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 Hearing: (See Section V)
12. Discussion Item: N/A
13. Comments by Citizens - Please register to speak with the Clerk of Commission (Non - Calendar items) sign-up sheets at entrance of Commission Chambers
14. Comments by City Manager
15. Comments by City Commission
16. Work Session: N/A
17. Miscellaneous (See Section VI)

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

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

1. Purchase Orders:

   **ECONOMIC DEVELOPMENT**
   A1. Comptech Computer Technologies, Inc. (temporary staffing services as needed through 12-31-23) $10,000.00
1. (Cont’d):

**FIRE**

| B1. Dell Marketing LP (computers, monitors, and accessories) | $37,831.54 |
| B2. Horton Emergency Vehicles Company (one ambulance) | $251,838.00 |
| B3. Motorola Solutions, Inc. (Motorola brand radios and accessories) | $14,949.46 |

**HUMAN RESOURCES**

| C1. Daniel Juday, LLC (departmental training as needed through 12-31-20) | $37,300.00 |

**WATER**

| D1. Corporate Equipment Company LLC (pump station repairs) | $57,325.00 |
| D2. Columbus Truck & Equipment Center LLC dba McMahon Truck Center (one truck with utility service body, compressor, generator and hydraulic pump) | $213,451.00 |
| D3. Sunesis Construction Company (water main repairs at Keowee and Ottawa Streets) | $1,442,260.50 |
| -Depts. of Economic Development, Fire, Human Resources, and Water. | Total: $2,064,955.50 |

2. **STEPCG, LLC – Service Agreement** – for the purchase of Extreme Networks brand hardware and software to replace the existing wireless network gear – Dept. of Information Technology. $239,847.44 (Thru 03/31/21)

**B. Construction Contracts:**

3. **Bilbrey Construction, Inc. – Service Agreement** – for Professional Design Build Services – City Hall Mezzanine Area – Dept. of Public Works/Civil Engineering. $800,000.00 (Thru 03/15/21)

**C. Revenue to the City:**

4. **United States Army Special Operations Command (USSO COM) – Service Agreement** – for off-duty police officer services – Dept. of Police. $22,886.46 (Est. Rev.)
E. Other – Contributions, Etc.:

5. Calfee Halter & Griswold, LLP – Payment of Voucher – for legal services – Dept. of Law/Civil. $3,191.00

IV. LEGISLATION:

Emergency Ordinance – First and Second Reading:

6. No. 31841-20 Amending Sections 35.31, 35.32, 35.35, 35.371, 35.373, and 35.49 of the Revised Code of General Ordinances in Order to Adopt Certain Findings with Respect to a Third Generation Disparity Study, Establishing a Rebuttable Presumption that Businesses Owned by Minorities and Females are Disadvantaged, Renewing a Process for Participation by Small/Disadvantaged Business Enterprises in Contracting with the City of Dayton in Construction and Goods and Services, and Declaring an Emergency.

Resolution – First Reading:

7. No. 6531-20 Authorizing the City Manager to Accept Federal Fiscal Years 2021 and 2022 Federal Aviation Administration Airport Improvement Project Grants from the United States Department of Transportation for Airport Improvement Projects at the James M. Cox Dayton International Airport and Dayton-Wright Brothers Airport on Behalf of the City of Dayton in an Amount Not to Exceed Twenty-Five Million Dollars and Zero Cents ($25,000,000.00).

V. PLANNING ACTION

A. PUBLIC HEARING:

8. To establish a HD-3 Historic Overlay District for the Hallmark Building at 714 Plymouth Avenue and the Meridian Building at 59 Central Avenue. The underlying zoning for property shall remain MMF Mature Multi-Family – Case No. PLN2020-00292.
VI. MISCELLNEOUS:

ORDINANCE NO. 31842-20

RESOLUTION NO. 6532-20

IMPROVEMENT RESOLUTION NO. 3598-20

INFORMAL RESOLUTION NO. 980-20
City Manager’s Report

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

2020 Purchase Orders

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

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

Description

ECONOMIC DEVELOPMENT

(A1) P0200073 – COMPTECH COMPUTER TECHNOLOGIES, INC., CENTERVILLE, OH
  • Temporary staffing services as needed through 12/31/2020.
  • These services are required to augment staff to maintain daily operations.
  • Rates are in accordance with the City of Dayton’s existing price agreement IFB 18066JL with pricing through 12/31/2023.
  • This amendment increases the previously authorized amount of $20,000.00 by $10,000.00 for a total not to exceed $30,000.00 and therefore requires City Commission approval.
  • The Department of Economic Development recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<tbody>
<tr>
<td>2020</td>
<td>Other Professional Services</td>
<td>10000-2602-1159-44</td>
<td>$10,000.00</td>
</tr>
</tbody>
</table>

Signatures/Approval

Melinda O. Wilson
Division
Diane E. Martin 9/14/2020
Department
City Manager

Approved by City Commission

Clerk

Date

Updated 06/2016
FIRE

(B1) P0201081 – DELL MARKETING LP, ROUND ROCK, TX

- Computers, monitors, and accessories.
- These goods are required to allow divisional staff to work from home as a result of the COVID-19 pandemic recommended operating guidelines.
- The City has standardized on Dell computing equipment; therefore, this purchase was negotiated.
- One hundred percent (100%) of funding is ensuant from the Coronavirus Aid, Relief and Economic Security Act (CARES Act).
- The Department of Fire recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<tbody>
<tr>
<td>2020</td>
<td>CARES Public Safety</td>
<td>28133-6330-1384-99-CRF24</td>
<td>$37,831.54</td>
</tr>
</tbody>
</table>

(B2) P0201080 – HORTON EMERGENCY VEHICLES COMPANY, GROVE CITY, OH

- One (1) new ambulance.
- This equipment is required to increase the City’s emergency fleet to provide additional support as a result of the COVID-19 pandemic.
- Rates are in accordance with the State of Ohio State Term Schedule Contract #800330 and Index # STS233.
- One hundred percent (100%) of funding is ensuant from the Coronavirus Aid, Relief and Economic Security Act (CARES Act).
- The Department of Fire recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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</thead>
<tbody>
<tr>
<td>2020</td>
<td>CARES Public Safety</td>
<td>28133-6330-1434-99-CRF10</td>
<td>$251,838.00</td>
</tr>
</tbody>
</table>

(B3) P0201082 – MOTOROLA SOLUTIONS, INC., Schaumburg, IL

- Motorola brand radios and accessories.
- These goods are required as standard issue to all public safety personnel and vehicles and are essential to upfit the new ambulance as a result of the COVID-19 pandemic.
- Rates are in accordance with the State of Ohio Term Schedule Contract #573077-0.
- One hundred percent (100%) of funding is ensuant from the Coronavirus Aid, Relief and Economic Security Act (CARES Act).
- The Department of Fire recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2020</td>
<td>CARES Public Safety</td>
<td>28133-6330-1434-99-CRF10</td>
<td>$14,949.46</td>
</tr>
</tbody>
</table>
HUMAN RESOURCES

(C1) P0201088 – DANIEL JUDAY LLC, WESTERVILLE, OH

- Departmental training as needed through 12/31/2020.
- These services are required to provide training for departmental employees.
- Daniel Juday LLC is recommended based upon regional knowledge and proven past performance; therefore, this purchase was negotiated.
- The Department of Human Resources recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<td>2020</td>
<td>Training Counseling</td>
<td>16903-5610-1159-62</td>
<td>$37,300.00</td>
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</table>

WATER – WATER ENGINEERING

(D1) P0201085 – CORPORATE EQUIPMENT COMPANY LLC, CINCINNATI, OH

- Pump station repairs.
- These goods and services are required to repair the motor control center at the Rutledge Pump Station as a result of vandalism.
- Corporate Equipment Company LLC is the Original Equipment Manufacturer (OEM) and installer of the upgraded pump station; therefore, this purchase was negotiated.
- The Department of Water recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<tr>
<td>2020</td>
<td>Infrastructure</td>
<td>55002-3445-1424-54-SF2004</td>
<td>$57,325.00</td>
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</table>

WATER – WATER UTILITY FIELD OPERATIONS

(D2) P0201091 – COLUMBUS TRUCK & EQUIPMENT CENTER LLC dba McMAHON TRUCK CENTER, COLUMBUS, OH

- One (1) 2021 truck with utility service body, compressor, generator and hydraulic pump.
- This equipment is required to support the daily operations of the Division and will replace Unit #923 which will be disposed of in the best interest of the City.
- Sixteen (16) possible vendors were solicited and three (3) bids were received.
- The Department of Water recommends acceptance of the low bid.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<td>2020</td>
<td>Motorized Equipment</td>
<td>53000-3445-1412-54</td>
<td>$213,451.00</td>
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</table>
WATER – WATER UTILITY FIELD OPERATIONS (CONTINUED)

(D3)  P0201092 – SUNESIS CONSTRUCTION COMPANY, WEST CHESTER, OH

- Water Main repairs at Keowee and Ottawa Streets.
- These goods and services are required to repair both locations due to the water main breaks.
- Pursuant to section 86 of the City of Dayton Charter, the Director of Water has declared an emergency, the necessary funds have been encumbered and the suppliers have been notified to proceed.
- The Department of Water recommends approval of this order.

<table>
<thead>
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<th>Fund Source(s)</th>
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<th>Fund Amount(s)</th>
</tr>
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<tbody>
<tr>
<td>2020</td>
<td>Infrastructure</td>
<td>53005-3445-1424-54-WF2009</td>
<td>$1,442,260.50</td>
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</table>

The aforementioned departments recommend approval of this order.
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 software to replace the existing City wireless network gear located in City Hall, IT, Water, Fuel Depot (Monument), Fire Garage, Fire Training, Fleet Garage, and One Stop along with professional services to assist with implementing the hardware and software.

The professional services will include a new wireless infrastructure design to support the growing demand for WiFi. The services include:

1) Inventory of wireless network gear to be configured and installed
2) Wireless hardware and software
3) Design, configuration and installation of hardware and software
4) Consulting, documentation and knowledge transfer

The agreement will be effective upon execution through March 31, 2021.

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

A Certificate of Funds in the amount of $239,847.44 is attached.
**SECTION I - to be completed by User Department**

<table>
<thead>
<tr>
<th>X</th>
<th>New Contract</th>
<th>_____</th>
<th>Renewal Contract</th>
<th>_____</th>
<th>Change Order</th>
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<tbody>
<tr>
<td>Contract Start Date</td>
<td>Upon Execution</td>
<td>03/31/21</td>
<td>Original Commission Approval</td>
<td>$239,847.44</td>
<td>Required Documentation</td>
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<tr>
<td>Expiration Date</td>
<td></td>
<td></td>
<td>Initial City Manager's Report</td>
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</tr>
<tr>
<td>Original Encumbrance</td>
<td>$239,847.44</td>
<td>X</td>
<td>Initial Certificate of Funds</td>
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<tr>
<td>Remaining Commission Approval</td>
<td>$ -</td>
<td>X</td>
<td>Initial Agreement/Contract</td>
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<tr>
<td>Original CT/CF</td>
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<td></td>
<td>Copy of City Manager's Report</td>
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<tr>
<td>Increase Encumbrance</td>
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<td>Copy of Original Certificate of Funds</td>
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<td>Decrease Encumbrance</td>
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<tr>
<td>Remaining Commission Approval</td>
<td>$ -</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Amount: | $239,847.44 | Amount: |  |
| 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:** STEPCG, LLC

**Vendor Address:** 50 East Rivercenter Blvd., Suite 900, Covington, Kentucky 41011

| Federal ID: | 300836376 |
| Commodity Code: | 92045 |

**Purpose:** Professional Services Agreement to replace the existing City wireless network gear located in City Hall, I.T., Water, Fuel Depot (Monument), Fire Garage, Fire Training, Fleet Garage, and One Stop through March 31, 2021 for $239,847.44.

**Contact Person:** Desa Foster, Manager (ext. 6349)

**Information Technology**

**Department/Division:** Information Technology

**Date:** 31-Aug-20

**Originating Department Director's Signature:**

**Kenneth R. Couch**

**Digitally signed by Kenneth R. Couch**

**Date:** 2020-08-20 11:22:01-04'00'

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

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

**Finance Director's Signature:**

**Date:** 9/15/2020

**CF Prepared by:** Jeff Marshall

**Date:** 9/10/2020

**CF/CT Number:** CT20 - 2636

**SA:** 09/15/2020

**Finance Department**

October 18, 2011
August 31, 2020

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

FROM: Shibu Varghese, Senior Systems Engineer  
Department of Information Technology  
8/31/2020

X Shibu Varghese  
Signed by: Varghese, Shibu

SUBJECT: STEPCG Wireless Project, Professional Services Agreement

Attached please find the service agreement between the City of Dayton and STEPCG, LLC for professional services through March 31, 2021. The purpose of this agreement is to replace the current end-of-life WIFI network with supported hardware located in City Hall, IT, Water, Fuel Depo (Monument), Fire Garage, Fire Training, Fleet, and One Stop.

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

Approved:

Kenneth R. Couch  
Digitally signed by Kenneth R. Couch  
Date: 2020.09.02 11:18:12 -04'00'

Kenneth R. Couch, Interim I.T. Director  
Department of Information Technology  
Date
TECHNOLOGY SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES, HARDWARE AND SOFTWARE AGREEMENT ("Agreement") is made and entered into on this ___ day of ____, 2020, between the City of Dayton, Ohio ("City"), a municipal corporation in and of the State of Ohio, and STEPCG, LLC. ("STEPG" or "Consultant"), a corporation authorized to conduct business in the State of Ohio.

