designation, a statement of the daily activity in the Depositor’s accounts.

INTERIM DEPOSITS

Whenever any Interim deposits of Depositor are awarded to and accepted by the Bank pursuant to Chapter 135 of the Ohio Revised Code, the Interim moneys shall be evidenced by the Bank’s interest bearing Certificates of Deposit. Such rates may be agreed upon by Bank and Depositor before issuance of said Certificates.

PLEDGED COLLATERAL -- OHIO REVISED CODE CHAPTER 135
(ORC 135.18(A)(2); 135.37(A)(2); 135.182; OAC 135-3-01)

KeyBank has been accepted into the Ohio Pooled Collateral Program, O.A.C. 135-3-01 (“OPCP”), which is authorized by Ohio Revised Code Section 135.182(B), and the Ohio Pooled Collateral System (OPCS), both of which are administered by and through the Office of the Treasurer of the State of Ohio.

In executing this Agreement, the undersigned Depositor/Public Unit represents that it is participating in, or will participate in, the OPCP and OPCS and acknowledges that KeyBank, as a Public Depository, will pledge, with other Public Depositories, a pool of eligible securities for the benefit of all public depositories to secure the repayment of uninsured public deposits at KeyBank, at the rate of 102% of the Depositor/Public Unit’s uninsured deposits, i.e. those deposits in excess of FDIC insured deposits, or at no less than the collateral floor the Ohio Treasurer of State, in his/her sole discretion, assigns to KeyBank as permitted under Ohio Revised Code Sections 135.18(A)(2), 135.182(B), 135.137 (A)(2), and the OPCP. If the latter event has occurred, eligible securities will be pledged by KeyBank at the rate of
% of Depositor’s uninsured deposits. In the event that such an assignment has not yet been made, and the Ohio Treasurer of State assigns such rate in the future, KeyBank will provide Depositor with written Notice of the specific percentage of eligible securities to be pledged by KeyBank as security for the uninsured portion of Depositor’s account(s), which Notice shall, upon receipt by Depositor, become a part of, and be incorporated into, this Agreement.

Depositor agrees that should it become necessary to look to collateral deposited in the OPCP for return of the value of its uninsured deposits at KeyBank, it will make such claim directly to and through the Ohio Treasurer of State and not through KeyBank. KeyBank, the Ohio Treasurer of State, and an eligible and qualified Trustee(s) (as approved by the Ohio Treasurer of State pursuant to ORC 135.182(C)) will enter into an agreement whereby collateral pledged to secure the uninsured portion of the Depositor’s account(s), as a percentage of Depositor’s deposits at KeyBank and as determined above, will be deposited with the Trustee(s) as Custodian and held as security for the benefit of Public Depositors through OPCP administered by the Treasurer of the State of Ohio.

Depositor/Public Unit hereby consents, in connection with its and KeyBank’s participation in the OPCP, to the sharing of its account information by and between KeyBank and the Office of the Ohio Treasurer of State, in order to effectuate the terms, conditions and requirements of OPCP and OPCS.

This Agreement will be executed as two originals, one of which will be retained by each party hereto.

CITY OF DAYTON

(Depositor)

By: ____________________________

(Printed Name) ____________________________

Title: ____________________________

KEYBANK NATIONAL ASSOCIATION

By: ____________________________

(Printed Name) Charles Wise

Title: Vice President

LOB Public Sector

APPROVED AS TO FORM AND CORRECTNESS

CITY ATTORNEY

APPROVED BY THE COMMISSION
OF THE CITY OF DAYTON, OHIO

20 Min. Book Page
APPLICATION FOR DEPOSIT OF PUBLIC FUNDS

TO:      CITY OF DAYTON

MONTGOMERY COUNTY, OHIO

U. S. Bank, N.A. which is located and doing business in Montgomery County, Ohio through an office in the City of Dayton, hereby applies to be designated as a depository for Active and Interim/Inactive Funds belonging to the City of Dayton from August 23, 2021 through August 22, 2026 inclusive.

The total amount applied for as specified below will be All Eligible Deposits which amount, in addition to those public funds held under Sections 135.01 through 135.33 of the Ohio Revised Code, is not in excess of thirty percent (30%) of its total assets of $542,566,283.00 as revealed by the financial statements attached hereto.

The maximum amount of public moneys which the applicant desires to receive and have on deposit as active funds at any one time during the period covered by this offer is All Eligible Deposits.

The maximum amount of such public moneys which the applicant desires to receive and have on hand as interim/inactive deposits at any one time during the period is a total of All Eligible Deposits.

For interim deposits the bank will issue liquid depository accounts or Certificates of Deposit during the period of designation in the amount desired. Interest will be payable at the maturity thereof, or at the time of withdrawal prior thereto. Interest rates are subject to change from time to time. Current interest rate quotations are available from the bank during normal business hours.

This application is accompanied by the required financial statement of the applicant under the oath of Joseph V. Murphy-V.P. and Assistant Controller and in such detail to show the assets and the capital funds of the applicant as of the date of its latest report to the Office of the Comptroller of the Currency adjusted to show any changes therein made after the report, but prior to the date of this application.

U S Bank, N.A., if subsequently designated as a depository, will comply in all respects with the laws, regulations and rules of Ohio and the United States relative to the deposit of such funds and will furnish, at the bank's option, security for funds as provided under either Section 135.18 or 135.181.

U. S. Bank, N.A.

By:  

Kim Mays
Vice President
Government Banking Division
MEMORANDUM OF AGREEMENT FOR DEPOSIT OF PUBLIC FUNDS

This is an agreement between U. S. Bank, N.A., a National bank located and doing business in Montgomery County, Ohio through an office located in the City of Dayton and whereby City of Dayton accepts the bank’s offer to serve as public depository during the period from August 23, 2021 through August 22, 2026 inclusive. Therefore, under this agreement the sub-division will appoint U S Bank, N.A. as its depositories and will deposit funds as enumerated below:

A) City of Dayton will deposit active funds and the bank will accept a maximum of All Eligible Deposits or any part thereof. For the service of making active funds accessible by demand, check, draft or other similar instrument, the bank may charge a reasonable fee as enumerated under Section 135.16 of the Ohio Revised Code.

b) City of Dayton will deposit and the bank will accept as interim/inactive deposits a maximum All Eligible Deposits or any part thereof. The bank will issue Certificates of Deposit during the period of designation in the amount desired. U S Bank, N.A., will bid competitive rates of the customer's interim deposits.

For interim deposits, the interest payable on Certificates of Deposit will be at the maturity thereof or at the time of withdrawal prior thereto. Also, for interim deposits, the interest rates are subject to change from time to time. If a deposit is renewed, it shall carry the then prevailing interest rate at that time on that type of deposit.

The total amount thus awarded under this agreement totals All Eligible Deposits which does not exceed the limitations set forth under Chapter 135 of thirty percent (30%) of total assets.

The bank will secure all public deposits at the bank's option under either Section 135.18 or Section 135.181, in an amount sufficient to meet the requirements of Chapter 135.

On the last business day of each month during the period that any funds awarded pursuant to this agreement are on deposit with the bank, the bank will furnish a statement showing the balance of such active moneys in its possession. The bank may charge a reasonable fee for providing monthly statements under this agreement.

The bank agrees that it will comply with all the requirements of the Ohio Revised Code, Chapter 135 and any amendments thereto. The bank also further agrees that it will abide by any state and federal laws, rules or regulations or any amendments thereunder. If any such laws, rules or regulations are changed or amended during the terms of the designation as public depository, and if the change of laws, rules or regulations will cause this agreement to become unlawful, at the bank's option, this agreement shall be limited so as not to extend beyond the date when such change becomes effective.

As part of this agreement, the depositor agrees to be subject to the rules which govern the account in which the depositor’s funds are deposited. Also, the depositor agrees to provide the bank the names and signatures of those persons authorized to execute drafts on and to make withdrawals from the accounts, and to provide such documentation establishing these persons authority as the bank may request.

City of Dayton

By: ____________________________

By: ____________________________

U. S. Bank, N.A.

Kim Mays
Vice President

APPROVED AS TO FORM AND CORRECTNESS

CITY ATTORNEY

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO

20 Min. Book Page

CLERK OF THE COMMISSION
City Manager’s Report

From 2320 - Planning, Neighborhoods & Dev. / Housing & Inspections
Supplier, Vendor, Company, Individual
Name CPM Enterprises, LLC
Address 306 S. Paul Laurence Dunbar Street
Dayton, OH 45402

Date August 18, 2021
Expense Type Contract Modification
Total Amount $15,000.00 (thru 12/31/2021)

<table>
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<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<tr>
<td>General Fund</td>
<td>16022-2320-1174-32</td>
<td>$15,000.00</td>
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Includes Revenue to the City □ Yes ☑ No
Affirmative Action Program □ No □ N/A

Description

NUISANCE ABATEMENT PROGRAM
RESIDENTIAL AND COMMERCIAL SECURING I – 2020
(20% MBE PARTICIPATION GOAL/100% MBE PARTICIPATION ACHIEVED)

The Department of Planning, Neighborhoods, and Development proposes Change Order No.1 for $15,000.00 to the existing contract with CPM Enterprises, LLC, for the Nuisance Abatement Program Residential and Commercial Securing I – 2020 project. This Change Order allows sufficient and necessary funding to ensure residential and commercial properties within the City are secured for the safety of citizens and the surrounding communities without interruption through the remainder of 2021.

The original contract amount was $175,545.00. Change Order No. 1, which totals $15,000.00, will increase the contract amount with CPM Enterprises, LLC by $15,000.00 for the Nuisance Abatement Program Residential and Commercial Securing I – 2020 project to $190,545.00.

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

The Department of Law has approved this Change Order as to form and correctness.

This Change Order is funded using General Funds — Demolition Special Projects Funds.

A Certificate of Funds and the Change Order No. 1 are 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

<table>
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<th>New Contract</th>
<th>Renewal Contract</th>
<th>X Change Order</th>
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<td>Expiration Date</td>
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<td>Increase Encumbrance</td>
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<td>Decrease Encumbrance</td>
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<td>Remaining Commission Approval</td>
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Required Documentation
- Initial City Manager's Report
- Initial Certificate of Funds
- Initial Agreement/Contract
- Copy of City Manager's Report
- Copy of Original Certificate of Funds

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<td>Fund</td>
<td>Org</td>
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Attach additional pages for more FOAPALs

Vendor Name: CPM Enterprises LLC
Vendor Address: 306 S. Paul Laurence Dunbar Street Dayton OH 45402
Federal ID: 01-0909162
Commodity Code: 96832
Purpose: To ensure sufficient and necessary funding for the Nuisance Abatement Program Residential and Commercial Securing I-2020 without interruption through the remainder of 2021.

Contact Person: Ariane Cook
Planning, Neighborhoods & Development/Housing & Inspections
Department/Division: 8/5/2021
Date

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: 8/10/2021
CF Prepared by: 8/11/2021
CF/CT Number: CT20-2535

October 18, 2011
Change Order Number One

This Change Order Number One, entered into this _____ day of ____________, 2021, is between the City of Dayton, Ohio (“City”) and CPM Enterprises, LLC (“Contractor”).

WITNESSETH THAT:

WHEREAS, the City and Contractor entered into a contract for the Nuisance Abatement Program Residential and Commercial Securing I-2020 (20% MBE Participation Goal) (“Project”), CT20-2535 dated March 11, 2021 (“Contract”), to provide all materials and labor to secure approximately 1,750 vacant residential or commercial structures or equivalent square footage, which includes garage doors, and 40 cisterns as assigned by the Housing and Inspections Division; and

WHEREAS, the City and Contractor agree that extra work, or altered work, must be performed to complete the Project; and

WHEREAS, the City and Contractor agree that the extra work or altered work or both require the Contract to be modified; and

WHEREAS, the City and Contractor agree upon the amount to be paid for the extra work or altered work, or both, to be performed.

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

Section 1. Under this Change Order Number One, the City will increase the Contract by FIFTEEN THOUSAND DOLLARS AND ZERO CENTS ($15,000.00) to be paid pursuant to the rules, regulations, and guidelines of the Contract.

Section 2. This Change Order Number One will ensure that sufficient funding is available to continue the City’s securing program without interruption until termination of Contract occurs on December 31, 2021.

Section 3. The terms and compensation provided by this Change Order Number One constitute full compensation and complete satisfaction for all direct and indirect costs, and interest related thereto, which has been or may be incurred in connection with this change in the work, including, but not limited to, any delays, inefficiencies, disruption or suspension, extended overhead, profit, interest, acceleration, and cumulative impact of this and any previously issued change orders.

Section 4. Except as modified by this Change Order Number One, the Contract remains unchanged and in full force and effect.
IN WITNESS WHEREOF, the City and Contractor, each by a duly authorized representative, have executed this Change Order Number One as of the date first set forth above.

THE CITY OF DAYTON, OHIO

City Manager

CPM ENTERPRISES, LLC

By

Title

APPROVED AS TO FORM AND CORRECTNESS:

7/22/2021

X  John Musto for

City Attorney

Signed by: Musto, John

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON OHIO:

Min. Bk. _____ Pg. ___

Clerk of the Commission
"Change Order Number I ljb edits" History

Document created by Ariane Cook (ariane.cook@daytonohio.gov)
2021-07-22 - 4:36:49 PM GMT- IP address: 198.30.33.2

Document emailed to Albert A. Powell (al.powell@cpment.com) for signature
2021-07-22 - 4:40:25 PM GMT

Email viewed by Albert A. Powell (al.powell@cpment.com)
2021-07-22 - 5:01:19 PM GMT- IP address: 104.230.75.48

Document e-signed by Albert A. Powell (al.powell@cpment.com)
Signature Date: 2021-07-22 - 5:54:54 PM GMT - Time Source: server- IP address: 104.230.75.48

Agreement completed.
2021-07-22 - 5:54:54 PM GMT
City Manager's Report

From 2320 - Planning & CD/Housing Inspection

Supplier, Vendor, Company, Individual

Name CPM Enterprises, LLC

Address 306 S. Paul Laurence Dunbar Street
Dayton, OH 45402

Date March 11, 2020

Expense Type Award of Contract

Total Amount $175,545.00 thru 12/31/2021

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<th>Fund Amount(s)</th>
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<td>Demolition Special Projects</td>
<td>16022-2320-1174-32</td>
<td>$ 175,545.00</td>
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Includes Revenue to the City ☑ Yes ☐ No

Affirmative Action Program ☑ Yes ☐ No ☐ N/A

Description

NUISANCE ABATEMENT PROGRAM
RESIDENTIAL AND COMMERCIAL SECURING I – 2020
(20% MBE PARTICIPATION GOAL/20% MBE PARTICIPATION ACHIEVED)

The Contractor shall provide all materials and labor to secure approximately 1,750 residential or commercial vacant structures or equivalent square footage, which includes garage doors, and 40 cisterns. The materials shall be new, unused plywood boards with a minimum thickness of ½” and various types of screws, washers, and rods depending upon structure materials. Clearing of pathways to secure properties or cisterns may be required. No Particle, Wafer or OSB Boards are to be used. There is no list of structures associated with this bid.

Two bids were received for this project. It is recommended that the contract be awarded to the lowest bidder, CPM Enterprises, LLC in the amount of $175,545.00. This amount includes the base bid in the amount of $165,545.00 and Alternate No. 1, Contingency Allowance, in the amount of $10,000.00. The estimated cost for the project was $199,906.00. The time bid for completion is 145 working days.

This project is being funded using Demolition Special Projects funds.

A Certificate of Funds, Tabulation of Bids, Human Relations Council's verification letter, and the Bid Form from the firm recommended for award are attached.

Signatures/Approval

Approved by City Commission

FORM NO. MS-16

Updated 06/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

X NEW CONTRACT

Contract Start Date: March 11, 2020
Expiration Date: December 31, 2021
Original Commission Approval: $175,545.00
Initial Encumbrance: $175,545.00
Remaining Commission Approval: $-
Original CT/CF: $-
Increase Encumbrance: $-
Decrease Encumbrance: $-
Remaining Commission Approval: $-

Amount: $175,545.00
Fund Code: 16022 2320 - 1174 - 32 -

CHANGE ORDER

Required Documentation

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

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

SECTION II - to be completed by the Finance Department

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

Finance Director Signature

Date

CF/ICT Number

October 18, 2011
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

X NEW CONTRACT

Contract Start Date: March 11, 2020
Expiration Date: December 31, 2021
Original Commission Approval: $175,545.00
Initial Encumbrance: $175,545.00

X RENEWAL CONTRACT

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

CHANGE ORDER

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

| Amount: $175,545.00 |
| Fund Code: 16022 |
| 2320 - 1174 - 32 |

| Amount: |
| Fund Code: |

Attach additional pages for more FOAPALS

Vendor Name: CPM Enterprises, LLC
Vendor Address: 306 S. Paul Laurence Dunbar Street
Dayton OH 45402
Federal ID: 01-0909162
Commodity Code: 96832
Purpose: Nuisance Abatement Program Residential and Commercial Securing I - 2020
(20% MBE Participation Goal)

Contact Person: Ariane Cook
PCD/Hs.: Conserv Department/Division
333-3910 Phone Number

Originating Department Director's Signature: [Signature] 21/24/2020

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: [Signature] 03/28/2020
Date

Finance Prepared by: [Signature] 03/27/2020
Date

October 18, 2011

BACK
Fourth Renewal and Amendment to the End User License Agreement

The Department of Information Technology requests permission for a Fourth Renewal and Amendment with Sisense, Inc. in the amount of $70,499.20 and to extend the term of the Agreement through August 23, 2022. This Renewal and Amendment will cover the original Sisense server with the advanced IT package including the backup server with corresponding licensing for Administrators, Designers, and the Viewers. The dashboards used to present the key performance indicators for the Issue 9 projects displayed on the City’s website were developed using the Sisense technology.

The original Agreement with Sisense, Inc was approved on August 16, 2017 in the amount of $50,000.00 and the First Renewal and Amendment was approved on July 11, 2018 in the amount of $60,900.01. The Second Renewal and Amendment was approved on August 14, 2019 in the amount of $63,945.21, increasing the total Agreement amount to $174,845.22. The Third Renewal and Amendment was approved on August 12, 2020 in the amount of $67,142.26, increasing the total Agreement amount to $241,987.48. The fees for the time period beginning August 24, 2021 and ending August 23, 2022 shall be in an amount not to exceed $70,499.20. This will increase the total Agreement amount to $312,486.68.

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

A Certificate of Funds and a copy of the Renewal and Amendment are attached.

City Manager

FORM NO. MS-16
August 04, 2021

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

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

SUBJECT: Sisense Fourth Renewal and Amendment

Sisense provides licenses, maintenance and support for the City’s dashboard reporting software used by the Department of Procurement, Management and Budget’s Data Team. This technology was first implemented in 2017.

The existing agreement provides support for the Sisense production and backup servers, as well as the licenses for Administrators, Designers and Viewers. The fourth renewal and amendment to the end user license agreement extends support through August 23, 2022.

The total amount for the fourth renewal is $70,499.20.

Approved:

E-SIGNED by Jon Rike on 2021-08-05 17:30:18 GMT

Jon Rike, CIO / Director  
Department of Information Technology
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>New Contract</th>
<th>X</th>
<th>Renewal Contract</th>
<th>X</th>
<th>Change Orders</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Start Date</td>
<td>08/16/17</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Expiration Date</td>
<td>08/23/22</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Original Commission Approval</td>
<td>$312,486.68</td>
<td>X</td>
<td>Initial City Manager's Report</td>
<td></td>
</tr>
<tr>
<td>Initial Encumbrance</td>
<td>$241,987.48</td>
<td>X</td>
<td>Initial Certificate of Funds</td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$70,499.20</td>
<td>X</td>
<td>Initial Agreement/Contract</td>
<td></td>
</tr>
<tr>
<td>Original CT/CF</td>
<td>CT17-1780</td>
<td>Copy of City Manager's Report</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Increase Encumbrance</td>
<td>$70,499.20</td>
<td>Copy of Original Certificate of Funds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Decrease Encumbrance</td>
<td>$</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Required Documentation

<table>
<thead>
<tr>
<th>Amount:</th>
<th>$70,499.20</th>
</tr>
</thead>
</table>

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

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

<table>
<thead>
<tr>
<th>Amount:</th>
<th></th>
</tr>
</thead>
</table>

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

Attach additional pages for more FOAPALs

Vendor Name: Sisense Inc
Vendor Address: 1359 Broadway, 4th Floor New York NY 10018
Street City State Zipcode + 4
Federal ID: 45-3944753
Commodity Code: 96185
Purpose: Fourth Renewal and Amendment to extend the expiration date of the term of the Agreement to August 23, 2022. This Renewal and Amendment will cover the original Sisense Server with Advanced IT Package including the backup server with corresponding licensing for Administrators, Designers, and the Viewers.

Contact Person: Desa Foster
Information Technology Department
3-Aug-21 Date

Originating Department Director's Signature: E-SIGNED by Jon Rike on 2021-08-05 17:30:09 GMT

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: [signature]
Date: 8/10/2021

Finance Pre pared by: [signature]
Date: 8/6/2021

CF/CT Number: CT21-1780

October 18, 2011
FOURTH RENEWAL AND AMENDMENT TO THE END USER LICENSE AGREEMENT BETWEEN THE CITY OF DAYTON, OHIO AND SIENSE, INC.

THIS FOURTH AMENDMENT TO THE END USER LICENSE AGREEMENT FOR SOFTWARE (this “Fourth Amendment”) is entered into this ___ day of __________, 2021 between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio, (hereinafter referred to as "City") and Sisense, Inc. (hereinafter referred to as “Licensor”).

WITNESSETH THAT:

WHEREAS, the City and Licensor entered into that certain End User License Agreement for Software on August 24, 2017 (the “Agreement”) for software licenses and services; and,

WHEREAS, The City and Licensor entered into a First Amendment to the End User License Agreement for Software on July 11, 2018 (the “First Amendment”), which amended the Agreement to extend the term and incorporate additional services; and,

WHEREAS, The City and Licensor entered into a Second Amendment to the End User License Agreement for Software on August 14, 2019 ("Second Amendment"), which extended the term of the Agreement and incorporated additional services; and,

WHEREAS, The City and Licensor entered into a Third Amendment to the End User License Agreement for Software on August 12, 2020 ("Third Amendment"), which extended the term of the Agreement and incorporated additional services; and,

WHEREAS, The City and the Licensor desire to further amend the Agreement; and,

NOW, THEREFORE, in order to accommodate the City's need for additional services, both parties have agreed to amend the Agreement as follows:

1. Section 3. COMPENSATION FOR SOFTWARE LICENSES A. LICENSE FEES is hereby deleted in its entirely and replaced with the following:

Total remuneration in this Agreement shall not exceed THREE HUNDRED TWELVE THOUSAND FOUR HUNDRED EIGHTY-SIX DOLLARS AND SIXTY-EIGHT CENTS ($312,486.68), inclusive of expenses, for the licenses to the Software granted by the Licensor in accordance with this Agreement. The fees for the time period beginning August 24, 2021 and ending August 23, 2022 shall be in an amount not to exceed Seventy Thousand Four Hundred Ninety-Nine Dollars and Twenty Cents ($70,499.20). The total fees for the agreement include the following: the licenses and onboarding services; support services and training as outlined in Exhibit A to the initial Agreement; the licenses that consist of the Software listed in Licensor's Order ID: OQ6DOW0000002cFjYSAU dated May 25, 2018, as stated on the First Amendment to the Agreement; and, the licenses that consists of the
Software listed in Licensor's Order ID: OQ00W0000002rCWnSAM dated May 13, 2019; and the licenses that consists of the Software listed in Licensor's Order ID: OW00W0000002t90ZSAY dated May 20, 2020; and the licenses that consists of the Software listed in Licensor's Order ID: 0Q06T000003n0x7SAA dated June 16, 2021; and provided to the City, as follows:

<table>
<thead>
<tr>
<th>Product</th>
<th>Annual Price/ Unit</th>
<th>Quantity</th>
<th>Net Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sisense Server w/ Advanced IT Package</td>
<td>$42,542.70</td>
<td>1</td>
<td>$42,542.70</td>
</tr>
<tr>
<td>Licensed to accommodate up to 100M Rows Includes 1 Admin, 1 Designer and 10 Viewers per Sisense Server</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional Admins</td>
<td>$1,215.50</td>
<td>4</td>
<td>$4,862.00</td>
</tr>
<tr>
<td>Additional Designers</td>
<td>$1,215.50</td>
<td>9</td>
<td>$10,939.50</td>
</tr>
<tr>
<td>Additional Viewers</td>
<td>$546.985</td>
<td>40</td>
<td>$21,879.00</td>
</tr>
<tr>
<td>Backup/Dev Sisense Server</td>
<td>$9,724.00</td>
<td>1</td>
<td>$9,724.00</td>
</tr>
<tr>
<td>Licensed to accommodate up to 100M Rows</td>
<td></td>
<td>1</td>
<td>($19,448.00)</td>
</tr>
<tr>
<td>Discount</td>
<td>($19,448.00)</td>
<td>1</td>
<td>($19,448.00)</td>
</tr>
<tr>
<td>Total Licenses Fees</td>
<td></td>
<td></td>
<td>$89,947.30</td>
</tr>
<tr>
<td><strong>Overall Discount</strong></td>
<td></td>
<td></td>
<td>($19,448.00)</td>
</tr>
<tr>
<td><strong>Net Total Licenses Fees</strong></td>
<td></td>
<td></td>
<td>$70,499.20</td>
</tr>
</tbody>
</table>

2. **Section 4. TERM** is hereby deleted in its entirety and replaced with the following:

This Agreement shall commence upon execution by the City and it shall terminate upon the expiration of the Subscription Period commencing on August 24, 2021 and ending on August 23, 2022. Renewals of this agreement will be subject to the process referenced within SECTION 11. GENERAL PROVISIONS, sub-section J. AMENDMENT.

3. Except as modified by this the Fourth Amendment, the Agreement between the City and Licensor, as previously amended, shall remain unchanged and in full force and effect.

******************************Remainder of the Page Intentionally Blank******************************
IN WITNESS WHEREOF, the City and Licensor, each by a duly authorized representative, have executed this Fourth Amendment as of the day and date first set forth above.

THE CITY OF DAYTON, OHIO

__________________________
City Manager

SISENSE, INC.

By: ________________________

__________________________
Print: Eric Spatz

__________________________
Its: ________________________

APPROVED AS TO FORM
AND CORRECTNESS:

7/28/2021

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
City Manager's Report

From 5560 - CS/Information Technology  
Supplier, Vendor, Company, Individual  
Name Sisense, Inc.  
Address 1359 Broadway, 4th Floor  
New York, NY 10019

Date August 12, 2020  
Expense Type Contract Modification  
Total Amount $67,142.26 through 8/23/2021

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Fund</td>
<td>10000-5560-1166-65</td>
<td>$67,142.26</td>
</tr>
</tbody>
</table>

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

Description

Third Renewal and Amendment to the End User License Agreement

The Department of Information Technology requests permission for a Third Renewal and Amendment with Sisense, Inc. in the amount of $67,142.26 and to extend the term of the Agreement through August 23, 2021. This Renewal and Amendment will cover the original Sisense server with the advanced IT package including the backup server with corresponding licensing for Administrators, Designers, and the Viewers. The dashboards used to present the key performance indicators for the issue 9 projects displayed on the City’s website were developed using the Sisense technology.

The original Agreement with Sisense, Inc was approved on August 16, 2017 in the amount of $50,000.00 and the First Renewal and Amendment was approved on July 11, 2018 in the amount of $60,900.01. The Second Renewal and Amendment was approved on August 14, 2019 in the amount of $63,945.21, increasing the total Agreement amount to $174,845.22. The fees for the time period beginning August 24, 2020 and ending August 23, 2021 shall be in an amount not to exceed $67,142.26. This will increase the total Agreement amount to $241,987.48.

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

A Certificate of Funds and a copy of the Renewal and Amendment are attached.

Signatures/Approval

Debra Foster  
Division
Kenneth R. Couch  
Department  
City Manager

Digitally signed by Kenneth R. Couch  
Date: 2020.08.06 09:30:17 -04'00'

Approved by City Commission  

Rashella Lavender  
Clerk  
Date  
August 12, 2020

FORM NO. MS-16

Updated 8/2016
**CERTIFICATE OF FUNDS**

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

<table>
<thead>
<tr>
<th>Contract Start Date</th>
<th>08/16/17</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expiration Date</td>
<td>08/23/21</td>
</tr>
<tr>
<td>Original Commission Approval</td>
<td>$241,987.48</td>
</tr>
<tr>
<td>Initial Encumbrance</td>
<td>$174,845.22</td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$67,142.26</td>
</tr>
<tr>
<td>Original CT/CF</td>
<td>CT17-1780</td>
</tr>
<tr>
<td>Increase Encumbrance</td>
<td>$67,142.26</td>
</tr>
<tr>
<td>Decrease Encumbrance</td>
<td>$-</td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$-</td>
</tr>
</tbody>
</table>

**NO DRAFT DOCUMENTS PERMITTED**

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

**Amount:** $67,142.26

<table>
<thead>
<tr>
<th>Fund Code</th>
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<th>1186</th>
<th>65</th>
<th>XXXX-XXXX</th>
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<tr>
<td>Fund</td>
<td>Org</td>
<td>Acct</td>
<td>Prog</td>
<td>Act</td>
<td>Loc</td>
</tr>
</tbody>
</table>

**Vendor Name:** Sisense, Inc.

**Vendor Address:** 1359 Broadway, 4th Floor  New York, NY  10019

<table>
<thead>
<tr>
<th>Federal ID:</th>
<th>45-3944753</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Commodity Code</th>
<th>96185</th>
</tr>
</thead>
</table>

**Purpose:** Third Renewal and Amendment to extend the expiration date of the term of the Agreement to August 23, 2021. This Renewal and Amendment will cover the original Sisense Server with Advanced IT Package including the backup server with corresponding licensing for Administrator, Designers, and the Viewers.

**Contact Person:** Desa Foster  Central Svcs./Information Technology  7/28/2020

<table>
<thead>
<tr>
<th>Originating Department Director's Signature:</th>
<th>Kenneth R. Couch</th>
</tr>
</thead>
</table>

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

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

**Finance Director Signature:**

**CF Prepared by:**

**Date:** 10/24/2020

**Date:** 11/12/2020

**CF/CT Number:** CT20 - 1780

**Finance Department**

October 18, 2011
THIRD RENEWAL AND AMENDMENT TO THE END USER LICENSE AGREEMENT FOR SOFTWARE BETWEEN THE CITY OF DAYTON, OHIO AND SISENSE, INC.

THIS THIRD AMENDMENT TO THE END USER LICENSE AGREEMENT FOR SOFTWARE ("Third Amendment"), is made and entered into this 24th day of August, 2020 between Sisense, Inc. ("Licensor") and the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio ("City").

WHEREAS, The City and Licensor entered into an End User License Agreement for Software on August 24, 2017 for software licenses and services ("Agreement"); and,

WHEREAS, The City and Licensor entered into a First Amendment to the End User License Agreement for Software on July 17, 2018 ("First Amendment"), which extended the term of the Agreement and incorporated additional services; and,

WHEREAS, The City and Licensor entered into a Second Amendment to the End User License Agreement for Software on August 14, 2019 ("Second Amendment"), which extended the term of the Agreement and incorporated additional services; and,

WHEREAS, The City and the Licensor desire to further amend the Agreement; and,

NOW, THEREFORE, in order to accommodate the City’s need for additional services, both parties have agreed to amend the Agreement as follows:

1. Section 3, COMPENSATION FOR SOFTWARE LICENSES A. LICENSE FEES, is hereby deleted in its entirety and replaced with the following:

Total remuneration in this Agreement shall not exceed TWO HUNDRED FORTY-TWO THOUSAND ONE HUNDRED FORTY-THREE DOLLARS AND ZERO CENTS ($242,143.00), inclusive of expenses, for the licenses to the Software granted by the Licensor in accordance with this Agreement. The fees for the time period beginning August 24, 2020 and ending August 23, 2021 shall be in an amount not to exceed Sixty-Seven Thousand One Hundred Forty-Two Dollars and Twenty-Six Cents ($67,142.26). The total fees for the agreement include the following: the licenses and onboarding services; support services and training as outlined in Exhibit A to the initial Agreement; the licenses that consist of the Software listed in Licensor’s Order ID: 0Q00W000002cFjYSAU dated May 25, 2018, as stated on the First Amendment to the Agreement; and, the licenses that consists of the Software listed in Licensor’s Order ID: 0Q00W000002rCWhnSAM dated May 13, 2019; and the licenses that consists of the Software listed in Licensor’s Order ID: 0W00W0000029OZSAY dated May 20, 2020 and provided to the City, as follows:

<table>
<thead>
<tr>
<th>Product</th>
<th>Quantity</th>
<th>Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sisense Server w/ Advanced IT Package</td>
<td>1</td>
<td>$40,516.88</td>
<td>$40,516.88</td>
</tr>
<tr>
<td>Includes 1 Admin, 1 Designer and 10 Viewers per Sisense Server</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional Admins</td>
<td>4</td>
<td>$1,157.63</td>
<td>$4,630.50</td>
</tr>
<tr>
<td>Additional Designers</td>
<td>9</td>
<td>$1,157.63</td>
<td>$10,418.63</td>
</tr>
<tr>
<td>Additional Viewers</td>
<td>40</td>
<td>$520.93</td>
<td>$20,837.25</td>
</tr>
<tr>
<td>Backup/Dev Sisense Server</td>
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<td>$9,261.01</td>
<td>$9,261.01</td>
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<tr>
<td><strong>License Total</strong></td>
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<td></td>
<td><strong>$85,664.27</strong></td>
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<td><strong>Discount</strong></td>
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<td></td>
<td><strong>($18,522.00)</strong></td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td></td>
<td></td>
<td><strong>$67,142.26</strong></td>
</tr>
</tbody>
</table>
2. Section 4, TERM, is hereby deleted in its entirety and replaced with the following:

This Agreement shall commence upon execution by the City and it shall terminate upon the expiration of the Subscription Period commencing on August 24, 2020 and ending on August 23, 2021. Renewals of this Agreement will be subject to the process referenced within SECTION 11. GENERAL PROVISIONS, Section J. AMENDMENT.

3. Except as amended herein, all other provisions of the Agreement, as now amended, remain in full force and effect and remain unchanged.

IN WITNESS WHEREOF, the parties have caused this Third Amendment to be executed, each by a duly authorized representative, on the date set forth below.

SISENSE, INC. DocuSign by: Shiri Blackman
By: ________________________________  City of Dayton, Ohio
By: ________________________________  City Manager
Its: Finance Director

CITY OF DAYTON, OHIO

9/10/2020

Date

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

August 12, 2020
Min. / Bk. 14 Pg. 0247

Rashelle Lavender
Clerk of the Commission

APPROVED AS TO FORM AND CORRECTNESS:

7/15/2020

X Amelia N. Blankenship
City Attorney
Signed by: Blankenship, Amelia
SECOND RENEWAL AND AMENDMENT TO THE END USER LICENSE AGREEMENT

The Department of Central Services, Division of Information Technology requests permission for a Second Renewal and Amendment with Sisense, Inc. in the amount of $63,945.21 and extend the term of the Agreement through August 23, 2020. This Renewal and Amendment will cover the original Sisense server with the advanced IT package including the backup server with corresponding licensing for Administrators, Designers, and the Viewers.

The original Agreement with Sisense, Inc. was approved on August 16, 2017 in the amount of $50,000.00 and the First Renewal and Amendment was approved on July 11, 2018 in the amount of $60,900.01. This Second Renewal and Amendment in the amount of $63,945.21 will increase the total Agreement amount to $174,845.22.

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

A Certificate of Funds and a copy of the Renewal and Amendment are 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 Orders</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Start Date</td>
<td>08/16/17</td>
<td>Expiration Date</td>
</tr>
<tr>
<td>Original Commission Approval</td>
<td>$174,845.22</td>
<td>Initial Encumbrance</td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$63,945.21</td>
<td></td>
</tr>
<tr>
<td>Original CT/CF</td>
<td>CT17-1780</td>
<td></td>
</tr>
<tr>
<td>Increase Encumbrance</td>
<td>$63,945.21</td>
<td></td>
</tr>
<tr>
<td>Decrease Encumbrance</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>

NO DRAFT DOCUMENTS PERMITTED

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: $63,945.21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund Code 10000 - 5580 - 1166 - 65 - XXXX - XXXX</td>
</tr>
<tr>
<td>Fund Org Acct Prog Act Loc</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Amount:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund Code XXXX - XXXX - XXXX - XX - XXXX - XXXX</td>
</tr>
<tr>
<td>Fund Org Acct Prog Act Loc</td>
</tr>
</tbody>
</table>

Attach additional pages for more FOAPALS

Vendor Name: Sisense Inc
Vendor Address: 1359 Broadway, 4th Floor New York NY 10019
Federal ID: 45-3944753
Commodity Code: 96185
Purpose: Second Renewal and Amendment to extend the expiration date of the term of the Agreement to August 23, 2020. This Renewal and Amendment will cover the original Sisense Server with Advanced IT Package including the backup server with corresponding licensing for Administrators, Designers, and the Viewers.
Contact Person: Desa Foster
Originating Department Director's Signature: [Signature]
Department/Division: Central Services/Information Technology
Date: 30-Jul-19

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: 8/1/19

CF Prepared by: Jonita Williams
Date: 8/1/19
CF/CT Number: CT19-1780

October 18, 2011
SECOND RENEWAL AND AMENDMENT TO THE END USER LICENSE AGREEMENT FOR SOFTWARE BETWEEN THE CITY OF DAYTON, OHIO AND SIENSE, INC.

THIS SECOND RENEWAL AND AMENDMENT TO THE END USER LICENSE AGREEMENT FOR SOFTWARE (this “Second Amendment”) is entered into this 19th day of August, 2019 between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio, (hereinafter referred to as "City") and Sisense, Inc. (hereinafter referred to as “Licensor”).

WITNESSETH THAT:

WHEREAS, the City and Licensor entered into an End User License Agreement for on August 24, 2017 for software licenses and services (the “Agreement”); and,

WHEREAS, The City and Licensor entered into a First Amendment to the End User License Agreement for Software on July 17, 2018 (the “First Amendment”), which extended the term of the Agreement and incorporated additional services; and,

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

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

1. Section 3. COMPENSATION FOR SOFTWARE LICENSES  A. LICENSE FEES is hereby deleted in its entirety and replaced with the following:

Total remuneration in this Agreement shall not exceed ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS AND NO CENTS ($175,000.00), inclusive of expenses, for the licenses to the Software granted by the Licensor in accordance with this Agreement. These fees include the following: the licenses and onboarding services; support services and training as outlined in Exhibit A to the initial Agreement; the licenses that consist of the software listed in Licensor’s Order ID: 0Q00W000002cfjYSAU dated May 25, 2018, as stated on the First Renewal to the Agreement; and, the licenses that consists of the software listed in Licensor’s Order ID: 0Q00W000002rCWnSAM dated May 13, 2019 and provided to the City, as follows:

<table>
<thead>
<tr>
<th>Product</th>
<th>Annual Price/ Unit Quantity</th>
<th>Net Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sisense Server w/ Advanced IT Package</td>
<td>$38,587.50</td>
<td>$38,587.50</td>
</tr>
<tr>
<td>Licensed to accommodate up to 100M Rows</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Includes 1 Admin, 1 Designer and 10 Viewers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional Admins</td>
<td>$1,102.50</td>
<td>$4,410.00</td>
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<tr>
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<td>$1,102.50</td>
<td>$9,922.50</td>
</tr>
<tr>
<td>Additional Viewers</td>
<td>$496.13</td>
<td>$19,845.20</td>
</tr>
<tr>
<td>Backup/Dev Sisense Server</td>
<td>$8,820.01</td>
<td>$8,820.01</td>
</tr>
<tr>
<td>Licensed to accommodate up to 100M Rows</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Discount</td>
<td>($17,640.00)</td>
<td>($17,640.00)</td>
</tr>
<tr>
<td>Total Licenses Fees</td>
<td>$81,585.21</td>
<td></td>
</tr>
<tr>
<td>Overall Discount</td>
<td>($17,640.00)</td>
<td></td>
</tr>
<tr>
<td>Net Total Licenses Fees</td>
<td>$63,945.21</td>
<td></td>
</tr>
</tbody>
</table>
2. **Section 4. TERM** is hereby deleted in its entirety and replaced with the following:

This Agreement shall commence upon execution by the City and it shall terminate upon the expiration of the Subscription Period commencing on August 24, 2019 and ending on August 23, 2020. Renewals of this agreement will be subject to the process referenced within SECTION 11. GENERAL PROVISIONS, section J. AMENDMENT.

3. Except as modified by this the Second Amendment, the Agreement between the City and Licensor, as previously amended, shall remain unchanged and in full force and effect.

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

**THE CITY OF DAYTON, OHO**

[Signature]

City Manager

**SISENSE, INC.**

By: [Signature]

Print: Todd Morgan

Its: CFO

**APPROVED AS TO FORM AND CORRECTNESS:**

[Signature]

City Attorney

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

August 14, 2019

Min. Bk. I-75 Pg. ____

[Signature]

Clerk of the Commission
From 5560 - CS/Information Technology

Supplier, Vendor, Company, Individual

Name Sisense, Inc.

Address 1359 Broadway, 4th Floor
New York, NY 10019

Fund Source(s)  
General Fund

Fund Code(s)  
10000-5560-1166-65

Fund Amount(s)  
$60,900.01

Date July 11, 2018

Expense Type Contract Modification

Total Amount $60,900.01 (Thru 8/23/2019)

Includes Revenue to the City  ✔ Yes

Affirmative Action Program  ✔ Yes

Description

FIRST RENEWAL AND AMENDMENT TO THE END USER LICENSE AGREEMENT

The Department of Central Services, Division of Information Technology requests permission for a First Renewal and Amendment with Sisense, Inc. to extend the term of the Agreement through August 23, 2019 and provide for additional licenses in the amount of $60,900.01. This Renewal and Amendment will cover the original Sisense Server with Advanced IT Package with corresponding licenses and the additional Administrator, Designers, and the Viewers licenses for the Backup/Dev Sisense Server.