WITNESSETH THAT:

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

WHEREAS, The Consultant represented that it is a skilled, experienced and competent consulting firm, with the personnel and equipment to perform the professional services, providing hardware and software 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 professional services, hardware, and software set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

The Consultant will provide the following services:

1) Inventory of gear to be configured and installed
2) Provide the necessary hardware and software
3) Design, Configuration and Installation
4) Provide Advice, Documentations and Knowledge Transfer

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 ($239,847.44) Two Hundred Thirty-Nine Thousand Eight Hundred Forty-Seven Dollars and Forty-Four Cents, 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 wireless installation deliverables described within the Scope of Services described in Exhibit A attached to this Agreement, or not later than March 31, 2021, whichever shall occur first. After completion, and acceptance by the City, of the wireless hardware installation, STEPCG shall provide one year of hardware maintenance and software 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, "Indemnities") 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 Indemnities. 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 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: Keith Davis, Department of Information Technology

Consultant:
STEPcG, 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 CONSULTANT

By executing this Agreement for professional services, Consultant acknowledges and agrees that it will be providing services to the City as an "Independent Contractee". 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, Consultants and sub-Consultants 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 consultants, associates, and sub-consultants 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: [Signature]

Print: Sara Voss

Its: Business Manager

APPROVED AS TO FORM AND CORRECTNESS:

8/25/2020

[Signature]  
John Musto for

City Attorney

Signed by: Musto, John

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO

_________  , 2020

Min./Bk. _________ Pg. _________

Clerk of Commission
A) Project Scope:

The scope of services includes the design, configuration & installation of an Extreme Networks Cloud IQ WLAN & expansion of the existing SPBm fabric network. The Cloud IQ (XIQ) WLAN solution will replace the existing WLAN 8100 duplicating SSIDs, security, & network parameters while improving & making enhancements as well with the new technology. Pricing includes the configuration of VLAN's, IP interfaces, SNMP, RF, captive portal, & other parameters ranging from OSI layer 1 to layer 7. The network will be deployed with the latest Extreme Networks recommended stable code releases. STEPCG will set up SSH, SNMP enabled for management with access. STEPCG will design, setup, & configure the annual service of Network Engine licensing that will act as the captive portal, traffic shaper, client authentication & analytics for the WLAN. The Network Engine runs on HW provided by STEPCG. STEPCG will ensure functionality including 2-3 days of post cutover support. STEPCG will be complete all tasks associated with planning, designing, coordinating & troubleshooting this solution. Our design engineers will work hand in hand with the City of Dayton, Ohio to ensure familiarity with the design and configurations when turned over. Upon completion we will provide the customer with full documentation including but not limited to; network diagram and back up configurations.

Some of these deliverables may be completed prior to site arrival and some may be performed post site visit.

No implementation, configuration tasks other than those specifically mentioned will be performed within the scope of this implementation.

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

- Detailed customer finding
- Network “First-Aid” training and documentation turnover
- Inventory of gear to be configured & installed
  - 9 Water Dept Locations
    - 100 410C AP & XIQ Pilot subscriptions
  - Additional Locations: Fleet Maint, Fire Garage, Fire Training, IT, Fuel station
    - 17 410C AP & 17 XIQ Pilot subscriptions
  - City Hall Locations
    - 63 410C AP & XIQ Pilot subscriptions
    - 1 XIQ virtual appliance on customer provided VMware solution
    - 3 AP30 ATOM & XIQ Pilot subscriptions
  - One Stop Location
    - 23 410C AP & XIQ Pilot subscriptions
  - Other Location(s) excluded from STEPCG to install that is on the accompanying quote.
    - 47 410C AP & 48 XIQ Pilot subscriptions
    - 4 XA 1480 w/ Fabric Connect @ 500mbps tier
    - 10 AP30 ATOM & XIQ Pilot subscriptions
    - 3 VSP4900-48P w/ VIM5 4XE
    - 3 VSP4900-48P w/ VIM5 4XE
    - 3 ERS4950GTS-PWR+
  - Associated SFPs, power supplies & accessories in the quote.
- City of Dayton, Ohio will be responsible for the following tasks:

  o Network discovery information
  o Access to all networking equipment
  o Work area for lab.
  o VMware ESXi host resources for on-prem Cloud IQ (XIQ)
  o Dedicated point of contact during after hours work.
  o Building Access to facilities to do after hours work.
  o Participation in all network design & consultation meetings
  o Boom or lift for AP installation heights of greater than 12 feet.

B) Hardware and Software 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: $239,847.44

<table>
<thead>
<tr>
<th>Hardware, Software &amp; Maintenance</th>
<th>TOTAL: $205,847.44</th>
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</thead>
<tbody>
<tr>
<td>Layer 2 design, configuration, &amp; installation:</td>
<td>$ 18,000.00</td>
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<tr>
<td>Physical installation of HW/SW:</td>
<td>$ 12,000.00</td>
</tr>
<tr>
<td>Project management:</td>
<td>$ 4,000.00</td>
</tr>
<tr>
<td>Professional Services</td>
<td>TOTAL: $ 34,000.00</td>
</tr>
</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 & software 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.
PROFESSIONAL DESIGN BUILD SERVICES – CITY HALL MEZZANINE AREA

The Department of Public Works requests permission to enter into a Professional Service Agreement with Bilbrey Construction, Inc. in the amount of $800,000.00 for the design build services - City Hall Mezzanine Area. This amount includes the base bid for the mezzanine design services in the amount of $12,271.00 and a mezzanine construction allowance in the amount of $787,729.00. This project will conduct a current site survey of an unfinished area on the mezzanine floor, create a mutually agreed upon design applicable to multiple proposed uses adhering to social distancing guidelines, develop final plans and specifications with firm construction costs, and include all necessary construction services to successfully complete the agreed upon design. Due to the CARES Act time constraints on the funding, the mezzanine construction allowance gives us authority to encumber all available funds for this project and to immediately begin construction after the proposed design is approved. At this time, a final Not to Exceed construction budget will be agreed upon by all parties to perform all necessary construction based upon a supplied schedule of values.

This project is fully funded from the Coronavirus Local Relief Fund.

The agreement commences upon execution by the City and shall terminate on March 15, 2021.

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

A Certificate of Funds is attached for $800,000.00.

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 1/2019
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

X New Contract

Renewal Contract

Change Order:

Contract Start Date: Upon Execution
Expiration Date: 03/15/21
Original Commission Approval: $800,000.00
Initial Encumbrance: $800,000.00
Remaining Commission Approval: $-
Original CT/CF: -
Increase Encumbrance: $-
Decrease Encumbrance: $-
Remaining Commission Approval: $-

Required Documentation:

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

Amount: $800,000.00

Fund Code 28133 6450 1431 54 CRF04 XXXX
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: Bilbrey Construction, Inc.
Vendor Address: 832 S. Ludlow Street, Dayton, Ohio 45402
Federal ID: 311167970
Commodity Code: 90600
Purpose: Professional design build services for City Hall Mezzanine Area

Contact Person: Andrew Marks
Civil Engineering
Department/Division
Date: 9/16/2020

Originating Department Director's Signature:

SECTION II - to be completed by the Finance Department

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

Finance Director Signature:

Date: 9/16/2020

CF Prepared by:

Date: 9/16/2020

Finance Department

October 18, 2011
AGREEMENT FOR PROFESSIONAL SERVICES

THIS PROFESSIONAL SERVICE AGREEMENT ("Agreement"), dated this ___ day of ____________, 2020 is between the City of Dayton, Ohio, a municipal corporation of the State of Ohio ("City") and Bilbrey Construction, Inc. ("Consultant").

WITNESSETH THAT:

WHEREAS, The President of the United States declared a nationwide state of emergency due to the coronavirus COVID-19 pandemic on March 13, 2020; and,

WHEREAS, On March 9, 2020, pursuant to Section 5119.36 of the Ohio Revised Code, the Governor of Ohio issued Executive Order 2020-23D, declaring a state of emergency in the State of Ohio as a result of the outbreak of COVID-19; and,

WHEREAS, On March 12, 2020, pursuant to Chapter 5502 of the Ohio Revised Code, the Mayor and City Manager declared a state of emergency in accordance with the Governor’s executive order; and,

WHEREAS, On March 27, 2020, Congress passed and the President signed the Coronavirus Aid, Relief, and Economic Security Act (H.R. 748, 116th Congress) which provides significant relief funding to deal with the emergency; and,

WHEREAS, City submitted a Request for Proposal 20-011PWPM for Design Build Services – City Hall Mezzanine Area; and,

WHEREAS, Consultant responded to City’s Request for Proposal, setting forth that it is experienced and qualified to provide the design build services for the city hall mezzanine area and submitted a proposal regarding same; and,

WHEREAS, Consultant’s response to the Request for Proposal has been accepted by City.

NOW, THEREFORE, in consideration of the promises contained in this Agreement, City and Consultant agree as follows:

ARTICLE 1 – SERVICES TO BE PERFORMED

Consultant shall perform the design build services for the city hall mezzanine area, hereinafter referred to as the ("Project") described in the Request for Proposal 20-011PWPM, hereinafter referred to as the ("RFP"), a copy of which is attached as Exhibit A and incorporated herein by reference. To the extent not inconsistent with Exhibit A, Consultant shall perform the work and services for the project and comply with the representations detailed in Consultant’s response to the RFP, hereinafter referred to as the ("Proposal"), a copy of which is attached as Exhibit B and incorporated herein by reference.

Consultant shall provide all necessary labor, material, equipment, and supervision necessary to perform the design and construction services for the renovations to an unfinished area on the
Mezzanine floor in City Hall located at 101 W. Third Street. This project is to include the following:

Scope of Services:
1. Initial coordination with the City: Scheduling of site visits will be discussed, code review, and any available as-built, original construction drawings, and CAD files will be provided.
   a. Enough site visits will be performed to verify and note existing conditions and compare against City supplied information for field accuracy.
   b. Review and verify the design requirements for the proposed mezzanine area.
2. Develop and provide at least two design concepts including construction cost estimates for review by the City.
   a. The exact purpose will be reviewed and agreed upon by the City and Consultant, however this will include renovating this space to act as multiple uses with social distancing in mind.
   b. This will include any and all necessary mechanical, electrical, data/network cabling, life safety services, plumbing, access control, audio/visual, finishes, temporary protection and cleaning, and general conditions.
3. After final design concept is selected by the City, complete the floor plan design and associated construction cost estimates, plans, and specifications.
4. Present final signed and sealed construction costs estimates, plans, and specifications to the City for final review and for application of all necessary permits.
   a. At this time a final not to exceed construction budget will be agreed upon by both the City and Consultant to perform the renovations based upon a supplied schedule of values.
      i. This agreed upon construction budget will include all necessary construction trades to successfully complete the agreed upon design.
For purposes of this Agreement, this shall include, but not be limited to:
1. Hazardous Material Inspection, Design Services, Abatement, and Post Abatement Inspections.
2. Temporary Protection.
3. Demolition and removal of existing items in the area.
4. Doors, frames and hardware.
5. Carpentry.
6. Insulation, drywall, tape and spackle.
7. Acoustical ceiling and/or drywall ceiling including insulation and suspension assemblies.
8. Window furnishings.
9. Glass and glazing.
11. Painting and staining.
12. Fire Stopping
13. Caulking.
14. Life Safety Services (fire extinguisher cabinets, fire extinguishers, emergency exit signs, etc.).
15. HVAC.
16. Electrical.
17. Fire alarm.
19. Access control.
21. Provide interior design services for the design and layout of the proposed furniture, fixtures, and equipment. Upon agreement from the City, all necessary furniture, fixtures, and equipment shall be furnished and installed.
22. Final clean up.
23. General conditions.
24. Building permit allowance.
25. Miscellaneous general conditions, project supervision, bonding, etc.
26. Contingency allowance for hidden or unforeseen conditions.

5. During construction the Consultant shall provide construction administration services to include:
   a. Answer questions during the bidding/solicitation period prior to final construction costs.
   b. Review shop drawings.
   c. Attend at a minimum bi-weekly progress meetings.
   d. Attend a punch list walk-through and create the project punch list(s).
   e. Create a final record drawing based upon the construction as-builts and provide to the City with any and all O&M information and closeout documentation.

6. Early completion incentive:
   a. The early completion incentive shall include the cost for all items necessary to obtain substantial completion by December 1, 2020. Failure to meet this date waives the Consultant from receiving this incentive.
   b. This incentive will be negotiated with the City and Consultant during the design period and will be finalized and agreed upon prior to construction commencing.

For purposes of this Agreement, all professional services to be performed by Consultant shall be hereinafter referred to as the “Services.” Consultant shall have no liability for defects in the Services attributable to Consultant’s reliance upon or use of data, design criteria, drawings, specifications, or other information furnished by City or third parties retained by City. The final documents, including digital copies of any plans, images, or data, shall become the property of City upon payment.

In performing the Services, Consultant shall utilize the services of competent and, where appropriate, licensed professionals, and warrant and represent that all Services will comply with all applicable federal, state, local, and other laws, ordinances, codes, regulations, orders, and agency or industry standards or other standards.

All provisions contained in the “General Provisions of the Construction and Material Specifications of the City of Dayton, Department of Public Works, Division of Civil Engineering, dated October 1, 2008”, and “Amendments to the City of Dayton General Provisions” are hereby embodied as part of this Agreement, a copy of which is attached hereto as Exhibit C.

It is further agreed that Consultant shall assume all responsibility for the work, and take all precautions preventing injuries to persons and damage to property on or about the work.
The City specifically reserves the right to deposit any disputed funds, payments, or claims into an escrow account and to discharge all or any further obligation by the City by reason of such deposit into escrow. All claims brought forward by Consultant must be brought forward immediately once they arise.

Any services not listed in this Agreement shall not be performed and compensated for unless it is agreed to in writing by both parties.

**ARTICLE 2- COMPENSATION**

The City shall pay Consultant a sum not to exceed Eight Hundred Thousand Dollars and Zero Cents ($800,000.00) for the Services actually provided in accordance with this Agreement. This amount includes the base bid for the mezzanine design services in the amount of Twelve Thousand Two Hundred Seventy-One Dollars and Zero Cents ($12,271.00) and a mezzanine construction allowance in the amount of Seven Hundred Eighty-Seven Thousand Seven Hundred Twenty-Nine Dollars and Zero Cents ($787,729.00). Payment for the Services shall be based upon the rates for each service to be provided as set forth in the Proposal dated August 20, 2020 attached as Exhibit B. Payment for the construction services shall be based upon the rates agreed upon by the City and the Consultant once the mezzanine design is completed. Consultant shall submit invoices, not more frequently than monthly for payment of the Services actually provided. Such invoices shall state the invoice period, total amount requested and Services provided during the invoice period. The City will, unless disputed, remit payment of all undisputed amount of invoices within thirty (30) days from receipt thereof. The City shall have the right to perform a final review and approval of the Services and make the final payment by March 15, 2021.

**ARTICLE 3- TERM**

This Agreement shall commence upon execution by the issued Notice of Intent/Notice to proceed in accordance with the rights allowed by Section 86 of the City’s Charter and shall be codified by approval of City Commission and shall terminate on March 15, 2021, unless extended to a later date by mutual written amendment to this agreement or terminated according to Article 6 of this Agreement. Due to the unique funding requirements of this Agreement, the Services must be fully performed and finalized by December 28, 2020. Any delay in the completion of the Services shall be considered a breach of this agreement and the City shall have the right to pursue Consultant accordingly.

**ARTICLE 4- INDEMNIFICATION**

Consultant agrees to defend, indemnify, and hold harmless City, its elected officials, employees and agents from and against claims, losses, damages, and expenses (including reasonable attorneys’ fees) to the extent such claims, losses, damages, or expenses are caused by or arise out of the Consultant’s negligent performance or non-performance of this Agreement and/or the acts, omissions or conduct of the Consultant or its employees, agents, and representatives.

**ARTICLE 5- 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 $1,000,000.00.

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 extent of the policy limits stated herein. All policies of insurance required hereunder shall contain a provision requiring a minimum of thirty (30) days advance written notice to the City in the event of cancellation. Consultant will provide notice of diminution of coverage within twenty-four (24) hours. 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.

ARTICLE 6- TERMINATION

This Agreement may be terminated by 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 or submit a plan for cure acceptable to City. If a plan to cure is not accepted, then this Agreement will be terminated immediately and City shall pay Consultant only for those services accepted by the City.

City may terminate or suspend performance of this Agreement for City’s convenience upon written notice to Consultant thirty (30) days before termination or suspension. If termination or suspension is for City’s convenience, upon restart, an equitable adjustment may be made to Consultant’s compensation, if necessary. In the event of termination by City hereunder, the City shall pay Consultant for Services actually provided up to the date of termination.

In either event, Consultant shall terminate the Services according to a schedule acceptable to City.

ARTICLE 7- COMMUNICATIONS

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

Consultant: Bilbrey Construction, Inc.
832 S. Ludlow Street  
Dayton, Ohio 45402  
Attention: Rob Lemaster, President

City: City of Dayton  
Division of Civil Engineering  
P.O. Box 22  
101 West Third Street  
Dayton, Ohio 45402  
Attention: Andrew Marks, Senior Engineer II

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

ARTICLE 8- NON DISCRIMINATION

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

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

ARTICLE 9- CONFIDENTIALITY

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

To the extent permitted by law, each party agrees that for two (2) years following the date of disclosure of the confidential or proprietary information, it shall not disclose such information of the other to any third party without the other party’s written consent. During this two-year period, each party shall protect the confidential or proprietary information in the same manner that it protects its own confidential information of a similar nature. Each party agrees that it shall only copy the confidential or proprietary information to the extent necessary to perform the work and services contracted for pursuant to this Agreement.

Nothing in this Section shall prohibit or limit either party’s use or disclosure of confidential or proprietary information: (i) previously known to it without an agreement of confidentiality, (ii) independently developed by it, (iii) acquired by it from a party that is not, to the other party’s knowledge, under an obligation not to disclose such information, (iv) that is or becomes publicly available through no breach of this Agreement by the other party, (v) when
such disclosure is required by an order of a Court or under state or federal law, or (vi) when such disclosure is authorized in writing by a party to this Agreement.

ARTICLE 10- OWNERSHIP OF DOCUMENTS & INTELLECTUAL PROPERTY

Except as otherwise provided in this Agreement, documents and reports prepared by Consultant as part of the Services shall become the sole and exclusive property of City upon payment.

Consultant shall retain its rights in standard scripts, databases, computer software, and other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of Consultant.

ARTICLE 11- GENERAL PROVISIONS

A. Waiver

A waiver by either 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.

B. Delay

Neither 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, pandemics; wars, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and inability to procure permits, licenses, or authorization from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either City of Consultant under this Agreement.

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.

C. Governing Law & 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 suit regarding this Agreement must be brought in a court of competent jurisdiction in Montgomery County, Ohio.

D. Meetings and Evaluation

Consultant shall meet with City’s designees at such times designated by City to review and discuss performance of this Agreement. Consultant shall cooperate with City in all respects
concerning the review and monitoring of Consultant’s performance pursuant to this Agreement.

E. Independent Contractor

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

Consultant understands and agrees that it is not a City employee, and therefore, will not be entitled to, nor will it make any claim for, any of the emoluments of employment with the City of Dayton. Further, Consultant will be solely responsible to withhold and pay all applicable local, state, federal taxes and Workers’ Compensation Insurance. Consultant is not a “public employee” for the purpose of the Ohio Public Employees Retirement System (“OPERS”) membership.

F. Assignment

Consultant shall not assign any rights or duties under this Agreement without the prior written consent of 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 consultants, associates, and subcontractors to assist in the performance of the Services.

G. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Consultant.

H. Amendment

This Agreement may be amended by mutual agreement between the parties. No amendment shall be effective unless it is reduced to writing, executed by a duly authorized representative of City and Consultant, approved by the City’s Director of Public Works, and, if required or applicable, approved by the Commission of the City of Dayton, Ohio and in accordance with any applicable funding source requirements.

I. Effect of Conflicting Documents

In the event any conflict between this Agreement and any term or condition found within any other document; including, but not limited to Exhibits A and B, the terms and conditions of this Agreement shall control.

J. Entire Agreement/Integration
This Agreement together with Exhibits A, B, C, D, E, and F represents the entire and integrated Agreement between City and Consultant. This Agreement supersedes all prior and contemporaneous communications, representations, agreements or contracts, whether oral or written, relating to the subject matter of this Agreement. This contract will be governed by 2 C.F.R. 200.317-200.326 and Appendix II in addition to 2 C.F.R. 200.303, 200.330-332 and 2 C.F.R. 200 Subpart F in accordance with CARES requirements.

ARTICLE 12 - DAVIS-BACON ACT

The Consultant shall pay the prevailing wage rates of the project locality, as determined by the Davis-Bacon Act of 1931 ("Davis-Bacon Act"). Consultant shall comply with the provisions, obligations, and is subject to the remedies and penalties of the Davis-Bacon Act relating to the payment of prevailing wages. Attached to this Agreement as Exhibit D are the current prevailing rates of wages. City shall, within seven (7) business days after receipt of a notice of a change in prevailing rates, notify the Consultant of the change. The Consultant shall make the necessary adjustment in the prevailing wage rate and shall pay any wage increase during the term of the Agreement.

Within ten (10) days of the Consultant being notified to proceed with the Agreement, the Consultant shall provide the City’s prevailing wage coordinator a schedule of dates during the term of the Agreement on which wages will be paid to employees working on the project.

Consultant shall also submit monthly payroll reports with each invoice for payment, which reports shall be certified by the Consultant that the payroll is correct and complete and the wage rates shown are not less than those required by the Contract. Consultant shall be responsible for submitting all payroll reports of the Consultant’s subcontractors, containing the name, address, and social security number of each employee of the Consultant and the Consultant’s subcontractors paid for the work. The payroll report shall list the number of hours each employee worked each day on the project during the reporting period, the total hours each week on the project, the employee’s hourly rate of pay, job classification, fringe benefits, and all deductions from wages and net pay. The payroll report shall also list each fringe benefit and state if it is paid in cash to the employee or to a named plan. Consultant and the Consultant’s subcontractors shall also submit apprenticeship agreements for all apprentices utilized on the project.

ARTICLE 13 - CONTRACT BOND

The contract bond labeled Exhibit E which is attached hereto and incorporated herein must be signed, notarized, and returned to the City, four original copies, before construction begins.

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

CITY OF DAYTON, OHIO

__________________________________________
City Manager

BILBREY CONSTRUCTION, INC.

By: ________________________________
Title: President

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

_______________, 20__
Min./Bk. _______ Pg. _____

________________________________________
Clerk of the Commission

Approved as to Form and Correctness:

9/11/2020

X John Musto for
City Attorney

Signed by: Musto, John
City Manager's Report

From 6210 - Police Director  
Supplier, Vendor, Company, Individual  
Name United States Army Special Operations Command (USSO COM)  
Address PO Box 70660  
Ft. Bragg, NC 26307-5000

Date September 23, 2020  
Expense Type Service Agreement  
Total Amount $22,886.46 Estimated Revenue

Fund Source(s) Fund Code(s) Fund Amount(s)
General Fund 10000-6210-22611-71 $22,886.46

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

Description

Officer Overtime Service Agreement with The United States Army Special Operations Command (USSO COM)

City Commission approval is requested for a Service Agreement with the United States Army Special Operations Command (USSO COM) for off duty police officer services. The USSO COM requests services for officer overtime for security and traffic control during various training events, all in locations within the municipal corporation limits of the City of Dayton, Ohio beginning September 20, 2020 through September 24, 2020.

The Agreement is for 319 officer hours at a rate of $66.70 per hour, 19 sergeant hours at a rate of $77.36 per hour and 108 Night Differential hours at a rate of $1.29 per hour. The contract total estimated revenue is $22,886.46 NOT TO EXCEED $30,000.00 thus requires Commission approval.

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

The Certificate of Revenue is attached.

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 10/2019
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information:  Name United States Army Special Operations Command
Address PO Box 70660
City Fort Bragg State NC Zip+4 26307 - 5000
Customer # USSO COM Address Location # P-1

Federal ID# ____________________

Revenue Information:  Fund 10000 Organization 6210 Revenue 22611 Program 71

Contract Information:  Contract Start Date 9/20/2020 Contract Expiration Date 9/24/2020

Billing Information:  Rate: Officer rate $66.70 - X
Sgt rate $77.36 - X
Lt. Rate $89.71
Night Diff rate $1.29 - X
Vehicle $13.00

Monthly (1st month of billing) ____________________________________
Quarterly (1st month of quarter) ____________________________________
Semi-annual (1st month of half) ____________________________________
Annual (1st month of billing) ____________________________________

Other (explain) To be Invoiced (Est. Revenue $22,886.46 Not to Exceed $30,000.00)
Rate Change Date n/a Rate Change Amount n/a

Description of Services (wording on invoice): To provide security and traffic control for various events for the United States Army Special Operations Command in various locations all within the municipal corporation limits of the City of Dayton, Ohio beginning on Sunday, September 20, 2020 through Thursday, September 24, 2020.

Departmental Approval ____________________

TO BE COMPLETED BY FINANCE

Revenue Contract Number 5-COM Auditor Latema J. Date 9/11/2020

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

Director of Finance ____________________
SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS
OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, AND 30

1. REQUISITION NUMBER
W911PT0215082

2. CONTRACT NO.
H0245620F0431

3. AWARD/EFFECTIVE DATE
09-Sep-2020

4. ORDER NUMBER

5. SOLICITATION NUMBER
W911PT0215082

6. SOLICITATION ISSUE DATE

7. FOR SOLICITATION INFORMATION CALL:

a. NAME

8. TELEPHONE NUMBER (No Dial Code)

9. ISNUED BY

ISSUCCOM REGIONAL CONTRACTING OFFICE (DS)
P.O. BOX 70660
ATTN: DEBRA L. STOKES
FORT BRAGG, NC 28307-5000

TEL: 910 643 5525
FAX:

10. THIS ACQUISITION IS
X UNRESTRICTED OR 
SET ASIDE: 100% FOR:

WOMEN-OWNED SMALL BUSINESS (WOSB)
ELIGIBLE UNDER THE WOMEN-OWNED
SMALL BUSINESS PROGRAM

HUBZONE SMALL BUSINESS
EDWOSB
NAICS:
922120
SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS

11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED

12. DISCOUNT TERMS
Net 30 Days

13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)

13b. RATING
SEE ITEM 9

14. METHOD OF SOLICITATION
RFQ
IFS
RFP

15. DELIVER TO
RECEIVING SECTION
LAMONT RD BLDG D 8000
MARK SHIPMENTS/INVOICES WITH CONTRACT NUMBER
FT. BRAGG, NC 28007-5000

16. ADMINISTERED BY

17a. CONTRACTOR CODE
1QMG1

18a. PAYMENT WILL BE MADE BY
KO GPC (JC)
GOVT MC************XX
JOSEPH CONRAD
FORT BRAGG, NC 28307-5000

17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER

18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a. UNLESS BLOCK BELOW IS CHECKED

19. ITEM NO.

20. SCHEDULE OF SUPPLIES/ SERVICES

21. QUANTITY

22. UNIT

23. UNIT PRICE

24. AMOUNT

SEE SCHEDULE

25. ACCOUNTING AND APPROPRIATION DATA

See Schedule

26. TOTAL AWARD AMOUNT (For Govt Use Only)

$30,000.00

27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3, 52.212-6 ARE ATTACHED.

27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4, FAR 52.212-6 IS ATTACHED.

28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED.

29. AWARD OF CONTRACT: REF. OFFER DATED 09-Sep-2020. YOUR OFFER ON SOLICITATION (BLOCK 6), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS. SEE SCHEDULE

30a. SIGNATURE OF OFFEROR/CONTRACTOR

30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT)

30c. DATE SIGNED

31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)

31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT)
Debra L. Stokes / Contracting Officer
TEL: 910 643 5525
EMAIL: debra.l.stokes@navy.mil

31c. DATE SIGNED
09-Sep-2020

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO

PREVIOUS ebenfalls NOT APPROVED AS TO FORM AND CORRECTNESS

AUTHORIZED FOR LOCAL REPRODUCTION

CITY ATTORNEY

20 Min. Book Page

CLERK OF THE COMMISSION
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<td>SEE SCHEDULE</td>
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**32a.** QUANTITY IN COLUMN 21 HAS BEEN
- [ ] RECEIVED
- [ ] INSPECTED
- [ ] ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED.