The original Agreement with Sisense, Inc. was approved on August 16, 2017 in the amount of $50,000.00. The First Renewal and Amendment will increase the total Agreement amount to $110,900.01.

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

A Certificate of Funds and a copy of the Renewal and Amendment are attached.

Signatures/Approval

Approved by City Commission

FORM NO. MS-16

Updated 8/2016
### SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>New Contract</th>
<th>Renewal Contract</th>
<th>Change Orders</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Start Date</td>
<td>08/08/17</td>
<td></td>
</tr>
<tr>
<td>Expiration Date</td>
<td>08/23/19</td>
<td></td>
</tr>
<tr>
<td>Original Commission Approval</td>
<td>$ 50,000.00</td>
<td></td>
</tr>
<tr>
<td>Initial Encumbrance</td>
<td>$ 50,000.00</td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Original CT/CF Approval</td>
<td>CT17-1780</td>
<td></td>
</tr>
<tr>
<td>Increase Encumbrance</td>
<td>$ 60,900.01</td>
<td></td>
</tr>
<tr>
<td>Decrease Encumbrance</td>
<td>$ -</td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$ -</td>
<td></td>
</tr>
</tbody>
</table>

---

**Required Documentation**

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

---

<table>
<thead>
<tr>
<th>Amount:</th>
<th>$ 60,900.01</th>
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<tbody>
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<table>
<thead>
<tr>
<th>Amount:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund Code</td>
</tr>
</tbody>
</table>

---

### Attach additional pages for more FOAPALs

**Vendor Name:** Sisense Inc

**Vendor Address:** 1359 Broadway, 4th Floor New York NY 10019 Street City State Zipcode + 4

**Federal ID:** 45-3944753

**Commodity Code:** 96185

**Purpose:** First Renewal and Amendment to extend the expiration date of the term of the Agreement to August 23, 2019. Also, to provide for additional licenses that will cover Sisense Server with Advanced IT Package, additional Admins, additional Designers, additional Viewers and Backup/Dev Sisense Server.

**Contact Person:** Desa Foster

**Central Services/Information Technology Department/Division:** 21-Jun-18 **Date**

**Originating Department Director's Signature:**

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

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

**Finance Director Signature:**

**Date:** 7-2-18

**CF Prepared by:**

**Date:** 6/25/19 **Date** **CF/CT Number:** CT18-1780

---

October 18, 2011
FIRST RENEWAL AND AMENDMENT TO THE END USER LICENSE AGREEMENT BETWEEN THE CITY OF DAYTON, OHIO AND SISENSE, INC. FOR SOFTWARE

THIS FIRST AMENDMENT TO THE END USER LICENSE AGREEMENT FOR SOFTWARE ("Amendment"), is entered into this ___ day of __________, 2018 between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio, (hereinafter referred to as "City") and The Sisense Inc. (hereinafter referred to as “Licensor”).

WITNESSETH THAT:

WHEREAS, the City and Licensor entered into an Agreement ("Agreement") on August 24, 2017 for software licenses and services; and,

WHEREAS, the City and the Consultant agree to amend the Agreement to extend the term of the Agreement and to provide for additional licenses;

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

1. Section 3. COMPENSATION FOR SOFTWARE LICENSES  A. LICENSE FEES is hereby deleted in its entirety and replaced with the following:

   Total remuneration in this Agreement shall not exceed SIXTY THOUSAND NINE HUNDRED DOLLARS AND ONE CENT ($60,900.01), inclusive of expenses, for the license to the Software granted by the Licensor in accordance with this Agreement. These fees include the licenses that consists of the software listed in Licensor’s Order ID: 0Q00W000002cFjYSAU dated May 25, 2018 and provided to the City, as follows

<table>
<thead>
<tr>
<th>Product</th>
<th>Annual Price/ Unit Quantity</th>
<th>Net Price</th>
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<tbody>
<tr>
<td>Sisense Server w/ Advanced IT Package</td>
<td>$35,000.00</td>
<td>$35,000.00</td>
</tr>
<tr>
<td>Licensed to accommodate up to 100M Rows</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Includes 1 Admin, 1 Designer and 10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Viewers per Sisense Server</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional Admins</td>
<td>$1,000.00</td>
<td>$4,000.00</td>
</tr>
<tr>
<td>Additional Designers</td>
<td>$1,000.00</td>
<td>$9,000.00</td>
</tr>
<tr>
<td>Additional Viewers</td>
<td>$450.00</td>
<td>$18,000.00</td>
</tr>
<tr>
<td>Backup/Dev Sisense Server</td>
<td>$11,700.01</td>
<td>$11,700.01</td>
</tr>
<tr>
<td>Licensed to accommodate up to 100M Rows</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Discount</td>
<td>($16,800.00)</td>
<td>($16,800.00)</td>
</tr>
<tr>
<td>Total Licenses Fees</td>
<td></td>
<td>$77,700.01</td>
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<tr>
<td>Overall Discount</td>
<td>($16,800.00)</td>
<td></td>
</tr>
<tr>
<td>Net Total Licenses Fees</td>
<td>$60,900.01</td>
<td></td>
</tr>
</tbody>
</table>

   This above fee schedule hereby replaces the fee schedule which was outlined on Exhibit B of the original Agreement, which was attached thereto.
2. **Section 4. TERM** is hereby deleted in its entirety and replaced with the following:

This Renewal and Amendment shall commence upon execution by the City and it shall terminate upon the expiration of the Subscription Period commencing on August 24, 2018 and ending on August 23, 2019. Renewals of the agreement will be subject to the process referenced within SECTION 12. GENERAL PROVISIONS, Section J. AMENDMENT.

3. Except as modified by this First Renewal and Amendment, the Agreement between the City and Consultant shall remain unchanged and in full force and effect.

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

THE CITY OF DAYTON, OHIO

[Signature]

City Manager

SISENSE, INC.

[Signature]

By: 

Print: Todd Sloan

Its: CFO

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]

City Attorney

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

[Signature]

July 11, 2018

Min. Bk. I Pg. 15

[Signature]

Clerk of the Commission
# 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>
<tbody>
<tr>
<td>Contract Start Date</td>
<td>08/08/17</td>
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<tr>
<td>Expiration Date</td>
<td>08/31/18</td>
<td></td>
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<td>Original Commission Approval</td>
<td>$50,000.00</td>
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<tr>
<td>Initial Encumbrance</td>
<td>$50,000.00</td>
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<td>Remaining Commission Approval</td>
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<tr>
<td>Original CT/CF</td>
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<tr>
<td>Increase Encumbrance</td>
<td>$0</td>
<td></td>
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<td>Decrease Encumbrance</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$0</td>
<td></td>
</tr>
</tbody>
</table>

| Initial City Manager's Report | X |
| Initial Certificate of Funds | X |
| Initial Agreement/Contract | X |
| Copy of City Manager's Report |  |
| Copy of Original Certificate of Funds |  |

<table>
<thead>
<tr>
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<tr>
<td>Fund</td>
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</tr>
<tr>
<td>Org</td>
<td>5560</td>
</tr>
<tr>
<td>Acct</td>
<td>1159</td>
</tr>
<tr>
<td>Prog</td>
<td>65</td>
</tr>
<tr>
<td>Act</td>
<td>XXXX</td>
</tr>
<tr>
<td>Loc</td>
<td>XXXX</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Amount:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund Code</td>
<td>XXXX - XXXX - XXXX - XXXX</td>
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<td>Fund</td>
<td>XXXX</td>
</tr>
<tr>
<td>Org</td>
<td>XXXX</td>
</tr>
<tr>
<td>Acct</td>
<td>XXXX</td>
</tr>
<tr>
<td>Prog</td>
<td>XX</td>
</tr>
<tr>
<td>Act</td>
<td>XXXX</td>
</tr>
<tr>
<td>Loc</td>
<td>XXXX</td>
</tr>
</tbody>
</table>

**Attach additional pages for more FOAPALs**

**Vendor Name:** Sisense Inc  
**Vendor Address:** 1359 Broadway, 4th Floor New York NY 10019  
**Federal ID:** 45-3944753  
**Commodity Code:** 96185  
**Purpose:** Award of contract to provide licensed access to their dashboard reporting software for a period of one year

**Contact Person:** Desa Foster  
**Central Services/Information Technology Department/Division:**  
**Date:** 1-Aug-17  
**Originating Department Director's Signature:**  
**07-Aug-2017**

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

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

**Finance Director Signature:**  
**Date:** 8-8-17  
**CT17-1780**

**Prepared by:**  
**Date:** 8-8-17  
**CT17-1780**

**Finance Department:**

October 18, 201
City Manager's Report

From 5560 - CS/Information Technology
Supplier, Vendor, Company, Individual
Name Sisense, Inc
Address 1359 Broadway, 4th Floor
New York, NY 10019

Date August 16, 2017
Expense Type Service Agreement
Total Amount $50,000.00 (Thru 08/31/18)

<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>Technology Fund</td>
<td>40018-5560-1159-65</td>
<td>$50,000,000</td>
</tr>
</tbody>
</table>

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

Description

The Department of Central Services Information Technology Division recommend approval to enter into a contractual agreement with Sisense, Inc. The total amount of this agreement is $50,000.00. Sisense, Inc. shall provide licensed access to their dashboard reporting software for a period of one (1) year and related training and support services. The software will be utilized to logically retrieve pertinent information from disparate information systems to create and publish performance dashboards and reports.

Based on initial research performed by a cross-section of City staff that included representatives from OMB, Public Works, and Central Services, the Sisense software was selected to be evaluated through a free ninety (90) day trial subscription. Based upon the positive performance of the software to date and the complexities of its configuration, it is recommended to extend this trial from 90 days to a one (1) year pilot program to further the City’s business intelligence research.

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

Certificate of Funds in the amount of $50,000 is attached.

Signatures/Approval

Approved by City Commission

FORM NO. MS-16

Updated 8/2016
END USER LICENSE AGREEMENT
For
SOFTWARE

THIS END USER LICENSE AGREEMENT ("Agreement") is made and entered into on this 24th day of August, 2017, between the City of Dayton, Ohio ("City"), a municipal corporation in and of the State of Ohio, and Sisense, Inc. ("Sisense" or "Licensor"), a Delaware corporation with its principal office at 1359 Broadway, 4th Floor, New York NY 10018.

WITNESSETH THAT:

WHEREAS, The City identified a need for specific software and corresponding professional services; and

WHEREAS, The Licensor licenses its business intelligence software and provides ancillary services related to its software.

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

SECTION 1. SCOPE OF SERVICES

The Licensor shall provide the software license set forth in Exhibit “A”, titled "SOFTWARE LICENSE”, which is attached hereto and incorporated herein by reference. Exhibit A defines the scope of the license granted hereunder in Licensor’s software (the “Software”) and the term of such license (the “Subscription Period” as defined on Exhibit A).

The Software is licensed to the City pursuant to the terms and conditions of the End User License Agreement attached hereto as Exhibit “C” (the “License Agreement”). The License Agreement is incorporated herein as if fully set forth herein. To the extent of any inconsistency between the License Agreement and this Agreement, this Agreement shall prevail.

Also included in the license granted in the Software are the onboarding services described on Exhibit A, Support Services at the Standard Support level as provided in the License Agreement and Sisense Academy training webinars as provided in the Agreement.

SECTION 2. BACKGROUND CHECK

Licensor's personnel assigned to perform services specifically for the City under this Agreement may be subject to criminal history background check(s) (including but not restricted to fingerprinting and identify verification).
SECTION 3. COMPENSATION FOR SOFTWARE LICENSE

A. LICENSE FEES

Total remuneration in this Agreement shall not exceed FIFTY THOUSAND DOLLARS AND ZERO CENTS ($50,000.00), inclusive of expenses, for the license to the Software granted by the Licensor in accordance with this Agreement. These fees include the license and the onboarding services, support services and training as outlined in Exhibit A.

B. BILLING FREQUENCY

Licensor shall submit an invoice as outlined in Exhibit “B”, titled “COMPENSATION” upon execution of this Agreement. Unless disputed, the City shall tender payment within thirty (30) days of receipt of the Licensor’s invoice. In the event the City disputes an invoiced amount in good faith, the City shall notify Licensor of such dispute, providing sufficient detail of the basis of the dispute within 30 days of date of invoice and the parties shall work together promptly and in good faith to resolve such dispute. The City shall not be obligated to pay any amount so disputed in good faith until such dispute is resolved.

SECTION 4. TERM

This Agreement shall commence upon execution by the City and it shall terminate upon the expiration of the Subscription Period as defined on Exhibit A. Renewals of this agreement will be subject to the process referenced within SECTION 12. GENERAL PROVISIONS, section J. AMENDMENT.

SECTION 5. CITY’S RESPONSIBILITIES

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

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

SECTION 6. STANDARD OF CARE

Licensor shall exercise the same degree of care, skill, and diligence in the performance of services under this Agreement as is ordinarily possessed and exercised by a professional under similar circumstances. Licensor shall have no liability for defects in such services attributable to Licensor's reliance upon or use of data or other information furnished by the City or third parties retained by the City.
SECTION 7. CONFIDENTIALITY

All information provided to and/or gathered by Licensor from the City during the term of this Agreement shall be deemed "confidential" information to the extent that it is classified as "private" under the laws of the State of Ohio or is not independently available to the general public. To the extent permitted by law, Licensor agrees that it shall not disclose such information to any third party without the City's written consent. Licensor shall also take all reasonable steps to protect against the disclosure of the City's confidential information.

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

SECTION 8. INDEMNIFICATION AND LIABILITY

Licensor shall indemnify and defend the City and its elected officials, officers, employees and agents (collectively, "Indemnitees") from and against all third-party 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 gross negligence or willful misconduct or fraud of Licensor and its agents, employees, consultants, sub-consultants and representatives in undertaking and performing its obligations under this Agreement; however, no indemnification will be required for any claims, losses, damages or expenses resulting from any negligence or willful misconduct of the City or any of the other Indemnitees. This Article shall survive early termination or expiration of this Agreement.

Notwithstanding the terms of any other provisions, (I) the total liability of Licensor and its subsidiaries, officers, employees, and agents for all claims of any kind arising out of Licensor’s services, whether in contract, tort, or otherwise, shall be limited to the total fees paid to Licensor under this agreement; and (II) neither party shall in any event be liable for any indirect, consequential, or punitive damages, even if it has been advised of the possibility of such damages.

SECTION 9. INSURANCE

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

1. General Liability Insurance, having a combined single limit of $1,000,000 for each occurrence and $1,000,000 in the aggregate.
2. Automobile Liability Insurance, having a combined single limit of $1,000,000 for each accident.
3. Employers’ Liability Insurance, having a limit of $500,000 for each occurrence.
4. Licensor shall maintain errors and omissions insurance in the amount of $1,000,000.

Current certificates of insurance for all policies and concurrent policies required to be maintained
by Licensor pursuant to this Article shall be furnished to the City upon reasonable request. All such insurance policies, excluding Errors and Omissions Insurance, shall name the City, its elected officials, officers, agents, employees, and volunteers as additional insureds, but only to the extent of the extent of the policy limits stated herein. Licensor shall endeavor to provide a minimum of thirty (30) days advance written notice to the City in the event of cancellation or diminution of coverage below the amounts required hereunder.

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

SECTION 10. TERMINATION

This Agreement may be immediately terminated by the City upon written notice in the event of substantial failure by Licensor to perform in accordance with the terms of this Agreement. Licensor shall have thirty (30) calendar days from the date of the termination notice to cure or submit a plan for cure acceptable to the City.

Any such termination shall not relieve Licensor of any liability to the City for damages sustained by virtue of any breach by Licensor. The City will be under no further monetary obligation or commitment to Licensor.

In the event of termination, the City may, at its option, exercise any remedy available to it, including the Uniform Commercial Code, according to Ohio law.

SECTION 11. GENERAL PROVISIONS

A. DELAY IN PERFORMANCE

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

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

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

C. COMMUNICATIONS

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

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

Licensor:
Sisense, Inc.
1359 Broadway, 4th Floor
New York, NY 10018
Attn: Chief Financial Officer

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

D. EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

F. SEVERABILITY

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

G. INDEPENDENT CONSULTANT

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

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

H. ASSIGNMENT

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

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

J. AMENDMENT

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

K. POLITICAL CONTRIBUTIONS

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

L. INTEGRATION

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

CITY OF DAYTON, OHIO

[Signature]

City Manager

APPROVED AS TO FORM AND CORRECTNESS

[Signature]

City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO

[Signature]

August 16, 2017

Min./Bk. I-15 Pg. [__]

[Signature]

Clerk of Commission

SISENSE, INC.

By: [Signature]

Print: Todd Sloan

Its: [Signature] CFO
EXHIBIT A  
SOFTWARE LICENSE

The Software licensed under this Agreement is licensed for a term commencing on August 18, 2017 and ending on August 17, 2018 (the “Subscription Period”) and shall consist of the software listed in Licensor’s Order ID: 0Q0CPQ1678 dated August 16, 2017 and provided to the City, as follows:

<table>
<thead>
<tr>
<th>Product</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sisense Server w/ Advanced IT Package</td>
<td>1</td>
</tr>
<tr>
<td>Licensed to accommodate up to 100M Rows.</td>
<td></td>
</tr>
<tr>
<td>Includes 1 Admin, 1 Designer and 10 Viewers per Sisense Server</td>
<td></td>
</tr>
<tr>
<td>Additional Admins</td>
<td>4</td>
</tr>
<tr>
<td>Additional Designers</td>
<td>9</td>
</tr>
<tr>
<td>Additional Viewers</td>
<td>40</td>
</tr>
</tbody>
</table>

- On Boarding service is included, under the following terms: 10 hours of on boarding guidance will be provided during a period of up to 8 weeks from the agreed first on boarding meeting (the “On Boarding Period”). All On Boarding services must be used during the On Boarding Period unless the parties agree to an extension of the On Boarding Period.

- Support Level: Standard Support is included

- Sisense Academy training webinars are included
EXHIBIT B
COMPENSATION

1. The total “Not-To-Exceed” license fee for the Software license granted as outlined in Exhibit “A”, titled "SOFTWARE LICENSE" to this Agreement, for the Subscription Period set forth on Exhibit A is $50,000.00. This amount includes all direct and indirect labor charges, material cost, overheads, and profits plus all other fees and charges including direct expenses.

2. The license fee is broken down as follows:

<table>
<thead>
<tr>
<th>Product</th>
<th>Annual Price/ Unit</th>
<th>Quantity</th>
<th>Net Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sisense Server w/ Advanced IT Package</td>
<td>$35,000</td>
<td>1</td>
<td>$ 35,000.00</td>
</tr>
<tr>
<td>Licensed to accommodate up to 100M Rows</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Includes 1 Admin, 1 Designer and 10 Viewers per Sisense Server</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional Admins</td>
<td>$1,000</td>
<td>4</td>
<td>$ 4,000.00</td>
</tr>
<tr>
<td>Additional Designers</td>
<td>$1,000</td>
<td>9</td>
<td>$ 9,000.00</td>
</tr>
<tr>
<td>Additional Viewers</td>
<td>$450</td>
<td>40</td>
<td>$ 18,000.00</td>
</tr>
<tr>
<td>Discount</td>
<td>($16,000)</td>
<td>1</td>
<td>($ 16,000.00)</td>
</tr>
<tr>
<td>Total Licenses Fees</td>
<td></td>
<td></td>
<td>$ 66,000.00</td>
</tr>
<tr>
<td>Overall Discount</td>
<td></td>
<td></td>
<td>($ 16,000.00)</td>
</tr>
<tr>
<td>Net Total Licenses Fees</td>
<td></td>
<td></td>
<td>$ 50,000.00</td>
</tr>
</tbody>
</table>
Exhibit C
End User License Agreement

PLEASE READ THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT CAREFULLY BEFORE USING THE SISENSE SOFTWARE PRODUCT/S LICENSED BY LICENSEE PURSUANT TO AND AS LISTED IN THE APPLICABLE SALES ORDER, AND/OR BEFORE DOWNLOADING OR INSTALLING THE SOFTWARE, AND INDICATE YOUR ACCEPTANCE BY CHOOSING “I ACCEPT”. THE SOFTWARE IS COPYRIGHTED AND IS LICENSED (NOT SOLD). BY CHOOSING “I ACCEPT”, YOU ARE ACCEPTING AND AGREEING TO BE BOUND BY ALL THE TERMS OF THIS LICENSE AGREEMENT. THIS LICENSE AGREEMENT REPRESENTS THE ENTIRE AGREEMENT CONCERNING THE SOFTWARE, BETWEEN YOU (“LICENSEE”) AND SISENSE, INC. (“LICENSOR”), AND IT SUPERSEDES ANY PRIOR PROPOSAL, REPRESENTATION, OR UNDERSTANDING BETWEEN THE PARTIES. You may print and keep a copy of this Agreement. For the sake of clarity, these terms and conditions shall not apply to Licensees who have licensed the Software through, and signed an end user license agreement with, a reseller authorized by Sisense to resell subscriptions to the Software, so long as such end user license agreement complies substantially with the terms and conditions of this Agreement. In such cases, Licensee is granted its license in the Software by and through the reseller and not directly by Sisense.

This Agreement has 3 sections:

Section I applies if you are downloading or using the Software free of charge for evaluation purposes only.

Section II applies if you have purchased or have been otherwise granted by Licensor a license to use the Software.

Section III applies to all grants of license. Definitions of capitalized terms used in this Agreement are set forth in Section 21 below.

SECTION I -- TERMS APPLICABLE TO GRANT OF EVALUATION LICENSE

1. Evaluation Licenses.

1.1. If Licensee is downloading the Software for the first time, solely for purposes of considering the purchase of a subscription to the Software, Licensor hereby grants to Licensee, and Licensee accepts, a nonexclusive, non-transferable, non-sub-licensable, limited right to use the Software in machine-readable, object code form, free of charge, for the purpose of evaluating whether to purchase a Software license, subject to the terms herein. Licensee may use the Software during the evaluation period for internal operations, on up to two Authorized Servers, by the Authorized Users specified upon download of the Software. The evaluation period is limited to a maximum of 14 days, unless Licensor has extended such period at its sole discretion.

1.2. If Licensee is a current subscriber to the Software who has agreed to participate in testing of a pending release of the Software or certain features or functionality of the Software prior to its general release, for purposes of identifying issues and providing feedback (a “Beta Test”), Licensor hereby
grants to Licensee, and Licensee accepts, a nonexclusive, non-transferable, non-sub-licensable, limited right to use the Software in machine-readable, object code form, free of charge, for the purpose of participating in the Beta Test, subject to the terms herein. Licensee may use the Software during the evaluation period for internal operations, on up to two Authorized Servers, by the Authorized Users specified upon download of the Software. The Beta Test term is limited to the period communicated by Licensor to Licensee in connection with offering Licensee the opportunity to participate in the Beta Test, unless Licensor has extended such period at its sole discretion.

Documentation or support may be provided at Licensor’s sole discretion for evaluation licenses. Each evaluation license shall expire at the end of the evaluation period. Licensee hereby acknowledges that Licensor reserves the right to terminate Licensee’s evaluation license at any time, with or without notice. Upon expiration or termination of the evaluation license Licensee shall immediately cease using the Software and promptly destroy it and certify to Licensor that Licensee has acted accordingly.

2. Disclaimer of Warranty

Under evaluation licenses, the Software is provided on an "AS IS" basis, without warranty of any kind. SUBJECT TO THE REQUIREMENTS AND LIMITATIONS, IF ANY, OF APPLICABLE LAW, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, SATISFACTION AND MERCHANTABILITY SHALL NOT APPLY. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SOFTWARE IS BORNE BY LICENSEE. LICENSEE’S SOLE RECOUSE IN THE EVENT OF ANY DISSATISFACTION WITH THE SOFTWARE IS TO STOP USING IT. This disclaimer of warranty constitutes an essential part of the agreement.

If Licensee wishes to purchase a license, contact Licensor at sales@sisense.com or via www.sisense.com.

SECTION II -- APPLICABLE TERMS WHEN GRANTED A LICENSE

3. License Grant. Subject to payment of license fees under a valid Sales Order ("Sales Order"), Licensor hereby grants Licensee, and Licensee accepts, a nonexclusive, nontransferable, non-sub-licensable, limited license to use the Software, in machine-readable, object code form only, by the Authorized Users to support Licensee’s internal business operation, strategy and decision making process, in accordance with the license scope and terms set forth in the Sales Order and in Section III below.

Subject to payment of the fees in the Sales Order, the activation and use of the Software shall be enabled remotely on Licensor’s servers following the download of the Software.

4. Limitation of Warranty. During a warrant period commencing upon the date of first download of the Software by Licensee and continuing for three (3) months thereafter, Licensor warrants, for Licensee’s benefit alone, that the Software, if operated as directed, shall operate substantially in accordance with the functional specifications in the Documentation. Licensor does not warrant that Licensee’s use of the Software will be uninterrupted or that the operation of the Software will be error-free or secure or that it will
be compatible with all of Licensee’s equipment or software configurations or that the Software is designed to meet all of Licensee’s business requirements. Licensor’s sole liability and Licensee’s exclusive remedy for any breach of this warranty shall be that Licensor shall use reasonable commercial efforts to remedy any failure of the Software to materially conform to its Documentation in accordance with the terms of the Support Services (as defined hereunder), provided that (i) Licensee has fully paid all applicable fees, (ii) Licensee is not otherwise in breach of this Agreement, and (iii) Licensee notifies Licensor in writing of the claimed failure promptly upon discovery and within the warranty period, with a specific description of the Software’s nonconformance and Licensor is able to replicate such nonconformance. Should Licensor be unable to remedy such failure within a reasonable time after notice has been provided, Licensee shall be entitled to terminate this Agreement with respect to the non-conforming Software and to receive a refund of license fees paid hereunder with respect to such Software for the then current annual term of the license granted hereunder for such Software. For the sake of clarity, Licensee shall be entitled to Support Services as described in Section 14 throughout the Term of this Agreement.

Licensor may disclaim any obligation or liability under this Section 4 if Licensor determines that: (i) the Software has been altered, modified, or serviced other than by or with the approval of Licensor; (ii) the Software has been improperly installed or used in a manner other than as specified in the Documentation; or (iii) Licensee has breached the terms of this Agreement. The warranty shall not apply if the Software is used on or in conjunction with hardware other than the unmodified version of the hardware with which the Software was designed to be used as described in the Documentation.

5. **Disclaimer.** EXCEPT FOR THE WARRANTIES SET FORTH ABOVE, LICENSOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE SOFTWARE AND/OR SERVICES. LICENSOR DISCLAIMS AND EXCLUDES THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OF NONINFRINGEMENT OF THIRD PARTIES’ RIGHTS. NO LICENSOR DEALER, DISTRIBUTOR, RESELLER, AGENT, OR EMPLOYEE IS AUTHORIZED TO MAKE ANY MODIFICATIONS, EXTENSIONS, OR ADDITIONS TO THIS WARRANTY.

6. **Indemnification.** Licensor shall defend or settle any third party action, claim or proceeding brought against Licensee that use of the Software in accordance with the terms of this Agreement infringes any third party intellectual property right ("Claims") and shall indemnify Licensee against all damages and liabilities finally awarded or paid in settlements and arising out of such Claims. Licensor’s foregoing defense and indemnity obligation shall not extend to claims based on (i) unauthorized modification or use of the Software made by any third party other than by or with the approval of Licensor; (ii) the combination of the Software with infringing items not supplied by Licensor or approved by Licensor for use with the Software in the Documentation to the extent such claim would not have arisen but for the combination; (iii) Open Source Software components; or (iv) Licensee’s use of any release which is not a release of the latest available Version of the Software. As a condition to Licensor’s indemnity obligation Licensee shall give Licensor prompt notice of any such claim, grant Licensor sole control of the defense and/or settlement of any such claim (provided that Licensor shall not enter into any settlement that admits liability on behalf of
Licensee or imposes any obligations on Licensee other than cessation of use of the allegedly infringing item or payment of amounts indemnified hereunder) and provide reasonable assistance as requested by Licensor. If the Software or part thereof becomes, or in Licensor’s opinion may become, subject to a Claim or Licensee’s use thereof may be otherwise enjoined, Licensor may, at its option, either: (i) procure for Licensee the right to continue using the Software; (ii) replace or modify the Software, so that it is non-infringing; or (iii) if neither of the foregoing alternatives is reasonably practical, terminate this Agreement and refund any sums prepaid for the unused Term, if any, upon the return or destruction (and certification of destruction) of the Software.

SECTION III -- TERMS APPLICABLE TO ALL GRANTS OF LICENSE

7. Scope of License. The type and scope of license will be specified in the Sales Order.

7.1. The Sales Order will specify the number of Licensee’s Authorized Users, and the number of Licensee’s Authorized Servers. Authorized Users shall receive a personal login and password which should be maintained securely by Licensee from unauthorized use. Licenses may not be shared. If Licensee wishes to add Authorized Users or Authorized Servers, purchase of additional licenses is required. Authorized Users fall into one of the following three categories: Administrators, Designers or Viewers. Licensee’s Authorized Users shall have the right to use the Software in and perform or access different functions of the Software as further detailed and described in the Documentation.

7.2. If an Authorized Server becomes non-operable, the Software may be installed on a substitute server authorized by Licensor. Concurrent use on two or more servers is not permitted without explicit written authorization from Licensor and the payment of applicable license fees.

7.3. For the sake of clarity, Licensee shall not use any technical or other means within or external to the Software to exceed use of the Software as licensed under the applicable Sales Order; for example, by providing access to dashboards, etc., other than to Authorized Users unless the applicable Sales Order expressly permits use such as Unlimited Static Access.

8. Limitations. Without derogating from Section 7 above, Licensee may not, and may not permit any third party to: (i) attempt to obtain, receive, review, or otherwise use or have access to the source code for the Software (or any part thereof) by decompilation, disassembly or other means except as is required to be permitted under applicable law; (ii) copy, reverse engineer, translate or modify the Software except as is required to be permitted under applicable law; (iii) sublicense, transfer, rent or lease the Software or use it as part of a service bureau to provide services, views and business intelligence or as a module for other software; (iv) test the Software or use the Software in connection with any benchmark tests, evaluation, or any other tests of which the results are designated or likely to be published in any form or media, or otherwise made available to the public, without Licensor’s prior written approval; (v) represent that Licensee possess any proprietary interest in the Software; (vi) directly or indirectly, take any action to contest Licensor’s intellectual property rights evidenced by or embodied in or connected or related to the
Software or infringe them in any way; or (ix) use the Software for the purpose of building a similar or competitive product or in any other manner competing with Licensor. For avoidance of doubt and without derogating from the foregoing, Licensee may not use the Software in order to engage, directly or through any third party, in development of any product which is or may constitute a derivative work of the Software or may infringe upon Licensor’s intellectual property rights.

In the event of a license to the US Government the following shall apply: As defined in FAR section 2.101, any software and documentation provided by Licensor are “commercial items” and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be “commercial computer software” and “commercial computer software documentation.” Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement. Government technical data and software rights related to the Software and any related services include only those rights customarily provided to the public as defined in this Agreement. If a government agency has a need for rights not conveyed under these terms, it must negotiate with Licensor to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

9. **Licensee Data.** All data stored or managed by means of the Software is “Licensee Data.” Licensee Data will be imported from different source systems that Licensee uses (like SalesForce.com, Oracle, MS SQL etc.) and may need further transformation like defining of relationships between tables that come from different databases. Licensee is required to have legal access to all Licensee Data. Licensee is required to comply with data protection laws and regulations and with the terms and conditions regarding the different source systems that Licensee uses. Licensee is solely responsible for back up of Licensee Data. Under no circumstances will Licensor be liable for any loss of or damages to Licensee Data or any data that is transferred or used by Licensee by means of the Software. It is explicitly agreed that all Licensee Data shall always reside on Licensee’s own servers and systems.

10. **Protection of Licensee Data.** If and to the extent Licensor has access to Licensee Data, Licensor shall employ and maintain various safeguards in accordance with generally accepted industry standards for protection of the security, confidentiality and integrity of Licensee Data. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Licensee Data by Licensor’s employees except (a) to provide those support services purchased in accordance with the applicable Sales Order and address service or technical problems, (b) as compelled by law, or (c) as Licensee expressly permits Licensor in writing.

11. **Intellectual Property.** Licensee acknowledges and agrees that the Software and the Documentation, including any related services and any revisions, corrections, modifications, enhancements and/or upgrades thereto, are Licensor’s or its licensors’ property protected under copyright laws and treaties. Licensee further acknowledges and agrees that all right,
title, and interest in and to the Software, including associated intellectual property rights (including, without limitation, copyrights, trade secrets, trademarks, etc.), evidenced by or embodied in and/or attached/connected/related to the Software (including, without limitation, the code) Documentation and any related services, are and shall remain with Licensor. This Agreement does not convey to Licensee an interest in or to the Software, but only a limited right of use revocable in accordance with the terms of this Agreement. Nothing in this Agreement constitutes a waiver of Licensor’s intellectual property rights under any law. Licensee understands and acknowledges that the Software contains or includes proprietary confidential information and trade secrets of Licensor.

12. Confidential Information.

12.1. Each party agrees that “Confidential Information” includes, without limitation, all technical and non-technical information provided by a party ("Disclosing Party") to the other party ("Receiving Party") that is either: (a) designated as confidential by the Disclosing Party at the time of disclosure; or (b) should reasonably be considered, given the nature of the information or the circumstances surrounding its disclosure, to be confidential. Each party, as a Receiving Party will not: (1) use any Confidential Information except for the sole benefit of the Disclosing Party and only to the extent necessary to perform its obligations under this Agreement; or (2) disclose any Confidential Information of the Disclosing Party to any person or entity, except to the Receiving Party’s own employees, consultants and agents who are involved in performing this Agreement, have a need to know, and are subject to non-disclosure obligations with terms no less restrictive than those herein.

12.2. The duties described in Section 12.1 will not apply to any information that: (a) is now or subsequently becomes generally available in the public domain through no fault or breach of this Agreement by the Receiving Party (b) is rightfully known by the Receiving Party prior to disclosure by the Disclosing Party; (c) is rightfully obtained by the Receiving Party without restriction from a third party not known by the Receiving Party to be subject to restrictions on disclosure; or (d) is disclosed by the Receiving Party with the prior written approval of the Disclosing Party. Receiving Party may disclose Confidential Information if and only to the extent it is required to be disclosed by law or court order, so long as, if permitted under applicable law, Receiving Party provides advance notice to the Disclosing Party as promptly as possible and reasonably cooperates with the Disclosing Party’s efforts to obtain a protective order regarding such disclosure at Disclosing Party’s expense.

12.3. Upon expiration or any termination of this Agreement the Receiving Party will promptly destroy or (if requested) return the Disclosing Party’s Confidential Information and all copies thereof, provided that the Receiving Party shall not be obligated to erase Confidential Information contained in archived computer system backups in accordance with the Receiving Party’s security and/or disaster recovery procedures, provided further that any such Confidential Information retained by the Receiving Party shall continue to be protected by the confidentiality obligations of this Agreement.
13. **Third Party Software**. The Software contains certain proprietary software provided by third parties including but not limited to certain open source software components ("Third Party Code").

13.1. Third Party Code is licensed under the applicable license terms set forth in the Documentation and if no such terms are set forth therein, then such Third Party Code is licensed under the terms of this Agreement and accordingly, the restrictions contained in this Agreement shall apply to such Third Party Code providers and Third Party Code as if they were Licensor’s and the Software respectively.

13.2. Third Party Code that is distributed by Licensor along with the associated license terms is listed at [http://www.sisense.com/documentation/3rd-party-open-source/](http://www.sisense.com/documentation/3rd-party-open-source/). Open source components are distributed AS IS, without any warranty, express or implied provided by the Third Party Code provider.

14. **Support Services and Professional Services**. For any purchased license and subject to payment of applicable fees, Licensor shall provide standard support and maintenance services ("Support Services") in accordance with the terms available at [http://pages.sisense.com/rs/sisense/images/sisense-support-terms.pdf](http://pages.sisense.com/rs/sisense/images/sisense-support-terms.pdf) (as amended from time to time, the "Support Terms"). The Software includes the Remote Support Analysis Module which automatically connects Licensee’s computer to Licensor’s server to verify successful installation of the Software and its updates. Through operation of the Remote Support Analysis Module, Licensor obtains: (i) non-personally identifiable information, such as manner, consistency, duration, usage pattern, statistics, memory, bandwidth and other information identifying the ways in which Licensee uses the Software; (ii) metadata such as logs, how many requests Licensee issued, commonly used data sources, size of Licensee database, modules used, etc. and (iii) the login id (including email address) for the Licensee representative who licensed the Software. In order to further facilitate troubleshooting of support issues, the Remote Support Analysis Module includes a feature to trace activity to specific user logins. The Remote Support Analysis Module (or the activity tracing feature) can be disabled as part of the Software configuration or can be set to scramble potentially sensitive data that might otherwise be collected at Licensee’s sole control and discretion. If the Remote Support Analysis Module is disabled, Licensee acknowledges that Licensor’s ability to provide the Support Services may be impaired.

From time to time, Licensee and Licensor may agree that Licensor shall provide Licensee with professional services, the scope, fee and terms of which shall be set forth in a separate Sales Order and subject to Licensor’s Professional Services Terms and Conditions in accordance with the terms available at [http://www.sisense.com/professional-services-agreement/](http://www.sisense.com/professional-services-agreement/) as may be amended from time to time.

In addition, Licensor may provide remote assistance with the initial implementation of the Software ("Onboarding Services") during an initial period and limited to the number of hours of effort as set forth on the applicable Sales Order. Further, Licensor offers basic training to Licensee’s Personnel through online interactive training programs established by Licensor from time to time, and such online interactive training programs are included in the subscription to the Software licensed hereunder. Any other training
shall be provided at such times and location(s), on such subjects and for such fees as are mutually agreed by the parties on the applicable Sales Order.

15. Assignment. Licensee may not assign, delegate, or otherwise transfer any or all of its rights or obligations under this Agreement without the prior written consent of Licensor. Notwithstanding the foregoing, Licensee may from time to time assign this Agreement, in whole or in part, to: (i) one or more of its then consolidated affiliates; or (ii) an acquirer of all or substantially all of its business or assets; and to the extent of any such assignment, the relevant references in this Agreement to Licensee shall apply to such affiliate or acquirer, as the case may be, provided that such affiliate or acquirer assumes all of the obligations hereunder in writing and such assignment or acquisition shall not expand the scope of the license as set forth on the applicable Sales Order nor shall the Software be permitted to be used by any business operations other than as specified on the applicable Sales Order and as were using the Software immediately prior to such assignment or acquisition.

16. Payment Terms. Unless otherwise specified in the applicable Sales Order, payment for all Software and services ordered from Licensor by Licensee and taxes shall be made in US Dollars by wire transfer to Licensor and are due within thirty (30) days of the date the invoice was received by Licensee. Except as expressly provided in this Agreement, all payments made hereunder are non-refundable. Failure of Licensee to make any payment when due which is not remedied within 15 days after notice by Licensor shall constitute sufficient cause for Licensor to immediately suspend its performance under this Agreement. Payments of amounts made under this Agreement after their due date will incur interest at a rate equal to one percent (1%) per month (i.e., 12% per annum) or the highest rate permitted by applicable law, whichever is less. Unless otherwise specifically stated in the Sales Order, any discounts provided will apply only to the year they were granted. Standard support services are included within the license fee. Premium support services are optionally available to Licensee subject to payment of applicable fees as set forth on the applicable Sales Order. All taxes or customs duties except income or corporate taxes will be borne by Licensee. If any such tax or duty has to be withheld or deducted from any payment under this agreement, Licensee will increase payment under this Agreement by such amount as shall ensure that after such withholding or deduction Licensor shall have received an amount equal to the payment otherwise required. The license fees for each Software license shall automatically be increased by 5% per annum for each Renewal Term (as defined below) for the same licenses on the same terms as were originally purchased.

17. Term, Termination. The term of this Agreement shall commence on the Effective Date and continue until no Sales Orders remain outstanding hereunder unless otherwise terminated as stated below. The license term granted under a Sales Order (referred to therein as the “Subscription Period”) shall be as set forth in such Sales Order and if no such term is set forth, the license shall continue in force for one (1) year from the date of such Sales Order (“Initial Term”). To avoid unintended service interruptions, at the end of the Initial Term, and at the end of each Renewal Term thereafter, this Agreement shall automatically renew for an additional one (1) year term (each, a “Renewal Term”), unless either party shall provide written notice to the other party, not less than sixty (60) days prior to such date of expiration, of its election to terminate this Agreement. The Initial Term and each Renewal Term are collectively referred to as the “Term.” This Agreement may be terminated by either party, at any time prior to the expiration of the then-current Term if the other party
has committed a breach of any of its obligations hereunder that has not been cured within thirty (30) days after receipt of written notice. In the event that the license is terminated for Licensee’s breach of this Agreement, all outstanding Sales Orders shall be immediately terminated. Within fifteen (15) days after termination Licensee shall destroy, or return to Licensor, the Software and the Documentation and all copies and portions thereof, and shall provide written certification to Licensor that such destruction or return has been completed. Sections 4 (Limitation of Warranty), 5 (Disclaimer), 6 (Indemnification), 8 (Limitations), 11 (Intellectual Property), 12 (Confidential Information), 17 (Term, Termination), 18 (Limitation of Liability), 20 (Miscellaneous) and 021 (Definitions) will survive the termination or expiration hereof.