**32b.** SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE

**32c.** DATE

**32d.** PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE

**32e.** Mailing Address of Authorized Government Representative

**32f.** Telephone Number of Authorized Government Representative

**32g.** E-mail of Authorized Government Representative

**33.** SHIP NUMBER

**34.** VOUCHER NUMBER

**35.** AMOUNT VERIFIED CORRECT FOR
- [ ] COMPLETE
- [ ] PARTIAL
- [ ] FINAL

**36.** PAYMENT

**37.** CHECK NUMBER

**38.** S/R ACCOUNT NUMBER

**39.** S/R VOUCHER NUMBER

**40.** PAID BY

**41a.** I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT

**41b.** SIGNATURE AND TITLE OF CERTIFYING OFFICER

**41c.** DATE

**42a.** RECEIVED BY (Print)

**42b.** RECEIVED AT (Location)

**42c.** DATE REC'D (YY/MM/DD)

**42d.** TOTAL CONTAINERS
STATEMENT OF OBJECTIVES

1. Off-duty police officers are needed to perform police-related functions pursuant to the authority of Section 35.27 of the Revised Code of General Ordinances of the City of Dayton; and because public safety requires the use of off-duty police personnel to perform police-related functions.

2. Scope of Services/Event Information
   a. Dayton Ohio police offices shall provide security and traffic control at various events for the United States Army Special Ops Command, all in locations within the municipal corporation limits of the City of Dayton, Ohio beginning on Sunday, September 20, 2020 through Thursday, September 24, 2020.

3. Chain of Authority / Command
   a. The City's Chief of Police or authorized representative shall have final authority for determining the availability of off-duty police personnel and the number and rank of such police personnel needed to provide an adequate level of security, traffic control and/or crowd control for the specified date(s) and location(s).
   b. All police personnel assigned pursuant to this Agreement shall remain subject to the authority of the City's Chief of Police, and shall act and respond in accordance with established City police procedures, rules and regulations. The duties and responsibilities of the police personnel assigned pursuant to this Agreement, including chain of command duties and responsibilities, shall be determined in accordance with the City's established police procedures, rules and regulations.
   c. Off-duty police personnel assigned pursuant to this Agreement may be reassigned, without notice to other locations and/or to perform other police services, functions or duties as required by the City's established police procedures, rules and regulations or by exigent circumstances requiring a police response.

4. Estimated Costs
   a. $66.70 per hour for each police officer
   b. $77.36 per hour for each police sergeant; and
   c. $89.71 per hour for each police lieutenant;
   d. $1.29 per hour additional for night differential and $13.00 per vehicle per hour, when applicable.
   e. Work hours requested and invoiced will include travel time, up to a maximum of thirty (30) minutes per officer, per shift, from the designated Dayton Police Department District to and from the requested coverage location.
   f. ESTIMATED COST: $22,886.46 (319 Officer Hours @ $66.70 per hr.; 19 Sgt. Hours @ $77.36 per hr.; 108 Night Differential Hours @ $1.29 per hr.)
ITEM NO 0001  SUPPLIES/SERVICES  QUANTITY  UNIT  UNIT PRICE  AMOUNT
Dayton Police Officer Overtime Hours  1  Each  $30,000.00  $30,000.00 NTE

FOB: Destination
PURCHASE REQUEST NUMBER: W81DPT02516235
PSC CD: S206

ACRN AA
CIN: W81DPT025162350001

NET AMT
$30,000.00

INSPECTION AND ACCEPTANCE TERMS
Supplies/services will be inspected/accepted at:

CLIN  INSPECT AT  INSPECT BY  ACCEPT AT  ACCEPT BY
0001  Destination  Government  Destination  Government

DELIVERY INFORMATION
CLIN  DELIVERY DATE  QUANTITY  SHIP TO ADDRESS  DODAAC / CAGE
0001  POP 19-SEP-2020 TO 24-SEP-2020  N/A  RECEIVING SECTION
LAMONT RD BLDG 0-1900
MARK SHIPMENTS/INVOICES WITH CONTRACT NUMBER
FT. BRAGG, NC 28307-5000
910-643-1463
FOB: Destination
W81DPT
ACCOUNTING AND APPROPRIATION DATA

AA: 97 0 0100 565A SG-SJ50 012415 ZZ 252C W81DPT 0251 6235 K3WC S31129
AMOUNT: $30,000.00

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<th>CIN</th>
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CLAUSES INCORPORATED BY REFERENCE

52.204-2 Security Requirements AUG 1996
52.204-9 Personal Identity Verification of Contractor Personnel JAN 2011
52.204-19 Incorporation by Reference of Representations and DEC 2014
  Certifications.
52.204-21 Basic Safeguarding of Covered Contractor Information JUN 2016
  Systems
52.204-23 Prohibition on Contracting for Hardware, Software, and JUL 2018
  Services Developed or Provided by Kaspersky Lab and Other
  Covered Entities.
52.204-25 Prohibition on Contracting for Certain Telecommunications AUG 2020
  and Video Surveillance Services or Equipment.
52.212-4 Contract Terms and Conditions--Commercial Items OCT 2018
52.222-3 Convict Labor JUN 2003
52.222-19 Child Labor -- Cooperation with Authorities and Remedies JAN 2020
52.223-6 Drug-Free Workplace MAY 2001
52.223-18 Encouraging Contractor Policies To Ban Text Messaging JUN 2020
  While Driving
52.225-13 Restrictions on Certain Foreign Purchases JUN 2008
52.232-1 Payments APR 1984
52.232-8 Discounts For Prompt Payment FEB 2002
52.232-11 Extras APR 1984
52.232-39 Unenforceability of Unauthorized Obligations JUN 2013
52.232-40 Providing Accelerated Payments to Small Business DEC 2013
  Subcontractors
52.233-1 Disputes MAY 2014
52.233-3 Protest After Award AUG 1996
52.233-4 Applicable Law for Breach of Contract Claim OCT 2004
52.242-15 Stop-Work Order AUG 1989
52.243-1 Changes--Fixed Price AUG 1987
252.203-7000 Requirements Relating to Compensation of Former DoD SEP 2011
  Officials
252.203-7002 Requirement to Inform Employees of Whistleblower Rights SEP 2013
252.204-7000 Disclosure Of Information OCT 2016
252.204-7003 Control Of Government Personnel Work Product APR 1992
252.204-7009 Limitations on the Use or Disclosure of Third-Party OCT 2016
  Contractor Reported Cyber Incident Information
252.204-7012 Safeguarding Covered Defense Information and Cyber DEC 2019
  Incident Reporting
252.225-7001 Buy American And Balance Of Payments Program-- Basic DEC 2017
252.225-7002 Qualifying Country Sources As Subcontractors DEC 2017
252.225-7048 Export-Controlled Items JUN 2013
252.232-7010 Levies on Contract Payments DEC 2006
CLAUSES INCORPORATED BY FULL TEXT

WAGE DETERMINATION:

The Service Contract Labor Standards statute is applicable to this order as it applies to the entire schedule of services provided in accordance with Federal Acquisition Regulations (FAR) Part 22 and FAR Clause 52.212-5 (et al). Wage Determination (WD) 2015-4377, Revision 01, dated 01/31/2017 (subject to revision) is issued by the U.S. Department of Labor (DOL) OR similar WD applicable at principle place of performance, as applies. This WD is available online at https://beta.sam.gov/wage-determination/2015-4732 and shall be considered fully incorporated with this order. The contractor is responsible to ensure all wages paid under this order are in compliance with provisions and protections of eligible employees pursuant to the statute. The contractor is responsible to ensure the accuracy and currency of applicable WD(s) over the course of performance. For example, if the contractor adds eligible labor category employees to the order through modification or other circumstance(s), the contractor shall ensure continued statute compliance, and further, the contractor shall identify to Contracting Officer any such added labor category title(s), occupational code(s), and labor category title(s). The contractor shall also timely notify the Contracting Officer of revision(s) issued to applicable WD(s) and other relevant data related to enforcement of labor laws. Failure to do so may result in cancellation/termination of the order.

AUTHORIZED CHANGES:

NO ONE OTHER THAN THE CONTRACTING OFFICER IS AUTHORIZED TO CHANGE THE SCOPE OR SPECIFICATIONS TO THIS CONTRACT. ANY CHANGES MADE TO THE CONTRACT WITHOUT WRITTEN AUTHORIZATION FROM THE CONTRACTING OFFICER WILL NOT BE SANCTIONED BY THE U.S. GOVERNMENT. ANY MONETARY CONSIDERATION AS A RESULT OF CHANGES MADE WITHOUT AUTHORIZATION FROM THE CONTRACTING OFFICER WILL BE BORNE BY THE CONTRACTOR OR THIRD PARTY MAKING THE CHANGE AS DETERMINED BY THE CONTRACTING OFFICER.

52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (DEVIATION 2018-O0021) (AUG 2020)

(a) Comptroller General Examination of Record. The Contractor shall comply with the provisions of this paragraph (a) if this contract was awarded using other than sealed bid, in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes
clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(b)(1) Notwithstanding the requirements of any other clauses of this contract, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (b)(1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—


(ii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(iii) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115-91).

(iv) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2020) (Section 889(a)(1)(A) of Pub. L. 115-232).

(v) 52.219-8, Utilization of Small Business Concerns (OCT 2018) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $700,000 ($1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(vi) 52.222-21, Prohibition of Segregated Facilities (APR 2015).

(vii) 52.222-26, Equal Opportunity (SEP 2016) (E.O. 11246).


(x) 52.222-37, Employment Reports on Veterans (FEB 2016) (38 U.S.C. 4212).

(xi) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.


(B) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).


(xvi) 52.222-54, Employment Eligibility Verification (OCT 2015) (E.O. 12989).

(xvii) 52.222-55, Minimum Wages Under Executive Order 13658 (DEC 2015).


(B) Alternate I (JAN 2017) of 52.224-3.


(xxi) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (MAY 2014) (42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xxii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the contractor MAY include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

52.232-36  PAYMENT BY THIRD PARTY (MAY 2014)

(a) General.

(1) Except as provided in paragraph (a)(2) of this clause, the Contractor agrees to accept payments due under this contract, through payment by a third party in lieu of payment directly from the Government, in accordance with the terms of this clause. The third party and, if applicable, the particular Governmentwide commercial purchase card to be used are identified elsewhere in this contract.

(2) The Governmentwide commercial purchase card is not authorized as a method of payment during any period the System for Award Management (SAM) indicates that the Contractor has delinquent debt that is subject to collection under the Treasury Offset Program (TOP). Information on TOP is available at http://fms.treas.gov/debt/index.html. If the SAM subsequently indicates that the Contractor no longer has delinquent debt, the Contractor may request the Contracting Officer to authorize payment by Governmentwide commercial purchase card.

(b) Contractor payment request.

(1) Except as provided in paragraph (b)(2) of this clause, the Contractor shall make payment requests through a charge to the Government account with the third party, at the time and for the amount due in accordance with those
clauses of this contract that authorize the Contractor to submit invoices, contract financing requests, other payment requests, or as provided in other clauses providing for payment to the Contractor.

(2) When the Contracting Officer has notified the Contractor that the Governmentwide commercial purchase card is no longer an authorized method of payment, the Contractor shall make such payment requests in accordance with instructions provided by the Contracting Officer during the period when the purchase card is not authorized.

(c) Payment. The Contractor and the third party shall agree that payments due under this contract shall be made upon submittal of payment requests to the third party in accordance with the terms and conditions of an agreement between the Contractor, the Contractor's financial agent (if any), and the third party and its agents (if any). No payment shall be due the Contractor until such agreement is made. Payments made or due by the third party under this clause are not payments made by the Government and are not subject to the Prompt Payment Act or any implementation thereof in this contract.

(d) Documentation. Documentation of each charge against the Government's account shall be provided to the Contracting Officer upon request.

(e) Assignment of claims. Notwithstanding any other provision of this contract, if any payment is made under this clause, then no payment under this contract shall be assigned under the provisions of the assignment of claims terms of this contract or the Assignment of Claims Act of 1940 (31 U.S.C. 3727, 41 U.S.C. 6305).

(f) Other payment terms. The other payment terms of this contract shall govern the content and submission of payment requests. If any clause requires information or documents in or with the payment request, that is not provided in the third party agreement referenced in paragraph (c) of this clause, the Contractor shall obtain instructions from the Contracting Officer before submitting such a payment request.

(End of clause)

52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

www.acquisition.gov

(End of clause)

52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.

(b) The use in this solicitation or contract of any Defense Federal Acquisition Regulation (48 CFR 2) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(End of clause)
PAYMENT OF VOUCHER

The Department of Law request payment of outstanding invoices for legal services in the amount of $3,191.00.

We recently received notification of three (3) invoices ($855.50) from November 2018, ($2,271.50) from December 2019 and ($64.00) from February 2020 that have not been paid. The Law Department has no record of receiving the invoices in our office at the time of service. We were able to confirm that the invoices were valid. The vendor does not dispute that original invoices were never sent.

The Law Department ask that the City Commission authorize payment to Calfee Halter & Griswold, LLP. A Certificate of Funds is attached.

Approved by City Commission

Clerk

Date

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

**x** New Contract

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<tr>
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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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| Fund Code: 10000 Fund 5200 Org 1152 Acct 63 Act XXXX Loc  
| Amount: |
| Fund Code: XXXX Fund XXXX Org XXXX Acct XXXX Act XXXX Loc  

**Attach additional pages for more FOAPALS**

**Vendor Name:** Caffee Halter & Griswold, LLP

**Vendor Address:** 1405 East Sixth Street Cleveland OH 44114

**Street:**  

**City:**  

**State:**  

**Zipcode + 4:**  

**Federal ID:** 340732302

**Commodity Code:** 95605

**Purpose:** Payment of past due invoices

**Contact Person:** Regina D. Blackshear

**Law - Civil**

**Department/Division:**  

**Date:** 9/3/2020

**Originating Department Director's Signature:**

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

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

**Finance Director Signature:**

**Date:** 9/14/2020

**CF Prepared by:**

**Date:** 9/14/2020

**CF/CT Number:** CF220-172

Finance Department

October 18, 2011
For services rendered and expenses incurred through November 30, 2018, being briefly described in the attached Memorandum of Services.

P.O. No. 1800622

<table>
<thead>
<tr>
<th>Matter Summary</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>CERTIFICATION APPLICATION FOR GOVERNMENTAL AGGREGATORS</td>
<td>855.50</td>
</tr>
<tr>
<td>Total Fees</td>
<td>$855.50</td>
</tr>
</tbody>
</table>

Total Invoice Amount $855.50
MEMORANDUM OF SERVICES

CERTIFICATION APPLICATION FOR GOVERNMENTAL AGGREGATORS

<table>
<thead>
<tr>
<th>Date</th>
<th>Rate</th>
<th>Hours</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>11/13/2018</td>
<td>NTA</td>
<td>0.60</td>
<td>Exchanging emails with working group regarding revised aggregation certificate; review of Ohio law regarding same.</td>
</tr>
<tr>
<td>11/13/2018</td>
<td>MTK</td>
<td>0.60</td>
<td>Prepare renewal application for governmental aggregation certification.</td>
</tr>
<tr>
<td>11/14/2018</td>
<td>MTK</td>
<td>0.70</td>
<td>Draft Exhibit A-4 and compile renewal application for client review.</td>
</tr>
<tr>
<td>11/14/2018</td>
<td>MTK</td>
<td>0.30</td>
<td>Confer with PUCO Staff concerning Dayton renewal application.</td>
</tr>
<tr>
<td>11/15/2018</td>
<td>NTA</td>
<td>0.50</td>
<td>Exchanging emails with Staff and working group regarding Dayton's aggregation program continuing even though Dayton does not currently have any offer.</td>
</tr>
<tr>
<td>11/15/2018</td>
<td>MTK</td>
<td>0.20</td>
<td>Finalize renewal application for Bridget Findley review.</td>
</tr>
</tbody>
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Summary of Hours

<table>
<thead>
<tr>
<th>Name</th>
<th>Rate</th>
<th>Hours</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALEXANDER, N. TREVOR (NTA )</td>
<td>295.00</td>
<td>1.10</td>
<td>324.50</td>
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<tr>
<td>KEANEY, MARK T. (MTK )</td>
<td>295.00</td>
<td>1.80</td>
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<tr>
<td>Totals:</td>
<td></td>
<td>2.90</td>
<td>$855.50</td>
</tr>
</tbody>
</table>
REMITTANCE ADVICE

Please send your remittance to:  

Calfee, Halter & Griswold LLP  
The Calfee Building  
1405 East Sixth Street  
Cleveland, OH 44114-1607  

Tax Identification Number: 34-0732302

<table>
<thead>
<tr>
<th>Invoice Summary</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Fees for Services</td>
<td>855.50</td>
</tr>
<tr>
<td>Total Expenses Incurred</td>
<td>0.00</td>
</tr>
</tbody>
</table>

**Total Invoice Amount** $855.50

Amount Enclosed $ _

PLEASE RETURN THIS PAGE WITH YOUR PAYMENT

THANK YOU

**Matter Summary**

Current recap of outstanding invoices

<table>
<thead>
<tr>
<th>Invoice Date</th>
<th>Invoice Number</th>
<th>Invoice Amount</th>
<th>Payments &amp; Adjustments</th>
<th>Balance Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>12/31/2018</td>
<td>276427</td>
<td>855.50</td>
<td>0.00</td>
<td>855.50</td>
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<tr>
<td><strong>Totals</strong></td>
<td></td>
<td><strong>$855.50</strong></td>
<td><strong>$0.00</strong></td>
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</table>

EXPENSES INCURRED ON YOUR ACCOUNT FOR WHICH BILLS HAVE NOT YET BEEN RECEIVED WILL APPEAR ON A LATER INVOICE

CDI: 439818  
3 of 3
For services rendered and expenses incurred through December 31, 2019, being briefly described in the attached Memorandum of Services.

P.O. No. 1900559

<table>
<thead>
<tr>
<th>Matter Summary</th>
<th>Amount</th>
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<tbody>
<tr>
<td>DAYTON PUCO UPDATES</td>
<td>2,271.50</td>
</tr>
<tr>
<td><strong>Total Fees</strong></td>
<td><strong>$2,271.50</strong></td>
</tr>
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</table>

**Total Invoice Amount**  **$2,271.50**
MEMORANDUM OF SERVICES

DAYTON PUCO UPDATES

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Hours</th>
<th>Rate</th>
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<tbody>
<tr>
<td>12/2/2019</td>
<td>Analytical review of PURO weekly entries and orders and Ohio Power Siting Board pending cases for any potential cases and/or entries that invoke the City of Dayton's interests.</td>
<td>0.80</td>
<td>$236.00</td>
<td>$265.50</td>
</tr>
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<td>12/3/2019</td>
<td>Analytical review of PURO weekly entries and orders and Ohio Power Siting Board pending cases for any potential cases and/or entries that invoke the City of Dayton's interests.</td>
<td>0.90</td>
<td>$265.50</td>
<td>$737.50</td>
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<tr>
<td>12/5/2019</td>
<td>Analytical review of PURO weekly entries and orders and Ohio Power Siting Board pending cases for any potential cases and/or entries that invoke the City of Dayton's interests.</td>
<td>2.50</td>
<td>$737.50</td>
<td>$1,843.75</td>
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<tr>
<td>12/30/2019</td>
<td>Analytical review of PURO weekly entries and orders and Ohio Power Siting Board pending cases for any potential cases and/or entries that invoke the City of Dayton's interests.</td>
<td>1.90</td>
<td>$560.50</td>
<td>$1,065.00</td>
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<tr>
<td>12/31/2019</td>
<td>Analytical review of PURO weekly entries and orders and Ohio Power Siting Board pending cases for any potential cases and/or entries that invoke the City of Dayton's interests.</td>
<td>1.60</td>
<td>$472.00</td>
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Summary of Hours

<table>
<thead>
<tr>
<th>HEHMEEYER, KARI D</th>
<th>Hours</th>
<th>Rate</th>
<th>Total</th>
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<tbody>
<tr>
<td>(KDH)</td>
<td>7.70</td>
<td>295.00</td>
<td>2,271.50</td>
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<td>Totals:</td>
<td>7.70</td>
<td></td>
<td>$2,271.50</td>
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</table>
REMITTANCE ADVICE

Please send your remittance to: Calfee, Halter & Griswold LLP
The Calfee Building
1405 East Sixth Street
Cleveland, OH 44114-1607

Tax Identification Number: 34-0732302

<table>
<thead>
<tr>
<th>Invoice Summary</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Total Fees for Services</td>
<td>2,271.50</td>
</tr>
<tr>
<td>Total Expenses Incurred</td>
<td>0.00</td>
</tr>
</tbody>
</table>

**Total Invoice Amount** $2,271.50

Amount Enclosed $______

PLEASE RETURN THIS PAGE WITH YOUR PAYMENT

THANK YOU

Matter Summary
Current recap of outstanding invoices

<table>
<thead>
<tr>
<th>Invoice Date</th>
<th>Invoice Number</th>
<th>Invoice Amount</th>
<th>Payments &amp; Adjustments</th>
<th>Balance Due</th>
</tr>
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<tbody>
<tr>
<td>12/17/2019</td>
<td>291582</td>
<td>708.00</td>
<td>0.00</td>
<td>708.00</td>
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<td>01/08/2020</td>
<td>292318</td>
<td>2,271.50</td>
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<td>2,271.50</td>
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<td>Totals</td>
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</table>

EXPENSES INCURRED ON YOUR ACCOUNT FOR WHICH BILLS HAVE NOT YET BEEN RECEIVED WILL APPEAR ON A LATER INVOICE
For services rendered and expenses incurred through February 29, 2020, being briefly described in the attached Memorandum of Services.

P.O. No. P1900559

<table>
<thead>
<tr>
<th>Matter Summary</th>
<th>Amount</th>
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<tbody>
<tr>
<td>IN THE MATTER OF THE APPLICATION OF DAYTON POWER AND LIGHT PUCO CASE NO. 18-1875-EL-GRD, 18-1876-EL-WVR, &amp; 18-1877-EL-AAM</td>
<td>$64.00</td>
</tr>
<tr>
<td><strong>Total Fees</strong></td>
<td><strong>$64.00</strong></td>
</tr>
</tbody>
</table>

**Total Invoice Amount** $64.00
MEMORANDUM OF SERVICES

IN THE MATTER OF THE APPLICATION OF DAYTON POWER AND LIGHT PUCO
CASE NO. 18-1875-EL-GRD, 18-1876-EL-WVR, & 18-1877-EL-AAM

NTA  0.20  $64.00  Exchanging emails with DP&L regarding settlement conference.

<table>
<thead>
<tr>
<th>Summary of Hours</th>
<th>Hours</th>
<th>Rate</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALEXANDER, N. TREVOR (NTA)</td>
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<td>320.00</td>
<td>64.00</td>
</tr>
</tbody>
</table>

Totals: 0.20  $64.00
REMITTANCE ADVICE

Please send your remittance to: Calfee, Halter & Griswold LLP
The Calfee Building
1405 East Sixth Street
Cleveland, OH 44114-1607

Tax Identification Number: 34-0732302

Invoice Summary

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Fees for Services</td>
<td>64.00</td>
</tr>
<tr>
<td>Total Expenses Incurred</td>
<td>0.00</td>
</tr>
</tbody>
</table>

Total Invoice Amount $64.00

Amount Enclosed $

PLEASE RETURN THIS PAGE WITH YOUR PAYMENT

THANK YOU

Matter Summary

Current recap of outstanding invoices

<table>
<thead>
<tr>
<th>Invoice Date</th>
<th>Invoice Number</th>
<th>Invoice Amount</th>
<th>Payments &amp; Adjustments</th>
<th>Balance Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>03/09/2020</td>
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<td>Totals</td>
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<td>$64.00</td>
<td>$0.00</td>
<td>$64.00</td>
</tr>
</tbody>
</table>

EXPENSES INCURRED ON YOUR ACCOUNT FOR WHICH BILLS HAVE NOT YET BEEN RECEIVED WILL APPEAR ON A LATER INVOICE
By: ..................................................  No: ..................................................

AN ORDINANCE

Amending Sections 35.31, 35.32, 35.35, 35.371, 35.373, and
35.49 of the Revised Code of General Ordinances in Order to
Adopt Certain Findings with Respect to a Third Generation
Disparity Study, Establishing a Rebuttable Presumption that
Businesses Owned by Minorities and Females are
Disadvantaged, Renewing a Process for Participation by
Small/Disadvantaged Business Enterprises in Contracting with
the City of Dayton in Construction and Goods and Services,
and Declaring an Emergency.

WHEREAS, In the City of Richmond v. Croson, 488 U.S. 469 (1989), the United
States Supreme Court held that state and local government’s use of race in contracting
decisions would be subject to a “strict scrutiny standard” whereby a “compelling interest” in
remedying discrimination must be shown, and any remedies adopted must be “narrowly
tailored” to the evidence of discrimination; and

WHEREAS, In March of 1991, D.J. Miller & Associates completed a disparity study
for the City with conclusions and recommendations for enacting programs to remedy past and
ongoing discrimination against minority and women owned businesses, which were adopted
by the Commission on December 31, 1991; and

WHEREAS, In February of 2007, MGT of America, Inc. (“MGT”) was retained to
conduct a Second-Generation Disparity Study for the City in order to determine whether
minority and women owned businesses (“MBE” and “WBE”) were underutilized in City
procurement activities; and

WHEREAS, MGT completed the disparity study for the City with conclusions and
recommendations for revising and enacting further provisions to remedy past and ongoing
discrimination against MBEs and WBEs, which were adopted by the Commission on
September 29, 2010, and set to expire within ten years of adoption; and

WHEREAS, In December 2017, the City again contracted with MGT to conduct a
Third Generation Disparity Study for the City in order to determine whether MBEs and
WBEs were underutilized in City procurement activities and to collect and develop evidence
regarding the nature and extent of discrimination against MBEs and WBEs in the market
areas relevant to the City; and

WHEREAS, MGT, among other things, researched statutes and laws, periodicals,
legislative histories, historical and economic literature, official reports from government and
civic organizations and conducted numerous personal and confidential interviews with
persons knowledgeable about contracting with the City. MGT also conducted a review of the
City’s Procurement Enhancement Program (“PEP”); established data parameters; reviewed
policies, procedures and programs, and conducted market area and utilization analyses,
determined the availability of qualified firms; analyzed the utilization and availability data for
disparity and statistical significance; conducted a telephone interview survey, one on one interviews, focus groups and a public hearing; conducted a statistically valid regression analysis; conducted a disparity analysis of the relevant private market; collected and analyzed anecdotal information; identified narrowly tailored race and gender based remedies; and, prepared a final report of the study; and

WHEREAS, MGT determined that there is a strong basis to support the continuation of the City’s PEP to address the compelling governmental interest of remedying past discrimination and that the City’s PEP is narrowly tailored to meet Constitutional strict scrutiny review; and

WHEREAS, On November 6th, 2019, the Commission heard a presentation from MGT in connection to the Third General Disparity Study, at which time the Commission receive the Final Report, along with the findings and recommendations of the study; and

WHEREAS, The statistical data included in the Third-Generation Disparity Study and the anecdotal and other evidence presented to the Commission identified discrimination against MBEs and WBEs in the marketplace relevant to the City in construction and goods and services; and

WHEREAS, The Third-Generation Disparity Study identified factors which impair MBEs and WBEs, and that are also common to small business generally; and

WHEREAS, A strong Small/Disadvantaged Business Enterprise (“S/DBE”) program is central to maintaining a narrowly-tailored program to promote MBE and WBE utilization; and

WHEREAS, To provide for the immediate preservation of the public peace, property, health or safety and for the usual daily operation of City Departments, it is necessary that this Ordinance take effect immediately; now, therefore,

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

Section 1. That Sections 35.31, 35.32, 35.35, 35.371, 35.373, and 35.49 of the Revised Code of General Ordinances be amended to read as follows:

Sec. 35.31. Adoption of the findings and conclusions regarding minority and woman owned business enterprises.

The Commission adopts the findings and conclusions of the MGT of America Consulting, LLC Final Report, titled “A Third-Generation Disparity Study for the City of Dayton, Ohio” and by this reference incorporates herein the Third-General Disparity Study.

Sec. 35.32. Findings.

On the basis of the foregoing and upon full consideration of all relevant facts, the Commission finds that:
(A) Minorities and women continue to show disparities in entry into self-employment, after controlling for age, wealth, and other variables.

(B) Minorities and women that were self-employed earned significantly less than non-minority males, after controlling for other factors.

(C) Past discrimination in the private sector and in the City’s overall contracting process in construction and goods and services has had the effect of underutilization of minority and woman owned business enterprises in contracts awarded by the City and has contributed to the underdevelopment of such businesses.

(D) The present effects of such past discrimination continue to impede the development of businesses owned by minorities and women.