18. Limitation of Liability. EXCEPT IN CASE OF WILLFUL MISCONDUCT, BREACH OF THE LICENSE SCOPE GRANTED UNDER SECTION 7 HEREOF OR THE INFRINGEMENT INDEMNIFICATION SET FORTH IN SECTION 6 HEREOF, IN NO EVENT SHALL EITHER PARTY’S TOTAL MONETARY OBLIGATION AND LIABILITY TO THE OTHER PARTY OR ANY OTHER PARTY UNDER ANY CLAIM FOR ANY CAUSES OF ACTION PURSUANT TO THIS AGREEMENT, EXCEED THE PAYMENTS MADE BY LICENSEE TO LICENSOR FOR THE SOFTWARE AND/OR SERVICES THAT GAVE RISE TO THE ACTION OR CLAIM DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT, AND IF NO SUCH SOFTWARE OR SERVICES ARE SO APPLICABLE THEN THE MAXIMUM LIABILITY FOR EITHER PARTY SHALL NOT EXCEED THE AMOUNT OF LICENSE FEES PAID BY LICENSEE TO LICENSOR HEREUNDER DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT.

SUBJECT TO THE REQUIREMENTS AND LIMITATIONS, IF ANY, OF APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTIES FOR INDIRECT, SPECIAL, CONSEQUENTIAL, COLLATERAL OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGE OR INJURY TO BUSINESS EARNINGS, LOST PROFITS, DATA OR GOODWILL SUFFERED BY ANY PERSON ARISING FROM AND/OR RELATED TO THIS AGREEMENT OR RELATED AND/OR CONNECTED TO ANY USE OF THE SOFTWARE, EVEN IF THE PUTATIVELY LIABLE PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

19. Use of Name and Trademarks; Press Release Cooperation. Unless otherwise requested by Licensee, Licensor may reference Licensee name and use Licensee logo and trademarks as well as indicate that Licensee is a Licensor customer in Licensor’s business development and marketing efforts and materials (both printed and online), including without limitation its website. Further, promptly after execution of this Agreement, the parties shall work together in good faith to issue a press release announcing the relationship created hereunder.

20. Miscellaneous. If the copy of the Software Licensee received or the Sales Order Licensee executed was accompanied by a modified version of this End User License Agreement which was executed by both Licensee and Licensor, then such modified End User License Agreement will govern the use of the Software and not this Agreement. This Agreement
represents the complete agreement concerning this license and may be amended only by a writing executed by both parties. THE ACCEPTANCE BY LICENSOR OF ANY SALES ORDER IS EXPRESSLY MADE CONDITIONAL ON LICENSEE’S CONSENT TO THE TERMS SET FORTH HEREIN. In the event of a conflict between the terms of a Sales Order and the terms of this Agreement, the terms of the Sales Order shall prevail with respect to that Sales Order only, unless the provision on the Sales Order expressly amends the terms of this Agreement. Except for the foregoing, no provisions in either party’s purchase orders, or in any other business forms employed by either party will supersede the terms and conditions of this Agreement. If any provision of this Agreement is held to be unenforceable, such provision shall be reformed only to the extent necessary to make it enforceable. This Agreement shall be construed and governed in accordance with the laws of the State of New York (without regard to its conflict of law provisions). The federal and state courts located in the City, County and State of New York shall have the sole and exclusive jurisdiction over any disputes arising under the terms of this Agreement. The parties hereby expressly consent to such exclusive jurisdiction and irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded.

The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

Except for payment obligations, neither party shall have any liability under the Agreement to the extent that the performance of its obligations is delayed, hindered or prevented by Force Majeure. If the period for which a party’s performance is delayed, hindered or prevented by an event of Force Majeure continues for more than thirty (30) days, then either party may terminate the Agreement immediately by written notice to the other party and such termination shall not be deemed a termination due to breach. In the event of any termination as a result of this paragraph, Licensee’s obligation to destroy or return the Software shall remain in effect.

At Licensor’s discretion and upon reasonable advance notice, and no more than once per calendar year, Licensor reserves the right to conduct periodic reviews and audits to ensure compliance with the terms of this Agreement.

All notices and demands hereunder shall be in writing and shall be served by personal service or by mail at the address of the receiving party set forth in this Agreement (or at such different address as may be designated by such party by written notice to the other party). All notices or demands by mail shall be certified or registered mail, return receipt requested, by nationally-recognized private express courier, or sent by electronic transmission, with confirmation received, to the email address specified below, and shall be deemed complete upon receipt.

Licensor: email: sisense.legal@sisense.com

Licensee: the address and contact information listed in the applicable Sales Order.

21. Definitions. For purposes of this Agreement (including any and all Sales Orders,
Schedules and amendments made to or incorporated herein now or in the future, the following capitalized terms shall have the following meaning:

21.1. “Administrator(s)” means the Authorized User(s) who are Personnel of Licensee who have the full authorization and access for server, user and data management.

21.2. “Advanced IT Package” means a set of features that are bundled in a license option for Authorized Servers, that is licensed hereunder if specified on the applicable Sales Order and that includes:

21.2.1. SSO as defined at this link: /documentation/configuring-single-sign-sso/
21.2.2. API as defined at the following links:
  • REST API – http://www.sisense.com/documentation/sisense-rest-api/
  • SQL API – http://www.sisense.com/documentation/sql-api/

21.2.3. SDK: the Software Development Kit, a component of the Software, which allows the development or configuration of the Software.

21.2.4. Sisense Monitor: a Sisense service that provides monitoring information regarding the Authorized Servers.

21.2.5. Unlimited Static Access: means access provided for unlimited non-authenticated web users (i.e., not Authorized Users) to static PDF’s created with the Software without user authentication. Static access does not permit filtering, selections or drilldowns.

21.3. “Authorized Users” means individual users granted access to use the Software on a named basis. Each Authorized User shall receive a personal login and password which shall be maintained securely by Licensee from unauthorized use. The number of Authorized Users licensed hereunder is specified on the Sales Order(s) executed hereunder.

21.4. “Authorized Servers” means the number of Licensee’s servers on which the Software may be installed as specified in the applicable Sales Order. For purposes of this Agreement, each Authorized Server shall be licensed for a specific number of Rows or Cores as specified on the applicable Sales Order.

21.5. “Backup/Development Server” means a Software instance that is to be used for the sole purpose of development, backup, staging and other non-production uses and may not be used in any way for production use.

21.6. “Core” shall be a collection of one or more processor threads and a set of shared execution resources. A processor thread is the architectural state within a processor that tracks execution of a software program thread/task. Hyperthreading and other current and future technologies that materially expand the processing capacity of a Core shall not be permitted to increase the licensed processing capacity of the Core-based licenses granted under this Agreement unless otherwise agreed by the parties.

21.7. “Dashboards” means the graphic representation of data extracted from the data source(s) ingested into the Software as designed and created by Designers and/or Administrators using the Software in accordance with this Agreement.
21.8. "Designer(s)" means the Authorized User(s) who are Personnel of Licensee that are authorized to create, edit and share Dashboards.

21.9. "Documentation" means the standard documentation and user manuals provided or made accessible to Licensee along with the Software and also available at https://www.sisense.com/documentation/.

21.10. "Force Majeure" means fire, storm, flood, earthquake, adverse weather conditions, explosions, Acts of God, terrorism or the threat thereof, nuclear, chemical or biological contamination, compliance with any law, governmental controls, restrictions or prohibitions, general strikes, lock-outs, industrial action or employment dispute not caused by or specific or limited to the affected party, protests, public disorder, general interruptions in communications or power supply, failure or malfunction of computer systems or any other event or circumstance outside the reasonable control of a party to this Agreement.

21.11. "Intellectual Property" means all intangible legal rights, titles and interests evidenced by or embodied in or connected or related to all inventions, patents, patent applications, trademarks, service marks, trade dress, logos, trade names, and corporate names, domain names, any work of authorship, copyrights, trade secrets and all other proprietary rights belonging to a party in whatever form or medium, in each case on a worldwide basis; together with all revisions, extensions, reexaminations translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith.

21.12. "Personnel" shall mean employees and contractors of Licensee where such personnel’s access to the Software and/or the Bundled Software is controlled by Licensee.

21.13. "Professional Services" means those services described in Section 14 and in the applicable Sales Order.

21.14. "Row" shall be a single record in a table of a Sisense ElastiCube. For licensing purposes, only Rows in tables that were added to the ElastiCube from external sources are counted (i.e., Base table). If a base table is used by several ElastiCubes, it is counted only once.

21.15. "Software" means one or more of Licensor’s proprietary software products listed in the applicable Sales Order in object code format, and shall include the Documentation and all Updates and Versions of the Software to the extent supplied by Licensor under this Agreement.

21.16. "Support Terms" shall have the meaning given such term in Section 14.

21.17. "Update" shall have the meaning given such term in the Support Terms.

21.18. "Version" shall have the meaning given such term in the Support Terms.

21.19. "Viewer(s)" means the Authorized User(s) who are Personnel of Licensee that are authorized to view and filter the Dashboards that Designers share with them via a standard web browser. An Unlimited Viewer license allows unlimited Viewers to be authorized to access the specified Authorized Server. Please note that while there is no legal limit to the number of Viewers, the technical capacity of the server may limit the number of Viewers that may actually access the
LICENSEE ACKNOWLEDGES THAT IT HAS READ AND UNDERSTOOD THIS LICENSE AGREEMENT AND AGREES TO BE BOUND BY ALL OF THE TERMS.
City Manager's Report

From 5560 - CS/Information Technology
Supplier, Vendor, Company, Individual
Name STEPCG, LLC
Address 50 East Rivercenter Blvd., Suite 900
Covington, KY 41011

Expense Type Service Agreement
Total Amount $585,306.01 (thru 12/30/2022)

Fund Source(s) Fund Code(s) Fund Amount(s)
Capital 40018-5560-1413-65 $585,306.01

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

PROFESSIONAL SERVICES AGREEMENT

The Department of Information Technology requests authorization to enter into a Professional Services Agreement with STEPCG, LLC to purchase Extreme Networks brand hardware and professional services to replace the existing facility wired core network gear at 46 locations throughout the City. The equipment is critical to maintaining network connectivity. It is necessary to replace the hardware as the existing technology has reached the end of its life cycle. Additionally, the replacement reduces security risks and increases network stability.

The Professional Services Agreement includes the following:

1. Hardware and maintenance support
2. Design, configuration, and installation
3. Consulting, documentation, and knowledge transfer

The Agreement will be effective upon execution through December 30, 2022.

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

A Certificate of Funds in the amount of $585,306.01 is attached.

Signatures/Approval

Approved by City Commission

Clerk
Date

Updated 10/2019
July 29, 2021

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

FROM: Shibu Varghese, Senior Systems Engineer  
Department of Information Technology

SUBJECT: STEPCG Wired Network Project, Professional Services Agreement

Attached, please find the service agreement between the City of Dayton and STEPCG, LLC for providing hardware, configuration, and professional services through December 30, 2022. The purpose of this agreement is to replace the end-of-life main (core) network gear at 46 locations with supported hardware. Replacing these gears reduces security risks and increases network stability.

If you have any questions, please feel free to call me at ext. 6341.

Approved:

E-SIGNED by Jon Rike  
on 2021-08-05 10:44:08 GMT

Jon Rike, C.I.O./Director  
Department of Information Technology
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

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</table>

Attach additional pages for more FOAPALs

Vendor Name: STEPCG, LLC
Vendor Address: 50 East Rivercenter Blvd., Suite 900, Covington, Kentucky 41011
Street City State Zipcode + 4
Federal ID: 300836376
Commodity Code: 92045
Purpose: Professional Services Agreement to purchase Extreme Networks brand hardware and professional services to replace the existing facility wired core network gear at 46 locations throughout the City through December 30, 2022 for $585,306.01.

Contact Person: Desa Foster, Manager (ext. 6349)
Information Technology
Department/Division 3-Aug-21
E-SIGNED by Jon Rike on 2021-08-05 10:44:29 GMT

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: [Signature]
Date: 9/5/21
CF Prepared by: [Signature]
Date: 8/5/21
CF/CT Number: CT21-3040

Finance Department
October 18, 2011
TECHNOLOGY SERVICES AGREEMENT

THIS HARDWARE AND PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into on this ____ day of ______, 2021, between the City of Dayton, Ohio ("City"), a municipal corporation in and of the State of Ohio, and STEPCG, LLC. ("STEPCG" or "Consultant"), a corporation authorized to conduct business in the State of Ohio.

WITNESSETH THAT:

WHEREAS, The City identified a need for certain hardware and professional services and;

WHEREAS, The Consultant represented that it is a skilled, experienced, and competent consulting firm, with the personnel and equipment to provide the hardware and professional services set forth hereinafter.

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

SECTION 1. SCOPE OF SERVICES

The Consultant shall provide hardware and professional services set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

SECTION 2. BACKGROUND CHECK

Consultant's personnel may be subject to criminal history background check(s) (including but not restricted to fingerprinting and identify verification).

SECTION 3. COMPENSATION AND PAYMENT

The City agrees to pay Consultant an amount not to exceed ($585,306.01) Five Hundred Eighty-Five Thousand Three Hundred and Six Dollars and One Cent, for all services provided by the Consultant, as set forth in Exhibit A. All invoices shall be accompanied by supporting documentation and information substantiating the invoiced amount as may be requested by the City. Unless disputed, the City shall tender payment within thirty (30) days of receipt of the Consultant's invoice.

SECTION 4. TERM

This Agreement shall commence upon execution by the City and it shall terminate as follows: The hardware installation shall be deemed complete, and such obligations will terminate upon the accepted receipt of all network switch installation deliverables described within the Scope of Services Exhibit A attached to this Agreement, or not later than December 30, 2022 whichever shall occur first. After completion, and acceptance by the City, of the network switch hardware installation, STEPCG shall provide one year of hardware maintenance and support, at which time the Agreement shall terminate, unless extended by mutual written agreement by the parties.
SECTION 5. CITY'S RESPONSIBILITIES

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

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

SECTION 6. STANDARD OF CARE

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

If, during the one-year period following completion of the Services, it is shown there is an error in the Services caused by Consultant's failure to meet such standards and City has notified Consultant in writing of any such error within that period, Consultant shall perform, at no additional cost to City, such Services within the original Project as may be necessary to remedy such error.

SECTION 7. CONFIDENTIALITY

All information provided to and/or gathered by Consultant in the course of its performance of Services shall be deemed "confidential" information to the extent that it is classified as "private" under the laws of the State of Ohio or is not independently available to the general public. To the extent permitted by law, Consultant agrees that it shall not disclose such information to any third party without City's written consent. Consultant shall also take all necessary steps to protect against the disclosure of City's confidential information.

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

SECTION 8. INDEMNIFICATION AND LIABILITY

Consultant shall indemnify and defend the City and its elected officials, officers, employees and agents (collectively, "Indemnitees") from and against all third-party 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 negligent acts, omissions, or willful misconduct or fraud of Consultant and its agents, employees, Consultants, sub-Consultants and representatives in undertaking and performing the Services; however, no indemnification will be required for any claims, losses, damages or expenses resulting from any negligence or willful misconduct of the City or any of the other Indemnitees. This Article shall survive early termination or expiration of this Agreement.
Notwithstanding the terms of any other provisions, (I) the total liability of Consultant and its subsidiaries, officers, employees, and agents for all claims of any kind arising out of Consultant's services, whether in contract, tort, or otherwise, shall be limited to the total fees paid to Consultant under this agreement; and (II) neither party shall in any event be liable for any indirect, consequential, or punitive damages, even if it has been advised of the possibility of such damages.

SECTION 9. INSURANCE

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

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

Current certificates of insurance for all policies and concurrent policies required to be maintained by Consultant pursuant to this Article shall be furnished to the City. All such insurance policies, excluding Professional Liability Insurance, shall name the City, its elected officials, officers, agents, employees, and volunteers as additional insureds, but only to the extent of the policy limits stated herein. Consultant shall endeavor to provide a minimum of thirty (30 days advance written notice to the City in the event of cancellation or diminution of coverage below the amounts required hereunder.

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

SECTION 10. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Except as otherwise provided in this Agreement, documents, reports, hardware and software configuration files, and configuration templates prepared by Consultant as part of the Services that are unique to the City and its infrastructure shall become the sole and exclusive property of the City upon payment. However, Consultant shall have the right to their use with prior written consent of the City, which consent shall not be unreasonably withheld.

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

All of Consultant's deliverables shall be for the exclusive use of the City for its internal business purposes and any specific purposes set forth in this Agreement, and for no other purposes without
the prior written consent of Consultant. Consultant shall have no liability to any third parties who rely on any of its deliverables.

SECTION 11. TERMINATION

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

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

Any such termination shall not relieve the vendor of any liability to the City for damages sustained by virtue of any breach by the vendor. The City will be under no further monetary obligation or commitment to the vendor. The City may terminate this contract at any time upon thirty (30) days written notice to the vendor.

In the event of termination, the City may, at its option, exercise any remedy available to it, including the Uniform Commercial Code, according to Ohio law.

SECTION 12. GENERAL PROVISIONS

A. DELAY IN PERFORMANCE

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

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

B. GOVERNING LAW AND VENUE

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

C. COMMUNICATIONS

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

**City:**
City of Dayton, Ohio  
Suite 321 or 320  
130 West 2nd Street  
Dayton, Ohio 45402  
Attn: Shibu Varghese, Department of Information Technology

**Consultant:**
STEPG, LLC,  
50 East Rivercenter Blvd  
Covington, KY 41011  
Attn: Denny Carroll

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

D. EQUAL EMPLOYMENT OPPORTUNITY

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

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

E. WAIVER

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

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

G. INDEPENDENT CONTRACTOR

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

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

H. ASSIGNMENT

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

I. THIRD PARTY RIGHTS

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

J. AMENDMENT

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

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

L. INTEGRATION

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

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

CITY OF DAYTON, OHIO

__________________________
City Manager

STEPCG, LLC

By: _______________________

__________________________
Print: Jim West

__________________________
Its: CFO

APPROVED AS TO FORM AND CORRECTNESS:

☑️ Recoverable Signature

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 Commission
EXHIBIT A
SCOPE OF SERVICES

A) Project Scope:

The scope of services includes the design, configuration, and installation of up to 60 Extreme Networks Universal 5520 switches to be installed in 44 physical areas across facilities of the City of Dayton to replace existing VSP 4450/4850/7000 hardware. StepCG will prepare and configure 50 switches as replacements for existing switches by converting the existing configurations and modifying them to function equivalently on the new replacements making additional changes to those configuration as specified by the City of Dayton. StepCG will prepare and configure 6 switches as a new 2nd switch for 6 buildings. StepCG will prepare 4 switches as on the shelf spares with the ability to pull in as replacements or new switch installations should they be needed during the project. The Water Department switches located at 320 Monument Ave will be configured differently than current production by moving routing from one switch to the other during configuration conversion. Pricing includes all necessary configuration required to deploy the Universal 5520 switches. The network will be deployed with the latest Extreme Networks recommended stable code releases as approved by the City of Dayton. STEPCG will ensure functionality including 2-3 days of post cutover support. STEPCG will complete all tasks associated with planning, designing, coordinating, and troubleshooting this solution. STEPCG design engineers will work hand in hand with the City to ensure familiarity with the design and configurations when turned over. Upon completion the Consultant will provide the customer with full documentation including but not limited to; network diagram and back up configurations.

Please Note: Some of the deliverables may be completed prior to site arrival and some may be performed post site visit.

No configuration or implementation tasks will be performed outside the scope of services unless both parties mutually agree to amend this Agreement as stated in Section J.

StepCG engineers will perform the following tasks to install and configure:

**Tentative switch count to location mapping:**

<table>
<thead>
<tr>
<th>QTY</th>
<th>Primary</th>
<th>Secondary</th>
<th>Tertiary</th>
<th>Quaternary</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>CTY Signal Building</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>DFD Fire HQ</td>
<td>New CTY</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>DPD Safety Building</td>
<td>New CTY</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>CTY IT User</td>
<td>IT 4K Aggregate</td>
<td>New CTY</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>CTY City Hall</td>
<td>TSignal Ring A</td>
<td>TSignal Ring B</td>
<td>New CTY</td>
</tr>
<tr>
<td>3</td>
<td>CTY One Stop - Main</td>
<td>One Stop - Training</td>
<td>New CTY</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>CTY Court Building</td>
<td>New CTY</td>
<td></td>
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</tr>
<tr>
<td>1</td>
<td>DPD Dist 2 - Wayne</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>1</td>
<td>DPD Dist 3/5 - Washington</td>
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<td>DPD Dist 5 - Salem</td>
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<tr>
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<tr>
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<td>DPD Care House</td>
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<tr>
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<td>DFD Fire Co 20</td>
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<td></td>
</tr>
<tr>
<td>1</td>
<td>DFD Fire Co 2</td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>
Planning / Design Phase:

Establish a timeline and work schedule for switch unit replacements including details on the IDF locations. The timeline will reflect information and planning in the event the project is disrupted due to severe weather or Majeure events.

A STEPCG project manager will be the primary contact for the City of Dayton for the duration of installation project. The project manager will work with the City of Dayton to establish timelines for the project along with scheduling appropriate resources to completion.

• Collect and review existing switch configurations provided by the City of Dayton.
• Identify and collect extra information from the City of Dayton needed to later migrate configurations to the latest VOSS release and hardware/VIM layout.
• Collect and identify current ethernet port active operations and statistics on a per switch basis.
• Collect outputs from learned mac-addresses by port and by VLAN.
• Confirm configuration backups for all switch units targeted for replacement.
• Review targeted IDF locations and equipment slated to be used at each location.
• Confirm rack space and power availability per site and IDF.
• Identify switch uplinks to port or VIM mapping.
• Identify existing cable to port labeling.
• Label cables as necessary in preparation for switch replacement.
• Select first site deployment.
• Review installation process and results to ensure future installations are successful. Make
changes to procedures, as necessary.

Implementation / Configuration Phase:

- Inventory switch component receivables.
- Provide asset tagging assistance where needed.
- Unpack and assemble switch units – power supply, mounting rack ears, and VIMs as appropriate.
- Upgrade switch software to OS release approved by the City of Dayton. Note that the new switches being installed require version 8.2.5 or higher.
- Migrate configuration from legacy switch to new unit via switch replacement procedure as well as make additional changes specified by the City of Dayton.

STEPCG will provide resources to replace existing switch units with designated units from the associated hardware order. Resource will carry laptop, console cables, Wi-Fi and cellular internet access, spare ethernet patch cables and fiber patch cables. Cables to be supplied by the City of Dayton.

Switch Replacement Procedure:

- Disconnect all copper and fiber patch cabling.
- Disconnect power from switch and remove power cords for return to the City of Dayton’s staging area by Step CG.
- Remove switch from rack.
- Install pre-configured replacement unit in location of vacant space made available from removal of switch.
- Same rack screws will be re-used for new switch installation.
- Install new power cords provided with the replacement switch unit.
- Verify power-up cycle and switch boot operations.

Once the switch has completed boot cycle, switch operations will be verified relative to switch ping operations and reachability status, port links states, and mac-learning verifications based upon pre-installation data collection.

Turnover / Knowledge Transfer Phase:

Per site location and associated IDF switch replacements will be turned over back to production status once switch operations and network connectivity have been validated.

Knowledge transfer will occur during the staging, configuration, and implementation phases of the project. We encourage the City of Dayton IT team to actively participate with the STEPCG team and partner to share knowledge throughout the project.

B) Hardware Maintenance Support:

Each Extreme Works Advanced Hardware Replacement Service offer includes the following:
- GTAC Technical Support – 24x7 telephone support that provides technical assistance with diagnosis of defect or failures in the Extreme Networks hardware and Operational Software to conform to published documentation on Covered Products.
- Escalation Management – The GTAC is the escalation point for the customer for raising unsatisfactory conditions or immediate concerns associated with the service quality on Covered Products.
- Advanced Shipment – Extreme Networks provides for the advanced shipment of FRUs to the
customer’s contracted sites within the contract response time on Covered Products. A request for a replacement FRU is validated by GTAC and a Return Material Authorization (RMA) number is assigned. Extreme Networks will pick, pack and dispatch the replacement FRU using a commercial delivery service to make the delivery to the customer’s contracted site. The replacement FRU will be delivered within the contracted response time, subject to the regional restrictions, response times, and diagnostic requirements.

C) Fees and Payment:

Estimated Total Project Cost: $585,306.01

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<thead>
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<th>Description</th>
<th>Cost</th>
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<tbody>
<tr>
<td>Hardware, Software &amp; Maintenance</td>
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<tr>
<td>STEP CG Switch Install and Configuration:</td>
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<td>Project management:</td>
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<tr>
<td>Professional Services</td>
<td>TOTAL:  $ 48,000.00</td>
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</tbody>
</table>

Labor and Out of Pocket Expenses: StepCG has included pricing & costs above to cover planned & agreed upon professional services as a fixed price.

Hardware/Software: StepCG will invoice for the hardware once it arrives. StepCG will invoice for the professional services as it is completed.

Any additional work that is required outside the scope of this services requires written approval by The City of Dayton and StepCG, LLC via change order.
From 2600 - Planning, Neighborhoods & Dev. / Development

Supplier, Vendor, Company, Individual

Name St. Peter Partners LLC

Address 4548 Royal Ridge Way
          Kettering, OH 45429

Fund Source(s) Fund Code(s) Fund Amount(s)
Capital Projects Fund 40001-2600-1424-41 $40,000.00

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

Description

Agreement
East Third Street Gateway Project

The Department of Planning, Neighborhoods & Development – Division of Development requests approval to enter into an Agreement with St. Peter Partners LLC to assist with the implementation of the East Third Street Gateway Project. Working in concert with property owners along the East Third Corridor, St. Peter Partners LLC will install hardscape, landscape, and water source improvements in the 600 block of East Third Street. The goal of the project is to enliven and better connect downtown to the neighborhood to the east.

The City is contributing up to $40,000.00 of this $80,000.00 effort from the Permanent Improvement Fund. This Agreement makes the funds available to St. Peter Partners LLC on a reimbursement basis as eligible expenses are incurred for the project.

The Agreement will commence upon execution and expire on December 31, 2022.

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

A site plan and map are included as Attachment A and B of the Agreement.

Funding source is the Capital Projects Fund - Permanent Improvement Fund.

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

<table>
<thead>
<tr>
<th>Contract Start Date</th>
<th>Expiration Date</th>
<th>Original Commission Approval</th>
<th>Initial Encumbrance</th>
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<td>upon execution</td>
<td>12/31/2022</td>
<td>$40,000.00</td>
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Required Documentation
- Initial City Manager's Report
- Initial Certificate of Funds
- Initial Agreement/Contract

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

<table>
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<tr>
<th>Amount: $40,000.00</th>
<th>Fund Code 40001 - 2600 - 1424 - 41 - XXXX - XXXX</th>
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</thead>
</table>

Attach additional pages for more FOAPALs

Vendor Name: St. Peter Partners LLC
Vendor Address: 4548 Royal Ridge Way Kettering OH 45429
Federal ID: 47-4155698
Commodity Code: 91849
Purpose: To provide funding for the East Third Street Gateway Project that includes landscape and hardscape improvements on the south side of East Third Street at the railroad overpass and Webster Street as part of the City's approved Streetscape and Corridor Guidelines.

Contact Person: Jill Bramini
Planning, Neighborhoods & Development/Development Department 8/4/2021 Date

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: [Signature]
Date: 8/5/2001

CF Prepared by: [Signature]
Date: 8/5/21
CF/CT Number: [Redacted]
AGREEMENT
East Third Street Gateway Project

THIS AGREEMENT ("Agreement") is made and entered into between St. Peter Partners, LLC a limited liability company in the State of Ohio, currently located at 4548 Royal Ridge Way, Kettering, OH 45429 ("Sponsor"), and the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio ("City").

WITNESSETH THAT:

WHEREAS, On May 5, 1999, the Commission of the City of Dayton adopted its strategic plan, CitiPlan Dayton: The 20/20 Vision ("CitiPlan 20/20"), of which downtown development is a major component of its Economic Development Strategy; and

WHEREAS, On August 5, 2020, the Commission of the City of Dayton adopted its Downtown Streetscape Guidelines and Corridor Plan shaping street-level experiences over the next 15 years; and

WHEREAS, Achieving the vision for the Corridor Plan requires a concerted and collaborative effort between public and private partners engaged in creating thoughtful and vibrant streetscape connections in Dayton; and

WHEREAS, City is committed to stimulating private investments within its municipal boundaries that result in thoughtful connections in and between neighborhoods that enrich our authentic urban experience; and

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

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

ARTICLE 1. PROJECT INFORMATION.
The East Third Gateway Project ("Project") will include landscaping, hardscape, installation of a water source, and related improvements along East Third near the railroad overpass at Webster Street. Like many railroad overpasses, this one separates neighborhoods to the east from Webster Station and the downtown neighborhoods. The goal is to create a more walkable gateway with lively plantings and beautification as depicted in Attachment A along the south side of East Third Street including the eastern section of Parcel ID R72 00604 0023 as depicted in Attachment B. Sponsor will be responsible for long term maintenance of Project.

ARTICLE 2. FUNDING.
Sponsor will invest private funds and City funds totaling Eighty Thousand Dollars ($80,000) to make gateway improvements along East Third Street. The City shall make available to Sponsor grant funds in an amount not to exceed Forty Thousand Dollars ($40,000) for improvements pursuant to this Agreement. Grant funds shall be provided by the City on a reimbursement basis. Sponsor shall provide no less than a one-to-one cash match of Forty Thousand Dollars ($40,000).
Sponsor will submit invoices for payment for project described in Article 1. Invoices shall specify the invoice period, state the total amount requested, detail the Services performed and shall be accompanied by supporting information including cancelled checks and records that substantiate the invoice amount and demonstrate proof of payment by Sponsor. The appropriate City inspection personnel will verify all project related work submitted for reimbursement is complete. The City will pay invoices within thirty (30) days from receipt thereof, unless disputed.

ARTICLE 3. TERM AND TERMINATION.

Sponsor shall complete the Project on or before December 31, 2022, unless such completion date is extended upon mutual written agreement between the parties to this Agreement. All construction activities and other work required to complete the Project shall be performed and completed in accordance with all applicable federal, state, and local laws, rules, regulations, orders, and all building, zoning, well field, and fire code requirements.

ARTICLE 4. INDEMNIFICATION.

Sponsor 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 Sponsor, and its agents, employees, contractors, sub-contractors, and representatives in undertaking and completing the Project, and/or Sponsor’s failure to comply with federal, state, and local laws.

ARTICLE 5. EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION.

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

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

ARTICLE 6. POLITICAL CONTRIBUTIONS.

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

ARTICLE 7. RECORDS AND RETENTION.

Sponsor shall use Generally Accepted Accounting Principles ("GAAP") 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 Sponsor 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 request, Sponsor 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. Sponsor 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 Sponsor and made available for review by City, the Auditor of the State of Ohio, the federal government and any of its departments and agencies, and any of their designees for a minimum of three (3) years after the termination or expiration of this Agreement. Notwithstanding the foregoing, if there is litigation, claims, audits, negotiations or other actions that involve any of the Records pertaining to this Agreement, which commences prior to the expiration of the three-year period, Sponsor shall retain such Records until completion of the actions and resolution of all issues or the expiration of the three-year period, whichever occurs later.

**ARTICLE 8. TAX REPRESENTATION.**

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

**ARTICLE 10. GENERAL PROVISIONS.**

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

B. **Entire Understanding.** This Agreement represents the entire and integrated agreement between the parties. This Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreements or contracts, whether oral or written, relating to the subject matter of this Agreement.

C. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws. Any arbitration, litigation or other legal matter regarding this Agreement or performance by either party must be brought in a court of competent jurisdiction in Montgomery County, Ohio.
D. **Amendment.** The parties may amend this Agreement, provided that no such amendment shall be effective unless it is reduced to a writing, which makes specific reference to this Agreement, is executed by a duly authorized representative of each party to this Agreement and, if required or applicable, is approved by the Commission of the City of Dayton, Ohio.

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

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

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: City of Dayton
            Department of Planning, Neighborhoods and Development
            c/o Development Division
            P.O. Box 22, 101 West Third Street
            Dayton, OH 45401

   For Sponsor: St. Peter Partners, LLC
                 4548 Royal Ridge Way
                 Kettering, OH 45429

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 Sponsor, each by a duly authorized representative, have executed this Agreement as of the day and date first set forth below.

CITY OF DAYTON, OHIO

City Manager

Date

ST. PETER PARTNERS, LLC

By:

Its: MANAGING MEMBER

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

__________________________ 2021

Min. / Bk. _____  Pg. _____

Clerk of the Commission

APPROVED AS TO FORM AND CORRECTNESS:

7/28/2021

Amelia N. Blankenship for

City Attorney
Signed by: Blankenship, Amelia

East Third Street Gateway
City Manager’s Report

From: 3210 - Aviation/AP Admin & Finance
Name: Saturn Electric Inc.
Address: 2628 Nordic Rd.
Dayton, OH 45414

Date: August 18, 2021
Expense Type: Award of Contract
Total Amount: $217,631.00 thru 12/31/2022

Fund Source(s): Cash Capital
Fund Code(s): 51144-3210-1423-43
Fund Amount(s): $217,631.00

Description:

Dayton International Airport
Cargo Road Lights- PSA to Guard Shack
10% SBE & 5% Participation Goal / 10% SBE & 8.25% Participation Achieved

The Dayton International Airport Cargo Road Lights- PSA to Guard Shack project includes replacement of light fixtures and light poles along Cargo Road from the PSA Maintenance Hangar to the end of Cargo Road at the guard shack. There are nine (9) light fixtures and poles that will be replaced. There are three (3) existing poles along the Terminal walkway that will get an additional light fixture added for the pedestrian walkway, and four (4) additional light fixtures and poles that will be replaced along Terminal Drive.

One bid was received for this project. It is recommended that the project be awarded to the lowest and best bidder, Saturn Electric Inc. The total contract amount is $217,631.00, including the base bid of $197,210.00 and Add Alternate #1 of $20,421.00 for additional light pole stock. The contract will be awarded at execution and is not expected to be closed until December 31, 2022.

The total Engineer’s estimate for this project is $272,935.50 as a base bid and Add Alternate #1.

HRC verified that Saturn Electric Inc. has committed to an SBE participation of 10% and an MBE of 8.25%, exceeding the goals set for this project.

The project is being funded with a $217,631.00 in Cash Capital. A Certificate of Funds, Tabulation of Bids, HRC recommendation letter and the proposal from the firm recommended for award are attached.

Signatures/Approval

Approved by City Commission

Clerk
Date

Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

X New Contract

Renewal Contract

Change Orders

Contract Start Date: upon execution
Expiration Date: 12/31/22
Original Commission Approval: $217,631.00
Initial Encumbrance: $217,631.00
Remaining Commission Approval: 

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

NO DRAFT DOCUMENTS PERMITTED

Required Documentation

X Initial City Manager’s Report
X Initial Certificate of Funds
X Initial Agreement/Contract

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

Amount: $217,631.00

Fund Code: 51144 - 3210 - 1423 - 43 -

Fund Org Acct Prog Act Loc

Amount: 

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

Fund Org Acct Prog Act Loc

Attach additional pages for more FOAPALs

Vendor Name: Saturn Electric Inc.
Vendor Address: 2628 Nordic Rd., Dayton, Ohio 45414
Federal ID: 311280886
Commodity Code: 96851
Purpose: Cargo Road Lighting Project to replace/upgrade existing lighting system and components at the Dayton International Airport.

Contact Person: Mike Cross
Aviation/Engineering Department/Division Date: 8/6/2021

Originating Department Director’s Signature:

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: 

Date: 8/11/2021

CF Prepared by: Williams

Date: 9/10/2021

CF/CT Number: C72-3041

October 18, 2011
CITY OF DAYTON, OHIO
DEPARTMENT OF PUBLIC WORKS

Bid
Cargo Road Lights
PSA to Guard Shack

Bidder Saturn Electric, Inc.
PO Box 13830
Dayton, Ohio 45413
<table>
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<th>Item Code</th>
<th>Item Description</th>
<th>UoM</th>
<th>Quantity</th>
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<td>9</td>
<td>LUMINAIRE, CONVENTIONAL, SOLID STATE (LED), AS PER PLAN, PL2</td>
<td>EA</td>
<td>10</td>
<td>$1,950.00</td>
<td>$19,500.00</td>
</tr>
<tr>
<td>10</td>
<td>LIGHT POLE 6' ARMS (AND HARDWARE ONLY)</td>
<td>EA</td>
<td>3</td>
<td>$457.00</td>
<td>$1,371.00</td>
</tr>
<tr>
<td>11</td>
<td>TRENCH 24&quot; DEEP</td>
<td>LF</td>
<td>1400</td>
<td>$29.48</td>
<td>$41,272.00</td>
</tr>
<tr>
<td>12</td>
<td>2&quot; CONDUIT, EPC-40-PVC</td>
<td>LF</td>
<td>1400</td>
<td>$6.60</td>
<td>$9,240.00</td>
</tr>
<tr>
<td>13</td>
<td>SPECIAL, DISCONNECT CIRCUIT, CARGO RD. (REMOVE CABLING)</td>
<td>LS</td>
<td>1</td>
<td>$3,000.00</td>
<td>$3,000.00</td>
</tr>
<tr>
<td>14</td>
<td>#6 AWG 600 VOLT DISTRIBUTION CABLE</td>
<td>LF</td>
<td>5000</td>
<td>$2.27</td>
<td>$11,350.00</td>
</tr>
<tr>
<td>15</td>
<td>#10 AWG POLE AND BRACKET ARM CABLE</td>
<td>LF</td>
<td>1500</td>
<td>$0.75</td>
<td>$1,125.00</td>
</tr>
<tr>
<td>16</td>
<td>#10 AWG GROUNDING CONDUCTOR</td>
<td>LF</td>
<td>2200</td>
<td>$1.50</td>
<td>$3,300.00</td>
</tr>
<tr>
<td>17</td>
<td>#8 AWG GROUNDING ELECTRODE CONDUCTOR</td>
<td>LF</td>
<td>200</td>
<td>$1.27</td>
<td>$254.00</td>
</tr>
<tr>
<td>18</td>
<td>LIGHT POLE REMOVAL</td>
<td>EA</td>
<td>9</td>
<td>$250.00</td>
<td>$2,250.00</td>
</tr>
<tr>
<td>19</td>
<td>LIGHT POLE FOUNDATION REMOVAL</td>
<td>EA</td>
<td>10</td>
<td>$906.00</td>
<td>$9,060.00</td>
</tr>
<tr>
<td>20</td>
<td>LUMINAIRE REMOVED</td>
<td>EA</td>
<td>10</td>
<td>$76.00</td>
<td>$760.00</td>
</tr>
<tr>
<td>21</td>
<td>LIGHTNING ARRESTER</td>
<td>EA</td>
<td>10</td>
<td>$75.00</td>
<td>$750.00</td>
</tr>
<tr>
<td><strong>MISCELLANEOUS</strong></td>
<td><strong>$22,632.00</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>MOBILIZATION</td>
<td>LS</td>
<td>1</td>
<td>$13,500.00</td>
<td>$13,500.00</td>
</tr>
<tr>
<td>23</td>
<td>TEMPORARY LIGHTING</td>
<td>LS</td>
<td>1</td>
<td>$3,560.00</td>
<td>$3,560.00</td>
</tr>
<tr>
<td>24</td>
<td>SIGNAGE</td>
<td>EA</td>
<td>1</td>
<td>$5,572.00</td>
<td>$5,572.00</td>
</tr>
<tr>
<td>Item Code</td>
<td>Item Description</td>
<td>UoM</td>
<td>Quantity</td>
<td>Unit Price</td>
<td>Extension</td>
</tr>
<tr>
<td>-----------</td>
<td>----------------------------------------------------------------------------------</td>
<td>------</td>
<td>----------</td>
<td>------------</td>
<td>-----------</td>
</tr>
<tr>
<td>25</td>
<td>CONTINGENCY ALLOWANCE</td>
<td>LS</td>
<td>1</td>
<td>$1.00</td>
<td>$1.00</td>
</tr>
<tr>
<td>26</td>
<td>ADDITIONAL LIGHT POLE, ALUMINUM, 25', 6' ARM (TYPE LP-1, CARGO ROAD)</td>
<td>EA</td>
<td>1</td>
<td>$3,275.00</td>
<td>$3,275.00</td>
</tr>
<tr>
<td>27</td>
<td>ADDITIONAL LIGHT POLE, ALUMINUM, 36', 8' ARM (TYPE LP-3, TERMINAL DRIVE LOOP)</td>
<td>EA</td>
<td>1</td>
<td>$4,775.00</td>
<td>$4,775.00</td>
</tr>
<tr>
<td>28</td>
<td>ADDITIONAL LIGHT POLE, ALUMINUM, 30' 15' ARM (TYPE LP-4, TERMINAL DRIVE)</td>
<td>EA</td>
<td>1</td>
<td>$6,245.00</td>
<td>$6,245.00</td>
</tr>
<tr>
<td>29</td>
<td>ADDITIONAL LUMINAIRE, CONVENTIONAL, SOLID STATE (LED), AS PER PLAN, PL1</td>
<td>EA</td>
<td>2</td>
<td>$2,250.00</td>
<td>$4,500.00</td>
</tr>
<tr>
<td>30</td>
<td>ADDITIONAL LUMINAIRE, CONVENTIONAL, SOLID STATE (LED), AS PER PLAN, PL2</td>
<td>EA</td>
<td>1</td>
<td>$1,625.00</td>
<td>$1,625.00</td>
</tr>
</tbody>
</table>

**Base Bid Total:** $197,210.00
DISCLOSURE OF LITIGATION AND/OR INVESTIGATION

Disclosure of Litigation: Have you or any person, group, partnership, company, or corporation affiliated with you been engaged in the past three (3) years in litigation, mediation or any form of contractual dispute resolution with any state government or any political subdivision thereof including, without limitation, the State of Ohio, the City of Dayton, Ohio, or Montgomery County, Ohio? For the purpose of your response, “affiliated” means directly or indirectly controlling, controlled by, or under common control, with “control” meaning legally or operationally in a position to exercise restraint or direction over the other.

RESPONSE: YES [ ] NO [✓]

If your response is “YES” please separately identify each lawsuit, mediation or dispute resolution process in which you or your affiliate have been engaged during the past three (3) years. Identify the nature of the dispute, the parties involved, and the current status of the dispute. Attach or include any information you believe pertinent to a full understanding of the disputed matters.