(E) Certain issues, such as difficulties in the financing and bonding markets and problems obtaining credit and insurance, impede the development of minority and woman owned businesses, as well as certain nonminority small business enterprises.

(F) The City has long recognized the importance of small business enterprises to its economic vitality and has adopted several measures and programs in support thereof including, but not limited to, Citywide Development Corporation, the Office of Small Business Ombudsmen, the Small Business Advisory Council, the Small Business Retention Program and the Small Business Assistance Program.

(G) It is in the best interest of the City to continue to promote the equitable utilization of small business enterprises, minority business enterprises, and women business enterprises in City contracting to combat the lingering effects of past discrimination and improve the City’s economic viability.

(H) The requirements of this division are necessary to overcome the present effects of past discrimination and are designed to achieve the goal of equitable utilization of small businesses and minority and women-owned businesses in contracting with the City.

**Sec. 35.35 Definitions.**

For the purposes of this division, the following terms shall have the following meanings:

*Annual receipts.* Total income (or in the case of a sole proprietorship, gross revenue) plus cost of goods sold as these terms are defined and reported on Internal Revenue Service tax return forms.

*Annual eligible spend for construction.* The total amount spent annually on construction projects, excluding money spent from state and federal funds and other funding streams that limit or prohibit local goal setting. Funds excluded from the annual spend for construction include, but are not limited to, those projects that are bid with a federal DBE goal as specified by the Federal Aviation Administration, Federal Highway Administration, Environmental Protection Agency, and Ohio Department of Transportation. The federal and state programs are further clarified in the PEP Policies and Procedures Manual.
Annual eligible spend for goods and services. The total amount spent annually for goods and services, excluding funds expended for the following, as further clarified in the PEP Policies and Procedures: payments to governmental entities or governmental agents; payments made because of negotiated settlements and required by the court system or state or federal government; payments made to the following regulated utilities: railroads, telephones, electric and natural gas; those purchases that are not for the following: equipment, materials, supplies, services; payments made because of prompt pay penalties; right-of-way payments made to owner for the purchase of land and/or property; and; sole source expenditures.

Award. Legislation or City Manager action authorizing the award of a contract by the city, provided, however, that the contract will not become binding upon the city, and the city will incur no liability under it, until it has been duly executed by the contractor and the city with all required submittals, including insurance and bonding, if applicable.

Bid. Written quotations, proposals, or offers by a bidder or contractor to perform or provide labor, materials, equipment, goods, or services to the city for a price submitted in response to a competitive bidding solicitation issued by the city.

Bids. Any individual, business enterprise, partnership, joint venture, or corporation that submits a bid to the city as defined herein.

Certification. The criteria and process for participation in the PEP.

Certifying agency. A private or public entity designated by the Executive Director or the Human Relations Council as an agency eligible to certify businesses for the city as an MBE, WBE, and/or SBE.

City. The City of Dayton, Ohio.

Commercially useful function. The execution by a minority or women owned business enterprise, which contracts with the city, or subcontracts with another business enterprise which contracts with the city, of a distinct element of the work of the contract by actually performing, managing, and supervising the work involved, excepting a business enterprise which serves as a conduit for another.

Construction. The process of building, altering, repairing, remodeling, improving or demolishing any public structure or building or other public improvements of any kind to any public real property, excepting the routine operation, routine repair or routine maintenance of structures, buildings or real property.

Council. The members of the Human Relations Council of the City of Dayton, Ohio, as appointed by the City Commission pursuant to Section 32.13 of the Revised Code of General Ordinances.

Contract. Any agreement between the city and a person or business enterprise to provide or procure labor, materials, equipment, goods and/or services to, for, or on behalf of the city. A "contract" shall include an agreement between the city and a person or business enterprise to perform professional, architectural and engineering services, construction related services,
or fund the performance of such services. Except as otherwise specifically defined in this section, a "contract" shall not include:

(a) Awards made by the city with federal or state grant or city general fund monies to a non-profit entity to which the city offers assistance, guidance, or supervision on a project or program and the recipient of the grant award uses the grant monies to provide services to the community;

(b) Sales transactions where the city sells or purchases real or personal property; or,

(c) Donations of materials, equipment, goods, or services to or by the city.

**Contractor.** Any person or business entity that shall enter into a contract with the city, including all partners and all joint ventures of such person or entity.

**Counting towards goals.** The procedure for calculation of participation in the PEP as determined by the Program Policies and Procedures.

**Dayton Local Business.** A business located within the corporate limits of the city that has filed or paid a payroll or earnings tax in the most recent calendar quarter and is a taxpayer in good standing with the City of Dayton.

**Dayton Local Small Business.** A business that:

(a) Is certified by the Executive Director of the Council, or his/her designee, as an MBE, WBE, and/or SBE; and
(b) Is a Dayton Local Business; and

(c) Is a general construction contractor, which has annual average gross receipts for each of the preceding three years of not more than $15,000,000.00; or,

(d) Is a business engaged in specialty trade and services which has annual average gross revenue for each of the immediately preceding three years of not more than $5,000,000.00.

**Executive Director of the Council.** The individual appointed by the Commission pursuant to Section 32.18 of the Revised Code of General Ordinances of the City of Dayton.

**Good faith efforts.** The steps undertaken, prior to submission of a bid, to obtain MBE, WBE, and/or SBE participation for subcontracting opportunities related to the bid proposal, and submitted as defined in the program policies and procedures.

**Goods.** All things, including specially manufactured goods, which are movable at the time of identification to the contract for sale, other than the money in which the price is to be paid, investment securities and things in action, and excluding land or a permanent interest in land.
Joint Venture. An association of two or more persons, partnerships, corporations, and any combination of them, whereby they combine their expertise, property, capital, efforts, skills and knowledge, which is also:

(a) Comprised of at least one certified MBE, WBE, or SBE;

(b) Evidenced by a notarized, written agreement executed by all joint venture partners;

(c) Approved by the Executive Director of the Council, or his/her designee;

(d) Compliant with any additional criteria established by the council in its policies and procedures; and

(e) Comprised of member businesses that have either different race ownership, different gender ownership, or both.

Lower tier subcontractor. A subcontractor who is not in privity of contract with a contractor but is in privity of contract with another subcontractor.

Lower tier supplier. A supplier who is not in privity of contract with a contractor but is in privity of contract with a subcontractor or a supplier.

Minority group. Any of the following racial or ethnic groups which are referenced in the Second-Generation Disparity Study for the City of Dayton, including:

(a) African-Americans or Black Americans;

(b) Hispanic Americans;

(b) Asian-Americans; and

(c) Native Americans.

Minority business enterprise ("MBE"). A business:

(a) Which is at least 51 percent owned by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least 51 percent of the stock of which is owned by one or more members of one or more minority groups, whose management and daily business operations are controlled by one or more members of one or more minority groups;

(b) Which, in the case of a general construction contractor, has annual average gross receipts for each of the preceding three years of not more than $33,500,000.00; or, in the case of a business engaged in a specialty trade and services has annual average gross revenue over each of the immediately preceding three years of not more than $15,000,000.00; or, in the case of a business engaged in goods and services has an annual average employee count of 100 or less;
(c) Which can demonstrate that the personal net worth of each owner whose ownership and control are relied upon for certification does not exceed $1,402,500.00 exclusive of the value of the owner's interest in the MBE and the individual's equity in his or her primary place of residence; and

(d) Which has been certified as an MBE by the Executive Director of the Council or his/her designee.

Personal net worth. The net value of the assets of an individual remaining after total liabilities are deducted, not including the individual's ownership interest in an applicant or participating MBE, WBE or SBE firm or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Policies and procedures. The policies and procedures adopted by the Commission herein, including any future amendments, additions or deletions made by the Council pursuant to its authority and consistent with this division.

Procurement. Buying, purchasing, renting, leasing or otherwise acquiring any goods, services and/or construction, including a description of requirements, selection and solicitation of sources, preparation and award of contracts and all phases of contract administration.

Professional services. Those services within the scope of the practices of architecture, investment banking, professional engineering, planning, landscape architecture, land, surveying, the medical arts, management and analysis, accounting or auditing, law, psychology or any other similar kind or type of professional practice. For purposes of this division, professional services shall not include investment management services.

Responsive bid. A quotation, proposal, solicitation, or offer that meets specifications, including, if applicable, any project participation goal as set out in the bid packet specifications.

Services. Those services within the scope of the practices included within professional services and general services.

Small business enterprise ("SBE"). A business that:

(a) Is an independent and continuing enterprise for profit, performing a commercially useful function;

(b) Has been in existence for not less than one year;

(c) In the case of a general construction contractor, has annual average gross receipts for each of the preceding three years of not more than $33,500,000.00; or, in the case of a business engaged in a specialty trade and services has annual average gross revenue over each of the immediately preceding three
years of not more than $15,000,000.00; or, in the case of a business engaged in
goods and services has an annual average employee count of 100 or less; in
determining the average annual gross revenues of a small business enterprise,
the Council shall include gross receipts of each of its affiliates. The gross
revenue standard shall be adjusted from time to time consistent with the United
States Small Business Administration ("SBA") standards for small businesses.

(d) Certifies that its individual owner(s) whose ownership and control are relied
upon for SBE certification has a personal net worth that does not exceed
$1,402,500.00; and,

(e) Which has been certified as an SBE by the Executive Director of the Council
or his/her designee.

Subcontractor. Any person or business enterprise providing goods, labor, or services
to a contractor if such goods, labor or services are procured in fulfillment of the contractor's
obligations arising from a contract with the city. Subcontractor includes every level of
subcontracting required to fulfill a contract with the city.

Women business enterprise ("WBE"). A business enterprise:

(a) Which is at least 51 percent owned by one or more women, or, in the case of a
publicly held corporation, 51 percent of the stock of which is owned by one or more women,
whose management and daily business operations are controlled by one or more women;

(b) Which, in the case of a general construction contractor, has annual average
gross receipts for each of the preceding three years of not more than $33,500,000.00; or, in
the case of a business engaged in a specialty trade and services has annual average gross
revenue over each of the immediately preceding three years of not more than $15,000,000.00;
or, in the case of a business engaged in goods has an annual average employee count of 100 or
less;

(c) Which can demonstrate that the personal net worth of each owner whose
ownership and control are relied upon for WBE certification does not exceed $1,402,500.00
exclusive of the value of the owner's interest in the WBE and the individual's equity in his or
her primary place of residence; and

(d) Which has been certified as a WBE by the Executive Director of the Council
or his/her designee.
Sec. 35.371 Annual participation goals for goods and services.

(A) In an effort to remedy the present effects of past identified discrimination in the Dayton market area and contracting and procurement with the City, as found in the Third-Generation Disparity Study reported by MGT of America, Inc., on November 6, 2019 and in order to provide MBEs, WBEs and SBEs equal opportunity and access to participate in all City procurement of goods and services, including professional services, the Council shall annually establish aspirational goals for MBE, WBE and SBE participation in contracting for City goods and services.

(B) The following factors shall be utilized as part of the methodology for establishing annual aspirational MBE, WBE and SBE goals for the MBE, WBE and SBE programs for goods and services:

1. The number of minority, women and small businesses in the State of Ohio;
2. The availability of minority, women and small businesses in the State of Ohio willing and able to do business with the City;
3. Annual participation figures for minority, women and small businesses in both City contracting and the private marketplace;
4. Analysis of disparities between the availability and participation of willing and able minority, women and small businesses in both the City and the private marketplace;
5. The findings and conclusions contained in the Third-Generation Disparity Study and other reports undertaken by the City, organizations, and governmental entities relating to the Dayton market area;
6. Review and analysis of the reports generated by the Council or other City departments in accordance with Policies and Procedures for Outreach and Business Assistance to Subcontractors by the Council; and,
7. Other relevant factors.

(C) The initial annual aspirational MBE, WBE and SBE goals for goods and services shall be as follows, indicated in percentage of annual eligible spend for goods and services.

1. Goals for goods: 6.5% MBE; 1.5% WBE; 10% SBE.
2. Goals for services (including professional services and other services): 6.5% MBE; 1.5% WBE; 10% SBE.
(D) These annual aspirational goals shall be reviewed each year by September 15 by the Council. The annual goal setting process shall include consultation with the PEP Oversight Committee.

(E) These goals are only intended to be benchmarks for evaluating overall performance of the program on an annual basis. These participation goals are not and shall not be quotas.

(F) For purposes of determining or satisfying annual participation goals, only participation of MBEs, WBEs and SBEs certified by the Executive Director of the Council or his/her designee, or a Council-approved certification agency, shall be considered.

**Sec. 35.373 Annual participation goals for construction.**

(A) In an effort to remedy the present effects of past identified discrimination in the Dayton market area and contracting and procurement with the City, as found in the Third-Generation Disparity Study reported by MGT of America, Inc., November 6, 2019, and in order to provide MBEs, WBEs and SBEs equal opportunity and access to participate in all City procurement of construction, the Council shall annually establish aspirational goals for MBE, WBE or SBE participation in contracting for city procurement of construction.

(B) The following factors shall be utilized as part of the methodology for establishing annual aspirational goals for MBE, WBE and SBE programs for construction:

1. The number of minority, women and small businesses in the State of Ohio;

2. The availability of minority, women and small businesses in the State of Ohio willing and able to do business with the City;

3. Annual participation figures for minority, women and small businesses in both City contracting and the private marketplace;

4. Analysis of disparities between the availability and participation of willing and able minority, women and small businesses in both the City and the private marketplace;

5. The findings and conclusions contained in the Third-Generation Disparity Study and other reports undertaken by the City, organizations, and governmental entities relating to the Dayton market area;

6. Review and analysis of the reports generated by the Council or other City departments in accordance with the Policies and Procedures for Outreach and Business Assistance to Subcontractors by the Council; and,

6. Other relevant factors.
(C) The initial annual aspirational MBE, WBE and SBE goals for construction shall be as follows, indicated in percentage of Annual Eligible Spend for Construction: 13% MBE; 3% WBE; 20% SBE.

(D) These annual aspirational goals shall be reviewed each year by November 15 by the Council. The annual goal setting process shall include consultation with the PEP Oversight Committee.

(E) These overall goals are only intended to be benchmarks for evaluating overall performance of the program on an annual basis. These participation goals are not and shall not be quotas.

(F) For purposes of satisfying annual participation goals, only participation of MBEs, WBEs and SBEs certified by the Executive Director of the Council or his/her designee, or a Council-approved certification agency, shall be considered.

Sec. 35.49. Sunset provision.

This division shall expire on December 31, 2030, unless the Commission, after conducting a public hearing, finds that the purposes identified herein have not been achieved, in which case this division may be extended for an additional five-year period subject to the annual review provided for herein.

Section 2. That previously enacted Sections 35.31, 35.32, 35.35, 35.371, 35.373, and 35.49 of the Revised Code of General Ordinances are hereby repealed.

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

Passed by the Commission......................, 2020

Signed by the Mayor........................., 2020

__________________________
MAYOR OF THE CITY OF DAYTON, OHIO

Attest:

__________________________
Clerk of Commission

APPROVED AS TO FORM:

__________________________
City Attorney
September 16, 2020

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

FROM: Erica Fields, Executive Director
      Human Relations Council

RE: Third Generation Disparity Study

Attached for your review is legislation outlining the amended sections of the Revised Code of general Ordinances in order to adopt findings of the Third General Disparity Study and to provide authorization for the continuation of the City’s Procurement Enhancement Plan (PEP). The current legislation expires at the end of September 2020.

The Law Department has approved this legislation as to form and correctness. We request that this be placed on the September 23, 2020 Commission Calendar.

If you have any questions, please contact me at x1407.
A RESOLUTION

Authorizing the City Manager to Accept Federal Fiscal Years 2021 and 2022 Federal Aviation Administration Airport Improvement Project Grants from the United States Department of Transportation for Airport Improvement Projects at the James M. Cox Dayton International Airport and Dayton-Wright Brothers Airport on Behalf of the City of Dayton in an Amount Not to Exceed Twenty-Five Million Dollars and Zero Cents ($25,000,000.00).

WHEREAS, The United States Congress enacted the FAA Reauthorization Act of 2018 (H.R. 302), which is designed to provide grants for local airport improvements; and,

WHEREAS, The City of Dayton owns, operates and maintains the James M. Cox Dayton International Airport and the Dayton-Wright Brothers Airport; and,

WHEREAS, The local Airport Improvement Program at the James M. Cox International Airport and Dayton-Wright Brothers Airport includes undertaking certain projects such as pavement rehabilitation and related improvements, airfield and terminal improvements, land acquisition, master planning, equipment purchases, environmental study, safety, security, and other aviation-related projects; and,

WHEREAS, These projects will be funded by the United States Department of Transportation through Federal Aviation Administration Airport Improvement Project Grants (“AIP Grants”) in an aggregate amount not to exceed Twenty-Five Million Dollars and Zero Cents ($25,000,000.00), with an aggregate local cash match not to exceed Two Million Five Hundred Thousand Dollars and Zero Cents ($2,500,000.00) to be provided by City of Dayton Department of Aviation funds; and,

WHEREAS, As a result of the United States Department of Transportation and the Federal Aviation Administration’s proclivity to make AIP Grants needing immediate action, it is necessary to authorize the City Manager to accept the award of all AIP Grants on behalf of the City of Dayton during Federal Fiscal Years 2021 and 2022; now, therefore,

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

Section 1. That the City Manager or her designee is authorized to execute any and all documents and agreements on behalf of the City of Dayton, which are necessary to accept AIP Grants awarded by the United States Department of Transportation acting through the Federal Aviation Administration during Federal Fiscal Years 2021 and 2022 in an aggregate amount not to exceed Twenty Five Million Dollars and Zero Cents ($25,000,000.00), with an aggregate local cash match by the City of an amount not to exceed Two Million Five Hundred
Thousand Dollars and Zero Cents ($2,500,000.00), for the following Airport Improvement Program projects at the James M. Cox Dayton International Airport or the Dayton-Wright Brothers Airport: (a) pavement rehabilitation and related improvements, (b) airfield and terminal improvements, (c) land acquisition, (d) master planning, (e) equipment purchases, (f) environmental study, (g) safety, (h) security, and (i) other aviation-related projects.

ADMITTED BY THE COMMISSION .................................., 2020

SIGNED BY THE MAYOR .............................................., 2020

Mayor of the City of Dayton, Ohio

ATTEST:

________________________
Clerk of Commission

APPROVED AS TO FORM:

________________________
City Attorney
September 10, 2020

TO: Shelley Dickstein  
    City Manager

FROM: Gilbert Turner  
      Director of Aviation

SUBJECT: Resolution – FAA Airport Improvement Program for 2021-22

The Department of Aviation submits the attached Resolution for approval Commission approval. This Resolution, reviewed by the Law Department, is needed to ensure that the City can take immediate action to receive funding from the Federal Aviation Administration (“FAA”) under its Airport Improvement Grant Program (“AIP Program”) for projects at the Dayton International Airport and Dayton-Wright Brothers Airport.

This Resolution allows the City to meet the narrow timeline prescribed by the FAA for execution of the required agreement(s) to receive federal funds for Airport projects. As is common practice with AIP Program grants issued by the FAA, there is often a short turnaround time in which to execute an agreement, failure to return the executed agreement can result in revocation of the grant award.

To be proactive and capture as much AIP Program grant funding as possible for Airport projects, this Resolution allows the City Manager or her designee, to execute any documentation or agreements to timely react to the immediacy needed to secure funds under this program.

As always, please contact me at 454-8212 if additional information is needed.

Encl.

cc: Ms. Lofton  
    File
August 21, 2020

TO: Members of the City Commission

FROM: Greg Scott, President
City Plan Board

SUBJECT: Transmittal of Report for City Plan Board Case PLN2020-00292
Establish a HD-3 Historic Overlay District for the Hallmark and Meridian Buildings

Applicant: Kiya Patrick
Greater Dayton Premier Management
400 Wayne Avenue
Dayton, OH 45410

Description: Establish a HD-3 Historic Overlay District for the Hallmark Building at 714 Plymouth Avenue and the Meridian Building at 59 Central Avenue. The underlying zoning for property shall remain MMF Mature Multi-Family.

Board Action: Date: August 11, 2020 Decision: Recommended Approval

Attachments: 1. Plan Board Minute Record
2. Plan Board Case Report
3. Copy of Ordinance

If you have any questions, please contact Tony Kroeger at ext. 3673.

GS/tdk

c: Ms. Dickstein, Mr. Parlette, Ms. Lofton, Mr. Kinskey, Mr. Kroeger
August 14, 2020

TO: Rashella Lavender, Clerk of Commission  
Office of the City Commission

FROM: Tony Kroeger, Secretary  
City Plan Board

SUBJECT: Advertise Public Hearing for City Plan Board Case PLN2020-00292  
Establish a HD-3 Historic Overlay District for the Hallmark and Meridian Buildings

Applicant: Kiya Patrick  
Greater Dayton Premier Management  
400 Wayne Avenue  
Dayton, OH 45410

Description: Establish a HD-3 Historic Overlay District for the Hallmark Building at 714 Plymouth Avenue and the Meridian Building at 59 Central Avenue. The underlying zoning for property shall remain MMF Mature Multi-Family.

Board Action: Date: August 11, 2020  
Decision: Recommended Approval

Request: The Clerk is authorized by the R.C.G.O. to set the public hearing and provide the appropriate notice. **It is requested that the Public Hearing be scheduled for Wednesday, September 23, 2020 at 8:30 A.M.**

Advertising: Advertise Public Hearing on **Friday, August 21, 2020**

Advertise in a newspaper of general circulation and mail a notice to mailing list when the notice is published.

Attachments: Legal Notice  
Mailing List

If you have any questions, please contact me at ext. 3673. Thank you.

c: Case File, w/ attachment
City of Dayton
Office of the City Commission
City Hall • 101 West Third Street
Dayton, Ohio 45402
(937) 333-3636

Legal Notice

Notice is hereby given that the Dayton City Commission will hold a Public Hearing on Wednesday, September 23, 2020 at 8:30 A.M., or as soon thereafter as the hearing can begin. The hearing will be held in the City Commission Chambers on the Second Floor of City Hall, 101 West Third Street, Dayton, Ohio. However, if certain Covid-19 restrictions remain in place on September 23, the hearing will be held remotely by electronic means. The City of Dayton will make a determination regarding whether the hearing will be held remotely no later than September 22, 2020 and the decision will be posted on the City of Dayton website at www.daytonohio.gov. If you wish to attend, listen to, or speak at the hearing, please contact Tony Kroeger in the Department of Planning and Community Development at 937-333-3673 or tony.kroeger@daytonohio.gov by 3:00 P.M. on September 22, 2020 for information on how to do so.

Official Zoning Map Amendment Case: PLN2020-00292

Establish a HD-3 Historic Overlay District for the Hallmark Building at 714 Plymouth Avenue and the Meridian Building at 59 Central Avenue. The underlying zoning for property shall remain MMF Mature Multi-Family.

The proposed Official Zoning Map Amendment is available for public inspection in the Office of the City Commission and with the Secretary to the City Plan Board. Please direct inquiries on this subject to Tony Kroeger in the Department of Planning and Community Development at 937-333-3673 or tony.kroeger@daytonohio.gov.

By order of the City Commission of the City of Dayton, Ohio.

RASHELLA LAVENDER, CLERK
OFFICE OF THE CITY COMMISSION
1. PLN2020-00292 – Zoning Map Amendment: HD-3 Historic Overlay for 1.4325-acres at 59 Central & 714 Plymouth Avenues (Hallmark & Meridian Apartments)

Applicant: Greater Dayton Premier Management
c/o Kiya Patrick
400 Wayne Avenue
Dayton, OH 45410

Priority Land Use Board: North Central Planning District: Grafton Hill

Decision: Approved as Submitted

Staff Comments
Abigail Free presented the staff report. The Applicant requests a Zoning Map Amendment to add an HD-3 Historic Overlay which will protect the Hallmark and Meridian Apartments from demolition without approval by the Landmark Commission. The existing MMF Mature Multi-family residential shall remain. Both apartment building were constructed in the Bauhaus style and built in the mid-century (approx. 1950’s). Landmark Commission reviewed the case and recommended approval of the HD-3 Zoning Map Amendment.

Public Comments
Kiya Patrick, Greater Dayton Premier Management, 400 Wayne Avenue, 45410, explained that the properties were awarded competitive 9% tax credits and carry a 30-year affordability requirement and has no intention of demolishing the buildings in the next 40 years and it aware of implications of using federal funds for demolition.

Dan Barton, 338 Central Avenue, was hired to aid in applying for historic tax credits for the properties. Also, he is part of the effort to expand the Grafton Hill Historic District boundary. The HD-3 Overlay will allow for greater control over future renovations as opposed to a more strict HD-1 or HD-2 Overlay.

Board Discussion
Mr. Sauer asked why the HD-3 request is being limited to only the two properties. There will be a boundary expansion to the Grafton Hill Historic district reviewed by Plan Board in the future. This specific request will allow the property owner to apply for State Historic Tax Credits in September 2020.

Mr. Payne asked about demolition using federal funds. He also asked about any density reduction being proposed. It was clarified that the unit count will remain the same, however some dead space within units and common space will allow for larger, 2-bedroom units.

Board Action
A motion was made by Mr. Payne, seconded by Mr. Sauer and carried to find that the HD-3 Overlay Zoning Map Amendment request met the criteria cited in R.C.G.O. Section 150.125.7(1-8) as outlined in the staff report and therefore the Plan Board approved the request as submitted.

Mr. Paul Bradley Yes Mr. Matt Sauer Yes
Ms. Geraldine Pegues Yes Mr. Greg Scott Yes
Mr. Jeff Payne Yes Mr. Richard Wright Absent

Minutes approved by the City Plan Board on September 8, 2020.
Tony Kroeger, Secretary City Plan Board
August 11, 2020

CITY PLAN BOARD REPORT
CASE: PLN2020-00292

A Zoning Map Amendment to rezone 1.4325-acres at 59 Central Avenue and 714 Plymouth Avenue, known as the Hallmark Meridian Apartments from MMF Mature Multi-family to MMF/HD-3 Overlay. The HD-3 Overlay must also be approved by the Landmark Commission. This designation only governs the removal of a structure/demolition. The Grafton Hill National Register Historic District may be expanded to include the subject property and will be reviewed and approved by the SHPO. The addition of the HD-3 overlay will allow eligibility for State Historic Tax Credits.

Applicant: Greater Dayton Premier Management  
c/o Kiya Patrick  
400 Wayne Avenue  
Dayton, OH 45410

Owner: Same as Applicant

Priority Land Use Board: NorthCentral    Planning District: Grafton Hill

Board Authority:  
R.C.G.O. §150.125.1 – §150.125.11 City Plan Board actions for amendments to the Official Zoning Map

Applicable Plans and Policies:  
CitiPlan 20/20 (1999)

Agencies and Groups Contacted:  
Applicant and Owner  
Property Owners within 500 feet  
Grafton Hill Neighborhood Association

CITY PLAN BOARD REPORT
CASE: PLN2020-00292

CURRENT CONDITIONS

Existing Land Use & Zoning: Multi-family apartments (public housing); MMF Mature Multi-family

Surrounding Land Use and Zoning:  
North: Multi-family apartments; MMF Mature Multi-family  
South: Multi-family apartments; MMF Mature Multi-family  
East: Multi-family apartments; MMF Mature Multi-family  
West: Auto Sales & Service; MNC Mature Neighborhood Commercial


150.125.1 Authority for Amendments
The regulations imposed and the districts created under this Zoning Code may be amended from time to time by ordinance duly enacted by the City Commission. No such amendment shall be adopted except in accordance with the procedure specified in sub-sections 150.125.2 to 150.125.11, inclusive, of this Zoning Code. (Ord. 30515-05, passed 12-28-05)

STAFF ANALYSIS

Case Background:
The Applicant/Property Owner seeks to add an HD-3 Historic Overlay as an addition to the existing MMF Mature Multi-family residential district. The Zoning Code describes the HD-3 designation as follows:

150.345.2 Designation of Historic District.
The Landmarks Commission shall recommend to the City Plan Board the adoption or modification of a historic district overlay on all eligible areas in accordance with Section 150.125, Amendments. The boundaries of each such district shall be indicated on the official zoning map.

[...]