Disclosure of Investigation or Criminal Proceedings:

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

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

RESPONSE: YES [ ] NO [✓]

(2) Been the subject of:

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

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

RESPONSE: YES [ ] NO [✓]

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

(1) Sanctioned relative to any business or professional permit and/or license?

RESPONSE: YES ☐ NO ☑

(2) Suspended, debarred, or disqualified from any government contracting process?

RESPONSE: YES ☐ NO ☑

(3) The subject of a criminal investigation, whether open or closed, or an indictment for any business related constituting a crime under local, state, or federal law?

RESPONSE: YES ☐ NO ☑

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

(i) Any business-related activity, including but not limited to fraud, coercion, extortion, bribe or bribe receiving, giving or accepting unlawful gratuities, immigration or tax fraud, racketeering, mail fraud, wire fraud, price-fixing or collusive bidding, or

(ii) Any crime, whether or not business-related, the underlying conduct of which related to truthfulness, including but not limited to filing of false documents or false sworn statements, perjury or larceny.

RESPONSE: YES ☐ NO ☑

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

Business Address

Telephone

Partnership
Firm Name
N/A

Members of Firm and
Their Business Address

Corporation
Name
Saturn Electric, Inc.

State of Incorporation
Ohio

Name and Title of
Officers with Authority
to Sign Contract
Douglas Kash
President

Home Office Address
2628 Nordic Rd., Dayton, Ohio 45414

Local Address
PO Box 13830, Dayton, Ohio 45413

Telephone (937) 278-2580  Fax (937) 278-0220
E-mail doug@saturn-electric.com

Federal I.D.# 31-1280886

Dated this 1 day of July, 2021

Bidder:

(Person, Firm, or Corporation)

By: Douglas Kash
Title: President
BID BOND

Amount $ Ten Percent (10%) of the Total Bid Amount

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

of Ten Percent (10%) of the Total Bid Amount Dollars, for the payment of which well and truly to be made, we hereby, jointly and

severally, bind ourselves, our heirs, executors, and administrators, firmly by these presents.

The condition of this obligation is such that, if the Bid attached hereto is accepted and the Contract award to the bidder,

Saturn Electric, Inc.

named therein, and the said bidder shall within ten (10) days after being notified that said contract has been awarded to

the bidder, enter into a Contract in the form acceptable to the Director and give bond in a form to be furnished by the

Director, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Signed at Dayton, Ohio, this 1st day of July, 2021.

Saturn Electric, Inc.

Bidder

Great American Insurance Company

Nancy Nemec, Attorney-in-Fact

Surety

AssuredPartners

Name of Insurance Agency

5905 E. Galbraith Road, Suite 5000
Cincinnati, OH 45236

Address of Insurance Agency

Telephone (513) 475-3376  FAX (513) 475-3376
GREAT AMERICAN INSURANCE COMPANY®
Administrative Office: 301 E 4TH STREET • CINCINNATI, OHIO 45202 • 513-369-5000 • FAX 513-723-2740

The number of persons authorized by this power of attorney is not more than TEN

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the GREAT AMERICAN INSURANCE COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Ohio, does hereby nominate, constitute and appoint the person or persons named below, each individually if more than one is named, its true and lawful attorney-in-fact, for it and in its name, place and stead to execute on behalf of the said Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; provided that the liability of the said Company on any such bond, undertaking or contract of suretyship executed under this authority shall not exceed the limit stated below.

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Limit of Power</th>
</tr>
</thead>
<tbody>
<tr>
<td>MARK NELSON</td>
<td>ALL OF CINCINNATI, OHIO</td>
<td>ALL</td>
</tr>
<tr>
<td>TIFFANY GOBICH</td>
<td></td>
<td>$100,000,000</td>
</tr>
<tr>
<td>RANDAL T. NOAH</td>
<td></td>
<td></td>
</tr>
<tr>
<td>STELLA ADAMS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>KATIE ROSE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>LIZ OHŁ</td>
<td></td>
<td></td>
</tr>
<tr>
<td>JULIE SIEMER</td>
<td></td>
<td></td>
</tr>
<tr>
<td>G. DALE DERR</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NANCY NEMEC</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TAMMY L. MASTERSON</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

This Power of Attorney revokes all previous powers issued on behalf of the attorney(s)-in-fact named above.

IN WITNESS WHEREOF the GREAT AMERICAN INSURANCE COMPANY has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 13TH day of APRIL 2021.

GREAT AMERICAN INSURANCE COMPANY

[Signature]
Divisional Senior Vice President

STATE OF OHIO, COUNTY OF HAMILTON — SS:

On this 13TH DAY OF APRIL 2021, before me personally appeared MARK VICARIO, to me known, being duly sworn, deposes and says that he resides in Cincinnati, Ohio, that he is a Divisional Senior Vice President of the Bond Division of Great American Insurance Company, the Company described in and which executed the above instrument; that he knows the seal of the said Company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of his office under the By-Laws of said Company, and that he signed his name thereto by like authority.

[Signature]
Notary Public
State of Ohio
My Comm. Expires May 18, 2023

This Power of Attorney is granted by authority of the following resolutions adopted by the Board of Directors of Great American Insurance Company by unanimous written consent dated June 9, 2008.

RESOLVED: That the Divisional President, the several Divisional Senior Vice Presidents, Divisional Vice Presidents and Divisional Assistant Vice Presidents, or any one of them, be and hereby is authorized, from time to time, to appoint one or more Attorneys-in-Fact to execute on behalf of the Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; to prescribe their respective duties and the respective limits of their authority; and to revoke any such appointment at any time.

RESOLVED FURTHER: That the Company seal and the signature of any of the aforesaid officers and any Secretary or Assistant Secretary of the Company may be affixed by facsimile to any power of attorney or certificate of either given for the execution of any bond, undertaking, contract of suretyship, or other written obligation in the nature thereof, such signature and seal when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

CERTIFICATION

I, STEPHEN C. BERAHA, Assistant Secretary of Great American Insurance Company, do hereby certify that the foregoing Power of Attorney and the Resolutions of the Board of Directors of June 9, 2008 have not been revoked and are now in full force and effect.

Signed and sealed this 1st day of July 2021.

[Signature]
Assistant Secretary

S1029AH (03/20)
CITY OF DAYTON, OHIO  
Department of Public Works

Responsible Contractor Bidding Requirements  
(Form 1 of 3)

In accordance with Ordinance No. 31487-16 of the City of Dayton, Ohio Revised Code of General 
Ordinances,

I, Douglas Kash  
(print name – an Officer of the company)

hereby certify that  
Saturn Electric, Inc.  
(company)  
meets the following Contractor requirements relating to this City of Dayton construction project

Check All That Apply:

☑ Comply with all City of Dayton income tax obligations and requirements

☑ Maintain worker’s compensation insurance for all employees as required by the State of Ohio

☑ Comply with State or Federal prevailing wage rate laws, as applicable and required by the funding of this project

☑ Comply with the State of Ohio Bureau of Worker’s Compensation Drug Free Workplace Policy

☑ Maintain an unemployment compensation insurance policy registered with the State of Ohio Department of Job and Family Services

☑ Made a good faith effort to contract with one or more qualified minority business enterprises to perform work required by this project, in accordance with bid documents, ordinances, and applicable Federal and State law

By:  

(signature)

Title:  
President

Date: 07/01/2021
A. Please provide a complete listing of the fringe benefits provided to employees, including but not limited to health insurance and retirement benefits.

- Health Insurance
- Dental Insurance
- Life Insurance
- Vacation Pay
- Holiday Pay
- Disability Insurance

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

- ABC
- IEC

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

- Site X
CITY OF DAYTON, OHIO
Department of Public Works

Responsible Contractor Bidding Requirements
(Form 3 of 3)

D. Please provide a list of all minority business enterprises contacted for the purpose of obtaining quotes to perform work for this project.

Cardinal Diversity Group

E. Provide a complete listing of any determinations of the bidder’s violations of federal, state, or local laws, including a list of all citations, orders, or recommendations issued to or against the bidder within the previous 3 years.

No Violations
CERTIFICATION
OF COMPLIANCE WITH OHIO REVISED CODE SECTION 3517.13
FOR CONTRACTS IN EXCESS OF FIVE HUNDRED DOLLARS ($500.00)

STATE OF OHIO,
COUNTY OF Montgomery, ss:

Douglas Kash __________________________________________ being duly sworn, deposes and states as follows:

1. I am duly authorized to make the statements contained herein on behalf of
   Saturn Electric, Inc. ______________________ (“the Contracting Party”).

2. The Contracting Party is a/an (select one):
   
   [ ] Individual, partnership, or other unincorporated business association (including without
   limitation, a professional association organized under Ohio Revised Code Chapter
   1785), estate, or trust.

   [✓] Corporation organized and existing under the laws of the State of OHIO.

   [ ] Labor organization.

3. I hereby affirm that the Contracting Party and each of the individuals specified in R.C.
   3517.93(I)(3) (with respect to non-corporate entities and labor organizations) or R.C.
   3517.93(J)(3) (with respect to corporations) are in full compliance with the political
   contributions limitations set forth in R.C. 3517.93(I) and (J), as applicable. I understand
   that a false representation on this certification constitutes a felony of the fifth degree pursuant to
   R.C. 3517.93(AA) and 3517.992(R)(3). Any contract that contains a falsified certification
   shall be rescinded.

   By:  

   Title: President
CITY OF DAYTON
CONTRACTOR NON-COLLUSION AFFIDAVIT

STATE OF Ohio )
COUNTY OF Montgomery ) SS:

Douglas Kash ____________________________, being first duly sworn deposes and states that:

(1) He/she is President ___________________________ of
(owner, partner, officer, representative, or agent)
Saturn Electric, Inc. ___________________________
(business or organization name)

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

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

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

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

SIGNED

President

TITLE
During the performance of this contract:

Saturn Electric, Inc.  PO Box 13830, Dayton, Ohio 45413  937-278-2580/937-278-0220

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

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

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

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

The required goals and timetables are as follows:

<table>
<thead>
<tr>
<th>Period</th>
<th>Goals of Minority Worker Utilization Expressed in Percentage Terms</th>
</tr>
</thead>
<tbody>
<tr>
<td>From 1/1/2000 to Present</td>
<td>11.5%</td>
</tr>
</tbody>
</table>

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

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

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

A contractor shall be deemed to be in compliance with the terms and requirements of this Part I by the employment and training of minorities and females in the appropriate percentage of the contractor's aggregate work force in the Economic Area for each trade for which it is committed to the goals under Part I.

However, no contractor shall be found to be in noncompliance solely on account of the contractor's failure to meet the goals and timetables, but such contractor shall be given the opportunity to demonstrate that all of the specific Affirmative Action steps specified in Part I have been instituted and has made every "good faith" effort to make these steps work towards the attainment of the goals and timetables.

2. **Specific Affirmative Action Steps**. A contractor subject to Part I, must engage in Affirmative Action directed at increasing minority and female utilization, which is at least as extensive and as specific as the following steps:

   a) The contractor shall notify community organizations that the contractor has employment opportunities available and shall maintain records of the organizations' responses.

   b) The contractor shall maintain a file of the names and addresses of each minority and female referred and what action was taken with respect to each referred worker. If the worker was not employed, the reason therefor. If the worker was not sent to the union hiring hall for referral, the contractor's file shall document this and the reasons therefore.

   c) The contractor shall promptly notify the Dayton Human Relations Council (HRC) when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority and/or female, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

   d) The contractor should participate in training programs in the area; especially those approved by the U.S. Department of Labor and/or the State of Ohio.
Part II: Contractor's Certification. A contractor will not be eligible for award of a contract under this Invitation to Bid, unless such contractor has submitted as a part of the bid the following certification, which will be deemed a part of the resulting contract:

CONTRACTOR'S CERTIFICATION

Saturn Electric, Inc. (Contractor) certifies that:

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

   Equipment Operators

   Electricians

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

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

SIGN: ____________________________

(Signature of Authorized Representative of Bidder)

FAILURE TO SIGN AND SUBMIT THIS DOCUMENT WITH YOUR BID WILL RESULT IN YOUR BID NOT BEING READ
July 7, 2021

TO:       Gil Turner, Director
          Department of Aviation

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

SUBJECT:  DIA Cargo Road Lights – PSA Guard Shack
          (10% SBE & 5% MBE Participation Goal)

The sole bidder, Saturn Electric submitted a bid utilizing one (1) PEP-certified contractor to meet the project’s participation goal. The HRC's contract compliance analysis has verified that Saturn Electric is an approved bidder in the City of Dayton's Affirmative Action Assurance program and that the company's authorized representative signed the Contractor’s Certification to indicate fair hiring practices.

The recommended company to receive the above-mentioned construction award is as follows:

<table>
<thead>
<tr>
<th>PRIME CONTRACTOR</th>
<th>AMOUNT OF BASE BID</th>
</tr>
</thead>
<tbody>
<tr>
<td>Saturn Electric</td>
<td>$197,210.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CERTIFIED BUSINESS PARTICIPATION</th>
<th>COMMITTED DOLLAR AMT</th>
<th>% TOWARD GOAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cardinal Diversity Group</td>
<td>$60,000.00</td>
<td>10% SBE</td>
</tr>
<tr>
<td></td>
<td>@60% = $36,000</td>
<td>8.25% MBE</td>
</tr>
</tbody>
</table>

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

CAG
PEP-CERTIFIED MBE

(SELECT ONE) PARTICIPATION FORM

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

SECTION 1: BIDDER / PROPOSER INFORMATION

Name of Bidder / Proposer's Firm: Saturn Electric, Inc.
Address: PO Box 13830
City: Dayton State: OH ZIP: 45413
Telephone: (937) 278-2580 Email: mike@saturn-electric.com
Primes Base Bid $
Name of Project: Cargo Road Lights-PSA to Guard Shack

SECTION 2: PEP-CERTIFIED BUSINESS & PARTICIPATION INFORMATION

Name of PEP-Certified Firm: Cardinal Diversity Group
PEP-Certified Firm’s Tax ID#: 20-3870038
Scope of Work to Be Performed by Certified Firm: Supply Electrical Materials

Total Dollar Amount Towards Goal | Percentage Towards Goal | Amount to Be Paid to This PEP Firm for the Work Described:

| Total Bid | $ 30,000.00 | % 100 | $ 30,000.00 |
| Materials | $ 30,000.00 | % 100 | $ 30,000.00 |
| Labor | $ | % | $ |

SECTION 3: AFFIRMATIONS

The above-named Bidder / Proposer affirms, under penalty of perjury, that it has negotiated in good faith with the above-named PEP-Certified Firm and will utilize the above-named PEP-Certified Firm for the type(s) of work and for the dollar amount(s) described above.

(Signature of Bidder/Proposer’s Authorized Agent)

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

President 07/01/21

(Date)

IF THE BIDDER/OFFEROR IS NOT AWARDED A CONTRACT, OR IF THE HRC DOES NOT APPROVE OF THE TERMS AS STATED ABOVE, THEN ANY AND ALL REPRESENTATIONS ON THIS PARTICIPATION FORM SHALL BE NULL AND VOID.
SECTION 1: BIDDER / PROPOSER INFORMATION

Name of Bidder / Proposer's Firm: Saturn Electric, Inc.

Address: PO Box 13830

City: Dayton State: OH ZIP: 45413

Telephone: (937) 278-2580 Email: mike@saturn-electric.com

Primes Base Bid $__________________

Name of Project: Cargo Road Lights-PSA to Guard Shack

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<table>
<thead>
<tr>
<th>Total Dollar Amount Towards Goal</th>
<th>Percentage Towards Goal</th>
<th>Amount to Be Paid to This PEP Firm for the Work Described:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Bid</td>
<td>$30,000.00</td>
<td>$30,000.00</td>
</tr>
<tr>
<td>Materials</td>
<td>$30,000.00</td>
<td>$30,000.00</td>
</tr>
<tr>
<td>Labor</td>
<td>$______________________</td>
<td>$__________________</td>
</tr>
</tbody>
</table>

SECTION 3: AFFIRMATIONS

The above-named Bidder / Proposer affirms, under penalty of perjury, that it has negotiated in good faith with the above-named PEP-Certified Firm and will utilize the above-named PEP-Certified Firm for the type(s) of work and for the dollar amount(s) described above.

(Signature of Bidder/Proposer's Authorized Agent)

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

President 07/01/21

(Date)

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

Instructions for Bidders/Proposers: Submit one (1) executed copy of this form with your Bid/Proposal.

- If Option 1 is selected, you must also submit one (1) executed PEP-Certified SBE/MBE/WBE/DLSB Participation Form for each PEP-Certified Firm whose participation you plan to count toward the project/contract's participation goal(s).

- If Option 2 (WAIVER REQUEST) is selected, you must also submit documentation of your Good Faith Efforts to the City of Dayton Human Relations Council (HRC) within two (2) business days of the Bid Opening / Proposal Due Date. Bidders/Proposers will receive no further reminders about this deadline.

The undersigned affirms that the Bidder/Proposer has satisfied the requirements of the Bld/RFP Specification in the following manner: (Check the box for Option 1 and/or Option 2, complete the appropriate spaces, and sign below.)

☑ Option 1. The Bidder/Proposer has secured enough commitment(s) from one or more PEP-Certified Firms to meet or exceed the project's PEP participation goal(s). The Bidder/Proposer is committed to a minimum of:

<table>
<thead>
<tr>
<th>% SBE</th>
<th>% MBE</th>
<th>% WBE</th>
<th>% DLSB</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>15</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

participation on this contract, as detailed on the executed PEP-Certified SBE/MBE/WBE/DLSB Participation Form(s) submitted with this Bid/Proposal.

☐ Option 2 (WAIVER REQUEST). The Bidder/Proposer is unable to meet the project's PEP participation goal(s) and requests that the following goal(s) be waived: (Check all that apply.)

☐ SBE  ☐ MBE  ☐ WBE  ☐ DLSB

The Bidder/Proposer’s documentation of Good Faith Efforts to meet the participation goal(s) checked above must be submitted to the HRC within two (2) business days of the Bid Opening / Proposal Due Date. The Bidder/Proposer will receive no further reminders about this deadline.

A waiver will be granted based on a Bidder/Proposer’s documented Good Faith Efforts, and only when the HRC determines that the Bidder/Proposer has completed all of the following activities:

1. Solicited the interest of all PEP-Certified Firms having the capability to perform the work of the contract. The Bidder/Proposer must solicit this interest at least ten (10) business days before the Bid Opening / Proposal Due Date in order to allow the PEP-Certified Firm sufficient time to respond to the solicitation. Electronic communication will not be deemed as sufficient Good Faith Efforts, if it is the sole method of communication used.

2. Divided contract work items into economically feasible units to facilitate PEP participation, even when the Bidder/Proposer might otherwise prefer to perform these work items with its own forces.

3. Negotiated in good faith with PEP-Certified Firms, and considered the firms’ prices and capabilities as well as the contract goals. Rejected PEP-Certified Firms as being unqualified only for reasons based on a diligent investigation of their capabilities. The Bidder/Proposer’s standing within its industry; membership in specific groups, organizations, or associations; and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes to reject or not solicit bids from particular PEP-Certified Firms.

4. Provided interested PEP-Certified Firms with plans and specifications at no cost, or directed them to the Greater Dayton Minority Business Assistance Center (Dayton MBAC) for information about the project’s plans, specifications, and requirements at least ten (10) business days prior to the Bid Opening / Proposal Due Date in order to assist them in responding to a solicitation.

5. Sought the Dayton MBAC’s assistance or used the services of community organizations; contractors’ groups; local, state or federal business assistance offices; or similar organizations to find PEP-Certified Firms. Contacting the HRC for a list of certified companies will not be deemed as sufficient Good Faith Efforts.

NOTE: In determining whether a Bidder/Proposer has made Good Faith Efforts, the HRC may take into account the performance of other Bidders/Proposers in meeting the goal(s). For example, when the apparent low bidder fails to meet a participation goal but others meet it, the HRC may reasonably raise the question of whether, with additional reasonable efforts, the apparent low bidder could have met the goal.

(Signature of Bidder/Offeree's Authorized Agent)

(Signature of Bidder/Offeree's Authorized Agent)

(Signature of Bidder/Offeree's Authorized Agent)

Saturn Electric, Inc.

(Signature of Bidder/Offeree's Authorized Agent)

Douglas Kash

(Presdent)

07/01/2021

(Date)
City Manager’s Report

From 6450 - PW/Civil Engineering

Date August 18, 2021

Expense Type Other, (See Description Below)

Total Amount $200.00 (Paid to City)

Supplier, Vendor, Company, Individual

Name Karen Gagel
Address 142 East Third Street
          Dayton, Ohio 45402

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Fund</td>
<td>10000-6450-27118-54</td>
<td>$200.00</td>
</tr>
</tbody>
</table>

Includes Revenue to the City ☑ Yes  ☐ No

Affirmative Action Program  ☐ Yes  ☐ No  ☑ N/A

Description

SPECIAL USE PERMIT TO INSTALL PATIO

The Department of Public Works requests permission for Karen Gagel, being the owner of 142 East Third Street, and lessee Adrian Bozeman, to install a 6' x 9' patio with iron gate and rails along the front sidewalk of Bozack’s Bar at 142 East Third Street.

This application has been reviewed and approved by the Departments of Planning and Community Development, Economic Development, Water, and Public Works-Civil Engineering.

Notice of the proposed permit has been published as required by ordinance, no objections have been received, and it is therefore recommended that the permit be granted.

Copy: Public Works/Business Office

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 06/2016
APPLICATION
For License or Privilege in Public
Way of the City of Dayton, Ohio

The undersigned, Karen Gagel, being the owner and Adrian Bozeman, lessee of the following described premises, to wit: Being all or part of Lot No. 142, as abutted and are known as No. 252 and 253, hereby make application for permit or installation, maintenance and use of the following license or privilege in said public way, to wit:

install 6' x 9' patio with iron gate rails

Such license or privilege is to be used in connection with said premises as above described.

A plat or print drawn to scale showing the proposed location of said license or privilege in the street, sidewalk, alley, public way or place and the adjacent property in connection with which said license or privilege to be used is hereto attached and made a part hereof.

Deposit in the sum of $200.00 to cover the fee for permit and legal advertisement is hereby made.

Said owner and lessee for themselves, their heirs, successors, administrators and assigns, hereby agree that the privilege sought if granted, may be revoked at any time hereafter upon order of the City Manager or of the City Commission; that they will obey all laws of the State of Ohio and ordinances of the City of Dayton, pertaining thereto, whether in force or hereafter enacted, in the installation, maintenance and use of such license or privilege, and that all acts or things to be done in connection therewith shall be subject to the supervision and control of the Director of Public Works of said City; that the public way shall be restored completely and to the entire satisfaction of and at such time as the Director of Public Works may determine without expense to said City; that they will safeguard the use of barricades and red lights, and such other means as may be necessary for the public safety, any excavation or obstruction in said public way during the installation, maintenance, repair or use of same or anything in any way related to such license or privilege, and will at all times save the City of Dayton free and harmless from any and all liability for damages to person, or persons, or property on any way connected with, arising out of or incidental to the installation, maintenance and use or the granting and exercise of said license or privilege; that they will pay all expense for any damage or injury to said license or privilege made necessary by any change of grade of said public way and hereby waive all claims for damages or expense in connection therewith; that they will conform to all of the provisions of Sections 95.30 to 95.49, both inclusive, of the Revised Code of General Ordinances as now exist or may hereafter be amended, and with such other provisions of other ordinances as may be passed by the Commission, which said existing and future ordinances are made a part of this contract by express reference.

WITNESS our signatures hereto this Thursday 1st day of April 2021.

[Signatures]

Tested as to location and ownership: [Signature]

Recommended for approval: [Signature]

Approved as to form: [Signature]

Approved by the Commission of the City of Dayton, Ohio, [Signature]

PERMIT

Pursuant of the foregoing application having been published as required by Section 95.39 (D), Revised Code of General Ordinances and no cause having been shown to the contrary the City Commission having approved the same, the privilege prayed for is hereby granted, subject to the terms and conditions set forth in the application.

[Signature]

Director of Public Works
Gagel Properties
142 E. Third Street
Dayton, Ohio 45402
(859)512-7474

April 1, 2021

City of Dayton
Director of Public Works
101 W. Third Street
Dayton, Ohio 45402

Dear Dayton Public Works,

I am Karen Gagel the property owner of 142 E. Third Street, Dayton, Ohio 45402. I am in total support of the patio outside of Bozacks’ lounge. It will add value to the property and to the community. It will allow guest to sit outside and enjoy the weather while having food and spirits and enjoying the beautiful city of Dayton.

Please consider the approval of a patio area outside of the above-mentioned property.

Thank you in advance,

Karen Gagel

Property Owner
EXISTING 3-COMPARTMENT SINK & COUNTER/BAR TO BE REMOVED & REPLACE IN SAME ORIGINAL POSITION.

SECOND FLOOR UNOCCUPIED.

6' X 9' 0" RATIO WITH IRON GATE & RAILS.

Black 14 color.

POST ANCHORED WITH 1/4" TAP CONs INTO EXISTING CONCRETE SIDE.

@ 2 ANCHORS PER POST

2X2" POST.

NOTE: ALL GA.
April 13, 2021

TO:       Fred Stovall, Director
          Department of Public Works

FROM:     Michael Powell, Director
          Department of Water

SUBJECT: Special Privilege Permit No. 940628 – 142 E. Third St.

The Department of Water has reviewed the above referenced permit application and offers the following comments:

- We have no objection to the installation of a 6’ x 9’ Patio with Iron Gate & Rails along the front sidewalk of Bozack’s Bar at 142 E. Third St.

If you have any questions, please contact Ben Botkin at 333-2058.
April 28, 2021

TO:    Fred Stovall, Director
       Public Works Department

FROM:  Carl Daugherty, Zoning Administrator
       Dept. of Economic Development

SUBJECT: Special Privilege Permit No. 940628
         142 E. Third St., Dayton, Ohio

With regard to the above-referenced special privilege permit request, Zoning Administration has no objections to its issuance.

Thx.

cc: Filep
April 24, 2021

TO: Fred Stovall, Director
Department of Public Works

FROM: Tony Kroeger, Planning Division Manager
Department of Planning and Community Development

SUBJECT: Special Privilege Permit 940628 – 142 E. Third St.

The Department of Planning and Community Development has reviewed the above referenced permit application and offers the following comments:

- Planning Staff has no objections to the proposed special privilege application, provided that the Department of Public Works finds that sufficient pedestrian width remains after installation.

If you have questions, please contact me at ext. 3673.
AN ORDINANCE

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.

WHEREAS, This Commission of the City of Dayton, Ohio (the “City”) duly adopted Resolution No. 6591-21 on July 14, 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. 31900-21 on July 21, 2021, and determined to proceed with the Project and adopted the maximum 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 130 West 2nd Street 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, $3,049,025.00, 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 2021 for collection in calendar year 2022 and shall continue through tax year 2039 for collection in calendar year 2040. 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

<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>130 West 2nd Street LLC</td>
<td>R72 00203 8001*</td>
<td>100%</td>
<td>$3,049,025.00</td>
</tr>
</tbody>
</table>

*As identified in the records of the Auditor of Montgomery County, Ohio as of June 30, 2021.
SCHEDULE OF SPECIAL ASSESSMENTS

The following schedule of Special Assessment charges shall be levied in thirty-eight (38) semi-annual installments with respect to first-half and second-half real property taxes in calendar years 2022 through 2040:

<table>
<thead>
<tr>
<th>Special Assessment Date**</th>
<th>Special Assessment Amount***</th>
</tr>
</thead>
<tbody>
<tr>
<td>February 15, 2022</td>
<td>$80,237.50</td>
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<tr>
<td>July 15, 2022</td>
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<td>80,237.50</td>
</tr>
<tr>
<td>February 15, 2040</td>
<td>80,237.50</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.
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 thirty-eight (38) semi-annual installments with respect to real property taxes due in calendar years 2022 through 2040, was filed in this office on ____________, 2021.

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

[SEAL]

Auditor
Montgomery County, Ohio
August 10, 2021

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

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

SUBJECT: Two Emergency Ordinances to Include 130 West Second Street in the Dayton Regional Energy Special Improvement District

The Department of Planning, Neighborhoods & Development – Division of Development is requesting adoption of two Ordinances (attached) approving the inclusion of 130 West Second 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. City Commission approved two resolutions for this project at the July 14, 2021 meeting and an Ordinance to Proceed at the July 21, 2021 meeting.

We are requesting two readings at one meeting for each ordinance at the August 18, 2021 City Commission meeting in the following order:

1. “Levying Special Assessments for the Purpose of Acquiring, Constructing, and Improving Certain Public Improvements…”
2. “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
Attachments
c: Todd Kinskey
AN ORDINANCE

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

WHEREAS, 130 West 2nd Street 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 (the “Project Petition”), together with a Supplement to Plan for 130 W. 2nd 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 130 West 2nd Street within the City (the “Project Site”); and,

WHEREAS, On July 14, 2021, this Commission approved the Project Petition and the Supplemental Plan; and,

WHEREAS, On July 14, 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 21, 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 August 18, 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) a Cooperative Agreement by and among the Owner, the City, the ESID, the Dayton-Montgomery County Port Authority (the “Investor”), and The Bank of New York Mellon Trust Company, N.A., as Trustee, 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 (collectively, 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 form as is 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
COOPERATIVE AGREEMENT

by and among

DAYTON-MONTGOMERY COUNTY PORT AUTHORITY

and

CITY OF DAYTON, OHIO

and

130 WEST 2nd STREET LLC
as Developer

and

CENTERVILLE, DAYTON, KETTERING, MORAIN, OAKWOOD, RIVERSIDE, SPRINGBORO, WASHINGTON TOWNSHIP REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., D/B/A:
DAYTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.

and

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.
as Trustee

$2,100,000
Dayton-Montgomery County Port Authority
Taxable Development Revenue Bonds
(Southwest Ohio Regional Bond Fund)
Series 2021F
(130 W. 2nd Street PACE Project)

Dated as of

[August 1], 2021
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COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (this "Agreement") is made and entered into as of [August] 1, 2021, by and among the DAYTON-MONTGOMERY COUNTY PORT AUTHORITY, a port authority and political subdivision and body corporate and politic duly organized and validly existing under the laws of the State (the "Authority"), the CITY OF DAYTON, OHIO, a municipal corporation and political subdivision duly organized and validly existing under the laws of the State and its Charter (the "City"), 130 WEST 2nd STREET LLC, a limited liability company organized and validly existing under the laws of the State of Ohio (the "Developer"), the CENTREVILLE, DAYTON, KETTERING, MORaine, OAKwood, RIVERsIDE, SPRINGBORO, WASHINGTON TOWNSHIP REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., doing business under the registered trade name DAYTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., an energy special improvement district and nonprofit corporation organized and validly existing under the laws of the State of Ohio (the "ESID"), and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association duly organized and validly existing under the laws of the United States of America and authorized to exercise trust powers under the laws of the State of Ohio, acting through its corporate office in Columbus, Ohio, as Trustee (the "Trustee"), under the circumstances summarized in the following recitals (the capitalized terms used and not defined in the recitals have the meanings given to them in Article I of this Agreement):

A. The Developer is the owner of certain real property more fully described in Exhibit A attached to and made a part of this Agreement (the "Property").

B. The ESID was created under Ohio Revised Code Chapters 1702 and 1710 as an energy special improvement district and nonprofit corporation created to further the public purposes of implementing "special energy improvement projects" within its territory under the authority in Ohio Revised Code Chapter 1710 and Article VIII, Section 2o of the Ohio Constitution.

C. The Developer intends to acquire, construct, install, equip, and improve certain special energy improvement projects and port authority facilities more particularly described in Exhibit B to this Agreement (the "Project") at the Property.

D. The Developer intends to pay a portion of the costs of the Project by paying special assessments under Ohio Revised Code Chapter 1710.

E. In order to add the Property to the territory of the ESID and to cause the special assessments to pay a portion of the costs of the Project to be levied, the ESID, the City, and the Developer cooperated to submit to the City a "Petition for Special Assessments for Special Energy Improvement Projects and Affidavit" (the "Petition") on or before [____], 2021.

F. On July 14, 2021, by its Resolution No. 6590-21 and on [August 18], 2021 by its Ordinance No. [____], respectively, the City approved the Petition and levied the special assessments described in the Petition (the "Special Assessments") on the Property in order to pay a portion of the costs of the Project.
G. The Authority, the City, the Developer, and the ESID each have determined that the most efficient and effective way to implement the financing, acquisition, construction, equipment, improvement, and installation of the Project and to further the public purposes set forth above is through this Agreement with (i) the Authority issuing its Series 2021F Bonds in order to make a portion of the proceeds of the Series 2021F Bonds available to pay a portion of the costs of the Project, (ii) the Authority making a portion of the proceeds of the Series 2021F Bonds available to finance the costs of the special energy improvement projects described in the Petition, (iii) the Developer acquiring, constructing, installing, equipping, and improving the Project, (iv) the Developer agreeing to pay special assessments in the maximum amount of the Special Assessments in an aggregate amount that will provide revenues sufficient to pay the Financing Payments.

H. A portion of the costs of the Project will be financed through bonds issued by the Ohio Air Quality Development Authority (the “OAQDA”), which bonds (the “OAQDA Bonds”) will be purchased by the Authority subject to the terms and conditions of the Bond Purchase Agreement between the Authority, the Developer, and OAQDA dated as of the Closing Date (the “OAQDA Bond Purchase Agreement”). A portion of the proceeds of the Series 2021F Bonds, allocated as set forth in this Agreement, when deposited under the Indenture and this Agreement will constitute the purchase of an equal principal amount of the OAQDA Bonds, and portions of the Special Assessments actually received by or on behalf of the City and paid to or for the credit of the Authority as identified in Exhibit C, paid in accordance with this Agreement and with the Special Assessment Agreement, will constitute payment of principal of, and interest and any premium on (“OAQDA Bond Service Charges”) the OAQDA Bonds.

I. The Authority, the Developer, the City, the ESID, and the Trustee each have full right and lawful authority to enter into this Agreement and to perform and observe its provisions on each party’s respective part to be performed and observed.

NOW THEREFORE, in consideration of the premises and the mutual representations and agreements contained in this Agreement, the Authority, the City, the Developer, the ESID, and the Trustee agree as follows (provided that any obligation of the Authority created by or arising out of this Agreement shall never constitute a general debt of the Authority or give rise to any pecuniary liability of the Authority but shall be payable solely out of the Pledged Revenues available to the Authority; and provided further that any obligation of the City to make Financing Payments or other payments under this Agreement shall never constitute a general debt of the City or give rise to any pecuniary liability of the City but shall be payable solely from the Assigned Special Assessments).

(Balance of page intentionally left blank)
ARTICLE I
Definitions

Section 1.1. Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement or by reference to the Indenture or another document, the words and terms defined in Section 1.2 of this Agreement shall have the meanings given to them in Section 1.2. The definitions in Section 1.2 shall be equally applicable to both the singular and plural forms of any of the words and terms defined.

Section 1.2. Definitions. As used in this Agreement:

“Act” means Sections 4582.21 through 4582.59, Ohio Revised Code, inclusive, as duly enacted and amended from time to time.

“Administrative Amounts” means that portion of the Financing Payments representing fees and reasonable expenses of the Trustee, the Authority, the City, and the ESID and including the Authority Fees, the ESID Fees, the Trustee Fees, and any amounts (other than the Bond Service Charges) required to be paid under this Agreement, including, but not limited to attorneys’ fees, amounts expended by the Authority, the City, or the Trustee in pursuing remedies, and the levy, collection, and transfer of the Assigned Special Assessments and expenses incurred to comply with continuing disclosure obligations.

“Affiliate” means, with respect to a specified Person, any other Person which directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, such Person (“control” meaning the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise).

“Agreement” means this Cooperative Agreement as duly amended or supplemented from time to time.

“Assigned Special Assessments” means the Special Assessments actually received by the City, which amounts are assigned and agreed to be paid and transferred by the City to the Trustee in accordance with Section 2.4 and Article IV of this Agreement, and which, in turn, are assigned by the Authority to the Trustee pursuant to the Indenture.

“Authority” or “Issuer” means the Dayton-Montgomery County Port Authority, a port authority and political subdivision and body corporate and politic duly organized and validly existing under the laws of the State.

“Authority Fees” means a semi-annual administrative fee of the Authority equal to an annual rate of 0.50% of the outstanding principal amount on each date an installment of the Special Assessments becomes due during which the Series 2021F Bonds are outstanding to be paid out of the Financing Payments as shown on Exhibit C to and incorporated into this Agreement.
“Authorized City Representative” means the Mayor, the City Manager, the Director of the Department of Economic Development, or the City Auditor of the City or the person at the time designated to act on behalf of the City by written certificate furnished to the Authority and the Trustee containing the specimen signature of that person and signed on behalf of the City by its Mayor, City Manager, Director of the Department of Economic Development, or the City Auditor. That certificate may designate an alternate or alternates. In the event that the Mayor, the City Manager, the Director of the Department of Economic Development, the City Auditor, and all persons so designated become unavailable or unable to act and the City fails to designate a replacement within ten days after such unavailability or inability to act the Authority may appoint an interim Authorized City Representative until such time as the City designates that person.

“Authorized Developer Representative” means the person at the time designated to act on behalf of the Developer by written certificate furnished to the Authority and the Trustee containing the specimen signature of that person and signed on behalf of the Developer. That certificate may designate an alternate or alternates. In the event that all persons so designated become unavailable or unable to act and the Developer fails to designate a replacement within ten days after such unavailability or inability to act, the Trustee may appoint an interim Authorized Developer Representative until such time as the Developer designates that person.

“Authorized Official” means the Executive Director of the Authority or Chair or Vice Chair of the Legislative Authority, or any person designated in written certificate furnished to the Trustee by the President, Chair or Vice Chair to act in that capacity. Such certificate may designate an alternate or alternates who shall have the same authority, duties and powers as the Authorized Official.

“Basic Indenture” means the Amended and Restated Trust Indenture dated as of April 1, 2015 between the Authority, the Trustee, and the Port of Greater Cincinnati Development Authority, as amended or supplemented from time to time.

“Bond Legislation” means, the resolution of the Authority providing for issuance of the Series 2021F Bonds and approving this Agreement, the Series 2021F Supplemental Indenture, the Bond Placement Agreement, and related matters, together with the Certificate of Award executed and delivered under that resolution, all as duly amended and supplemented from time to time.

“Bond Placement Agreement” means the Bond Placement Agreement dated [____], 2021 among the Placement Agent of the Series 2021F Bonds and the Authority relating to the original purchase of the Series 2021F Bonds, as duly amended and supplemented from time to time.

“Bond Reserve Deposit” means, the Bond Reserve Deposit as defined in the Indenture.

“Bond Service Charges” shall have the meaning assigned to that term in the Indenture.
“Business Day” means a day that is not a (i) Saturday, (ii) Sunday, or (iii) day on which the Trustee is closed or banks in New York, New York are closed.

“City” means the City of Dayton, Ohio, a municipal corporation and political subdivision duly organized and validly existing under the Constitution and laws of the State and its Charter.

“Closing Date” means [August 25], 2021.

“Completion Date” means the date of completion of the Project in accordance with the requirements of Article III of this Agreement.

“Construction Agent” means the Developer, as the Construction Agent under the Construction Agency Agreement, or its permitted successors or assigns under the Construction Agency Agreement.

“Construction Agency Agreement” means the Construction Agency Agreement dated as of the date of this Agreement between the Authority and the Construction Agent, as duly amended or supplemented from time to time.

“Continuing Disclosure Agreement” means the Continuing Disclosure Agreement as defined in the Series 2021F Supplemental Indenture.

“Cooperative Agreement” means this Agreement, as may be duly amended, modified or supplemented from time to time in accordance with its terms.

“Cooperative Parties” means the City, the Authority, the Developer, the ESID, and the Trustee.

“County” means Montgomery County, Ohio, a county and political subdivision duly organized and validly existing under the Constitution and laws of the State and its Charter.

“County Auditor” means the Auditor of the County or its successors.

“County Treasurer” means the Treasurer of the County or its successors.

“Developer” means 130 West 2nd Street LLC, a limited liability company organized and validly existing under the laws of the State of Ohio, together with its permitted successors and assigns under this Agreement.

“Disbursement Request” means a request by the Developer for disbursement from the Series 2021F PF Account to pay or reimburse Series 2021F Project Costs in accordance with Section 3.8 of this Agreement, and made on the form attached to this Agreement as Exhibit D.

“Environmental Laws” means all applicable federal, state, and local environmental, land use, zoning, health, chemical use, safety, and sanitation laws, statutes, ordinances, and codes relating to the protection of the environment and/or governing use,
storage, treatment, generation, transportation, processing, handling, production, or disposal of Hazardous Materials and the rules, regulations, policies, guidelines, interpretations, decisions, orders, and directives of federal, state, and local governmental agencies and authorities with respect thereto, including, without limitation, CERCLA and Chapter 3734 of the Ohio Revised Code.

“ESID Fees” means a semi-annual administrative fee of the ESID payable on each date an installment of the Special Assessments becomes due during which the Series 2021F Bonds are outstanding to be paid out of the Financing Payments as shown on Exhibit C to and incorporated into this Agreement. “Event of Default” means any of the events described as an Event of Default in Section 7.1 of this Agreement.

“Excess Special Assessments” means any Assigned Special Assessments received by the Trustee in excess of the amount necessary to pay any Administrative Amounts and Required Amounts and, as provided in this Agreement, to be returned to the Developer.

“Financing Payment” means the portion of the amounts required to be paid by the City under this Agreement as Assigned Service Payments representing Administrative Amounts and Required Amounts.

“Financing Payment Date” means each date on which the City pays to the Trustee the Assigned Special Assessments, which payments shall be made by the City no later than fourteen (14) calendar days following the City’s receipt of Special Assessments from the County Treasurer or any final settlement relating to the Special Assessments, for deposit by the City into the Special Assessment Fund.

“Fiscal Officer” means, the Secretary or an Assistant Secretary of the Legislative Authority of the Authority, or if any of them are unavailable, absent or incapacitated, any member of the Board of Directors of the Authority.

“Force Majeure” means any of the causes, circumstances or events described as constituting Force Majeure in Section 7.1 of this Agreement.


“Holder” or “Holder of a Bond” shall have the meaning assigned to that term in the Indenture.
“Indenture” means the Basic Indenture, as amended and supplemented from time to time under its terms, including, without limitation, by the Series 2021F Supplemental Indenture.

“Interest Payment Date” or “Interest Payment Dates” means the fifteenth day of each May and November, commencing November 15, 2021.

“Interest Rate for Advances” means the rate of 12% per year or a rate which is 2% plus the interest rate then charged by the Trustee (in its lending capacity as a bank or if it has no such rate by the largest bank of which it is an affiliate) to its most creditworthy commercial borrowers in its lending capacity as a bank, whichever is, in whole or part, greater and lawfully chargeable.

“Legislative Authority” means, the Board of Directors of the Authority.

“Notice Address” means:

(a) As to the Authority: Dayton-Montgomery County Port Authority 8 North Main Street Dayton, Ohio 45402 Attention: Executive Director

(b) As to the City: City of Dayton, Ohio 101 W. 3rd Street Dayton, Ohio 44502 Attention: City Manager

(c) As to the Trustee: The Bank of New York Mellon Trust Company, N.A. 4449 Easton Way, Office 2041 Columbus, Ohio 43219 Attention: Corporate Trust Department

(d) As to the Developer: 130 West 2nd Street LLC [___________] Attention: [___________]

(e) As to the ESID: Dayton Regional Energy Special Improvement District, Inc. c/o Dayton-Montgomery County Port Authority 8 North Main Street Dayton, Ohio 45402 Attention: ESID Chairperson
With a Copy to: J. Caleb Bell
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
Phone: (614) 227-2300
Email: pace@bricker.com

or such additional or different address, notice of which is given under Section 9.2 of this Agreement.

“OAQDA” means the Ohio Air Quality Development Authority.

“OAQDA Bond Purchase Agreement” means the Bond Purchase Agreement dated as of the Closing Date between the Developer, the Authority, and OAQDA, as it may be validly amended or supplemented and in effect from time to time.

“OAQDA Bonds” means the revenue bonds issued by the Ohio Air Quality Development Authority on the Closing Date to the Authority under the OAQDA Bond Purchase Agreement, together with any revenue bonds issued to refund such bonds.

“OAQDA Bond Service Charges” means the principal of, and interest and any premium on, the OAQDA Bonds due and payable at any specified time.

“Original Purchaser” means the Original Purchaser as defined in the Series 2021F Supplemental Indenture.

“Petition” means the Petition for Special Assessments for Special Energy Improvement Projects and Affidavit submitted to the City on July 2, 2021 and approved by the City on July 14, 2021 by Resolution No. 6590-21.

“Person” or words importing persons mean firms, associations, partnerships (including without limitation, general and limited partnerships), limited liability companies, joint ventures, societies, estates, trusts, corporations, public or governmental bodies, other legal entities and natural persons.

“Placement Agent” means KeyBanc Capital Markets, Inc.

“Plans and Specifications” means the drawings, surveys, maps, plats or other depiction, as amended through approved change orders, of the Project for construction on the Property.

“Pledged Revenues” shall have the meaning assigned to that term in the Indenture.
“Project” means the special energy improvement projects to be completed by the Developer on the Property constituting a “project” and “port authority facilities” as defined in the Act for the Project Purposes, all as more particularly described in Exhibit B to this Agreement.

“Project Fund” means the Project Fund as defined in the Basic Indenture.

“Project Purposes” means providing funds to pay a portion of the Developer’s costs of constructing the Project for commercial and economic development purposes, or as may otherwise be permitted by this Agreement and the Bond Legislation.

“Property” means the real property more fully described in Exhibit A attached to and made a part of this Agreement.

“Required Amounts” means that portion of the Financing Payments to be paid to the Trustee for application to Bond Service Charges with respect to the Series 2021F Bonds in the amounts shown on Exhibit C attached to, and incorporated into, this Agreement.

“Required Insurance Coverage” means, collectively, the Required Property Insurance Coverage and the Required Public Liability Insurance Coverage, each of which, in addition to the requirements described in their respective definitions, (i) must provide for 10 days’ notice to the Authority in the event of cancellation or nonrenewal and (ii) must name as an additional insured (mortgagee/loss payee) the Authority.

“Required Property Insurance Coverage” means at any time insurance coverage evidenced maintained with generally recognized, responsible insurance companies qualified to do business in the State in the amount of the then full replacement value of the Project and the Property, insuring the Project against loss or damage by fire, windstorm, tornado, and hail and extended coverage risks on a comprehensive all risk/special form insurance policy and containing loss deductible provisions of not to exceed $10,000, which insurance coverage shall name the Authority as loss payee/mortgagee.

“Required Public Liability Insurance Coverage” means at any time commercial general liability insurance against claims for personal injury, death, or property damage suffered by others upon, in or about any premises occupied by the Developer, which insurance coverage shall name the Authority as an additional insured.

“Series 2021F Bonds” means the $2,100,000 aggregate principal amount of Bonds initially issued by the Authority under the Bond Legislation, designated “Taxable Development Revenue Bonds (Southwest Ohio Regional Bond Fund) Series 2021F (130 W. 2nd Street PACE Project).”

“Series 2021F PF Account” means the Series 2021F PF Account as defined in the Series 2021F Supplemental Indenture.
“Series 2021F Supplemental Indenture” means the Thirty-Fifth Supplemental Indenture, between the Authority and the Trustee, dated as of the date of this Agreement containing the terms of the Series 2021F Bonds.

“Special Assessment Act” means, collectively, Ohio Revised Code Section 727.01 et seq., Ohio Revised Code Section 1710.01 et seq., Ohio Revised Code Section 323.01 et seq., Ohio Revised Code Section 319.01 et seq., Ohio Revised Code Section 5721.01 et seq., and related laws.

“Special Assessment Agreement” means the Special Assessment Agreement dated as of the date of this Agreement among the County Treasurer, the City, Developer, the ESID, and the Authority, as duly amended or supplemented from time to time.

“Special Assessment Fund” means the City’s segregated fund established for the collection of the Special Assessments.

“Special Assessment Legislation” means, collectively, the Petition, Resolution Nos. 6590-21 and 6591-21 duly adopted by the City on July 14, 2021, Ordinance No. 31900-21 duly adopted by the City on July 21, 2021, and Ordinance No. [___] duly adopted by the City on [August 18], 2021.

“Special Assessments” means the special assessments levied by the City against the Property under its Ordinance No. [___] duly adopted on [August 18], 2021, to pay a portion of the costs of the Project and certified by the City to the County Auditor for collection with real property taxes.

“Special Funds” means the Special Funds as defined in the Indenture.

“State” means the State of Ohio.

“Transaction Documents” means, collectively, this Agreement, the Indenture, the Construction Agency Agreement, the Special Assessment Agreement, and the Bond Placement Agreement.

“Trustee” means The Bank of New York Mellon Trust Company, N.A., Columbus, Ohio, until a successor Trustee shall have become such pursuant to the applicable provisions of the Indenture, and thereafter, “Trustee” shall mean the successor Trustee.

“Trustee Fees” means a semi-annual administrative fee of the Trustee equal to an annual rate of 0.06% of the outstanding principal amount, or $1,250 per year, whichever is greater, on each date an installment of the Special Assessments becomes due during which the Series 2021F Bonds are outstanding to be paid out of the Financing Payments as shown on Exhibit C to and incorporated into this Agreement.

“Unassigned Authority Rights” means the rights of the Authority to be held harmless and indemnified under Section 5.2 of this Agreement, to receive notice of litigation under Section 5.3 of this Agreement, to be reimbursed for attorney fees and expenses under
Section 7.4 of this Agreement, to make requests and give or withhold consent including, without limitation, requests under Section 3.8 of this Agreement, and consent to amendments, changes, modifications, alterations, and termination of this Agreement under Section 8.5 of this Agreement.

Section 1.3. Interpretation. Any reference in this Agreement to the Authority, to the Legislative Authority, or to any member or officer of either includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a Section or provision of the Constitution of the State or the Act, to a section, provision, or chapter of the Ohio Revised Code, or any other legislation or to any statute of the United States of America, includes that section, provision, or chapter as amended, modified, revised, supplemented, or superseded from time to time; provided, that no amendment, modification, revision, supplement, or superseding section, provision, or chapter shall be applicable solely by reason of this provision if it constitutes in any way an impairment of the rights or obligations of the Cooperative Parties under this Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number and vice versa. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

Section 1.4. Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses of this Agreement.

(End of Article I)
ARTICLE II

Representations and Covenants

Section 2.1. **Representations of the Authority.** The Authority represents that: (a) it is duly organized and validly existing under the laws of the State; (b) it is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the Authority which would impair its ability to carry out its obligations contained in this Agreement or the Transaction Documents to which it is a party; (c) it is legally empowered to enter into and carry out the transactions contemplated by this Agreement and the other Transaction Documents to which it is a party; (d) it has duly authorized the execution, delivery, and performance of this Agreement and the other Transaction Documents to which it is a Party; (e) it has duly accomplished all conditions necessary to be accomplished by it prior to the execution of the agreements necessary to issue the Series 2021F Bonds and to make the proceeds of the Series 2021F Bonds available for the Project Purposes; and (f) it will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement and the other Transaction Documents to which it is a party by any successor public body.

Section 2.2. **Representations and Covenants of the City.** The City represents and covenants that:

(i) It is a municipal corporation duly organized and validly existing under the Constitution and laws of the State and its Charter.

(ii) To the best of its knowledge, it is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the City which would impair its ability to carry out its obligations contained in this Agreement or the Transaction Documents to which it is a party.

(iii) It is legally empowered to execute, deliver, and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement, the Special Assessment Legislation, and the other Transaction Documents to which it is a party. To the best of its knowledge, that execution, delivery, and performance do not and will not violate or conflict with any provision of law applicable to the City, including but not limited to, its Charter, and do not, and will not, conflict with or result in a default under any agreement or instrument to which the City is a party or by which it is bound.

(iv) It has duly authorized the execution, delivery, and performance of this Agreement and the other Transaction Documents to which it is a party and the transactions contemplated in this Agreement and in those Transaction Documents, and those transactions will enhance, aid, and promote authorized purposes of the City.
(v) It will do all things in its power in order to maintain its existence or assure the assumption by any successor public body of its obligations under this Agreement, the Special Assessment Legislation, and the other Transaction Documents to which it is a party.

(vi) The Special Assessment Legislation has been duly adopted, is in full force and effect, and is not subject to repeal by referendum.

(vii) Upon request of the Authority, the City shall use its best efforts to deliver to the Authority and Trustee such information as the Authority may determine they may need in connection with any obligation they have entered into, or may enter into, for the purpose of permitting an underwriter of the Series 2021F Bonds to satisfy the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Act of 1934.

Section 2.3. **Representations and Covenants of the Developer.**

(a) The Developer represents and covenants that:

(i) It is a limited liability company duly organized and validly existing under the laws of the State of Ohio.

(ii) It has full power and authority to execute, deliver, and perform this Agreement and the other Transaction Documents to which it is a party and to enter into and perform the transactions contemplated by those documents. That execution, delivery, and performance do not, and will not, violate any provision of law applicable to the Developer or the Developer’s Articles of Organization or [Operating Agreement], and do not, and will not, conflict with or result in a default under any agreement or instrument to which the Developer is a party or by which it is bound. This Agreement has, by proper action, been duly authorized, executed, and delivered by the Developer and all steps necessary to be taken by the Developer have been taken to constitute this Agreement valid and binding obligations of the Developer.

(iii) The provision of financial assistance to be made available under this Agreement and the commitments for that assistance made by the Authority and the ESID have induced the Developer to undertake the transactions contemplated by this Agreement and the other Transaction Documents to which it is a party and will create and preserve jobs and employment opportunities within the City and the jurisdiction of the Authority.

(iv) The Developer will construct the Project in accordance with the Plans and Specifications and with the terms of this Agreement and the Construction Agency Agreement and will maintain the Project in
such manner as to conform in all material respects with all applicable zoning, planning, building, environmental, and other applicable governmental regulations and as to be consistent with the Act.

(v) The Project will comply in all material respects with all applicable Environmental Laws.

(vi) Upon request of the Authority, the Developer shall deliver to the Authority and the Trustee such information as the Authority may determine they may need in connection with any obligation they have entered into, or may enter into, for the purpose of permitting an underwriter of the Series 2021F Bonds to satisfy the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Act of 1934.

(vii) The Required Insurance Coverage is in place as of the date of this Agreement will be maintained at all times during the term of this Agreement, while the Series 2021F Bonds remain outstanding, and while any Special Assessments remain to be paid. Any return of insurance premium or dividends based upon the Required Insurance Coverage shall be due and payable solely to the Developer, unless such premium shall have been paid by the Authority, in accordance with the distribution priority specified in Section 3.10.

Section 2.4. Special Assessment Payments.

(a) The Special Assessment Proceedings. The City has taken all necessary actions required by the Special Assessment Act to levy and collect the Special Assessments on the Property.

Under Ohio Revised Code Section 727.33, the City has certified the Special Assessments to the County Auditor for collection, and the County Auditor shall collect the unpaid Special Assessments with and in the same manner as other real property taxes and pay the amount collected to the City. The Parties intend that the County Auditor and the County Treasurer shall have the duty to collect the Special Assessments through enforcement proceedings in accordance with applicable law.

(b) Collection of Delinquent Special Assessments. The Authority, the Trustee, and the ESID are hereby authorized to take any and all actions as assignees of and, to the extent required by law, in the name of, for, and on behalf of, the City to collect delinquent Special Assessments levied by the City pursuant to the Special Assessment Act and the Special Assessment Legislation and to cause the lien securing the delinquent Special Assessments to be enforced through prompt and timely foreclosure proceedings, including, but not necessarily limited to, filing and
prosecution of mandamus or other appropriate proceedings to induce the County Prosecutor, the County Auditor, and the County Treasurer, as necessary, to institute such prompt and timely foreclosure proceedings. The proceeds of the enforcement of any such lien shall be deposited and used in accordance with this Agreement.

(c) **Prepayment of Special Assessments.** The Cooperative Parties agree that the Special Assessments assessed against the Property and payable to the City pursuant to the Special Assessment Act may be prepaid to the Trustee by the Developer in accordance with Section 6.1 of this Agreement. A portion of any such prepayments shall constitute OAQDA Bond Service Charges (including, as applicable, prepayment of OAQDA Bond Service Charges) in accordance with [Exhibit C](#). Except as set forth in this Section 2.4(c) and Section 6.1 of this Agreement, the Developer shall not prepay any Special Assessments. Notwithstanding the foregoing, if the Developer attempts to cause a prepayment of the Special Assessments by paying to the County Treasurer any amount as a full or partial prepayment of Special Assessments, and if the City shall have knowledge of the same, the City immediately shall notify the Authority and the Trustee, and, unless provided the express written consent of the Authority, the City shall not cause any reduction in the amount of Special Assessments. Except as specifically provided in this Agreement to the contrary, no other action pursuant to any provision of this Agreement shall abate in any way the payment of the Special Assessments by the owners of property or the transfer of the Special Assessments by the City to the Trustee.

(d) **Assignment of Special Assessments.** The City agrees that it shall establish the Special Assessment Fund for the collection of the Special Assessments as a separate fund maintained on the City’s books and records and to be held in the custody of a bank with which the City maintains a depository relationship. The City hereby assigns to the Authority all of its right, title and interest in and to: (i) the Special Assessments received by the City under the Special Assessment Legislation and this Agreement, (ii) the City’s Special Assessment Fund established for the Project, and (iii) any other property received or to be received from the City under the Special Assessment Legislation and this Agreement. The City further shall transfer, set over, and pay the Special Assessments to the Trustee in accordance with this Agreement. The portion of the payment of Special Assessments by or on behalf of the City to the Investor shown on [Exhibit C](#) as OAQDA Bond Service Charges shall constitute OAQDA Bond Service Charges. The ESID acknowledges and consents to the City’s assignment of the Special Assessments to the Authority. The Cooperative Parties agree that each of the City, the ESID, the Authority, as assignee of the Special Assessments, and the Trustee, as trustee for the Special Assessments and the Series 2021F Bonds, is
authorized to take any and all actions, whether at law, or in equity, to collect delinquent Special Assessments levied by the City pursuant to law and to cause the lien securing any delinquent Special Assessments to be enforced through prompt and timely foreclosure proceedings, including, but not necessarily limited to, filing and prosecution of mandamus or other appropriate proceedings to induce the County Prosecutor, the County Auditor, and the County Treasurer, as necessary, to institute such prompt and timely foreclosure proceedings.

(e) **Transfer of Special Assessments.** The parties anticipate that annual installments of the Special Assessments will be paid to the City by the County Auditor and the County Treasurer in accordance with Ohio Revised Code Chapters 319, 321, 323, and 727, which, without limiting the generality of the foregoing, contemplates that the County Auditor and County Treasurer will pay the semi-annual installments of the Special Assessments to the City on or before June 1 and December 1 of each year. Promptly upon receipt of any moneys received by the City as Special Assessments, but in any event no later than (i) fourteen (14) calendar days after receipt from the County Treasurer or any final settlement relating to the Special Assessments or (ii) each Financing Payment Date, whichever is earlier, the City shall deliver to the Trustee all such moneys received by the City as Special Assessments. The payment by or on behalf of the City to or on behalf of the Authority of the portion of the Special Assessments shown on Exhibit C as OAQDA Bond Service Charges shall constitute the payment of OAQDA Bond Service Charges. The Authority may from time to time provide written payment instructions to the City for payment of Special Assessments by check, wire instructions, or other means. If at any time during the term of this Agreement the County Auditor agrees, on behalf of the City, to disburse the Special Assessments to the Authority or to the Authority’s direction pursuant to instructions or procedures agreed upon by the County Auditor and the City, then, upon each transfer of an installment of the Special Assessments from the County Auditor to the Authority or to the Authority’s direction, the City shall be deemed to have satisfied all of its obligations under this Agreement to transfer that installment of the Special Assessments to the Trustee.

(f) **No Contest of Special Assessments.** The Developer further agrees that it will not contest the amount of the Special Assessments.

Section 2.5. **Security for Advanced Funds.** To secure the transfer of the Special Assessments by the City to the Authority, and in accordance with the Special Assessment Act, the ESID hereby assigns, transfers, sets over, and shall pay all of its right, title, and interest in and to the Special Assessments related to the ESID actually received by or on behalf of the City to the Authority. The Owner and the City hereby agree and consent to that assignment.

(End of Article II)
ARTICLE III

Cooperative Arrangements; Undertaking the Project; Issuance of the Series 2021F Bonds

Section 3.1. Cooperative Arrangements. The Developer, the City, and the ESID have requested the assistance of the Authority in the financing of the Project as special energy improvement projects within the territory of the ESID. For the reasons set forth in this Agreement’s recitals—which recitals are incorporated into this Agreement by this reference as a statement of the public purposes of this Agreement and the intended arrangements among the Cooperative Parties—the City and the ESID have requested the assistance and cooperation of the Authority and the Trustee in the collection and payment of Special Assessments in accordance with this Agreement. The Cooperative Parties intend this Agreement to be, and it shall be, an agreement among the Cooperative Parties to cooperate in the financing, acquisition, construction, equipping, improvement, and installation of “special energy improvement projects,” pursuant to Ohio Revised Code Chapter 1710, and as that term is defined in Ohio Revised Code Section 1710.01(A) and “port authority facilities” under the Act. The Cooperative Parties intend this Agreement’s provisions to be, and they shall be construed as, agreements to take effective cooperative action and to safeguard the Cooperative Parties’ interests.

To the extent, if any, necessary, desirable or appropriate to implement the intent of this Agreement and in accordance with the Act, the Authority undertakes to, and is authorized by the City to, exercise any power, perform any function and render any service, on behalf of the City, together with all necessary or incidental powers, to the fullest extent that the City is authorized to exercise, perform or render such power, function or service. Each power exercised, function performed, or service rendered by the Authority under this Agreement, to the extent if any necessary to the implementation of this Agreement and the financing of the Project in the manner set forth in this Agreement, is undertaken by the Authority on behalf of the City, pursuant to Revised Code Sections 4582.43 and 4582.431.

Section 3.2. Undertaking and Improvement of the Project. The Authority, the Developer, and the ESID agree to undertake the Project for the Project Purposes, and the Developer agrees to undertake and construct the Project with all reasonable dispatch and in accordance with the following:

(a) The Financing of the Project with Special Assessments. In order to provide moneys to finance costs of the Project, the City will cause to be paid to the Trustee, the Assigned Special Assessments received by the City under this Agreement on or before each Financing Payment Date.

(b) Construction of the Development. The Developer shall, for and on behalf of the Authority, undertake the Project in accordance with all applicable laws, and in accordance with this Article III and the Construction Agency Agreement by constructing the Project.
Section 3.3. **Plans and Specifications.** The Plans and Specifications have been or will be filed with the City by the Developer. The Developer may revise the Plans and Specifications from time to time, provided that no revision shall be made which would (i) change the Project Purposes in any material respect, without the written consent of the Authority which consent shall not be unreasonably withheld, or (ii) change the Project Purposes to other than permitted by the Act.

Section 3.4. **Issuance of the Series 2021F Bonds; Application of Proceeds.** To provide funds to pay for the Project pursuant to the Bond Legislation, the Authority has agreed to issue its Series 2021F Bonds and the Authority has issued, sold and delivered the Series 2021F Bonds to the Original Purchaser. The Series 2021F Bonds are issued pursuant to the Series 2021F Supplemental Indenture and the Bond Legislation in the aggregate principal amount, bear interest, mature and are subject to redemption as stated in the Series 2021F Supplemental Indenture and the Bond Legislation. The Developer hereby approves the terms of the Series 2021F Bonds and the Indenture, and agrees that, in the event of any inconsistency or conflict between this Agreement and the terms of the Indenture, the terms of the Indenture shall control.

The proceeds from the issuance of the Series 2021F Bonds shall be paid to the Trustee and deposited as provided in this Agreement and the Indenture and used to pay or reimburse the Developer for the payment of the costs to construct the Project, to pay costs of issuance of the Series 2021F Bonds, to pay capitalized interest on the Series 2021F Bonds, and to fund the Bond Reserve Deposit.

The deposit of a portion of the proceeds of the Series 2021F Bonds equal to $[____] under the Indenture and this Agreement shall constitute the Authority's purchase of the equal principal amount of the OAQDA Bonds.

Section 3.5. **Disbursements of the Series 2021F Bonds Proceeds.** All disbursements of the Series 2021F Bond proceeds shall be made in accordance with the Indenture and this Agreement, the terms of which are hereby approved and agreed to by the Developer, the City, and the ESID.

Section 3.6. **Bond Reserve Deposit.** Concurrently with the issuance of the Series 2021F Bonds, the Bond Reserve Deposit under the Series 2021F Supplemental Indenture shall be funded with proceeds of the Series 2021F Bonds.

Section 3.7. **Construction and Completion of the Project.** The Developer hereby covenants to cause to be constructed on the Property, the Project as described on Exhibit B. The Project shall be completed on or prior to [____]. The Completion Date shall be evidenced to the City, the Authority and the Trustee by a certificate of the Developer, in the form attached to the Construction Agency Agreement, stating that the Project is substantially complete in conformance with the terms of this Agreement and the Construction Agency Agreement. The Developer shall cause the completion of the Project on the Property regardless of whether the amounts made available to the Developer under this Agreement are sufficient to pay all of the costs of the Project. In the event the costs of the Project exceed the amounts made available to the Developer under this Agreement, the Developer nevertheless shall complete the Project in
accordance with the Plans and Specifications and shall pay any costs in excess of the amounts made available under this Agreement from any other sources available to the Developer.


(a) Except as provided in the Series 2021F Supplemental Indenture, disbursements from the Series 2021F PF Account shall be made only to reimburse or pay the Developer, or any person designated by the Developer, for Series 2021F Project Costs. Disbursements from the Series 2021F PF Account may only be made pursuant to and in accordance with this Section 3.8.

(b) The Authority hereby authorizes and directs the Trustee, as to money on deposit in the Series 2021F PF Account, to disburse moneys from that account in accordance with this Agreement to pay (or, if paid by the Developer, to reimburse the Developer for payment of), the following costs relating to the Series 2021F Project (the “Series 2021F Project Costs”):

(i) costs incurred directly or indirectly for or in connection with the acquisition, construction, equipment, installation, and/or improvement of the Series 2021F Project, including without limitation, costs incurred in respect of the Series 2021F Project for preliminary planning and studies; architectural, legal, engineering, surveying, accounting, consulting, supervisory and other services; labor, services and materials; and recording of documents and title work;

(ii) financial, legal, recording, title, accounting, and printing and engraving fees, charges and expenses, and all other fees, charges and expenses incurred in connection with the authorization, sale, issuance and delivery of the Series 2021F Bonds, including, without limitation, the fees of the Authority, the Developer, any underwriter or placement agent, or bond purchaser for the Series 2021F Bonds and the fees and expenses of the Trustee and any paying agent properly incurred under the Indenture that may become due and payable;

(iii) premiums attributable to any surety and payment and performance bonds and insurance required to be taken out and maintained until the date on which the Series 2021F Project is final and complete;

(iv) taxes, assessments and other governmental charges in respect of the Series 2021F Project that may become due and payable until the date on which the Series 2021F Project is final and complete;

(v) costs incurred directly or indirectly in seeking to enforce any remedy against any contractor or subcontractor in respect of any actual or claimed default under any contract relating to the Series 2021F Project; and
(vi) any other incidental or necessary costs, expenses, fees and charges properly chargeable to the cost of the acquisition, construction, equipment, installation, and/or improvement of the Series 2021F Project.

(c) Disbursements from the Series 2021F PF Account for the payment of Series 2021F Project Costs (other than disbursements for costs of issuance, as authorized in the Series 2021F Supplemental Indenture, which shall be made by the Trustee upon the written order of the Authority, which written order shall be substantially in the form of the Disbursement Request Form attached hereto as Exhibit E) shall be made by the Trustee only upon the written order of the Authorized Developer Representative on the Disbursement Request Form and the approval of such written order by the Authority. Each such written order shall be substantially in the form of the Disbursement Request Form attached hereto as Exhibit D and shall be consecutively numbered. Each Disbursement Request Form shall be accompanied by invoices or other appropriate documentation supporting the payments or reimbursements requested reasonably satisfactory to the Authority and subject to the requirements set forth in this Agreement for such payment. All Disbursement Request Forms for costs relating to the Series 2021F Project shall be submitted to the Authority. Upon approval of the Disbursement Request by the Authority, the Authority shall deliver the executed and approved Disbursement Request Form to the Trustee for payment, on which Disbursement Request Form the Trustee shall conclusively rely, without investigation or liability. The Developer shall submit no more than one such written order in any given calendar month.

(d) The Authority shall review each Disbursement Request submitted pursuant to this Agreement. The approval of any Disbursement Request by the Authority shall be contingent upon the Authority’s determination, as evidenced by its approval of an applicable Disbursement Request Form that the disbursement request complies with the requirements for a disbursement from the proceeds of the Series 2021F Bonds in accordance with the terms of this Agreement. The Developer hereby releases the Authority and agrees that the Authority shall not be liable for, any and all liabilities and claims imposed upon or asserted against the Authority in connection with any authorization, approval, direction, delivery or review made by the Authority pursuant to this Section 3.8.

(e) Disbursement Requests to be paid or reimbursed under this Section 3.8 shall be paid or reimbursed from available moneys in the Series 2021F Project Subaccount in the Series 2021F PF Account in the Project Fund.

(f) In case any contract provides for the retention by the Developer of a portion of the contract price, there shall be paid from the Series 2021F PF Account only the net amount remaining after deduction of any such portion, and only when that retained amount is due and payable, may it be paid from the Series 2021F PF Account.

(g) Any moneys in the Series 2021F PF Account remaining after the Completion Date and payment, or provision for payment, in full of the appropriate Series 2021F Project Costs, at the direction of the Authorized Developer Representative, promptly shall be:
(i) used to acquire, construct, equip, install, and/or improve such additional real or personal property in connection with the Series 2021F Project as is designated by the Authorized Developer Representative and the acquisition, construction, equipment, installation, and/or improvement of which will be permitted under the Act;

(ii) credited against the Developer’s obligation to make Special Assessment payments under this Agreement;

(iii) used for the purchase of Series 2021F Bonds in the open market for the purpose of cancellation at prices not exceeding the fair market value thereof plus accrued interest thereon to the date of payment therefor;

(iv) paid into the Bond Fund to be applied to the redemption of the Series 2021F Bonds; or

(v) a combination of the foregoing as is provided in that direction.

Section 3.9. Casualties and Takings. The Developer shall promptly notify the Authority and the Trustee if the Project is damaged or destroyed by fire, casualty, injury or any other cause (each such occurrence, a “Casualty”). Upon the occurrence of such Casualty, all proceeds of Required Insurance Coverage shall be applied to pay the costs of the restoration of the Project or to the repayment of the outstanding balance of the Special Assessments, and in which case the Authority shall remain obligated to make disbursements of up to the total amount of the proceeds of the Series 2021F Bonds made available under this Agreement and the Indenture, all in accordance with this Agreement.

In the event restoration of the Project or the Property is pursued, the Developer shall immediately proceed with the restoration of the Project in accordance with the Plans and Specifications. If, in the Authority’s reasonable judgment, the proceeds of the Required Insurance Coverage are insufficient to complete the restoration, the Developer shall deposit with the Authority such amounts as are necessary, in the Authority’s reasonable judgment, to complete the restoration in accordance with the Plans and Specifications.

In the event any part of the Property or the Project shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain (a “Taking”), the Authority’s obligation to make disbursements under this Agreement shall be terminated unless the Property and the Project can be replaced and restored in a manner which will enable the Project to be functionally and economically utilized and occupied as originally intended. If the Property and the Project can be so restored, the Developer shall immediately proceed with the restoration of the Project in accordance with the Plans and Specifications, and the Authority shall release the funds for such purpose. If, in the Authority’s reasonable judgment, the Taking proceeds available to the Developer and the Authority are insufficient to complete the restoration, the Developer shall deposit with the Authority such amounts as are
necessary, in the Authority’s reasonable judgment, to complete the restoration in accordance with the Plans and Specifications.

Each of the City and the Authority hereby agree not to take the Property or the Project for public purposes by condemnation as a result of any action or proceedings in eminent domain or to accept the transfer of the Property or the Project in lieu of condemnation during the term of this Agreement.

(End of Article III)
ARTICLE IV

Financing Payments

Section 4.1. Financing Payments. Upon the terms and conditions of this Agreement, the Authority will finance a portion of the costs of the Project by the issuance of the Series 2021F Bonds. In consideration of that undertaking by the Authority, the City shall pay to the Trustee within fourteen (14) calendar days after receipt of, and solely from, Assigned Special Assessments, the Financing Payments due on the next scheduled Financing Payment Date as shown on Exhibit C attached to, and incorporated, into this Agreement. The Parties acknowledge that the transfer from the City to the Trustee of the portions of the Special Assessments shown on Exhibit C as OAQDA Bond Service Charges shall constitute OAQDA Bond Service Charges.

All Financing Payments shall be paid to the Trustee, who shall transfer the necessary amounts for Bond Service Charges and Administrative Amounts. Any Excess Special Assessments available after transferring amounts accruing to pay Bond Service Charges and Administrative Amounts shall be returned to the Developer.

Notwithstanding anything in this Agreement to the contrary, the City’s obligation under this Agreement to make Financing Payments shall be a special obligation of the City and the Financing Payments shall be required to be made solely from Assigned Special Assessments. The obligations of the City under this Agreement are not and shall not be secured by an obligation or pledge of any moneys raised by taxation. The obligations of the City under this Agreement do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the City, and the Authority does not have and shall not have any right to have taxes levied by the City for the payment of Financing Payments.

Upon the City’s execution and delivery of this Agreement, all moneys received by or on behalf of the City from the collection of the Special Assessments shall be deemed to have been appropriated to pay the City’s obligations under this Agreement. While this Agreement is in effect, the City shall take such further actions as may be necessary or appropriate to appropriate and maintain the moneys received from the collection of the Special Assessments in accordance with this Agreement. The City shall have no obligation to use or apply to the payment of Financing Payments any funds or revenues from any other source other than the Assigned Special Assessments.

Except for such interests as may hereafter arise pursuant to Section 5.06 of the Basic Indenture, the City, the Developer, the ESID, and the Authority each acknowledge that none of the City, the Developer, the ESID, or the Authority has any interest in the Special Funds and any moneys deposited in the Special Funds shall be in the custody of and held by the respective Trustee in trust for the benefit of the Holders of the respective series of Bonds (as defined in the Indenture), in accordance with the respective Indentures.

Section 4.2. Place of Payments. The City shall pay all Financing Payments directly to the Trustee at its corporate trust office or to such other as the Authority may from time
to time direct; provided, however, that while the Series 2021F Bonds shall remain outstanding and secured by the Series 2021F Supplemental Indenture, the Authority shall not direct the City to pay Financing Payments to any Person other than the Trustee.

Section 4.3. **Obligations Unconditional.** The obligation of the City to make Financing Payments, solely from Assigned Special Assessments, shall be absolute and unconditional, and the City shall make such payments without abatement, diminution, or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set-off, recoupment, or counterclaim which the City may have or assert against the Authority, the Trustee, the Developer, the ESID, or any other Person. All of the obligations of the City under Sections 2.4, 3.1, 3.2, 4.1, and 4.2 of this Agreement are hereby established as duties specifically enjoined by law and resulting from an office, trust, or station upon the City within the meaning of Section 2731.01 of the Ohio Revised Code and shall be enforceable by mandamus.

Section 4.4. **Assignment of Agreement and Revenues.** To secure the payment of Bond Service Charges, the Authority shall assign to the Trustee by the Series 2021F Supplemental Indenture, its respective rights under and interests in this Agreement (except for the Unassigned Authority Rights), and the Pledged Revenues. The City, the Developer, and the ESID hereby agree and consent to those assignments.

Section 4.5. **Administrative Amounts.** Except to the extent such amounts are paid from the proceeds of the Series 2021F Bonds, in a manner consistent with Section 4.1 of this Agreement, the City and the Developer hereby direct and authorize the Trustee to pay to the Authority, as Administrative Amounts under this Agreement, any and all costs and expenses in excess of such costs and expenses payable from the Administrative Payments shown on Exhibit C to this Agreement incurred or to be paid by the Authority in connection with the issuance and delivery of the Series 2021F Bonds or otherwise related to actions taken by the Authority under this Agreement or the Indenture, including the Administrative Amounts set forth on Exhibit C; provided, however, that such payments shall be made only from Assigned Special Assessments.

The City and the Developer hereby direct and authorize the Trustee to pay to the City, the Trustee, any Registrar and any Paying Agent or Authenticating Agent, their reasonable fees, charges, and expenses for acting as such under the Indenture; provided, however, that such payments from the Trustee shall be made only from Assigned Special Assessments.

(End of Article IV)
ARTICLE V
Additional Agreements and Covenants

Section 5.1. Right of Inspection and Signage.

(a) Inspection. Subject to reasonable security and safety regulations and upon reasonable notice to the City and Developer the Authority and the Trustee, and their respective agents, shall have the right during normal business hours to inspect the Project during the construction.

(b) Signage. Subject to all applicable City ordinances and procedures, the City and the Developer hereby agree that the Authority shall have the right to erect a project financing sign at a prominent location on the Property in order to identify the Authority’s role in financing the Project.

Section 5.2. Indemnification by the Developer.

(a) The Developer (the “Indemnifying Party”) releases the Authority, the City, the ESID, the Trustee and their respective officers, directors, and employees, from, agrees the Authority, the City, the ESID, the Trustee, and their respective officers, directors, and employees, shall not be liable for and, indemnifies the Authority, the City, the ESID, the Trustee from, all liabilities, claims, costs, and expenses, including out-of-pocket and incidental expenses and legal fees, imposed upon, incurred or asserted against the Authority, the City, the ESID, the Trustee, and their respective officers, directors, agents and employees, on account of: (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the construction, installation, equipment and improvement, maintenance, operation and use of the Project; (ii) any breach or default on the part of the Indemnifying Party in the performance of any covenant, obligation or agreement of the Indemnifying Party under this Agreement, any contract for the construction of the Project, or other Transaction Document to which the Indemnifying Party is a party, or arising from any act or failure to act by the Indemnifying Party or any of the agents, contractors, servants, employees, or licensees of the Indemnifying Party; (iii) the authorization, issuance, sale, trading, redemption, or servicing of the Series 2021F Bonds, and the provision of any information or certification furnished in connection therewith concerning the Series 2021F Bonds or the Project, by the Developer; (iv) the failure of the Developer to comply with any requirement of this Agreement or any other Transaction Document; (v) any failure of compliance by the Developer with the provisions of the Charter of the City, the Act, or any other applicable provision of law; (vi) any action taken or omitted to be taken by the Authority, the City, the ESID, or the Trustee pursuant to the terms of this Agreement, the Indenture, any other Transaction Document or any other related instrument or document, or any action taken or omitted to be taken by the Authority, the City, the ESID, or the Trustee at the written request of or with the written consent of the Developer; (vii) any and all costs reasonably related to and reasonably incurred by the Authority, the City, the ESID, or the Trustee in connection with its efforts to collect
delinquent Special Assessments; and (viii) any claim, action or proceeding brought with respect to any matter set forth in clause (i), (ii), (iii), (iv), (v), (vi), (vii) or (viii) above.

(b) The Indemnifying Party agrees to indemnify and hold the Authority, the City, the ESID, the Trustee, and their respective officers, directors, agents and employees, harmless from and against all liabilities, and all reasonable costs and expenses, including out-of-pocket expenses and attorneys' fees and expenses incurred by the Authority, the City, the ESID, the Trustee as a result of the existence on, or release from, the Project, or the Property, of Hazardous Materials which in any way result from any act of omission or commission of the Developer, its related entities or any of its agents, employees, independent contractors, invitees, licensees, successors, assigns or tenants or arising out of any federal state or local environmental laws, regulations or ordinances.

The Indemnifying Party further covenants and agrees with the Authority, the City, the ESID, and the Trustee that neither the Indemnifying Party, nor its related entities, any of its agents, employees, independent contractors, invitees, licensees, successors, assigns, or tenants will store, release, or dispose of, or permit the storage, release, or disposal of any Hazardous Materials at the Project at any time from and after the effective date of this Agreement other than in accordance with applicable federal, state and local law and regulation. In the event that any party to this Agreement receives a notification or clean up requirement under 42 U.S.C. §9601 et seg. or other federal, state or local statute, ordinance, or regulation, relating to the Project, that party shall promptly notify the other parties to this Agreement of such receipt, together with a written statement of such party setting forth the details thereof and any action with respect thereto taken or proposed to be taken, to the extent of such party's knowledge. On receipt by the Indemnifying Party of any such notification or clean up requirement, the Indemnifying Party shall either proceed with appropriate diligence to comply with such notification or clean up requirement or shall commence and continue negotiation concerning or contest the liability of the Indemnifying Party with respect to such notification or clean up requirement. The Indemnifying Party agrees to indemnify and hold the Authority, the City, the ESID, and the Trustee harmless from and against any and all liabilities and all reasonable costs and expenses, including reasonable attorneys' fees and expenses, arising out of any federal, state, or local environmental laws, regulations, or ordinances, incurred by the Authority, the City, the ESID, or the Trustee as a result of any breach of this covenant or as a result of the presence of Hazardous Materials at the Project.

(c) The Indemnifying Party agrees to indemnify and hold the Trustee and its officers, directors, agents and employees harmless against all liabilities, claims, costs and expenses, including out-of-pocket and incidental expenses and reasonable legal fees (including the allocated costs and expenses of in-house counsel and legal staff) ("Losses") that may be imposed on, incurred by or asserted against the Trustee for following any instructions or other directions of the Developer upon which the Trustee is authorized to rely pursuant to the terms of the Indentures, this Agreement, or any other Transaction Document. In addition and not in limitation of the immediately preceding
sentence, the Indemnifying Party agrees to indemnify and hold the Trustee and its officers, directors, agents and employees, harmless from and against any and all Losses as a result of action or inaction on the part of the Indemnifying Party that may be imposed on, incurred by, or asserted against, the Trustee in connection with or arising out of Trustee’s performance under the Agreement, the Indenture, or any other Transaction Document provided such Trustee has not acted (or failed to act) with negligence or engaged in willful misconduct.

(d) In case any claim or demand is at any time made, or action or proceeding is brought, against or otherwise involving the Authority, the City, the ESID, the Trustee, or any officer, director, agent or employee of any such entity, in respect of which indemnity may be sought under this Agreement, the Person seeking indemnity promptly shall give notice of that action or proceeding to the Indemnifying Party, who, upon receipt of that notice, shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure of a party to give that notice shall not relieve the Indemnifying Party from any of its obligations under this Section unless, and only to the extent, that failure prejudices the defense of the action or proceeding by the Indemnifying Party. An indemnified party may employ separate counsel and participate in the defense, but the fees and expenses of such counsel shall be paid by the indemnified party unless (a) the employment of such counsel has been specifically authorized by the Indemnifying Party in writing, or (b) the Indemnifying Party has failed to assume the defense and to employ counsel, or (c) the named parties to any such action (including any impleaded parties) include both an indemnified party and the Indemnifying Party and such indemnified party shall have been advised by its counsel that there may one or more legal defenses available to it which are different from or additional to those available to the Indemnifying Party, in which case, if the indemnified party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the Indemnifying Party’s expense, the Indemnifying Party shall not have the right to assume the defense of such action on behalf of such indemnified party and the Indemnifying Party shall be responsible for payment of the fees and expenses of such separate counsel. The Person seeking indemnity agrees to fully cooperate with the Indemnifying Parties to the extent such cooperation does not prejudice the position of such indemnified Person and lend the Indemnifying Party such assistance as the Indemnifying Party shall reasonably request in defense of any claim, demand, action or proceeding. The Indemnifying Party shall not, nor shall any indemnified Person, be liable for any settlement made without its consent.

(e) Nothing in this Agreement is meant to release, extinguish, or otherwise alter or interfere with any rights which the Authority, the City, the ESID, or the Trustee may now or after the date of this Agreement have against the Developer or any other Person for any environmental liabilities as a result of that Person’s former, present, or future ownership, occupancy, or use of, or interest in, any real property included in or in the vicinity of the Project.

(f) The indemnification set forth above is intended to, and shall include, the indemnification of all affected officials, directors, officers, agents, and employees of the Authority, the City, the ESID, and the Trustee, respectively, and their successors and
assigns. That indemnification is intended to, and shall be, enforceable to the full extent permitted by law and shall survive the termination of this Agreement and repayment of the Series 2021F Bonds, and the earlier removal or resignation of the Trustee.

Section 5.3. **Litigation Notice; Management.** The ESID and the Developer shall give the Authority and the Trustee prompt notice, and the City shall use its best efforts to give the Authority and the Trustee prompt notice, of any action, suit, or proceeding by or against the City, the ESID, or the Developer, at law or in equity, or before any governmental instrumentality or agency, or of any of the same which is threatened in writing, of which the City, the ESID or the Developer has notice, which, if adversely determined, would materially impair the right or ability of the City, the ESID, or the Developer to carry on the business which is contemplated in connection with the Project, or would materially and adversely affect any of their respective businesses, operations, properties, assets, or condition (financial or otherwise) (an “Action”) together with a written statement describing the details of the Action and any actions taken or proposed to be taken by the City, the ESID, or the Developer in response to the Action.

Section 5.4. **Assignment by Developer.** This Agreement may not be assigned by the Developer, except (i) to an Affiliate, (ii) to the transferee or resulting surviving entity in a transaction permitted by Section 5.5, and (iii) upon the transfer of its ownership interest in the Property and the Project or any portion of the Property and the Project to an arm’s-length, good faith purchaser of the Property, but only after notice of such assignment is given to the Authority. No assignment of this Agreement by the Developer shall be applicable except upon (a) the execution and delivery to the Authority, the Trustee, and the ESID of an “Assignment and Assumption of Cooperative Agreement” in the form attached to and incorporated into this Agreement as **Exhibit F**; and (b) if the Project is not completed as of the date of such assignment, the execution and delivery to the Authority of an assignment of all construction contracts for the Project. The Parties acknowledge and agree that the Assignment and Assumption of Cooperative Agreement includes the assignment and assumption of the Special Assessment Agreement, the Owner Consent, the Construction Agency Agreement, and the OAQDA Bond Purchase Agreement (if applicable). Following any assignment by the Developer as described above, all obligations of the Developer contained in this Agreement, the Special Assessment Agreement, the Owner Consent, the Construction Agency Agreement, and the OAQDA Bond Purchase Agreement (if applicable) shall be obligations of the assignee, and the assigning Developer shall be released of its obligations to a corresponding extent.

Section 5.5. **Developer to Maintain Its Existence; Sales of Assets or Mergers.** The Developer shall do all things necessary to preserve and keep in full force and effect its existence, rights and franchises. In particular, the Developer agrees that it shall not (a) sell, transfer or otherwise dispose of all, or substantially all, of its assets; (b) consolidate with or merge into any other entity; or (c) permit one or more other entities to consolidate with or merge into it. But the Developer may, any time after the Completion Date, without violating the first sentence of this Section, consolidate with, or merge into, another Person, permit one or more other Persons to consolidate or merge into it, or sell or otherwise transfer to another Person all or substantially all of its assets as an entirety and dissolve, only if (a) the surviving, resulting, or transferee Person—whether the Developer or an entity other than the Developer—(i) assumes in writing all of the Developer’s obligations under this Agreement and each of the Transaction
Documents to which the Developer is a party and (ii) has a net worth, determined in accordance with generally accepted accounting principles consistently applied, at least equal to that of the Developer prior to dissolution, sale, consolidation, or merger, and (b) that the consolidation, merger, sale, or transfer does not violate or result in the violation of any provision of any document to which the Developer is a party. Upon consummation of a transaction permitted in this Section 5.5, the Developer, if it is not the surviving, resulting, or transferee entity, shall be released from its obligations under this Agreement and the Transaction Documents to which the Developer is a party.

To the extent permitted by law, the Developer agrees, for its benefit and the benefit of its successors and assigns, that it shall not enter into a written undertaking to pay delinquent taxes in installments under law, including but not limited to, Ohio Revised Code Section 323.31, where the effect of such entry would be to preclude the commencement, continuation, or resolution of foreclosure proceedings, or to otherwise delay the payment in full of any and all delinquent taxes, service payments in lieu of taxes, special assessments, including the Special Assessments, or other governmental charges on the Property.

Section 5.6. Financial Statements. The Developer shall deliver to the Authority, (i) within forty-five (45) calendar days of the end of each fiscal quarter, quarterly financial statements prepared by the Developer, and certified by its financial officer to be true, correct, and complete in all material respects to the best of its knowledge, subject to year-end adjustment, and (ii) annual audited financial statements of the Developer promptly upon their completion but not later than 120 calendar days after the end of each of its fiscal years, prepared by its independent certified public accountants, and (iii) such other financial information or reports as the Authority shall reasonably request.

(End of Article V)
ARTICLE VI

Financing Payment Abatement

Section 6.1. Financing Payment Abatement. If at any time Financing Payments have been paid to the Trustee or the Trustee otherwise holds sufficient moneys available for that purpose in an aggregate amount sufficient to cause the redemption or defeasance of all of the Series 2021F Bonds in accordance with the Indenture so that after such payment or defeasance none of the Series 2021F Bonds will be outstanding under the Indenture, then the Authority shall direct the Trustee to cause that redemption or defeasance in accordance with the Indenture. Except as specifically provided in this Agreement to the contrary, no other action pursuant to any provision of this Agreement shall in any way abate the payment of Financing Payments.

(End of Article VI)
ARTICLE VII

Events Of Default And Remedies

Section 7.1. Events of Default. Each of the following shall be an Event of Default:

(a) The City shall fail to transfer the Assigned Special Assessments to the Trustee when due;

(b) The Developer fails to pay an installment of the Special Assessments when due;

(c) The City shall fail to observe and perform any other agreement, term, or condition contained in this Agreement, and the continuation of such failure for a period of thirty (30) calendar days after notice shall have been given to the City by the Authority or the Trustee, or for such longer period as the Authority may agree to in writing; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the City institutes curative action within the applicable period and diligently pursues that action to completion; provided, further, that such action must be completed within 180 days after the delivery of such notice of failure;

(d) The City shall: (A) (i) admit in writing its inability to pay its debts generally as they become due; (ii) file a petition in bankruptcy or a petition to take advantage of any insolvency act; (iii) make a general assignment for the benefit of creditors outside the ordinary course of business; or (iv) consent to the appointment of a receiver for itself or of the whole or any substantial part of its property; or (B) file a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state;

(e) Any representation or warranty made by the City or the Developer in this Agreement or any statement in any report, certificate, financial statement, in the Transaction Documents or any other instrument furnished in connection with this Agreement or with the issuance of the Series 2021F Bonds shall at any time prove to have been false or misleading in any material respect when made or given; or

(f) The Developer shall fail to observe and perform any other agreement, term, or condition contained in this Agreement or any other Transaction Document to which it is a party for a period of 30 days after notice shall have been given to the Developer by the Authority or Trustee, or for such longer period as the Authority may agree to in writing; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the Developer institutes curative action within the applicable period and diligently pursues that action to completion; provided, further, that such action must be completed within 180 days after the delivery of such notice of failure.
(g) The Developer shall: (A) (i) admit in writing its inability to pay its debts generally as they become due; (ii) file a petition in bankruptcy or a petition to take advantage of any insolvency act; (iii) make a general assignment for the benefit of creditors outside the ordinary course of business; or (iv) consent to the appointment of a receiver for itself or of the whole or any substantial part of its property; or (B) file a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state.

Notwithstanding the foregoing, if, by reason of Force Majeure, the City, or the Developer is unable to perform or observe any agreement, term, or condition of this Agreement which would give rise to an Event of Default under subsection (c) or (f) above, neither the City nor the Developer shall be deemed in default during the continuance of such inability. But the City or the Developer, as applicable, shall promptly give notice to the Trustee and the Authority of the existence of an event of Force Majeure and shall use its best efforts to remove the effects of the event of Force Majeure; provided that the settlement of strikes or other industrial disturbances shall be entirely within their discretion.

The term Force Majeure shall mean, without limitation, the following:

(i) acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; droughts; floods; arrests; restraint of government and people; explosions; breakage, malfunction, or accident to facilities, machinery, transmission pipes, or canals; partial or entire failure of utilities; shortages of labor, materials, supplies, or transportation; or

(ii) any cause, circumstance or event not reasonably within the control of the City or Developer, as applicable; provided that inability to obtain necessary financing shall not constitute an event of Force Majeure.

The declaration of an Event of Default under subsection (d) or (g) above, and the exercise of remedies upon any such declaration, shall be subject to any applicable limitations of federal bankruptcy law affecting or precluding that declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation, or reorganization proceedings.

Section 7.2. Remedies on Default. Whenever an Event of Default shall have happened and be subsisting, any one or more of the following remedial steps may be taken:

(a) The Trustee may refuse to honor requests and orders from the Developer for the disbursement of funds from the Series 2021F Project Subaccount in accordance with the Series 2021F Supplemental Indenture or this Agreement;
(b) The Trustee may exercise any or all or any combination of the remedies specified in the Indenture;

(c) The Authority, the ESID, or the Trustee may have access to, inspect, examine and make copies of the books, records, accounts, and financial data of the City and the Developer pertaining to the Special Assessments, if any, any other Assigned Special Assessments, any amounts required to be paid by the Developer under this Agreement, or the Project;

(d) The Authority or the ESID may pursue all remedies available to them under the Special Assessment Agreement; or

(d) The Authority, the ESID, or the Trustee may pursue all remedies now or after the date of this Agreement existing at law or in equity to collect all amounts then due and to become due under this Agreement to enforce the performance and observance of any other obligation or agreement of the City and the Developer under the Transaction Documents.

Notwithstanding the foregoing, none of the Trustee, the ESID, or the Authority shall be obligated to take any step which in its opinion will or might cause it to expend time or money or otherwise incur liability unless and until a satisfactory indemnity bond has been furnished to the Authority, the ESID, or the Trustee at no cost or expense to the Authority or the Trustee. Any amounts collected as Financing Payments or applicable to Financing Payments and any other amounts collected pursuant to action taken under this Section shall be deposited and applied in accordance with the provisions of the Indenture.

Section 7.3. **No Remedy Exclusive.** No remedy conferred upon or reserved to the Authority, the ESID, or the Trustee by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, or now or after the date of this Agreement existing at law, in equity, or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair that right or power or shall be construed to be a waiver of that right or power, but any right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority, the ESID, or Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than any notice required by law or for which express provision is made in this Agreement.

Section 7.4. **Agreement to Pay Attorneys’ Fees and Expenses.** If an Event of Default by the Developer occurs and the Authority, the City, the ESID, or the Trustee incurs expenses, including attorneys’ fees and expenses, in connection with the enforcement of this Agreement against the Developer or the collection of sums due from the Developer under this Agreement, the Developer shall reimburse the Authority, the City, the ESID, and the Trustee, as applicable, for the reasonable expenses so incurred upon demand in the manner provided for Administrative Amounts. If any such expenses are not so reimbursed, the amount of the expenses, together with interest on that amount from the date of demand for payment at the Interest Rate for Advances, to the extent permitted by law, shall constitute indebtedness secured
by this Agreement and in any action brought to collect that indebtedness or to enforce this Agreement, the Authority, the City, the ESID, or the Trustee, as applicable, shall be entitled to seek the recovery of those expenses in such action except as limited by law or judicial order or decision entered in such proceedings.

Section 7.5. **No Waiver.** No failure by the Authority, the ESID, or the Trustee to insist upon the strict performance by the City or the Developer of any provision of this Agreement shall constitute a waiver of their right to strict performance and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by the City or the Developer to observe or comply with any provision of this Agreement.

Section 7.6. **Notice of Default.** The City and the Developer shall notify the Trustee, the ESID, and the Authority promptly if either of them becomes aware of the occurrence of any Event of Default under this Agreement or of any fact, condition, or event which, with the giving of notice or passage of time or both, would become an Event of Default.

(End of Article VII)
ARTICLE VIII

Miscellaneous

Section 8.1. Term of Agreement. This Agreement shall be and remain in full force and effect from the Closing Date (i) until the payment in full of the Special Assessments or (ii) such time as all sums payable under this Agreement shall have been paid (except for obligations of the City and the Developer under Sections 5.2 and 5.3 of this Agreement, and the obligations of the Developer under Sections 2.4 and 7.4 of this Agreement, which shall survive any termination of this Agreement), whichever shall come earlier. Notwithstanding the foregoing, provided that the Series 2021F Bonds shall no longer be outstanding and all other sums under this Agreement have been paid, the City, the ESID, and the Authority, may by written instrument agree to terminate this Agreement except for Sections 2.4, 5.2, 5.3, and 7.4 of this Agreement, provided that the Authority, the ESID, and the City shall have complied with the provisions of Section 8.8 of this Agreement.

Section 8.2. Notices. All notices, certificates, requests, or other communications under this Agreement shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, and addressed to the appropriate Notice Address. A duplicate copy of each notice, certificate, request, or other communication given under this Agreement to any of the Cooperative Parties shall also be given to each of the others, provided that the City shall provide to the Trustee any notice it receives pursuant to the Transaction Documents promptly, but in any event not later than five (5) Business Days after the City’s receipt. Any of the Cooperative Parties, by notice given under this Section, may designate any further or different addresses to which subsequent notices, certificates, requests, or other communications shall be sent. If, because of the suspension of delivery of certified or registered mail or for any other reason, notice, certificates, requests or other communications are unable to be given by the required class of mail, any notice required to be mailed by the provisions of this Agreement shall be given in such other manner as in the judgment of the Trustee shall most effectively approximate mailing, and the giving of that notice in that manner for all purposes of this Agreement shall be deemed to be in compliance with the requirement for the mailing. Except as otherwise provided in this Agreement, the mailing of any notice shall be deemed complete upon deposit of that notice in the mail and the giving of any notice by any other means of delivery shall be deemed complete upon receipt of the notice by the delivery service.

Section 8.3. Extent of Covenants: No Personal Liability. All covenants, obligations, and agreements of the Authority, the ESID, and the City contained in this Agreement and any other Transaction Documents to which they are a party shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation, or agreement shall be deemed to be a covenant, obligation, or agreement of any present or future member, officer, agent, or employee of the Authority, the ESID, the Developer, the City, the Legislative Authority, the board of directors of the ESID, or the Council of the City, in other than his or her official capacity.
Section 8.4. Binding Effect. This Agreement shall inure to the benefit of, and shall be binding in accordance with its terms upon, the Authority, the City, the ESID, the Developer, the Trustee, and their respective permitted successors and assigns; provided that this Agreement may not be assigned by the City and the respective interests of the Authority under this Agreement may not be assigned by the Authority except by the Authority to Trustee pursuant to the Indenture or as otherwise may be necessary to enforce or secure payment of Financing Payments. This Agreement may be enforced only by the Cooperative Parties, their assignees, and others who may, by law, stand in their respective places.

Section 8.5. Amendments and Supplements. Except as otherwise expressly provided in this Agreement or the Indenture, subsequent to the issuance of the Series 2021F Bonds and prior to all conditions provided for in the Indenture for release of the Series 2021F Supplemental Indenture having been met, this Agreement may not be effectively amended, changed, modified, altered, or terminated except in accordance with the provisions of Article XI of the Basic Indenture. Any attempt to amend, change, modify, alter, or terminate this Agreement expect as provided above shall be void.

Section 8.6. Execution Counterparts. This Agreement may be executed in counterpart and in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

Section 8.7. Severability. If any provision of this Agreement, or any covenant, obligation, or agreement contained in this Agreement is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation, or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained in this Agreement. That invalidity or unenforceability shall not affect any valid and enforceable application of the provision, covenant, obligation, or agreement, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 8.8. Extent of Obligation.

(a) The obligations of the Authority under this Agreement are not and shall not be secured by an obligation or pledge of any moneys raised by taxation. The obligations of the Authority under this Agreement do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the Authority, and neither the City, the Developer, the ESID, the Trustee, or any other party shall have any right to have taxes levied by the Authority for the payment of its obligations under this Agreement.

(b) The obligations of the City under this Agreement are not and shall not be secured by an obligation or pledge of any moneys raised by taxation. The obligations of the City under this Agreement do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the City, and neither the Authority, the Developer, the
ESID, the Trustee, or any other party shall have any right to have taxes
levied by the City for the payment of its obligations under this Agreement.

c The obligations of the City under this Agreement are hereby
established as duties specifically enjoined by law and resulting from an
office, trust, or station upon the City within the meaning of Ohio Revised
Code Section 2731.01 and shall be enforceable by mandamus, but only by
the express beneficiaries of that covenant.

Section 8.9. Continuing Disclosure. The City and the Developer each agrees to
provide to the Authority such information at the request of the Authority as shall be sufficient to
enable the Authority to comply with its respective continuing disclosure obligations under the
Indenture or any continuing disclosure agreement entered into by the Authority relating to the
Series 2021F Bonds or any portion thereof.

Section 8.10. Limitation of Rights. With the exception of rights conferred
expressly in this Agreement, nothing expressed or mentioned in or to be implied from this
Agreement or the Series 2021F Bonds is intended or shall be construed to give to any Person
other than the Cooperative Parties and the Holders of the Series 2021F Bonds any legal or
equitable right, remedy, power, or claim under or with respect to this Agreement or any
covenants, agreements, conditions, and provisions contained in this Agreement. This Agreement
and all of those covenants, agreements, conditions, and provisions are intended to be, and are, for
the sole and exclusive benefit of the Cooperative Parties and the Holders of the Series 2021F
Bonds, as provided in this Agreement.

Section 8.11. Governing Law. This Agreement shall be deemed to be a contract
made under the laws of the State and for all purposes shall be governed by and construed in
accordance with the laws of the State.

Section 8.12. Trustee. The Trustee shall have the same rights, protections,
immunities and indemnities hereunder as accorded to it under this Agreement and the other
Transaction Documents.

(End of Article VIII)
IN WITNESS WHEREOF, the Cooperative Parties each have caused this Agreement to be duly executed in their respective names, all as of the date first written above.

THE CITY OF DAYTON, OHIO

By: ____________________________

Name: __________________________

Title: __________________________

APPROVED AS TO FORM AND CORRECTNESS

[Counterpart Signature Page to Cooperative Agreement]
130 WEST 2nd STREET LLC

By: __________________________

Name: _________________________

Title: __________________________

[Counterpart Signature Page to Cooperative Agreement]
CENTERVILLE, DAYTON, KETTERING, MORAIN, OAKWOOD, RIVERSIDE, SPRINGBORO, WASHINGTON TOWNSHIP REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., D/B/A:

DAYTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.

By: ________________________________

Name: ______________________________

Title: ______________________________
THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,

as Trustee

By: __________________________

Name: __________________________

Title: Vice President
AUTHORITY’S FISCAL OFFICER’S CERTIFICATE

The undersigned, assistant secretary and fiscal officer of the Dayton-Montgomery County Port Authority, hereby certifies that the moneys required to meet the obligations of the Authority during the year 2021 under the foregoing Agreement have been lawfully appropriated by the Board of Directors of the Authority for such purposes and are in the treasury of the Authority or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: _________________, 2021

_________________________________
Fiscal Officer
Dayton-Montgomery County Port Authority

[Authority Fiscal Officer Certificate to Cooperative Agreement]
CITY FISCAL OFFICER’S CERTIFICATE

The undersigned, fiscal officer of the City, hereby certifies that the moneys required to meet the obligations of the City during the year 2021 under the Agreement have been lawfully appropriated by the Council of the City for such purposes and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: _____________, 2021

__________________________________________
Fiscal Officer
City of Dayton, Ohio

APPROVED AS TO FORM AND CORRECTNESS

______________________________
CITY ATTORNEY

[City Fiscal Officer Certificate to Cooperative Agreement]
EXHIBIT A

Property

The Property is located at the commonly used mailing address 130 West 2nd Street, Dayton, Ohio 45402 having Montgomery County Auditor Parcel ID No. R72 00203 8001 and the following legal description:

[To Be Inserted]
EXHIBIT B

Project

The Project consists of the acquisition, construction, installation, equipping, and improvement of the following components to be incorporated into the building and improvements located on the Property, as described in Exhibit A to this Agreement, which constitute energy efficiency improvement and special energy improvement projects under Ohio Revised Code Section 1710.01(I):

- LED lighting
- Chillers
- Cooling tower
- Window tinting
- BAS controls update
- AHU system
### EXHIBIT C

#### Schedule of Financing Payments

<table>
<thead>
<tr>
<th>Borrower Payment Date</th>
<th>Bondholder Payment Date</th>
<th>Principal</th>
<th>Interest 3.00%</th>
<th>Admin Fee 0.50%</th>
<th>Trustee Fee 0.06%</th>
<th>ESID Admin Fee</th>
<th>Capitalized Interest and Fees</th>
<th>Bond Debt Service</th>
<th>Legislated Assessment</th>
<th>Bond Debt Service Balance Returned to Owner</th>
</tr>
</thead>
<tbody>
<tr>
<td>09/25/21</td>
<td>11/15/21</td>
<td>14,000.00</td>
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<td>09/25/22</td>
<td>11/15/22</td>
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<td>300.00</td>
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<td>01/15/22</td>
<td>11/15/22</td>
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<td>01/15/24</td>
<td>11/15/24</td>
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<td>300.00</td>
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<td>$0.00</td>
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<td>2,950.00</td>
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<tr>
<td>01/15/25</td>
<td>11/15/25</td>
<td>19,000.00</td>
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<td>250.00</td>
<td>300.00</td>
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<td>07/01/25</td>
<td>09/15/25</td>
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<td>300.00</td>
<td>350.00</td>
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<td>Totals</td>
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<td>2,100,000.00</td>
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</tbody>
</table>

Based on Max Bond Payment

\[(A) - (B) = (C)\]

\[\text{Total} = 2,100,000.00, \quad 727,175.00, \quad 221,195.83, \quad 24,685.00, \quad 41,500.00, \quad (53,993.33), \quad 2,890,542.50, \quad 2,980,542.50, \quad 88,682.50\]

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EXHIBIT D

DISBURSEMENT REQUEST FORM

STATEMENT NO. [___] REQUESTING AND AUTHORIZING DISBURSEMENT OF FUNDS PURSUANT TO SECTION 3.8 OF THE COOPERATIVE AGREEMENT DATED AS OF [AUGUST 1], 2021.

Pursuant to Section 3.8 of the Cooperative Agreement dated as of [August 1], 2021 (the “Cooperative Agreement”) among the Authority, the Developer, the City, and the Trustee, the undersigned Authorized Developer Representative hereby requests the Trustee, having custody of the Series 2021F PF Account, to pay to the Developer or the other person(s) listed on the disbursement schedule attached hereto as Appendix I (the “Disbursement Schedule”), the respective amounts specified in the Disbursement Schedule out of the moneys on deposit in the Series 2021F Project Subaccount in the Series 2021F PF Account for the advances, payments and expenditures made in connection with the costs of the Series 2021F Project described in the Disbursement Schedule, all in accordance with Section 3.8 of the Cooperative Agreement (capitalized words and terms not otherwise defined herein having the meanings assigned to them in the Cooperative Agreement).

In connection with this request and authorization (the “Disbursement Request”), the undersigned hereby certifies that:

(i) each of the representations and warranties made by the Developer in the Cooperative Agreement remains true and correct, in all material respects, as of the date of this Disbursement Request and no Event of Default by the Developer under the Cooperative Agreement exists;

(ii) each item for which disbursement is requested by this Disbursement Request is properly payable out of the Series 2021F Project Subaccount in the Series 2021F PF Account in accordance with the terms and conditions of the Cooperative Agreement and, except as otherwise noted, none of those items has formed the basis for any disbursement heretofore made from the Series 2021F Project Subaccount in the Series 2021F PF Account;

(iii) to the extent any portion of the payment requested is for construction work, the Developer has received and herewith delivers to the Trustee, conditional waivers of any mechanics’ or other liens with respect to such work;

(iv) this Disbursement Request and all exhibits hereto, including the Disbursement Schedule, shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warrant, protection and authority to the Trustee for its actions taken pursuant hereto; and

D-1
(v) this Disbursement Request constitutes the approval of the Developer of each disbursement hereby requested and authorized.

Dated: __________________________  __________________________

Authorized Developer
Representative

Approved in accordance with the Cooperative Agreement:

Dayton-Montgomery County Port Authority

By: __________________________

Name: __________________________

Title: __________________________

Dated: __________________________
APPENDIX I

DISBURSEMENT SCHEDULE TO STATEMENT NO. [__] REQUESTING AND AUTHORIZING DISBURSEMENT OF FUNDS PURSUANT TO SECTION 3.8 OF THE COOPERATIVE AGREEMENT DATED AS OF [AUGUST] 1, 2021.

<table>
<thead>
<tr>
<th>PAYEE</th>
<th>AMOUNT</th>
<th>PURPOSE</th>
<th>ACCOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

D-3
EXHIBIT E


Pursuant to: (i) Article V of the Amended and Restated Trust Indenture between the Dayton-Montgomery County Port Authority (the “Port Authority”), the Port of Greater Cincinnati Development Authority, and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”) dated as of April 1, 2015 (the “Master Indenture”); (ii) Section 8 of the Thirty-Fifth Supplemental Trust Indenture between the Port Authority and Trustee dated as of [August] 1, 2021 (the “Series 2021F Supplemental Indenture” and together with the Master Indenture, as it has been supplemented prior to the date hereof, the “Indenture”); and (iii) Section 3.8 of the Cooperative Agreement between the Port Authority, 130 West 2nd Street LLC (the “Developer”), the City of Dayton, Ohio (the “City”), the Dayton Regional Energy Special Improvement District, Inc., and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”) dated as of [August 1], 2021, as the same may be amended, modified, or supplemented from time to time (the “Series 2021F Agreement”), the Port Authority hereby requests and authorizes the Trustee, having custody of the Project Fund, including the Series 2021F PF Account therein, to pay to the Port Authority or the other person(s) listed on the disbursement schedule attached hereto as Appendix I (the “Disbursement Schedule”), the respective amounts specified in the Disbursement Schedule out of the moneys on deposit in the Series 2021F PF Account, for the advances, payments and expenditures made in connection with the costs of issuance of the Bonds described in the Disbursement Schedule, all in accordance with Article V of the Indenture, Section 8 of the Series 2021F Supplemental Indenture, and Section 3.8 of the Series 2021F Agreement (with capitalized words and terms not otherwise defined herein having the meanings assigned to them in the Series 2021F Agreement).

In connection with this request and authorization (the “Disbursement Request”), the Port Authority hereby certifies that:

(i) each item for which disbursement is requested by this Disbursement Request is a cost of issuance and is properly payable out of the Series 2021F Costs of Issuance Subaccount in the Series 2021F PF Account of the Project Fund, in accordance with the terms and conditions of the Indenture, the Series 2021F Supplemental Indenture, and the Series 2021F Agreement and, except as otherwise noted, none of those items has formed the basis for any disbursement heretofore made from the Series 2021F Costs of Issuance Subaccount in the Series 2021F PF Account of the Project Fund;

(ii) this Disbursement Request and all exhibits hereto, including the Disbursement Schedule, shall be conclusive evidence of the facts and statements set forth
herein and shall constitute full warrant, protection, and authority to the Trustee for its actions taken pursuant hereto; and

(iii) this Disbursement Request constitutes the approval of the Port Authority of each disbursement hereby requested and authorized.
APPENDIX I


<table>
<thead>
<tr>
<th>PAYEE</th>
<th>AMOUNT</th>
<th>PURPOSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dayton-Montgomery County Port Authority</td>
<td>$21,000.00</td>
<td>Issuer Closing Fee</td>
</tr>
<tr>
<td>DiPerma Advisors</td>
<td>21,000.00</td>
<td>Financial Advisor Fee</td>
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<tr>
<td>Bricker &amp; Eckler LLP</td>
<td>20,000.00</td>
<td>Bond Counsel Fee</td>
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<tr>
<td>Dayton Regional Energy Special Improvement District, Inc.</td>
<td>10,500.00</td>
<td>ESID Fee</td>
</tr>
<tr>
<td>Standard &amp; Poor’s Rating Services</td>
<td>10,000.00</td>
<td>Rating Fee</td>
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<tr>
<td>The Bank of New York Mellon Trust Company, N.A.</td>
<td>2,000.00</td>
<td>Trustee Fee</td>
</tr>
<tr>
<td>Thompson Hine LLP</td>
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<td>Disclosure Counsel Fee</td>
</tr>
<tr>
<td>KeyBanc Capital Markets, Inc.</td>
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<td>Placement Agent Fee and Expenses</td>
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<td>The Bank of New York Mellon Trust Company, N.A.</td>
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<td>Miscellaneous Expenses</td>
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<td><strong>Total Disbursement:</strong></td>
<td><strong>$117,250.00</strong></td>
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</tr>
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</table>
EXHIBIT F

FORM OF ASSIGNMENT AND ASSUMPTION
OF COOPERATIVE AGREEMENT

ASSIGNMENT AND ASSUMPTION
OF
COOPERATIVE AGREEMENT

[_____________] (Assignor), in consideration of the sum of $[________] in hand paid and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by Assignor’s execution of this Assignment and Assumption of Cooperative Agreement (Assignment), assigns, transfers, sets over, and conveys to [_____________] (Assignee) all of Assignor’s right, title, and interest in and to that certain Cooperative Agreement dated as of [August 1, 2021] (the Cooperative Agreement) by and among the Dayton-Montgomery County Port Authority (the Authority), 130 West 2nd Street LLC, a Massachusetts liability company (the Developer), the Centerville, Dayton, Kettering, Moraine, Oakwood, Riverside, Springboro, Washington Township Regional Energy Special Improvement District, Inc., doing business under the registered trade name Dayton Regional Energy Special Improvement District, Inc., (the ESID), the City of Dayton, Ohio (the City) and The Bank of New York Mellon Trust Company, N.A., as trustee (the Trustee).

By executing this Assignment, Assignee accepts the assignment of, and assumes all of Assignor’s duties and obligations under, the Cooperative Agreement. Assignee further represents and warrants that it has taken title to the “Property,” as that term is defined in the Cooperative Agreement, subject to the Special Assessment Agreement dated as of even date with the Cooperative Agreement between the Montgomery County Treasurer, the ESID, the Authority, the City, and the Developer (the Special Assessment Agreement) and to the Owner Consent dated ______, 2021 by the Owner and recorded in the records of the Montgomery County Recorder with respect to the Property. By executing this Assignment, Assignee accepts the assignment of, and assumes all of Assignor’s duties and obligations under, the Special Assessment Agreement and the Owner Consent. Assignee further represents and warrants that it has assumed the duties of the Developer under the Construction Agency Agreement (as defined in the Cooperative Agreement), and by executing this Assignment, Assignee accepts the assignment of, and assumes all of Assignor’s duties and obligations under, the Construction Agency Agreement. Assignee further represents and warrants that it has assumed the duties of the Developer under the OAQDA Bond Purchase Agreement (as defined in the Cooperative Agreement), and by executing this Assignment, Assignee accepts the assignment of, and assumes all of Assignor’s duties and obligations under, the OAQDA Bond Purchase Agreement.

Assignor and Assignee acknowledge and agree that executed copies of this Assignment shall be delivered to the Authority, the Trustee, and the ESID, all in accordance with Section 5.4 of the Cooperative Agreement.

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In witness of their intent to be bound by this Assignment, each of Assignor and Assignee have executed this Assignment this __________ day of ________________, [____], which Assignment is effective this date. This Assignment may be executed in any number of counterparts, which when taken together shall be deemed one agreement.
ASSIGNOR:

[____________________________________]

By: ________________________________

Name: ______________________________

Title: ______________________________
ASSIGNEE:

[__________________________________________]

By: ________________________________

Name: _______________________________

Title: _______________________________
SPECIAL ASSESSMENT AGREEMENT
(ORC Sections 5721.33 and 9.482)

by and among

COUNTY TREASURER OF MONTGOMERY COUNTY, OHIO
(“Treasurer”),

And

CITY OF DAYTON, OHIO
(“City”),

And

CENTERVILLE, DAYTON, KETTERING, MORaine, OAKWOOD, RIVERSIDE, SPRINGBORO, WASHINGTON
TOWNSHIP REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., D/B/A:

DAYTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.;
(“District”),

And

130 WEST 2nd STREET LLC
(“Owner”),

And

DAYTON-MONTGOMERY COUNTY PORT AUTHORITY
(“Investor”)

Dated as of __________, 2021
SPECIAL ASSESSMENT AGREEMENT

THIS SPECIAL ASSESSMENT AGREEMENT (this “Agreement”) is made effective as of [August 25], 2021, by and among the County Treasurer of Montgomery County, Ohio (the “Treasurer”), the City of Dayton, Ohio (the “City”), the Centerville, Dayton, Kettering, Moraine, Oakwood, Riverside, Springboro, Washington Township Regional Energy Special Improvement District, Inc., doing business under the registered trade name Dayton Regional Energy Special Improvement District, Inc. (“District”), 130 West 2nd Street LLC (the “Owner), and the Dayton-Montgomery County Port Authority (together with its permitted successors and assigns, the “Investor”) (the Treasurer, the District, the City, the Owner, and the Investor are collectively referred to herein as the “Parties”).

BACKGROUND:

WHEREAS, the District was created under Ohio Revised Code Chapters 1702 and 1710 and established pursuant to Resolution 6117-15 of the City Commission of the City of Dayton, Ohio (the “City Commission”) approved on June 24, 2015; and

WHEREAS, the District is an energy special improvement district and nonprofit corporation duly organized and validly existing under the laws of the State of Ohio to further the public purpose of implementing special energy improvement projects pursuant to the authority in Ohio Revised Code Chapter 1710 and Article VIII, Section 2o of the Ohio Constitution; and

WHEREAS, on June 24, 2015, by its Resolution No. 6117-15, the City Commission approved the Dayton Regional Energy Special Improvement District Project Plan (the “Original Plan”), as a plan for public improvements or public services for the District under Ohio Revised Code Section 1710.02(F); and

WHEREAS, the Owner has determined that it is in its best interests to cause the acquisition, installation, equipping, and improvement of special energy efficiency improvements, including, without limitation, LED lighting, chillers, a cooling tower, energy efficient window tinting, BAS controls upgrades, an AHU system, and related (collectively, the “Project”) on certain real property located within Montgomery County, Ohio (the “County”) and the City, and as more fully described in Exhibit A to this Agreement (the “Assessed Lands”); and

WHEREAS, the costs of the Project are being funded in part through an advance in the amount of $2,100,000.00 (the “Project Advance”) to the Owner pursuant to a Cooperative Agreement dated as of [August 1], 2021 (the “Cooperative Agreement”) between the District, the Investor, the Owner, and the City; and

WHEREAS, to secure the repayment of the principal of, and the payment of any premium, fees, and unpaid interest on, the Project Advance used to finance the Project (the “Project Costs”), (i) the Owner signed and delivered to the Clerk of the City Commission a Petition for Special Assessments for Special Energy Improvement Projects and Affidavit (the “Petition”) for the acquisition, installation, equipping, and improvement of the Project and
evidencing Owner's agreement to the levy and collection of special assessments by the City (the "Special Assessments") on the Assessed Lands, which are located within the District, in amounts sufficient to pay the Project Costs, and (ii) the City (a) has taken all the necessary actions required by Ohio Revised Code Chapter 727, including, without limitation, the passage of the assessing resolution or ordinance pursuant to the requirements of Ohio Revised Code Section 727.25, for the levying of the Special Assessments and has caused or will cause the Special Assessments to be certified to the County Auditor of Montgomery County, Ohio (the "County Auditor") for collection by the Treasurer in semi-annual installments, and (b) hereby has agreed to transfer to the Investor the payments of Special Assessments received to pay the Project Costs.

WHEREAS, the Owner agrees that its delivery of the Petition and the requests and agreements made in the Petition are irrevocable and that the Parties have acted and will act in reliance on the agreements contained in the Petition; and

WHEREAS, pursuant to the Petition, the Special Assessments have been levied against the Assessed Lands as described in the Petition and pursuant to this Agreement the Owner is willing to agree to make Special Assessment payments in accordance with the Petition; and

WHEREAS, Ohio Revised Code Chapters 323 and 5721 set forth certain parameters and timing requirements for the foreclosure of property on which taxes and assessments, including the Special Assessments, are due and owing and remain unpaid; and

WHEREAS, upon the occurrence of an Event of Default pursuant to the Cooperative Agreement, it may be necessary for the District to foreclose on the lien of the Special Assessments with respect to the Assessed Lands as set forth in Section 2 of this Agreement; and

WHEREAS, in consideration of the Project Advance, the Owner is willing to consent to an expedited foreclosure process with respect to the lien of the Special Assessments, the form of the consent being attached hereto as Exhibit B (the "Owner Consent") and the Owner Consent with respect to the foreclosure of the Special Assessments as soon as possible (as referenced in Section 2 hereof) shall be a covenant running with Assessed Lands and binding upon the Owner and upon future owners of the Assessed Lands until the Project Costs are paid in full; and

WHEREAS, based on the Owner Consent and other considerations, including, without limitation, the right to be indemnified pursuant to this Agreement, at the request of the District and, upon the occurrence of an Event of Default described under Section 7.1 of the Cooperative Agreement, the Treasurer has agreed to foreclose the lien of the Special Assessments as soon as possible as described herein upon an occurrence of an Event of Default under the Cooperative Agreement; and

WHEREAS, if any assessments, including, without limitation, the Special Assessments, payments in lieu of taxes, real property taxes, or other governmental charges levied on the Assessed Lands are not paid when due and thereafter remain delinquent, the Treasurer, pursuant to Ohio Revised Code Sections 5721.30 through 5721.41 (the "Delinquent Tax Lien Sale Act"), specifically Ohio Revised Code Section 5721.33, may, in his discretion, but is not required to,
negotiate with one or more persons the sale of any number of tax certificates ("Tax Certificates") which evidence the liens (the "Tax Liens") of the State of Ohio (the "State") and its applicable taxing districts for such delinquent assessments, including Special Assessments, real property taxes, payments in lieu of taxes, governmental charges, or penalties and interest on such Assessed Lands; and

WHEREAS, pursuant to the Delinquent Tax Lien Sale Act, the Treasurer, in its discretion, may sell such Tax Certificates at a discount from the full amount of the general real estate taxes, assessments, including the Special Assessments, penalties, and interest that have become delinquent; and

WHEREAS, if the Treasurer were to sell such Tax Certificates at a discount (other than in accordance with the provisions of this Agreement), the proceeds of such sale representing the delinquent Special Assessments might be insufficient to pay the Project Costs; and

WHEREAS, the Treasurer does not desire to take any action with respect to the collection of the Special Assessments that might adversely affect the repayment of the Project Advance without the consent of the District or adversely affect the payment of the Project Costs without the consent of the District; and

WHEREAS, the Treasurer has agreed to remit to the District, in the event of a default under the Cooperative Agreement, as set forth in this Agreement, amounts collected by the Treasurer and relating to the Special Assessments, including without limitation amounts collected by the Treasurer as a result of foreclosure of the lien of the Special Assessments on the Assessed Lands and including amounts received from a sale of Tax Certificates pursuant to the Delinquent Tax Lien Sale Act;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, and desiring to be legally bound hereunder, the Parties hereto covenant and agree as follows:

Section 1. Special Assessments.

1.1 The Owner, prior to the execution and delivery of this Agreement, signed and delivered to the Clerk of the City Commission the Petition for the acquisition, installation, equipping, and improvement of the Project and evidencing the agreement of the Owner to the levy of the Special Assessments as security for the Project Advance. The Owner agrees that its delivery of the Petition and the requests and agreements made therein are irrevocable and that the Parties hereto have acted and will act in reliance on the agreements contained in that Petition. The City shall take all necessary actions required by Ohio Revised Code Chapter 727 to levy and collect the Special Assessments on the Assessed Lands. On [August 18], 2021 the City passed Ordinance No. [_______] pursuant to the requirements of Ohio Revised Code Section 727.25 for the levying of the Special Assessments (the "Assessing Ordinance"). The Clerk of the City
Commission certified (or caused to be certified) the Assessing Ordinance to the County Auditor as set forth in the Petition.

1.2 The City shall cause the Special Assessments, as set forth in the Assessment Schedule attached to the Petition, to be certified to the County Auditor on or before the last date for the certification of special assessments to the County Auditor of each year during which the Special Assessments are to be levied pursuant to the Assessment Schedule. The Parties acknowledge that pursuant to such certification, the Special Assessments are expected to be collected and paid to the City pursuant to Ohio Revised Code Chapters 319, 321, 323, and 727.

1.3 In the event the Project Advance is prepaid or redeemed in accordance with the Cooperative Agreement, in whole or in part, the Parties shall, in cooperation with the Owner, and to the extent permitted by law, cause the aggregate lien of the Special Assessments to be no greater than the remaining principal of and interest and premium, if any, on the Project Advance through maturity.

1.4 To the extent that the Owner prepays any of the required payments to the Investor pursuant to the Cooperative Agreement, then the amounts of the Special Assessments shall be reduced in accordance with the appropriate Assessment Schedule attached to the Petition.

1.5 To facilitate the repayment of the Project Advance, the City, pursuant to Section 2.4 of the Cooperative Agreement, assigned to the Investor all of its right, title, and interest in and to the Special Assessments, the funds of the City established to collect and hold the Special Assessments, and any other property received or to be received from the City under the Cooperative Agreement. The Treasurer, the City, the District, the Owner, and the Investor each hereby acknowledges, agrees with, and consents to those assignments.

1.6 Pursuant to Section 2.5 of the Cooperative Agreement, the District assigned to the Investor any and all of its right, title, and interest it may have in and to the Special Assessments related to the District actually received by or on behalf of the City under the Cooperative Agreement. The Treasurer, the City, the District, the Owner, and the Investor each hereby acknowledges, agrees with, and consents to those assignments.

1.7 Notwithstanding anything in this Agreement to the contrary, the Treasurer’s obligations under this Agreement are not and shall not be secured by an obligation or pledge of any moneys raised by taxation. The Treasurer’s obligations shall be limited to the moneys levied, collected, and received in respect of the Special Assessments and any County-imposed collection fees, charges, or penalties. The Treasurer’s obligations under this Agreement do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the County.

1.8 Notwithstanding anything in this Agreement to the contrary, the City’s obligations under this Agreement are not and shall not be secured by an obligation or pledge of
any moneys raised by taxation. The City's obligation under this Agreement shall be limited to any moneys received from the County in respect of the Special Assessments and any County-imposed collection fees, charges, or penalties. The City's obligations under this Agreement do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the City.

Section 2. Foreclosure Process.

2.1 The Treasurer, the City, the Investor, and the Owner each acknowledge that the Special Assessments are to secure payments relating to the Project Advance, including the Project Costs and other amounts as provided under the Cooperative Agreement. The Treasurer agrees that so long as the Project Advance is outstanding and the Project Costs and other amounts under the Cooperative Agreement are secured, at least in part, by the revenues derived from the Special Assessments, the Treasurer will, upon receipt of written notice from the Investor or the District (with a copy to the other of the Investor or the District, and to the Owner and the City) that an Event of Default (solely as described under Section 7.1(b) of the Cooperative Agreement) has occurred and is continuing and which notice requests the Treasurer to foreclose on the lien of the Special Assessments, file and diligently prosecute a foreclosure action against the Assessed Lands following the procedures for lien foreclosures established in Ohio Revised Code Section 323.25 and related sections, but not earlier than the sixtieth day following receipt by the Treasurer of the delinquent land list certifying that the Special Assessments are delinquent. The foreclosure action shall be to collect all Special Assessments then due and owing on the Assessed Lands in accordance with the Petition. Without the prior written consent of the District and the Investor, the Treasurer will not confirm the sale of the Assessed Lands for an amount less than 100% of the amount of the Special Assessments and other general real estate taxes, payments in lieu of taxes, and assessments then due and owing with respect to the Assessed Lands, as shall be certified by the District to the Treasurer pursuant to the records of the Treasurer, except and unless the Assessed Lands become forfeited land subject to Ohio Revised Code Chapter 5723. All fees and expenses of the Treasurer in collecting the Special Assessments are to be included and paid for by the Owner. All fees and expenses of the Treasurer in collecting the Special Assessments, including other general real estate taxes, payments in lieu of taxes, and assessments then due and owing are to be included and paid for by the Owner prior to any such amounts being paid to the City and to other affected taxing jurisdictions and special districts. The City, Investor, and Owner understand and agree that the failure of the Treasurer to obtain any consent under Section 2.1 shall not create a cause for action against the Treasurer, the Montgomery County Board of County Commissioners, or Montgomery County, nor shall it subject the Treasurer, the Montgomery County Board of County Commissioners, or Montgomery County to liability for any difference between the foreclosure price and the amount of the delinquent Special Assessments. Further, nothing in this Agreement shall be construed to limit any immunity to which the Treasurer may be entitled pursuant to Chapter 2744 of the Ohio Revised Code.

2.2 The Treasurer hereby acknowledges that the City has assigned all of its right, title, and interest in and to the Special Assessments to the Investor, and that the District has
assigned all of its right, title, and interest it may have in and to the Special Assessments to the Investor, and the Treasurer hereby agrees that so long as the Project Advance is outstanding and the Project Costs and other amounts under the Cooperative Agreement are secured, at least in part, by the revenues derived from the Special Assessments, the Treasurer will not sell or negotiate the sale of one or more Tax Certificates related to the Assessed Lands for an amount less than 100% of the amount levied and certified for collection without the prior written consent of the District and the Investor.

2.3 The Treasurer hereby covenants and agrees that if any of the general real estate taxes, payments in lieu of taxes, assessments, including the Special Assessments, governmental charges, or penalties and interest on the Assessed Lands are delinquent and the Delinquent Tax Lien Sale Act would permit the Treasurer to negotiate the sale of Tax Certificates with respect thereto, the Treasurer will, prior to giving any notice under the Delinquent Tax Lien Sale Act of a sale of Tax Certificates with respect to the Assessed Lands, give written notice to the District and the Investor regarding the same and state therein whether the Treasurer reasonably anticipates receiving no less than 100% of the general real estate taxes, payments in lieu of taxes, and assessments, including the Special Assessments, penalties and interest, originally levied and certified for collection plus other charges, including attorney’s fees, or whether the Treasurer reasonably expects to receive less than 100% of the general real estate taxes, payments in lieu of taxes, and assessments, including the Special Assessments, penalties and interest, levied and certified for collection plus other charges, including attorney’s fees, and in accordance with this Agreement is requesting the consent of the District and the Investor for such a sale.

2.4 The Treasurer agrees, on behalf of the County, not to utilize the authority contained in Ohio Revised Code Chapter 5722 to transfer any of the Assessed Lands to the county land reutilization corporation, to sell or convey any of the Assessed Lands to any political subdivision under the authority contained in Ohio Revised Code Chapter 5722, or to clear the liens and encumbrances applicable to the Assessed Lands under the authority contained in Ohio Revised Code Chapter 5722 without the express written consent of the District and the Investor.

2.5 Nothing in this Agreement shall, or shall be construed to, prevent the Treasurer from selling one or more Tax Certificates with respect to the Assessed Lands to a third party without the consent of the District if the price received for the Tax Certificate or Tax Certificates equals or exceeds 100% of the delinquent general real estate taxes, assessments, including the Special Assessments, penalties and interest on the Assessed Lands outstanding against the Assessed Lands at the time of such sale.

2.6 The District and the Investor each hereby agrees that upon written notice from the Treasurer pursuant to Section 2.1 of this Agreement, it, within 30 days of receipt of the Treasurer’s notice, shall give a written response to the Treasurer indicating wherein it consents to the request for sale of a Tax Certificate or Tax Certificates.

2.7 Delay or failure of the District or the Investor to give a written response within 30 days of receipt of such notice shall be construed to be a consent to such request or to
be a waiver of the right to give such consent. No consent or refusal thereof by the District or the Investor in response to a request by the Treasurer shall extend to or affect any subsequent request of the Treasurer or shall impair the rights of the District or the Investor with respect to any such subsequent request.

2.8 So long as the Project Costs are outstanding, the Treasurer hereby covenants and agrees (a) to remit to the Investor, as appropriate and as provided for herein, not more than 30 days from the date of collection by the Treasurer, any amounts collected with respect to the Assessed Lands as payment for delinquent Special Assessments, including any amounts collected from Tax Certificates; and (b) to the extent the Treasurer seeks and is appointed as receiver for the Assessed Lands, as provided for in Chapter 323 of the Revised Code, after payment of reasonable fees and expenses of the Treasurer, all amounts collected by the Treasurer, as receiver for the Assessed Lands and collected as a result of any delinquent Special Assessments, shall be remitted to the Investor.

Section 3. Indemnification by Owner

3.1 The Owner hereby releases the District, the City, the Treasurer, the Investor, and their respective officers, directors, and employees (the “Indemnified Parties”), from, agrees that the Indemnified Parties shall not be liable for, and indemnifies the Indemnified Parties against, all liabilities, claims, costs, and expenses, including out-of-pocket and incidental expenses and legal fees, imposed upon, incurred, or asserted against Indemnified Parties, on account of: (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the acquisition, installation, equipping, improvement, maintenance, operation, and use of the Owner’s Project; (ii) any breach or default on the part of the Owner in the performance of any covenant, obligation, or agreement of the Owner under the Cooperative Agreement, or arising from any act or failure to act by the Owner, or any of the Owner’s agents, contractors, servants, employees, or licensees; (iii) the Owner’s failure to comply with any requirement of this Agreement; (iv) the efforts of the City and the Treasurer to collect Special Assessments; (v) any legal costs or out-of-pocket costs incurred by the District specifically related to additional approvals or actions that may be required by the District arising after the date of the Cooperative Agreement (and in the case of such legal costs or out-of-pocket costs, agrees to pay such costs directly to the District); and (vi) any claim, action or proceeding brought with respect to any matter set forth in clause (i), (ii), (iii), (iv), or (v) above, provided, however that the Owner shall not indemnify the Indemnified Parties as provided above to the extent that any liability, claim, cost, or expenses arises out of or results from the gross negligence, willful misconduct, or breach of this Agreement or the Cooperative Agreement of the Indemnified Parties.

3.2 The Owner agrees to indemnify, to pay, and to hold each of the Indemnified Parties harmless from and against all liabilities, and all reasonable costs and expenses, including out-of-pocket expenses and attorneys’ fees, arising out of any federal, state, or local environmental laws, regulations, resolutions or ordinances, incurred by any of the Indemnified Parties as a result of the existence on or release from the Owner’s Project Site of
Hazardous Materials, which in any way result from any act of omission or commission of the Owner or any of its agents, employees, independent contractors, invitees, licensees, successors, assignees, or tenants.

Section 4. Additional Agreements and Covenants.

4.1 The agreements of the Parties hereafter with respect to the foreclosure process shall be a covenant running with the Assessed Lands and, so long as Project Costs are payable from or secured, at least in part, by the revenues derived from the Special Assessments, such covenant shall be binding upon the Assessed Lands (except as released as provided in the Owner Consent), the Owner and any future owner of all or any portion of the Assessed Lands. The Owner Consent, and all other required documents and agreements, shall be recorded with the Montgomery County, Ohio Recorder’s Office, so that the agreements of the Parties hereafter with respect to the foreclosure process established pursuant to this Agreement is a covenant running with and is enforceable against the Assessed Lands.

4.2 The Investor and the District hereby agree that any future legal cause of action to enforce this Agreement against the Treasurer shall be solely limited to specific performance of this Agreement as the sole remedy, and the Investor and the District agree to provide the Treasurer with 60 days advanced written notice delivered by certified mail prior to bringing an action for specific performance.

4.3 If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

4.4 This Agreement shall inure to the benefit of each of the Parties, and each of their successors and assigns, all subject to the provisions of this Agreement. This Agreement may be amended only by a written instrument of the Parties, and any attempt to amend or modify this Agreement without a written instrument signed by all of the Parties to this Agreement shall be null and void. Notices given hereunder shall be in writing and shall be effective when actually received if delivered by hand or overnight courier, or three days after being sent by registered or certified mail, postage prepaid, the certification receipt therefore being deemed the date of such notice, and addressed to the Parties as follows:

If to City: City of Dayton, Ohio
101 W. Third St.
Dayton, OH 45402
Attention: City Manager

If to Treasurer: County Treasurer
Montgomery County, Ohio
451 W Third St., 2nd Floor
Dayton, Ohio 45422
4.5  (a) The Investor shall have the unrestricted right at any time or from time to time, and without the Treasurer, the City, the District, or the Owner’s consent, to assign all or any portion of its rights and obligations under this Agreement and may sell or assign any and all liens received directly or indirectly from the City to any person (each, an “Investor Assignee”), and the Owner agrees that it shall execute, or cause to be executed, such documents, including without limitation, amendments to this Agreement and to any other documents, instruments and agreements executed in connection with this Agreement as the Investor shall deem necessary to effect the foregoing. Any Investor Assignee shall be a party to this Agreement and shall have all of the rights and obligations of the Investor under this Agreement (and under any and all other guaranties, documents, instruments and agreements executed in connection with this Agreement) to the extent that such rights and obligations have been assigned by the Investor pursuant to the assignment documentation between the Investor and such Assignee, and the Investor shall be released from its obligations under this Agreement and under any and all other guaranties, documents, instruments and agreements executed in connection with this Agreement to a corresponding extent.

(b) The Investor shall have the unrestricted right at any time and from time to time, and without the consent of or notice of the Treasurer, the City, the District, or the Owner, to grant to one or more persons (each, a “Participant”) participating interests in the Investor’s obligation to make Project Advances under the Cooperative Agreement or any or all of the loans
held by Investor under the Cooperative Agreement. In the event of any such grant by the Investor of a participating interest to a Participant, whether or not upon notice to the Treasurer, the City, the District, and the Owner, the Investor shall remain responsible for the performance of its obligations under the Cooperative Agreement and the Owner shall continue to deal solely and directly with the Investor in connection with the Investor’s rights and obligations under the Cooperative Agreement.

(c) The Investor may furnish any information concerning the Owner in its possession from time to time to prospective Investor Assignees and Participants.

4.6 This Agreement shall be construed in accordance with the laws of the State of Ohio.

4.7 This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(Signature Pages Immediately Follow)
IN WITNESS WHEREOF, each party to this Agreement has caused this Agreement to be executed in its respective name and capacity by its respective duly authorized officers, all as of the day and the year first written above.

“TREASURER”
COUNTY TREASURER OF MONTGOMERY COUNTY, OHIO

______________________________
Treasurer
County of Montgomery, Ohio

[Signature Page to Special Assessment Agreement]
...AND CORRECTNESS:

Approved as to form:

City Attorney

“CITY”
CITY OF DAYTON, OHIO

By: __________________________

Name: _______________________

Title: ________________________

[Signature Page to Special Assessment Agreement]
“DISTRICT”

CENTERVILLE, DAYTON, KETTERING, MORAINES, OAKWOOD, RIVERSIDE, SPRINGBORO, WASHINGTON TOWNSHIP REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., D/B/A:

DAYTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.

By: 

Name: 

Title: 

[Signature Page to Special Assessment Agreement]
“OWNER”
130 WEST 2\textsuperscript{nd} LLC

By:  

Name:  

Title:  

[Signature Page to Special Assessment Agreement]
"INVESTOR"
DAYTON-MONTGOMERY COUNTY PORT AUTHORITY

By: ____________________________

Name: __________________________

Title: ___________________________
FISCAL OFFICER’S CERTIFICATE

The undersigned, Fiscal Officer of the City of Dayton, Ohio, hereby certifies that the City will establish a special assessment fund, into which the Special Assessments (as that term is defined in the foregoing Agreement) received by the City shall be deposited, free from any previous encumbrances. The City shall use the moneys deposited in such special assessment fund to meet its obligations under the foregoing Agreement. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44

Dated: ____________, 2021

Fiscal Officer
City of Dayton, Ohio

[Approved as to form and correctness]

City Attorney
FISCAL OFFICER’S CERTIFICATE

The undersigned, Fiscal Officer of the Dayton-Montgomery County Port Authority hereby certifies that the moneys required to meet the obligations of the Port Authority during the current fiscal year under the foregoing Special Assessment Agreement have been lawfully appropriated by the Board of Directors of the Port Authority for such purposes and are in the treasury of the Port Authority or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44 of the Ohio Revised Code.

Dated: ____________, 2021

Fiscal Officer
Dayton-Montgomery County Port Authority

[Port Authority Fiscal Officer Certificate to Special Assessment Agreement]
EXHIBIT A

DESCRIPTION OF ASSESSED LANDS

The Assessed Lands subject to this Special Assessment Agreement and owned by 130 West 2\textsuperscript{nd} Street LLC are located at the commonly used mailing address 130 West 2\textsuperscript{nd} Street, Dayton, Ohio 45402, with Montgomery County Auditor Parcel ID No. R72 00203 8001 and the following legal description:

[To Be Inserted]
EXHIBIT B

OWNER CONSENT
(Affidavit of Facts Relating to Title Made Pursuant to O.R.C. §5301.252)

The undersigned, ____________, having been duly cautioned and sworn, deposes and states as follows:

The undersigned is the __________ of 130 West 2nd LLC, a Massachusetts limited liability company (the “Owner”).

This Owner Consent, dated as of __________, 2021, is given by the Owner pursuant to the Special Assessment Agreement dated as of __________, 2021 (the “Agreement”) by and among the County Treasurer of Montgomery County, Ohio (the “Treasurer”), the City of Dayton, Ohio (the “City”), the Centerville, Dayton, Kettering, Moraine, Oakwood, Riverside, Springboro, Washington Township Regional Energy Special Improvement District, Inc., d/b/a Dayton Regional Energy Special Improvement District (the “District”), the Dayton-Montgomery County Port Authority (together with its permitted successors and assigns under the Agreement, the “Investor”) and the Owner. Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

The Agreement provides for an expedited foreclosure process with respect to certain Special Assessments which have been levied on the Assessed Lands by the City in order to pay the costs of special energy improvement projects under Ohio Revised Code Chapter 1710. The Assessed Lands are described in Exhibit 1 to this Owner Consent, and the Special Assessments are disclosed on Exhibit 2 to this consent.

The Agreement further provides that if an event of default occurs and is continuing with respect to a required semi-annual payment of Special Assessments or an “Event of Default” (as that term is defined in the Cooperative Agreement, as appropriate) under the Cooperative Agreement occurs and is continuing, the Treasurer will pursue an expedited foreclosure of the lien of the Special Assessments, all as provided in the Agreement. In consideration of the Project Advance to finance the Project, the Owner hereby consents to the expedited foreclosure process with respect to the lien of the Special Assessments then due and owing with respect to the Assessed Lands, as provided in the Agreement.

The Owner is the owner of the Assessed Lands. The Owner covenants and agrees that so long as the Project Advance remains outstanding, except as the covenant may be released by the District, the City, and the Investor, as applicable, in writing, the expedited foreclosure process established pursuant to the Agreement shall be a covenant on and running with, and shall be binding upon, the Assessed Lands, the Owner and all future owners of the Assessed Lands. Any release, modification or waiver of the covenant running with the land by the District, the City, or the Investor, as applicable, shall be filed of record with the Montgomery County, Ohio Recorder’s Office. The Owner agrees that this Owner Consent shall be recorded with the Montgomery County, Ohio Recorder’s Office and the Owner covenants and agrees to record
such documents and to take such reasonable steps as are necessary, so that the expedited foreclosure process with respect to the lien of the Special Assessments is a covenant on and running with the Assessed Lands and is binding on the Owner and any and all future owners of all or any portion of the Assessed Lands.

The Special Assessments have been levied by the City and certified to the County Auditor for placement on the tax list and duplicate and collection with and in the same manner as real property taxes as special assessments binding against the Assessed Lands in each of the years disclosed in the schedule of Special Assessments attached to this Owner Consent as Exhibit 2. Unless earlier paid by the Owner or any successor in interest of the Owner to the Assessed Lands, the Special Assessments shall be levied, billed, due and payable, and collected in each of the years in each of the amounts disclosed on Exhibit 2.

Anything in this Owner Consent to the contrary notwithstanding, this Owner Consent shall in no way be construed as a waiver by the Owner of its statutory right of redemption, including the full applicable redemption period.

(Signature Page Immediately Follows)
Further affiant sayeth naught.

“OWNER”

130 WEST 2\textsuperscript{nd} STREET LLC

By: ________________________________

Name: ______________________________

Title: ______________________________

STATE OF OHIO  )
 ) SS:
COUNTY OF ____________  )

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named 130 West 2\textsuperscript{nd} Street LLC by ____________, its ________, who acknowledged that such officer did sign the foregoing instrument and that the same is such officer’s free act and deed as such officer and of said company. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this ____ day of _________________, 2021.

____________________________________________

Notary Public

This instrument was prepared by:

J. Caleb Bell, Esq.
Bricker & Eckler LLP
100 South Third St.
Columbus, Ohio 43215
EXHIBIT 1

DESCRIPTION OF ASSESSED LANDS

The Assessed Lands subject to this Owner Consent and owned by 130 West 2nd Street LLC are located at the commonly used mailing address 130 West 2nd Street, Dayton, Ohio 45402, with Montgomery County Auditor Parcel ID No. R72 00203 8001 and the following legal description:

[To Be Inserted]
## EXHIBIT 2

### SCHEDULE OF SPECIAL ASSESSMENTS

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* Pursuant to Ohio Revised Code Chapter 323, the Special Assessment Payment Dates identified in this Exhibit B are subject to adjustment by the Montgomery County Auditor under certain conditions.

** Pursuant to Ohio Revised Code Section 727.36, the Montgomery County Auditor may charge and collect a fee in addition to the amounts listed in this Exhibit B.
A RESOLUTION

Declaring the Intention to Appropriate Real Property Interest in Parcel 12SH & T in Connection with the Siebenthaler and Philadelphia Signal Upgrade Project, and Declaring an Emergency

WHEREAS, The acquisition of interests in certain real estate is required for the Siebenthaler and Philadelphia Signal Upgrade Project, and

WHEREAS, The City has been unable to reach an agreement with the legal owner/owners of the property that may have an interest, and

WHEREAS, It is necessary for the immediate preservation of the public peace, property, health and safety that this resolution take effect at an early date, for the reason that the earliest possible acquisition of the interest in certain real property hereinafter described is essential to begin the construction, which may otherwise be jeopardized by any undue delay; now, therefore,

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

Section 1. That the Commission hereby declares its intention to appropriate a fee simple interest in Parcel 12 SH & T for the purpose of clearing the title in connection with the Siebenthaler and Philadelphia Signal Upgrade Project, said real estate being more fully described in exhibit “A” attached hereto and made a part hereof.

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

Adopted by the Commission............................... 2021

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

Mayor of the City of Dayton, Ohio

Attest:

Clerk of the Commission

Approved as to form:

City Attorney
August 6, 2021

To: Shelley Dickstein  
   City Manager

From: Joseph Weinel, Chief Engineer  
      Division of Civil Engineering

Subject: Resolution for Appropriation

Attached is the Resolution declaring the Intention to appropriate one parcel in connection with the Siebenthaler and Philadelphia Signal Upgrade project. Please present this Resolution to the City Commission as an emergency at the August 18, 2021 meeting.

The parcel is being appropriated because the City has been unable to come to an agreement with the legal owners.

If you have any questions, please call me at extension 4218.

Attachments

Copy: Mr. Stovall
EXHIBIT A

LPA RX 871 SH

Ver. Date 10/14/2020

PARCEL 12-SH
MOT-SIEBENTHALER/PHILADELPHIA SIGNAL UPGRADE
PERPETUAL EASEMENT FOR HIGHWAY PURPOSES
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS
IN THE NAME AND FOR THE USE OF THE
CITY OF DAYTON, MONTGOMERY COUNTY, OHIO

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

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

[Surveyor’s description of the premises follows]

Situated in Section 18, Town 2, Range 6 East, the Harrison Township, Montgomery County, Ohio, and being part of that real estate conveyed to Philadelphia Oil, LLC by recorded in I. R. Deed 07-039276 (all references to deeds microfiche, plats, surveys, etc. refer to the records of the Montgomery County, Ohio Recorder’s Office, unless noted otherwise) with stations and offsets referenced to the centerline plat of survey for MOT-Siebenthaler/Philadelphia Signal Upgrade as the same is recorded in Plat Book 224, Page 494, of the Montgomery County, Ohio Recorder’s Office, and being more particularly described as follows:

BEGINNING at a set iron pin with cap being the intersection of the existing north right-of-way of Siebenthaler Avenue (a 56.50’ wide right-of-way) and the existing east right-of-way of Philadelphia Drive (a 65’ wide right-of-way), said point being 16.50 feet left of station 199+26.40 of the centerline of right-of-way of Siebenthaler Avenue;

Thence North two degrees forty-eight minutes forty-two seconds East (N 02°48’42” E), leaving the existing north right-of-way of Siebenthaler Avenue along the existing east right-of-way of Philadelphia Drive for a distance of one hundred ninety-three and 67/100 feet (193.67”) to a set iron pin with cap being in the north line of the grantor’s tract, being located 209.95 feet left of station 199+35.52 of the centerline of right-of-way of Siebenthaler Avenue;

Thence South eighty-nine degrees forty-five minutes twenty-one seconds East (S 89°45’21” E), leaving the existing east right-of-way of Philadelphia Drive, along the north line of the grantor’s tract for a distance of six and 00/100 feet (6.00’) to a set iron pin with cap being the proposed east right-of-way of
EXHIBIT A

Philadelphia Drive, located 209.94 feet left of station 199+41.53 of the centerline of right-of-way of Siebenthaler Avenue;

Thence leaving the north line of the grantor’s tract along the proposed east right-of-way of Philadelphia Drive and the proposed north right-of-way of Siebenthaler Avenue the following seven (7) courses:

1) South two degrees forth-eight minutes forty-two seconds West (S 02°48'42" W) for a distance of one hundred fifty and 14/100 feet (150.14') to a set iron pin with cap being located 59.96 feet left of station 199+34.46 of the centerline of right-of-way of Siebenthaler Avenue;

2) South eighty-seven degrees eleven minutes eighteen seconds East (S 87°11'18" E) for a distance of ten and 00/100 feet (10.00') to a set iron pin with cap being 59.49 feet left of station 199+44.45 of the centerline of right-of-way of Siebenthaler Avenue;

3) South two degrees forty-eight minutes forty-two seconds West (S 02°48'42" W) for a distance of nine and 52/100 feet (9.52') to a set iron pin with cap being located 49.97 feet left of station 199+44.00 of the centerline of right-of-way of Siebenthaler Avenue;

4) South forty-three degrees thirty-two minutes eighteen seconds East (S 43°32'18" E) for a distance of fourteen and 47/100 feet (14.47') to a set iron pin with cap being located 39.50 feet left of station 199+53.99 of the centerline of right-of-way of Siebenthaler Avenue;

5) South eighty-nine degrees fifty-three minutes eighteen seconds East (S 89°53'18" E) for a distance of fourteen and 43/100 (14.43') to a set iron pin with cap being located 39.50 feet left of station 199+68.42 of the centerline of right-of-way of Siebenthaler Avenue;

6) South zero degrees six minutes forty-two seconds West (S 00°06'42" W) for a distance of thirteen and 00/100 feet (13.00') to a set iron pin with cap being located 26.50 feet left of station 199+68.42 of the centerline of right-of-way of Siebenthaler Avenue;

7) South eighty-nine degrees fifty-three minutes eighteen seconds East (S 89°53'18" E) for a distance of one hundred thirty-three and 48/100 (133.48') to a set iron pin with cap being in the east line of the grantor’s tract, also located 26.50 feet left of station 201+01.90 of the centerline of right-of-way of Siebenthaler Avenue;

Thence South zero degrees six minutes forty-two seconds West (S 00°06'42" W), leaving the proposed north right-of-way of Siebenthaler Avenue, along the east line of the grantor's tract for a distance of ten and 00/100 feet (10.00') to a set iron pin and cap being in the existing north right-of-way of Siebenthaler Avenue, also located 16.50 feet left of station 201+01.90 of the centerline of right-of-way of Siebenthaler Avenue;

Thence North eighty-nine degrees fifty-three minutes十八 seconds West (N 89°53'18" W), leaving the east line of the grantor's tract along the existing north right-of-way of Siebenthaler Avenue for a distance of one hundred seventy-five and 50/100 feet (175.50') to the TRUE PLACE OF BEGINNING.

The above describe parcel contains a total of 820/10,000 acres (0.0820 acres) more or less from Auditor’s Parcel No. E20-01106-0204.
Prior Instrument Reference as of the date of this survey is I. R. Deed 07-039276 of the deed records of the Montgomery County, Ohio Recorder’s Office.

Iron pins designated as set are 5/8” diameter rods, 30” long with a yellow plastic cap stamped “BCS, LLS S-7366”

Bearings for this description are based State Plane Coordinate System for the State of Ohio (South Zone), NAD 83, (95) NAVD 88.

The above description was prepared under the direction and supervision of Paul W. Feie, Ohio Registered Surveyor No. 6723 in June of 2020, and is based upon a field survey performed by Briggs Creative Services, LLC for the City of Dayton, Ohio

BRIGGS CREATIVE SERVICES, LLC

By: ___________________________ 2/25/21
Paul W. Feie  Date
Ohio Registered Surveyor No. 6723
EXHIBIT A

PARCEL 12-T
MOT - SIEBENTHALER/PHILADELPHIA SIGNAL UPGRADE
TEMPORARY EASEMENT FOR THE PURPOSE OF
PERFORMING THE WORK NECESSARY TO
GRADING AND SEEDING
FOR 12 MONTHS FROM DATE OF ENTRY BY THE
THE CITY OF DAYTON, MONTGOMERY COUNTY, OHIO

[Surveyor's description of the premises follows]

Situated in Section 18, Town 2, Range 6 East, Harrison Township, Montgomery County, Ohio, and being part of that real estate conveyed to Philadelphia Oil, LLC by deed recorded in I. R. Deed 07-039276 (all references to deeds microfiche, plats, surveys, etc. refer to the records of the Montgomery County, Ohio Recorder's Office, unless noted otherwise) with stations and offsets referenced to the centerline plat of survey for MOT-Siebenthaler/Philadelphia Signal Upgrade as the same is recorded in Plat Book 230, Page 43, of the Montgomery County, Ohio Recorder's Office, and being more particularly described as follows:

COMMENCING at the intersection of the existing east right-of-way of Philadelphia Drive (a 65' wide right-of-way) and the existing north right-of-way of Siebenthaler Avenue (a 56.50 wide right-of-way), said point being 16.50 feet left of station 199+26.40 of the centerline of right-of-way of Siebenthaler Avenue;

Thence North two degrees forty-eight minutes forty-two seconds East (N 02°48'42" E), leaving the existing north right-of-way of Siebenthaler Avenue, along the existing east right-of-way of Philadelphia Drive for a distance of one hundred ninety-three and 67/100 feet (193.67') to a set iron pin with cap being in the north line of the grantor's tract, said point being 209.95 feet left of station 199+35.52 of the centerline of right-of-way of Siebenthaler Avenue;

Thence South eighty-nine degrees forty-five minutes twenty-one seconds East (S 89°45'21" E), leaving the existing east right-of-way of Philadelphia Drive, along the north line of the grantor's tract for a distance of six and 00/100 feet (6.00') to a set iron pin with cap being located 209.94 feet left of station 199+41.53 of the centerline of right-of-way of Siebenthaler Avenue, said point also being in the proposed east right-of-way of Philadelphia Drive;

Thence South two degrees forty-eight minutes forty-two seconds West (S 02°48'42" W), leaving the north line of the grantor's tract along the proposed east right-of-way of Philadelphia Drive for a distance of one hundred thirty-three and 14/100 feet (133.14') to the north line of a proposed temporary construction easement, said point being located 76.94 feet left of station
199+35.26 of the centerline of right-of-way of Siebenthaler Avenue, also being the **TRUE PLACE OF BEGINNING** for the land herein described;

Thence continuing along the proposed east right-of-way of Philadelphia Drive and proposed north right-of-way of Siebenthaler Avenue the following seven (7) courses:

1) South two degrees forty-eight minutes forty-two seconds West (S 02°48′42″ W) for a distance of seventeen and 00/100 feet (17.00′) to a set iron pin with cap being located 59.96 feet left of station 199+34.46 of the centerline of right-of-way of Siebenthaler Avenue;

2) South eighty-seven degrees eleven minutes eighteen seconds East (S 87°11′18″ E) for a distance of ten and 00/100 feet (10.00′) to a set iron pin with cap being located 59.49 feet left of station 199+44.45 of the centerline of right-of-way of Siebenthaler Avenue;

3) South two degrees forty-eight minutes forty-two seconds West (S 02°48′42″ W) for a distance of nine and 52/100 feet (9.52′) to a set iron pin with cap being located 49.97 feet left of station 199+44.00 of the centerline of right-of-way of Siebenthaler Avenue;

4) South forty-three degrees thirty-two minutes eighteen seconds East (S 43°32′18″ E) for a distance of fourteen and 47/100 feet (14.47′) to a set iron pin with cap being located 39.50 feet left of station 199+53.99 of the centerline of right-of-way of Siebenthaler Avenue;

5) South eighty-nine degrees fifty-three minutes eighteen seconds East (S 89°53′18″ E) for a distance of fourteen and 43/100 feet (14.43′) to a set iron pin with cap being located 39.50 feet left of station 199+68.42 of the centerline of right-of-way of Siebenthaler Avenue;

6) South zero degrees six minutes forty-two seconds West (S 00°06′42″ W) for a distance of thirteen and 00/100 feet (13.00′) to a set iron pin and cap being located 26.50 feet left of station 199+68.42 of the centerline of right-of-way of Siebenthaler Avenue;

7) South eighty-nine degrees fifty-three minutes eighteen seconds East (S 89°53′18″ E) for a distance of fifty-nine and 34/100 feet (59.34′) to the easterly terminus of a proposed temporary construction easement said point being located 26.50 feet left of station 200+27.76 of the centerline of right-of-way of Siebenthaler Avenue;

Thence leaving the proposed north right-of-way of Siebenthaler Avenue along said proposed temporary construction easement the following five (5) courses:

1) North zero degrees six minutes forty-two seconds East (N 00°06′42″ E) for a distance of five and 00/100 feet (5.00′) to a point being located 31.50 feet left of station 200+27.76 of the centerline of right-of-way of Siebenthaler Avenue;

2) North eighty-nine degrees fifty-three minutes eighteen seconds West (N 89°53′18″ W) for a distance of forty-nine and 23/100 feet (49.23′) to a point located 31.50 feet left of station 199+78.53 of the centerline of right-of-way of Siebenthaler Avenue;
3) North forty-nine degrees twenty-seven minutes forty-four seconds West (N 49°27'44" W) for a distance of fifty-one and 03/100 feet (51.03') to a point located 64.60 feet left of station 199+39.68 of the centerline of right-of-way of Siebenthaler Avenue;

4) North two degrees forty-eight minutes forty-two seconds East (N 02°48'42" E) for a distance of twelve and 12/100 feet (12.12') to a point being located 76.71 feet left of station 199+40.25 of the centerline of right-of-way of Siebenthaler Avenue;

5) North eighty-seven degrees eleven minutes eighteen seconds West (N 87°11'18" W) for a distance of five and 00/100 feet (5.00') to the TRUE PLACE OF BEGINNING.

The above describe parcel contains a total of 150/10,000 acres (0.0150 acres) more or less, from Auditor’s Parcel No. E20-01106-0204.

Prior Instrument Reference as of the date of this survey is I. R. Deed 07-039276 of the deed records of the Montgomery County, Ohio Recorder’s Office.

Bearings for this description are based State Plane Coordinate System for the State of Ohio (South Zone), NAD 83, (95) NAVD 88.

The above description was prepared under the direction and supervision of Paul W. Feie, Ohio Registered Surveyor No. 6723 in June of 2020, and is based upon a field survey performed by Briggs Creative Services, LLC for the City of Dayton, Ohio.

BRIGGS CREATIVE SERVICES, LLC

By: [Signature]
Paul W. Feie
Date: 2/25/21
Ohio Registered Surveyor No. 6723
AN ORDINANCE

To Vacate the Alley East of June Street (Tulsa Lane) from 78 Feet South of the Alley South of East Fourth Street to 25 Feet North of the Norfolk Southern Railroad Right of Way.

WHEREAS, The City Commission did on the 21st day of June, 2021, by Resolution No. 6585-21, declare its intention to vacate the alley east of June Street (Tulsa Lane) from 78 feet south of the alley south of East Fourth Street to 25 feet north of the Norfolk Southern Railroad Right of Way; and

WHEREAS, The Board of Revision of Assessments, after a hearing regularly held for the purpose of consideration of objections to said proposed vacation, as provided by the Charter of the City of Dayton, has recommended that the alley east of June Street (Tulsa Lane) from 78 feet south of the alley south of East Fourth Street to 25 feet north of the Norfolk Southern Railroad Right of Way; vacated; and

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

WHEREAS, The vacation of the alley east of June Street (Tulsa Lane) from 78 feet south of the alley south of East Fourth Street to 25 feet north of the Norfolk Southern Railroad 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 the alley east of June Street (Tulsa Lane) from 78 feet south of the alley south of East Fourth Street to 25 feet north of the Norfolk Southern Railroad Right of Way; being more particularly bounded and described in as follows:

Being all of the 15-foot alley east of June Street (Tulsa Lane) from 78 feet south of the 12-foot alley south of East Fourth Street to 25 feet north of the 40-foot Norfolk Southern Railroad 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. A turn around shall be constructed and dedicated at the southern end of the proposed vacation. The improvement plan shall be submitted to the Division of Civil Engineering for review and approval.
C. AES Ohio shall retain an easement over, under, and through the vacated area for its existing facilities. With written consent from AES Ohio these facilities may be relocated or abandoned at the expense of the applicant.

D. AT&T shall retain an easement over, under, and through the vacated area for its existing aerial facilities. With written consent from AT&T these facilities may be relocated or abandoned at the expense of the applicant.

E. Vectren shall retain an easement over, under, and through the vacated area for its existing aerial facilities. With written consent from Vectren these facilities may be relocated or abandoned at the expense of the applicant.

F. 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. 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
August 5, 2021

TO: Shelley Dickstein
    City Manager

FROM: Joseph Weinel, Chief Engineer
      Division of Civil Engineering

SUBJECT: The Vacation of the Alley East of June Street (Tulsa Lane) from 78 Feet South of the Alley South of East Fourth Street to 25 Feet North of the Norfolk Southern Railroad Right of Way

Attached is the ordinance to vacate the subject property. Please present this legislation to the City Commission for their action at the August 18, 2021 meeting.

Petition No. 21566 requesting the vacation was received from Doliboa Construction Inc. on May 20, 2021. Resolution No. 6585-21 declaring the Commission’s intention to vacate was adopted on June 21, 2021. The Board of Revision of Assessments recommended the vacation on July 19, 2021. The vacation will enable the abutting property owners to develop this property.

If you have any additional questions, please contact me 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
REPORT AND MINUTES OF THE BOARD OF REVISION OF ASSESSMENTS TO THE CITY COMMISSION OF THE CITY OF DAYTON

In the Matter of the Vacation of June Street (Tulsa Lane) from 78 Feet South of the Alley South of East Fourth Street to 25 Feet North of the Norfolk Southern Railroad Right of Way.

Pursuant to proper notice being given, the Board of Revision of Assessments reports that it convened its meeting July 19, 2021 in the Fifth Floor Conference Room of the Department of Public Works for the purpose of considering the above matter.

Attended by John Musto Patricia Jones
Brian Zamostny Joe Weinel

AGENDA ITEMS: One item was on the agenda. There were no interested parties in attendance.

The Board of Revision of Assessments meeting was convened by Mr. John Musto on July 19, 2021 in the Public Works Fifth Floor Conference Room. Mr. John Musto agreed to chair the meeting.

ITEM # 1: Resolution No. 6585-21 In the Matter of the Vacation of June Street (Tulsa Lane) from 78 Feet South of the Alley South of East Fourth Street to 25 Feet North of the Norfolk Southern Railroad Right of Way.

Service was made to twenty one property owners: Doliboa Construction, Inc., 8678 Bunnell Hill Road, Springfield, Ohio 45066; Dayton Area Lift LTD, P.O. Box 503, Springboro, Ohio 45066; Alvino Espino, 147 S. June St., Dayton, Ohio 45403; Jose Huerta, 1803 E. 5th St., Dayton, Ohio 45403; TPH OHL LLC, 1807 E. 5th St., Dayton, Ohio 45403; Mary Calhoun, 1809 E. 5th, Dayton, Ohio 45403; UTEAMUP LLC, 62 Rogge St., Dayton, Ohio 45409; JEMTEC Electronic Corp., P.O. Box 397, Dayton, Ohio 45401; Nasra Ramsey, P.O. Box 149, Oak Ridge, NJ 07438; LW Worman, 129 Ringgold St., Dayton, Ohio 45403; Marco Antonio Ollivis, 123 Ringgold St., Dayton, Ohio 45403; Historic Rentals, LLC, 119 Ringgold St., Dayton, Ohio 45403; Jeremy & Mary Dowsett, 109 Ringgold Street, Dayton, Ohio 45403; Brian Quinlan, P.O. Box 3811, Dayton, Ohio 45401; Eric Thiry, 1736 E. 4th St., Dayton, Ohio 45403; Walter Glazer & Sarah Jaekel, 1732 E. 4th St., Dayton, Ohio 45403; Lonnie & April Anderson, 1330 Demphle Ave., Dayton, Ohio 45410; CSF and Sons LLC, 554 Michael Place, Tipp City, Ohio 45371; Susan Tabo Tamara, 1706 E. 4th St., Dayton, Ohio 45403; Brenda Wynn, 1700 E 4th St., Dayton, Ohio 45403; Rachel Falknor, 3747 West Drive Wayne Lakes, Greenville, Ohio 45331.

Discussion followed as to the reason for the vacation request. Mr. John Musto, stated the conditions established by the City Plan Board meeting on May 11, 2021 to accept the vacation with the conditions from the City Plan Board meeting on as follows:

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

2. A turn around shall be constructed and dedicated at the southern end of the proposed vacation. The improvement plan shall be submitted to the Division of Civil Engineering for review and approval.

3. AES Ohio shall retain an easement over, under, and through the vacated area for its existing facilities. With written consent from AES Ohio these facilities may be relocated or abandoned at the expense of the applicant.

4. AT&T shall retain an easement over, under, and through the vacated area for its existing aerial facilities. With written written consent from Vectren these facilities may be relocated or abandoned at the expense of the applicant.
5. Vectren shall retain an easement over, under, and through the vacated area for its existing aerial facilities. With written consent from Vectren these facilities may be relocated or abandoned at the expense of the applicant.

6. 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. With written consent from City of Dayton Department of Water these facilities may be relocated or abandoned at the expense of the applicant.

Mr. Zamostny made motion to accept the vacation with the conditions from the City Plan Board meeting on May 11, 2021. Mr. Musto seconded, and the vacation passed unanimously.

With no other business to come before the Board, Mr. Musto made motion to close the meeting and Mr. Zamostny seconded. All present said “aye”, and the motion carried. The meeting was adjourned.

Respectfully submitted,

[Signature]

Patricia N. Jones, Secretary
to the Board of Revision of Assessments

cc: Board Members
    Assessment File
    Joe Weinel – Ordinances

BOARD OF REVISION OF ASSESSMENTS

[Signature]
Senior Engineer I, Public Works

[Signature]
Chief Counsel, Department of Law

APPROVED BY THE CITY COMMISSION

[Signature]
City Manager
A RESOLUTION

Honorary Naming Stone Street Between South Jefferson Street and South Patterson Boulevard as “Land of Funk Way.”

WHEREAS, An application has been made by Dr. Sharon Davis Gratto to honorarily designate Stone Street between South Jefferson Street and South Patterson Boulevard as “Land of Funk Way” for a two year period due to the City of Dayton’s historical identity as the Funk Capital of the World; and

WHEREAS, Dr. Davis Gratto is organizing the second annual Dayton Funk Music Symposium to be held on November 4-6, 2021 which includes tours of significant funk landmarks across the city; and

WHEREAS, The portion of Stone Street to be given the honorary designation is adjacent to the existing Land of Funk mural completed by Morris Howard in 2018 which honors seven original Dayton Funk groups; and

WHEREAS, The City Commission adopted Resolution 5014-99 on July 28, 1999, which established the rules and procedures for the naming of public facilities and rights-of-way, and this proposal is consistent with the policy outlined in said resolution; and

WHEREAS, The City Plan Board, on July 13, 2021 reviewed the proposal, Case PLN2021-00245, and recommended approval of the two-year designation; now, therefore,

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

Section 1. Stone Street between South Jefferson Street and South Patterson Boulevard is honorarily designated as Land of Funk Way for a two-year period commencing thirty days after the adoption of this resolution.

Section 2. The official name of Stone Street is unchanged.

Section 3. The City Manager is directed to implement this resolution in a timely manner.

Adopted by the Commission…………………………..., 2021
Signed by the Mayor……………………………………..., 2021

Attest:

Mayor of the City of Dayton, Ohio

Clerk of the Commission

Approved as to form:

City Attorney
July 26, 2021

TO: Regina Blackshear, Clerk of Commission

FROM: Tony Kroeger, Secretary
City Plan Board

SUBJECT: Establish a Two-Year Honorary Designation for a Portion of Stone Street (from South Jefferson Street to South Patterson Boulevard) as “Land of Funk Way.”

Plan Board Case PLN2021-00245

I am requesting that a resolution be placed on the August 18, 2021, City Commission calendar to establish a two-year honorary designation for a portion of Stone Street (from South Jefferson Street to South Patterson Boulevard) as “Land of Funk Way.” The official/legal name of Stone Street will remain Stone Street. A second reading of the resolution will be required at the August 25, 2022, City Commission meeting. If approved on August 25, the effective date of the resolution will be September 23, 2021.

Dr. Sharon Davis Gratto, a University of Dayton Professor of Music and Graul Endowed Chair in Arts and Languages, is requesting this designation to honor the City of Dayton’s funk music history and to compliment and highlight the existing Land of Funk mural and artists featured within the paintings. Dr. Davis Gratto is the organizer of the international Dayton Funk Music Symposium originally hosted in 2018 and again planned for November 2021. Tours of important Funk sites are included as part of the symposium’s activities and visitors to Dayton will be encouraged to visit the Land of Funk mural.

There are only two abutting property owners: the City of Dayton and Norfolk Southern. Norfolk Southern was notified and shared no objections; the City of Dayton supports the designation. In addition, the City of Dayton Engineer, the Public Works Department, and the Police and Fire Departments have no objections to the designation. The NEON provided correspondence in support of the designation.

By a 4-0 vote the Plan Board recommends City Commission approval of the honorary designation. The Plan Board believes the request complies with the requirements outlined in Resolution 5014-99, which pertains to honorary street name designations. No public hearing is required on the request so a public hearing will not be held.

Enclosed, for distribution to the City Commission is the Plan Board minute record, the Plan Board case report, correspondence received, and the resolution. If you have any questions, please contact Susan Vincent at 3683. Thank you.

c: Ms. Dickstein, Mr. Parlette, Ms. Lofton, Mr. Kinskey, Ms. Hollingsworth, Case File
City of Dayton
City Plan Board

Summary Minute Record
July 13, 2021

1. PLN2021-00245 – Establish an Honorary Designation for Stone Street (From South Jefferson Street to South Patterson Boulevard) as “Land of Funk Way.” The official name of Stone Street will remain. It is proposed to be a two-year honorary designation.

Applicant: Dr. Sharon Davis Gratto
Priority Land Use Board: Greater Downtown Planning District: Downtown
Decision: Approved

Staff Comments
Susan Vincent presented the staff report. She explained the intent for the designation is to honor the City of Dayton’s funk music history and to compliment and highlight the existing mural and artists featured within the paintings. There are no negative impacts expected due to establishing this honorary two-year designation. The Departments of Public Works, Fire, and Police stated no objections to the designation. The honorary designation is also supported by the Greater Downtown Land Use Board. The required number of abutting property owners submitted petitions in support of the designation.

Public Comments
Dr. Sharon Davis Gratto, 821 Beech Hill Rd, Dayton, Ohio 45419, spoke on behalf of the application. She explained the importance of Dayton’s funk history and the background behind the creation of the Land of Funk mural. She also shared information regarding the upcoming Funk Symposium and related events to be hosted by the University of Dayton in November 2021.

Mr. Scott asked if there was any information regarding the reopening of the Funk Museum. Dr. Davis shared that the museum lacks funding and has not been successful in identifying a new location.

Board Discussion
None

Board Action
A motion was made by Ms. Pegues, seconded by Mr. Sauer and carried to approve Case PLN2021-00245 to give a two-year honorary designation because the proposal meets the requirements outlined in City Commission Resolution 5014-99.

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<th>Absent</th>
<th>Mr. Matt Sauer</th>
<th>Yes</th>
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<tr>
<td>Ms. Rosalyn Miller</td>
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<td>Mr. Jeff Payne</td>
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Minutes approved by the City Plan Board on August 10, 2021.

Tony Kroeger, Secretary
City Plan Board
**STAFF REPORT**

<table>
<thead>
<tr>
<th>Case #</th>
<th>PLN2021-00245</th>
<th>Hearing Date</th>
<th>07/13/21</th>
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<tr>
<td>Address/Location</td>
<td>Stone Street</td>
<td>Parcel #</td>
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<tr>
<td>Subject</td>
<td>Request for an honorary designation for a segment of Stone St as &quot;Land of Funk Way&quot;</td>
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<tr>
<td>Owner</td>
<td>Right-of-way</td>
<td>Name</td>
<td>Address</td>
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<tr>
<td>Applicant</td>
<td>Dr. Sharon Davis Gratto</td>
<td>Name</td>
<td>821 Beech Hill Rd</td>
</tr>
<tr>
<td>Type</td>
<td>Honorary Street Designation</td>
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<td>Planning District</td>
<td>Downtown</td>
<td>Land Use Area</td>
<td>Greater Downtown</td>
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<td>Conformance with applicable City Plans and Policies</td>
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<tr>
<td>Department Contact</td>
<td>Susan Vincent</td>
<td>Name</td>
<td>937.333.3683</td>
</tr>
</tbody>
</table>

**STAFF RECOMMENDATION**

- [✓] Approve
- □ Approve with conditions
- □ Deny
- □ Continue

**Comments**
Meets required evaluation criteria.

**Future Actions:**
Honorary Designations go to City Commission for approval.
Overview
The applicant, Dr. Sharon Davis Gratto, a University of Dayton Professor of Music and Graul Endowed Chair in Arts and Languages is requesting a two-year honorary street designation for the portion of Stone Street between S. Jefferson Street and S. Patterson Boulevard to be named “Land of Funk Way” in Downtown Dayton. The portion of Stone Street to be designated runs parallel to the Land of Funk Mural completed by Morris Howard in 2018. Dr. Davis Gratto seeks this honorary designation to honor the City of Dayton’s funk music history and to compliment and highlight the existing mural and artists featured within the paintings.

Background
Dr. Davis Gratto is the organizer of the international Dayton Funk Music Symposium originally hosted in 2018 and again planned for November 2021. Tours of important Funk sites are included as part of the symposium’s activities and visitors to Dayton will be encouraged to visit the Land of Funk mural. It is the applicant’s hope that the honorary designation might be in place in time for the November event.

There are six individual parcels but two property owners along the affected section of Stone Street: the City of Dayton (owner of the five northern parcels) and Norfolk Southern (owner of the one southern rail road right-of-way). A signed petition from the City of Dayton is attached to this report indicating the required 51% support for the designation.

Staff comment/analysis
There should be no negative impact by implementing the proposal for an honorary designation as the official name of the street shall remain Stone Street. Signs posted above the street signs will recognize the designation. The Departments of Public Works, Fire, and Police have stated no objections to the designation. There were no objections stated by either property owner along the right-of-way. The City of Dayton signed a petition (attached) and Norfolk Southern did not express any objection to the honorary dedication.

Public Comments
The Greater Downtown Priority Land Use Board will meet on Monday, July 12; their recommendation for the Board’s consideration will be presented during the Plan Board meeting. No additional comments were received from the community.

Staff recommendation
Staff believes that the application meets the rules and guidelines set forth in Resolution Number 5014-99, and therefore recommends approval.
Required Standards for Consideration

Resolution Number 5014-99: Honorary designations shall meet the following criteria:

a. The designation shall be confined to the right-of-way within the vicinity of the home, business, or location associated with the person(s) or event.
   The Land of Funk mural runs the extent of the section of Stone Street to be designated.

b. The designation shall not be an Arterial as listed on the Official Thoroughfare Plan.
   Stone Street is not an arterial and has been determined by the Department of Public Works to be appropriate for an honorary designation.

c. There shall be only one honorary designation per facility or right-of-way.
   There is no current designation for this portion of Stone Street.

d. An important community event, organization or well-known person(s) is a person or entity who has made a sustained contribution, over a long period of time, above and beyond the call of duty and demonstrated leadership relating to governance, human relations and development, or neighborhood development.
   • A person(s) who has made specific and sustained contributions to an organization located in or in proximity to the facility.
   • An event that recognized statewide or nationwide.
   The Land of Funk mural honors the City of Dayton’s historical identity as the Funk Capitol of the World and highlights several Dayton Funk groups that were well-known in the 70’s and early 80’s. The honorary designation further calls attention to Dayton’s cultural heritage and our community’s important contributions to the Funk genre.

e. The important community event, organization, or well-known person(s) shall be directly related to the public facility or the public right-of-way, i.e. lived, worked, went to school, etc. at the location specified. Only one honorary designation shall be permitted for each person(s) or community event. Preference shall be given to intersections and other limited locations.
   The co-location of the Land of Funk mural and the Land of Funk Way honorary designation meets this criterion.

Board Alternatives

1. Recommend approval of the proposal to give a two-year honorary designation because the proposal meets the requirements outlined in City Commission Resolution 5014-99.

2. Recommend an alternate proposal.

3. Recommend disapproval of the designation because the proposal does not meet the requirements outlined in City Commission Resolution 5014-99.

Attachments

Aerial map, Site Photos, Application, Petitions
Honorary Designation of a Public Facility or Right-of-Way  
City of Dayton, Ohio

Complete this form in Adobe Reader software, not a Web browser, to ensure proper functionality. Place the cursor in a field and type. Print a copy to add the required attachments to: City of Dayton, Development, 101 West Third Street, P.O. Box 22, Dayton, OH 45401.

Please Read Instructions Carefully Before Completing

To: Clerk of the City Commission

Applicant Name (Contact Person): Dr. Sharon Davis Gratto
Address: 821 Beech Hill Road - Dayton, OH - 45419

Telephone Numbers: (Day) 717-253-7892 (Evening) same

Honoree Information: Honoree is not an individual but is an historical event, Dayton's Funk history and the bands that made Dayton and Funk music well-known both nationally and internationally.
Name: N.A.
Address: N.A.

Proposed Facility or Right-of-way for Designation: The designation shall be confined to a facility or right-of-way within the vicinity of home, business or location associated with the person or event.

This is a request to change the name of Stone Street in Dayton, where the Land of Funk Mural is located to Funk Way in honor of the city's historical identity and recognition as the Funk Capital of the World, significant public art and Dayton's Funk Music Hall of Fame & Exhibition Center.

From: East on S. Patterson Street To: West on S. Jefferson Street

Summary statement citing the reasons for the designation detailing the significant contributions or significance of the designation and the length of time the designation shall be in effect (Not longer than two years). Attach a detailed resume or reasons for designation.

Please see the attached document, which includes a link to a Google map of the Stone Street location. This request is for the maximum amount of time, two years.
Honorary Designation Application

Explain why none of the preferred methods listed below can not be used for the proposed honorary designation. Attach documentation supporting the determination.

A. Donations to programs and projects:
   The mural project is the only project on Stone Street, and it has already been completed. The applicant for this name change is contributing the fee that is required with the application.

B. Proclamation:
   There is no related proclamation involved in this request to rename Stone Street as Land of Funk Way.

C. Naming of neighborhood and community festivals:
   This renaming of Stone Street is not part of any neighborhood or community festival.

D. Planting trees or other living memorials:
   There is no space to plant trees or create another type of living memorial on Stone Street, which runs parallel to the wall mural.

E. Placement of pieces of art, benches and similar objects in public or private spaces:
   There is no space to place additional art, benches or similar objects on Stone Street.

F. Community Service Awards of the Dayton Volunteers Program:
   The Funk mural project has already received community grant support for its design and execution; no additional support is needed.

Endorsement:
(The designation must be endorsed by the City Manager, a member of the City Commission, the City Plan Board or a Priority Board.)

A member of the City Commission: ____________________________
The City Manager: _________________________________________
The City Plan Board:* _______________________________________
Priority Board Endorsement/Comment:* _______________________
Neighborhood Association Comments:* _______________________

*Submit Minutes or other documentation of official Board Action.

Attachments:

____ Map specifying location.
____ A petition supporting the designation signed by 51 percent of the abutting property owners.
____ Attach detailed resume or reasons for designation.
____ Copy of minutes or resolution from the Priority Board and neighborhood association.
____ An non-refundable application fee of $500.00 is required with the filing of an application.
CITY OF DAYTON STREET NAME CHANGE APPLICATION
DETAILED SUPPORT STATEMENT & MAP LINK
JUNE, 2021

This request is to change the name of Stone Street, located between S. Saint Clair Street/S. Patterson Blvd on the East side and S. Jefferson Street on the West side in Dayton, to Land of Funk Way, in honor of the city's historical identity as the Funk Capitol of the World. This name change was inspired by Dayton artist Morris Howard's painting project to create the Land of Funk Mural on the Norfolk Southern Railroad bridge wall on Stone Street, across from the City of Dayton's Neon Theatre building and the garage that houses the equipment used for the city's Downtown Ambassadors program. The mural includes single panels honoring seven original Dayton Funk groups that were well-known in the 1970's and early 1980's, including The Ohio Players, Slave, Fazeo, Lakeside, Heatwave, Sun, and Zapp, the group that featured the late Roger Troutman.

The mural project represented a collaboration between Morris Howard and Brittini Long, one of the founders of the County Juvenile Court's HAALO (Helping Adolescents Achieve Long-Term Objectives) Youth Program and Project Coordinator. Teenagers from the HAALO program assisted in painting the mural under Mr. Howard's guidance. In 2018 Mr. Howard and Ms. Long met with members of the Department of Planning & Community Development's Planning Division to obtain authorization for this project. It was determined at that time that since the railroad bridge is maintained by the City, permission to paint the mural on it was not required. Permission was also not required from those occupying the two Stone Street city-owned properties across from the mural. The mural project was funded in part through a Culture Works Individual Artists Grant, a grant from the Downtown Dayton Priority Board, and a City of Dayton 2018 Mini-Grant.

In my position as Professor of Music and Graul Endowed Chair in Arts & Languages at the University of Dayton, I initiated work in 2018 to connect University faculty, staff, and students to Dayton's African American music community through an international Dayton Funk Music Symposium. Local and international presenters gathered on campus for academic presentations, panel discussions, and tours of the Funk Music Hall of Fame & Exhibition Center and the Funk Mural. Social interaction was also a significant part of the Symposium, culminating in a Funk Dance Party on campus that featured members of the Dayton Contemporary Dance Company, the Dayton Funk All-Stars Band, and a popular local men's quartet, the Motown Sound of Touch.

This event was such a huge success that I was encouraged to organize and host a second Symposium in the fall of 2020. A Culture Works special projects grant award yielded significant financial support for the second Symposium. Unfortunately, COVID shut-downs forced two postponements; the new date is set for November 4-6, 2021. The second Symposium will conclude with a Dayton Philharmonic Orchestra Funk concert as part of the Dayton Performing Arts Alliance's Rockin' Orchestra Series at the Schuster Center, preceded by a reception and an induction ceremony into the Dayton Funk Hall of Fame. It is my hope that visitors to Dayton for this Symposium will be able to tour the city's Funk sites, including the newly named Ohio
Players Way where the original group rehearsed and Land of Funk Way where the Funk Mural is located.

Changing the name of Stone Street to Land of Funk Way will honor an important aspect of Dayton history. It will support the Funk groups featured on the Mural that were popular and successful both locally and nationally in the ’70’s and ’80’s. A number of these original musicians still live in Dayton and continue to be active performers. A new name for Stone Street will also bring additional attention to the Funk Mural, artist Morris Howard, and the special group of young people in the juvenile court system who helped execute the painting. The renaming will serve to compliment an important piece of public art. The goal of this request is for the designated honorary name to remain in place for the two-year maximum time that is permitted. I have obtained support from artist Morris Howard; project collaborator Brittni Long, who now works for the ADAMHS Board; David Webb, President and CEO of the Funk Music Hall of Fame & Exhibition Center; and Jeffrey Willis, who was responsible for the recently-completed Ohio Players Street renaming project. A link to the map of the Stone Street location is provided below.

Link to a Google map of the Stone Street location:

https://goo.gl/maps/vMRnXRs58R8sIoMS6

Submitted by:

Sharon Davis Gratto, D.M.A.
Professor of Music and
Graul Endowed Chair in Arts and Languages
Pronouns: she/her/hers

College of Arts and Sciences
University of Dayton
300 College Park
Dayton, OH - 45469-1549
937-229-3968
Fax - 937-229-4400
sgratto1@udayton.edu
http://go.udayton.edu/graulchair
http://go.udayton.edu/music

Director, University of Dayton World Music Choir
Dayton Contemporary Dance Company Board of Directors
Emerita Founding Trustee, Dayton Performing Arts Alliance
Dayton Performing Arts Alliance Education Committee
2020 Women of Dayton Honoree
HONORARY STREET DESIGNATION PETITION

PETITION to support giving a two-year honorary designation of “Funk Way” to Stone Street from S. Jefferson Street to S. Patterson Blvd. The official and legal name of Stone Street WILL NOT change. The honorary designation will be marked by a blue and white sign mounted above the street name sign.

I, Joseph Parlette for the City of Dayton, am the owner of property at
(Name of property owner and agency if applicable)

Entire north side of Stone Street between Jefferson and Patterson Blvd.
(Address(es) of Property or County Parcel Identification Number for Property)

By signing this petition, I acknowledge my desire to support giving the honorary designation of “Funk Way” to Stone Street from S. Jefferson Street to S. Patterson Blvd

Joseph D. Parlette
Signature of Property Owner

Joseph D. Parlette
Printed Name of Property Owner

101 West Third Street
Printed Mailing Address of Property Owner

Dayton, OH 45402
City, State, Zip Code of Property Owner

06/22/2021
Date Signed
"Funk Way Petion City of Dayton" History

Document created by Tony Kroeger (tony.kroeger@daytonohio.gov)
2021-06-21 - 9:15:55 PM GMT- IP address: 198.30.33.2

Document emailed to Joseph Parlette (joseph.parlette@daytonohio.gov) for signature
2021-06-21 - 9:16:58 PM GMT

Email viewed by Joseph Parlette (joseph.parlette@daytonohio.gov)
2021-06-22 - 11:52:34 AM GMT- IP address: 198.30.33.2

Document e-signed by Joseph Parlette (joseph.parlette@daytonohio.gov)
Signature Date: 2021-06-22 - 11:53:26 AM GMT - Time Source: server- IP address: 198.30.33.2

Agreement completed.
2021-06-22 - 11:53:26 AM GMT
July 2, 2021

City of Dayton
Depart. of Planning and Community Development
101 West Third Street
P.O. Box 22
Dayton, OH 45401

Dear Department of Planning and Community Development,

I am writing today in support of Sharon Davis Gratto’s request to change the name of Stone Street to Land of Funk Way. By renaming this street, more attention will be drawn to Dayton’s important, historical heritage of being the Funk Capitol of the World.

At THE NEON, we regularly see groups of people gathered in front of the Morris Howard mural project on Stone Street – celebrating the murals’ vibrancy as well as the historical relevance that the different panels portray. By renaming the street, the city will further acknowledge the artist importance that Funk Music adds to the fabric of Dayton’s rich, artistic legacy.

Thank you for your consideration,

Jonathan McNeal, manager
A RESOLUTION

Honoring NAME_1 Auto Club Drive Between Perry Street and South Patterson Boulevard as “Linda Kramer Way.”

WHEREAS, An application has been made by Cheli Curran to honorably designate Auto Club Drive between Perry Street and South Patterson Boulevard as “Linda Kramer Way” for a two year period due to her contributions to both Daybreak and to the City of Dayton; and

WHEREAS, Ms. Kramer retired as Daybreak’s CEO after twenty-three years of service; and

WHEREAS, Ms. Kramer has a reputation as a visionary leader and increased the level of service provided by Daybreak over the years to Dayton’s youth; and

WHEREAS, The portion of Auto Club Drive to be given the honorary designation runs between Daybreak’s two facilities; and

WHEREAS, The City Commission adopted Resolution 5014-99 on July 28, 1999, which established the rules and procedures for the naming of public facilities and rights-of-way, and this proposal is consistent with the policy outlined in said resolution; and

WHEREAS, The City Plan Board, on July 13, 2021 reviewed the proposal, Case PLN2021-00281, and recommended approval of the two-year designation; now, therefore,

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

Section 1. Auto Club Drive between Perry Street and South Patterson Boulevard is honorarily designated as Linda Kramer Way for a two-year period commencing thirty days after the adoption of this resolution.

Section 2. The official name of Auto Club Drive is unchanged.

Section 3. The City Manager is directed to implement this resolution in a timely manner.

Adopted by the Commission................................................., 2021

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

Attest:

Mayor of the City of Dayton, Ohio

Clerk of the Commission

Approved as to form:

City Attorney
July 26, 2021

TO: Regina Blackshear, Clerk of Commission

FROM: Tony Kroeger, Secretary
City Plan Board

SUBJECT: Establish a Two-Year Honorary Designation for a Portion of Auto Club Drive (from Perry Street to South Patterson Boulevard) as “Linda Kramer Way.”

Plan Board Case PLN2021-00281

I am requesting that a resolution be placed on the August 18, 2021, City Commission calendar to establish a two-year honorary designation for a portion of Auto Club Drive (from Perry Street to South Patterson Boulevard) as “Linda Kramer Way.” The official/legal name of Auto Club Drive will remain Auto Club Drive. A second reading of the resolution will be required at the August 25, 2022, City Commission meeting. If approved on August 25, the effective date of the resolution will be September 23, 2021.

Cheli Curran, CEO of Daybreak, is requesting this designation to honor Daybreak’s long time CEO, Linda Kramer, who retired after serving the organization for twenty-three years. During Ms. Kramer’s tenure she increased the agency’s annual operating budget from $1 million to $9.5 million expanding the organization’s capacity to serve Dayton’s homeless youth. She spearheaded several new programs including Lindy’s Bakery, which provides employment readiness and David Place, a resource and drop-in center for LGBTQ+ youth. While CEO, Ms. Kramer raised $15 million to build the two new facilities that house the organization today.

In compliance with the requirements of Resolution 5014-99 which governs honorary street designations, sufficient support was received from property owners abutting the proposed designation. The City of Dayton Engineer, the Public Works Department, and the Police and Fire Departments have no objections to the designation.

By a 4-0 vote the Plan Board recommends City Commission approval of the honorary designation. The Plan Board believes the request complies with the requirements outlined in Resolution 5014-99, which pertains to honorary street name designations. No public hearing is required on the request so a public hearing will not be held.

Enclosed, for distribution to the City Commission is the Plan Board minute record, the Plan Board case report, correspondence received, and the resolution. If you have any questions, please contact Susan Vincent at 3683. Thank you.

c: Ms. Dickstein, Mr. Parlette, Ms. Lofton, Mr. Kinskey, Ms. Hollingsworth, Case File
2. PLN2021-00281 – Establish an Honorary Designation for Auto Club Drive (From Perry Street to South Patterson Boulevard) as “Linda Kramer Way.” The official name of Auto Club Drive will remain. It is proposed to be a two-year honorary designation.

Applicant: Cheli Curran, Daybreak
Priority Land Use Board: Greater Downtown  Planning District: Midtown
Decision: Approved

Staff Comments
Susan Vincent presented the staff report. She explained the intent for the designation is to honor Daybreak’s long time CEO, Linda Kramer, who retired after 23 years serving the organization. There are no negative impacts expected due to establishing this honorary two-year designation. The Departments of Public Works, Fire, and Police stated no objections to the designation. The honorary designation is also supported by the Greater Downtown Land Use Board. The required number of abutting property owners submitted petitions in support of the designation.

Public Comments
Cheli Curran, 605 S. Patterson, Dayton, Ohio, spoke on behalf of the application. She explained Linda Kramer’s impact on both the City of Dayton and Daybreak. The COVID-19 health crisis prevented the organization and community from recognizing Ms. Kramer’s contribution in the form of a party and so they are seeking an honorary designation to recognize her.

Board Discussion
None.

Board Action
A motion was made by Mr. Payne, seconded by Ms. Pegues and carried to approve Case PLN2021-00281 to give a two-year honorary designation because the proposal meets the requirements outlined in City Commission Resolution 5014-99.

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Minutes approved by the City Plan Board on August 10, 2021.

Tony Kroeger, Secretary
City Plan Board
CITY OF DAYTON CITY PLAN BOARD

STAFF REPORT

Case # PLN2021-00281  Hearing Date 07/13/21
Address/Location Auto Club Dr  Parcel # NA

Subject Request for an honorary designation for a segment of Auto Club Drive as "Linda Kramer Way"

Owner Right-of-way
Name
Address
City, State Zip

Applicant Cheli Curran
Name
Address
City, State Zip
Dayton, Ohio 45402

Type Honorary Street Designation

Planning District Midtown
Land Use Area Greater Downtown
Existing Zoning NA
Existing Land Use NA

Historic District ☑ NA  ☐

Conformance with applicable City Plans and Policies
Resolution 5014-99

Location Map

Department Contact
Susan Vincent
Name
937.333.3683
Phone
susan.vincent@daytonohio.gov
Email

STAFF RECOMMENDATION

☑ Approve  ☐ Approve with conditions  ☐ Deny  ☐ Continue

Comments
Meets required evaluation criteria.

Future Actions:
Honorary Designations go to City Commission for approval.
Overview

The applicant, Cheli Curran, CEO of Daybreak, is requesting a two-year honorary street designation for the portion of Auto Club Drive between Perry Street and S. Patterson Boulevard to be named “Linda Kramer Way” in Midtown Dayton. The portion of Auto Club Drive to be designated runs between Daybreak’s two facilities. Ms. Curran seeks this honorary designation to honor Daybreak’s long time CEO, Linda Kramer, who retired after 23 years serving the organization.

Background

Linda Kramer served as Daybreak’s CEO from November 1997 to April 2021. During her tenure she increased the agency’s annual operating budget from $1 million to $9.5 million expanding the organization’s capacity to serve Dayton’s homeless youth. She spearheaded several new programs including Lindy’s Bakery, which provides employment readiness and David Place, a resource and drop-in center for LGBTQ+ youth. While CEO, Ms. Kramer raised $15 million to build the two new facilities that house the organization today.

Daybreak and the Board of Trustees seek the two-year honorary designation to recognize Ms. Kramer’s contributions to both the organization and the City of Dayton in time for a September event during which Ms. Kramer will be honored.

Staff comment/analysis

There should be no negative impact by implementing the proposal for an honorary designation as the official name of the street shall remain Auto Club Drive. Signs posted above the street signs will recognize the designation. The Departments of Public Works, Fire, and Police have stated no objections to the designation.

Greater than 51% of adjacent property owners submitted petitions in support of the honorary designation including Daybreak, RTA, and Bilbrey Construction.

Public Comments

The Greater Downtown Priority Land Use Board will meet on Monday, July 12; their recommendation for the Board’s consideration will be presented during the Plan Board meeting.

No additional comments were received from the community.

Staff recommendation

Staff believes that the application meets the rules and guidelines set forth in Resolution Number 5014-99, and therefore recommends approval.
Required Standards for Consideration

Resolution Number 5014-99: Honorary designations shall meet the following criteria:

a. The designation shall be confined to the right-of-way within the vicinity of the home, business, or location associated with the person(s) or event. Daybreak's facilities are located at the north and south west corners of Auto Club Drive and S. Patterson Blvd.

b. The designation shall not be an Arterial as listed on the Official Thoroughfare Plan. Auto Club Drive is not an arterial and has been determined by the Department of Public Works to be appropriate for an honorary designation.

c. There shall be only one honorary designation per facility or right-of-way. There is no current designation for this portion of Auto Club Drive.

d. An important community event, organization or well-known person(s) is a person or entity who has made a sustained contribution, over a long period of time, above and beyond the call of duty and demonstrated leadership relating to governance, human relations and development, or neighborhood development.
   • A person(s) who has made specific and sustained contributions to an organization located in or in proximity to the facility.
   • An event that recognized statewide or nationwide.
   The honorary designation will honor Linda Kramer, CEO of Daybreak for 23 years, who has a reputation as a visionary leader and who increased the level of service Daybreak provided over the years to Dayton’s youth.

e. The important community event, organization, or well-known person(s) shall be directly related to the public facility or the public right-of-way, i.e. lived, worked, went to school, etc. at the location specified. Only one honorary designation shall be permitted for each person(s) or community event. Preference shall be given to intersections and other limited locations.
   Linda Kramer worked at the Daybreak facilities located at Auto Club Drive.

Board Alternatives

1. Recommend approval of the proposal to give a two-year honorary designation because the proposal meets the requirements outlined in City Commission Resolution 5014-99.

2. Recommend an alternate proposal.

3. Recommend disapproval of the designation because the proposal does not meet the requirements outlined in City Commission Resolution 5014-99.

Attachments

Aerial Map, Site photos, Application, Petitions
Honorary Street Designation
Auto Club Drive
To: Clerk of the City Commission

Applicant Name (Contact Person): Cheli Curran
Address: 605 South Patterson Blvd 45402

Telephone Numbers: (Day) 330-327-2994 (Evening) 330-327-2994

Honoree Information:
Name: Linda Kramer
Address:

Proposed Facility or Right-of-way for Designation: The designation shall be confined to a facility or right-of-way within the vicinity of home, business or location associated with the person or event.

Auto Club Drive to Linda Kramer Way

From: 9/1/2021 To: 9/1/2023

Summary statement citing the reasons for the designation detailing the significant contributions or significance of the designation and the length of time the designation shall be in effect (Not longer than two years). Attach a detailed resume or reasons for designation.

In between Daybreak's two facilities is AutoClub Drive. Daybreak and the Board of Trustees would like to honor our long time CEO Linda Kramer who retired after 23 years leading the agency to great success. Linda is well known in the community as the leader of Daybreak which serves homeless and vulnerable youth in Miami Valley and beyond. Linda has been a visionary leader and has increases services throughout the years keeping a keen eye on what our youth needs are and thereby providing those services. Linda was the visionary behind Lindy's Bakery, a social enterprise providing youth with job readiness skills and employment. This program has helped both youth and businesses in the Miami Valley.
Honorary Designation Application

Explain why none of the preferred methods listed below can not be used for the proposed honorary designation. Attach documentation supporting the determination.

A. Donations to programs and projects:
   We wanted something unique to honor Linda specifically.

B. Proclamation:
   This could be done, however the street naming is unique and will definitely draw a crowd to our open house which will be in her honor.

C. Naming of neighborhood and community festivals:
   Linda has moved to Florida, so an honor of a street right in between our buildings for a short period of time would be most appropriate.

D. Planting trees or other living memorials:
   These can be destroyed, damaged or moved and we are looking for something that is a statement for her for a short period of time.

E. Placement of pieces of art, benches and similar objects in public or private spaces:
   Same as above.

F. Community Service Awards of the Dayton Volunteers Program:
   Doesn't really fit the work she has done.

Endorsement:
(The designation must be endorsed by the City Manager, a member of the City Commission, the City Plan Board or a Priority Board.)

A member of the City Commission:

The City Manager:

The City Plan Board:

Priority Board Endorsement/Comment:

Neighborhood Association Comments:

*Submit Minutes or other documentation of official Board Action.

Attachments:

- [ ] Map specifying location.
- [X] A petition supporting the designation signed by 51 percent of the abutting property owners.
- [X] Attach detailed resume or reasons for designation.
- [ ] Copy of minutes or resolution from the Priority Board and neighborhood association.
- [X] An non-refundable application fee of $500.00 is required with the filing of an application.
Attached Reasons for the Request:

In between Daybreak's two facilities is AutoClub Drive. Daybreak and the Board of Trustees would like to honor our long time CEO, Linda Kramer, who retired after 23 years leading the agency to great success. Linda is well known in the community as the leader of Daybreak which serves homeless and vulnerable youth in Miami Valley and beyond. Linda has been a visionary leader and has increases services throughout the years keeping a keen eye on what our youth needs are and thereby providing those services. Linda was the visionary behind Lindy's Bakery, a social enterprise providing youth with job readiness skills and employment. This program has helped both youth and businesses in the Miami Valley.

Also, under Linda's leadership Daybreak was able to take this section of town which was once blighted and give it an inviting facelift between the two buildings we own. Also, of note is that AutoClub Drive was originally named after AAA, which is no longer in business in that location.
Linda L. Kramer
6331 Shadow Lake Trail
Centerville, Ohio 45459
Home: (937) 291-9676    Cell: (937) 657-2186
Email: lkramer6@gmail.com

PROFILE
Creative, highly motivated professional with a proven record in developing and managing a wide array of innovative housing and human service programming. Highly skilled in organizational management program development, fundraising, grant writing and community collaboration.

EDUCATION
- Master’s in management and Organizational Behavior  University of Phoenix: Albuquerque, NM
- Master’s in Education  The American University: Washington, DC
- Bachelor of Science Health/Physical Education  University of Delaware: Newark, DE

PROFESSIONAL EXPERIENCE
Daybreak, Inc. (Dayton, OH): November 1997 – April 2021
Chief Executive Officer

- Oversees strategic direction and operations of Daybreak, Inc., a nonprofit organization with 100+ employees that provides supports for homeless youth in Dayton Ohio.
  - 24-7 emergency shelter
  - 24-7 supervised transitional housing
  - Scattered site transitional housing
  - Permanent supportive housing
  - Rapid rehousing
  - Mental health and drug prevention/treatment services
  - Employment programming and support
  - Outreach services including 2 drop-in centers
- Increased the agency’s annual operating budget from $1 million to $9.5 million.
- First organization in Ohio to use the federal Low Income Housing Tax Credit Program to create supportive housing for homeless youth.
- Raised 10 million dollars and completed construction of a new 50,000 sq. ft., green-friendly facility.
- Raised 5 million dollars and completed construction of a new 40,000 sq. ft. employment and education center for homeless youth new emergency shelter residential space for minor age youth.
- Secured Commission on Accreditation of Rehabilitation Facilities. Commission (CARF)
- Created “Lindy’s Bakery”, a gourmet dog treat bakery and social enterprises that provides homeless youth with employment readiness training in a safe, and supportive commercial enterprise.
- Created “David Place”, a resource and dropin center for LGBTQ+ youth.

- **St. Joseph Children’s Treatment Center** – Secured public/government funding to develop special needs housing. Raised $400,000 in HOME and CDGG funds and $1.4 million in low interest loans from the Federal Home Loan Bank and The Affordable Housing Fund.
- **Greene County Domestic Violence Project** – Facilitating the organization’s efforts to build a new shelter for victims of domestic violence in Greene County.
- **Miami Valley Housing Opportunities** – Prepared proposal requesting $2.8 million from HUD’s “Supportive Housing Program” funding to implement a community wide collaborative venture.
- **Goodwill Industries** – Planned and coordinated the implementation of a new management/merger agreement between Goodwill Industries and The Easter Seal Society of West Central Ohio.

The Community Builders, Inc. (TCB) (Boston, MA): March 1996 – September 1996

Director of Human Services

- Managed a wide array of self-sufficiency and supportive services for residents of federally subsidized housing developments in 5 different states. Programs included, but were not limited to, on-site “Education and Employment Centers”. Medical clinics, “Computer Learning Centers”, construction apprenticeship programs, case management services and independent living skills training.
- Created department structure to complement the organization’s new matrix management structure.
- Prepared human service sections of tax credit applications for TCB development projects.
- Developed and wrote human service proposals based on the formation of community collaboratives. (Two of the proposals were funded by the HUD HOPE VI program)
- Began oversight of a nationally funded “Demonstration Project “designed to assess the effectiveness of supportive services in affordable housing developments.


Executive Director

- Tripled annual operating budget from $1.2 million in 1989 to a projected $3.7 million in 1996.
- Operated 96 Section 8 SRO units 8 transitional housing units, a battered women’s shelter, a shelter for homeless women, shelter for pregnant teenagers, intergenerational daycare and a youth crisis center.
- Awarded $2.05 million in HUD Supportive Housing Program funds to expand and duplicate “HouseKeys”, an innovative project designed to stabilize individuals and families by providing intensive support services for those moving from shelters to permanent housing.
- Conceived and managed the $5.5 million “YWCA Redevelopment Project” which resulted in the complete renovation of the YWCA’s 80-year-old, 120,000 square foot facility. Negotiated contracts with Montgomery County, the City of Dayton, The Ohio Department of Development, and the Affordable Housing Fund for a total of $2.3 million in financing. Secured maximum amount of low-income housing tax credits from the Ohio Housing Finance Agency (OHFA). Negotiated limited partnership agreements with National City Bank, Bank One, Society Bank and Western Ohio Health Care that resulted in the sale of tax credits and $1.6 million in revenues. Secured a 10-year, Section 8 contract with HUD that guaranteed $3.1 million in future operating revenues through rental subsidies.
- Increased and diversified sources of income. (Diversified to 40 different funding sources).
- Managed 130+ employees in a multi-site delivery operation.
Other Employment

Albuquerque Rape Crisis Center (Albuquerque, NM): 1987 – 1989
  • Executive Director

Lehigh Valley Stroke Program (Allentown, PA): 1986-1987
  • Development Director

Planned Parenthood of Miami Valley (Dayton, Ohio): 1979-1985
  • Director of Education and Training

National and State Presentations:

  • Heartland Alliance Annual Conference: 2017
  • National Alliance to End Homelessness Pre Conference Meeting: 2013
  • Coalition On Housing and Homelessness In Ohio (COHHIO) Annual Conference: 2012, 2013, 2015
  • Ohio Housing Conference (OHFA and OCCH) 2012, 2015; Investors Briefing 2013
  • Housing Options for Transition-Age Youth Partnership Forum: 2011

Special Appointments, Committees, Boards, and Awards:

Board of Directors:

  • Coalition On Homelessness and Housing in Ohio (COHHIO) 2006 – 2021
  • Family Violence Prevention Center of Greene County 1996-1999
  • The United Way of the Greater Dayton Area 1994, 1995

State Committees:

  • Ohio “Homeless Assistance Program” Advisory Committee 2005 - 2021
  • Ohio Balance of State (CoC) Advisory Committee 2007 - 2015
  • Ohio Human Trafficking Sub-Committee on Victim Services & Safe Locations 2010 - 2015
  • Ohio Housing Trust Fund Advisory Committee 1995

Awards:

  • 2009 Award of Excellence in Special Needs Housing (Ohio Capital Corporation for Housing)
  • 1995 LIHTC Excellence Award (IPED/Affordable Housing Tax Credit Coalition)
  • 1994 Affordable Housing Project of the Year Award (CityWide Development Corporation)
06/28/2020

Dear City of Dayton,

Robert M. Lemaster, the owner of Bilbrey Construction, Inc, and all of its employees which operate out of our office located at 832 S. Ludlow Street, and adjacent property owners to Auto Club Drive, are in complete support of honoring Linda Kramer, former CEO of Daybreak by temporarily renaming Auto Club Drive to Linda Kramer Way. We believe this would be a great honor to signify Linda’s tremendous work and support in Dayton Ohio.

Sincerely,

[Signature]

Robert M. Lemaster, President

832 S. LUDLOW STREET, DAYTON, OH 45402 • P.O. BOX 822, DAYTON, OH 45401-0822 • PHONE: (937) 228-0046 • FAX: (937) 228-8751

www.bilbrey-construction.com
06/28/2021

Dear City of Dayton,

We the property owners of Daybreak, adjacent property owners to AutoClub Drive, are in complete support of honoring Linda Kramer, former CEO of Daybreak by temporarily renaming AutoClub Drive to Linda Kramer Way. We believe this would be a great honor to signify Linda’s tremendous work in Dayton Ohio.

Sincerely,

Cheli Curran, MBA
CEO Daybreak
June 30, 2021

To:

City of Dayton  
101 W. Third Street  
Dayton, OH 45402

Mayor and Commissioners,

RTA has been contacted by Daybreak about the possible temporary renaming of Auto Club Drive to Linda Kramer Way, to honor the former CEO of Daybreak. RTA owns the property located at 901 South Ludlow, of which Auto Club drive is the Northern border. As this request will not impact the address of our property, RTA has no opposition to the request.

Sincerely,

[Signature]

Robert Ruzinsky  
Chief Executive Officer