(C) The HD-3 Historic Designation Overlay (HD-3) is an overlay district for properties that have been determined by the Landmarks Commission, in accordance with sub-section 150.345.4 (C), be historically significant and by doing so, has determined that the loss of these properties is an irreversible act worthy of review. These properties collectively are called the Dayton Register of Historic Landmark Properties. (Ord. 30515-05, passed 12-28-05).

The HD-3 Designation requires verification of eligibility from the Landmarks Commission. At the July 23, 2020 Landmarks Commission meeting, the eligibility was approved.

Significance:
The following references to support the HD-3 Designation:
- 2020 Approval from the Landmark Commission
- Attached is the summary of significance provided by the Applicant.
- Mid-century Bauhaus style architecture

History:
The Grafton Hill planning district saw a surge in construction of dense, low amenity apartment blocks during the mid-century. Many of the existing historic houses suffered deterioration due to redlining. Large areas of land were easy to assemble and close to downtown, making Grafton Hill a prime location for multi-family housing. The Hallmark, built in 1947 and the Meridian, built in 1950, both Bauhaus style, were part of the multi-family redevelopment of area within eastern Dayton View. As the Dayton population hit its peak, the Hallmark and Meridian apartments were located close to public transportation
(trolleys) that could take workers quickly downtown, making it an affordable housing choice for blue collar employees. This area was later renamed Grafton Hill.

**Staff Comments:**
The owners would like to establish the building as an individual landmark for accessibility to historic tax credits. The HD-3 overlay is our least restrictive historic district designation and requires a COA for demolition only.

The Hallmark and Meridian Apartments are in the process of being reviewed by the Ohio State Historic Preservation Office (SHPO) to be added to the Grafton Hill National Register Historic District. An approval of the HD-3 overlay would provide local recognition by the City of Dayton.

Based on these factors, as well as the required standards listed below and the finding of eligibility of the Landmark Commission, staff recommends approval of the proposed zoning map amendment. This designation will recognize the significance of the property, require approval from the Landmark Commission for demolition, and potentially allow for a greater range of financing options. Therefore, **staff recommends approval** of this proposed zoning change.

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**REVIEW OF FINDINGS**

R.C.G.O. §150.125.7 Amendments to Change Zoning Districts or Zoning Classification of Properties

1. **The change in classification would be consistent with the Comprehensive Plan of the City or other plans and policies.**

The proposed change is supported by adopted plans and polices. Specifically:

*Landmark Preservation Task Force Report:*

- “Historic designation regulation provides protection against the potential loss on property value associated with neighboring incompatible uses.”

- “Historic designation protects against development that could damage property values.”

- “Historic designation drives economic development by attracting a creative class that attracts in its turn desirable new firms.”

2. **The change in classification would be consistent with the intent and purpose of this Zoning Code.**

This change is consistent with the zoning code which says the following:
150.345.1 Purposes.

The public interest calls for the preservation and protection of significant historical, architectural and archeological resources from Dayton’s and America’s histories that lie within our city. Buildings and places that tell us of the presence of our forebears add meaning and livability to our city as do handsome residential areas and orderly business districts. To accomplish this, it is necessary to provide a method whereby, with careful consideration for the rights of private property and only after thorough analysis of the objectives to be achieved, certain public controls are required for changes made to meaningful buildings or neighborhoods.

Therefore, historic overlay districts (HD-1, HD-2, HD-3) and their regulations are established in order to achieve these purposes:

(A) To promote and protect the health, safety, and general welfare of the public through the enhancement of property values, economic development, neighborhood stability, and the protection of property rights of all citizens.

(B) To preserve and enhance the varied architectural styles reflecting the distinct phases of the City of Dayton’s history.

(C) To preserve, restore, reconstruct, renovate and/or rehabilitate historically or architecturally significant or contributing historic buildings, structures, sites and objects (hereafter referred to as “property” or “properties”) in districts that possess integrity of location, design, setting, materials, workmanship, feeling, and association.

(D) To develop and maintain appropriate settings and environments for the properties and districts described in Section 150.345, Historic Overlay Districts.

(E) To this end, this Section authorizes the adoption of overlay historic districts and creates a Landmarks Commission, a Secretary to the Landmarks Commission and an Historic Preservation Officer to review and approve architectural modifications that affect the historic quality of such properties and districts.

This request meets the intent and purpose because it will ensure protection of a historically important asset and allowing for more funding sources for redevelopment.

3. The proposed amendment is made necessary because of changed or changing conditions in the area affected, and if so, the nature of such changed or changing conditions.

The amendment reflects a number of emerging conditions, including:

- Desire to preserve the building with a minimum level of historic zoning protection (HD-3).
• Desire to obtain historic tax credits to allow for renovation/updating the buildings.

4. **The uses that would be permitted on the property if it were reclassified would be compatible with the uses permitted on other property in the immediate vicinity.**

A historically designated building is compatible with uses permitted in MMF and the surrounding Grafton Hill historic district.

5. **The uses that would be permitted on the property if it were reclassified would have an adverse environmental or health impact on the immediate surrounding area in terms of acceptable air, noise, light, or water quality standards.**

Since this is an overlay designation, the existing use will remain and exhibits no adverse environmental or health impacts.

6. **Adequate utility, sewer, and water facilities, and all other needed public services exist or can be provided to serve the uses that would be permitted on a property if it were reclassified.**

Adequate utilities exist.

7. **The amount of vacant land with the same zoning classification as proposed for the subject property, particularly in the vicinity of the subject property, and any special circumstances, if any, make a substantial part of such vacant land unavailable for development.**

Since this is an overlay designation, this standard is not applicable.

8. **The proposed amendment would correct an error in the application of this Zoning Code as applied to the subject property.**

There is no error in the application of the Zoning Code as applied to the subject property.

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**ALTERNATIVES**

1. Recommend **approval** of the Zoning Map Amendment application and establish an HD-3 designation for the Hallmark and Meridian apartments as 59 Central and 714 Plymouth Avenues based on R.C.G.O. §150.125.7(1-8).

2. Recommend **denial** of the Zoning Map Amendment application to establish an HD-3 designation for the Hallmark and Meridian apartments as 59 Central and 714 Plymouth Avenues based on the board’s inability to make the findings under R.C.G.O. §150.125.7(1-8).
FUTURE ACTIONS
If the Plan Board recommends approval for the proposed zoning map amendments, the request will be forwarded on to the City Commission for public hearing.
A. Name of Applicant
Greater Dayton Premier Management (Dayton Metropolitan Housing Auth)
Mailing Address 400 Wayne Avenue
City Dayton State OH Zip Code 45410-1118
Daytime Phone Number (937) 910-7558 Fax Number ( )
Email Address kpatrick@dmha.org

Name of Property Owner (If Different from Applicant)
Mailing Address
City State Zip Code
Daytime Phone Number ( ) Fax Number ( )

B. Description of Property to be Rezoned
Address of Property 59 Central, 714 Plymouth
City of Dayton Lot Number(s) 7604, 7605, 7606, 7607, 7608, 7609 and a portion of 7610
Parcel I.D. Number(s) R72 06509 0001, R72 06509 0002, R72 06509 0003, R72 06509 0004,
R72 06509 0005, R72 06509 0006, R72 06509 0065 Deed & Declaration of Trust included
Size of Parcel(s) to be Rezoned in Acres: 1.4325 acres
Existing Zoning for Property MMF Proposed Zoning for Property HD3 Overlay
Existing Use of Property Apartment Residences
Proposed Use of Property Apartment Residences
Reason Zoning Change is Needed
Change is needed to facilitate eligibility for State Historic Tax Credits. An update of the
Grafton Hill National Register Historic District is in the SHPO approval-review process, and
includes the property into the National Register District, and that revision has received a letter
of approval by the City of Dayton Planning Department.

Interest of Applicant Kiya Patrick, Vice President-Development
C. Required Attachments

Vicinity Map (see instructions for format)

List of Property Owners (see instructions for format)

Site Plan (see instructions for format)

Mailing Labels (see instructions for format)

D. Authorization to Visit the Property

Site visits to the property by City representatives are essential to process this application. By signing below, the owner/applicant authorizes City representatives to visit and photograph the property described in this application.

E. Property Owner’s Signature (If Different from Applicant)

Digitally signed by Kiya Patrick
DN: cn=Kiya Patrick, o=Greater Dayton Premier Management, ou=Invictus Development,
email=kpatrick@gdpco.org, c=US
Date: 2020.07.07 22:47:12 -04'00'

Signature of Property Owner

Printed Signature of Property Owner

F. Certification and Applicant’s Signature

I hereby certify that the information contained in this application and all attachments is true and correct.

Signature of Applicant

Date

Printed Signature of Applicant
Summary Statement of Significance

The GRAFTON HILL HISTORIC DISTRICT (aka East Dayton View, Steele's Hill, OMB No. 1024-0018;of1986) is significant for both historical, cultural and architectural reasons. Architecturally, this relatively small area constitutes an excellent grouping and evolution of high style residences which date roughly from the 1847 through the increasingly dense mid-century modern construction lasting through 1970.

The Hallmark and Meridian Apartments exemplify this mid-century transition in Grafton Hill from large expensive single family residences, to dense mid-market housing. This transition impacted Grafton Hill more thoroughly that the western areas of Dayton View due to proximity of the Streetcar System, and large lots with deteriorating housing stock due to Federal Housing Redlining policies.

The eastern portion of Dayton View became known as Grafton Hill in the 1970s. The concept of this area as a separate neighborhood is a 1970s Dayton Planning Department strategy to encourage “urban villages” encouraging cohesiveness and rehabilitation in deteriorated neighborhoods. Both (Western) Dayton View, and (Eastern) Grafton Hill were separately encouraged to build neighborhood associations to cultivate grass-roots advocacy and recovery.

Impacting the course of development in this neighborhood was the introduction of the practice of Federally Institutionalized Redlining in Greater Dayton in 1937. This onerous practice of limiting financing in “High risk” neighborhoods were based on multiple factors (excerpt by NCRC.org below):

“From 1935 to 1939, government surveyors ... considered a variety of factors, including access to transportation and the quality of the housing. But a primary driver of the grading system was the racial and ethnic makeup of the neighborhood's residents... The HOLC maps show how local banks defined credit risks based on neighborhoods rather than on an individual's ability to repay a loan... That discrimination had a profound impact on the segregated structure of cities, the rise of suburbs as the American middle class moved away from central cities after World War II ...”

The neighborhood to the East (Belmont Park) was classed as B-Second Grade, and the area to the West was classified C-Third Grade, while other exclusively white neighborhoods were ranked A-First Grade. Only the poorest integrated and worker neighborhoods were ranked D-Fourth Grade.

Western and Eastern Dayton View (Grafton Hill) were historically non-exclusionary neighborhoods which included whites, Jews, Greeks, African Americans, other European immigrants, these low rankings set the stage for a sustained decline in value of the existing housing stock.

By the 1950s, the impact of Redlining was apparent and the district suffered widespread property value collapse. Many houses were then subdivided into rentals, for student housing for the Dayton Art Institute Art College and the Grandview Hospital Osteopathic Residents Training Programs.

Especially in the historically integrated “Eastern Dayton View” (Grafton Hill) section, low values for the aging historic houses presented an attractive redevelopment scenario: large inexpensive lots available near a burgeoning downtown, a shortage of inexpensive rental housing that was close to public transportation. These conditions offered developers the opportunity to produce low-cost housing for clerical workers in downtown business headquarters.
Summary Statement of Significance-cont.

This redevelopment opportunity was encouraged in “Western Dayton View” and “Eastern Dayton View” (Grafton Hill) throughout the 1950s through 1970s, as the then city planners envisioned a clearing away of the old housing stock in favor of dense, low amenity mid-century apartment blocks. These newer structures were lacking outdoor greenspace, private outdoor areas, or sufficient parking for the increasing auto-centric lifestyles of the mid-19th Century. Zoning was changed to encourage dense development in Grafton Hill. These trends resulted in the construction of the following early and mid-century structures:

• Plymouth Apartments, 1924, Plymouth at Central, Tudor Revival, contributing
• Commodore Apartment-Hotel, 1926, 522 West Grand Avenue, Sulivanesque, contributing
• Grand Place Apartment-Hotel, 1929, 729 West Grand Avenue, Flemish Revival, contributing
• Hallmark Apartments, 1947, 79 Central at 714 Plymouth Avenue, Bauhaus style, contributing
• Meridian Apartments, 1950, 59 Central Avenue, Bauhaus style, contributing
• The Metropolitan, 1951 Apartment, 59 Central Avenue, Bauhaus style, contributing
• Riverstone Apartment, 1965, 111 Grafton Avenue, displacing three original houses, Bauhaus style, contributing
• Rockwood Apartments, 1966, 515 West Grand Avenue, displacing three original houses, Bauhaus style, contributing
• Park Layne Apartments, 1969, 531 Belmonte Park North, Mid Century Modern, contributing
• 465 West Grand, 1971, 465 Grand Avenue, displacing four original houses, Bauhaus style, contributing in 2021

By the mid 1970’s, it was apparent the population in Dayton was in decline, from a peak of 262,000 in 1960 to 182,000 in 1990. The demand for small apartments crowded onto small lots began to subside with employer movement out of downtown, and this type of high density residential construction ended. High vacancies began to be a ongoing problem in these Mid-Century buildings, and their condition began to deteriorate.

Currently, the district has a strong and dedicated neighborhood association which is determined to completely rehabilitate the district by taking advantage of depressed cost historic housing stock, while leveraging State and Federal Historic Tax Credits to rehabilitate larger apartments. Rehabilitated housing stock has been targeted to accommodate Grand View Hospital trainee Residents, and address the early 21st Century demand for post-suburban downtown “walk able” neighborhood living.

Architecturally, the Grafton Hill Historic District contains some of the finest examples of turn-of-the-century architecture in Dayton, juxtaposed with high-density mid-century modern architecture. Historically, it represents a unique combination or architectural evolution, deserving of preservation and rehabilitation.

See copies of historic maps in documents (1-Hallmark-Meridian Landmark Nomination-Preliminary NR Application-Plat Maps- V3)
1947 Increasing Density in Housing Stock typified by the construction of the Hallmark Apartment
1950 Increasing Density in Housing Stock typified by the construction of the Meridian Apartment

Merridien Apartments, 59
Central Avenue, 1950
Apartment, contributing
AN ORDINANCE

Amending the Official Zoning Map to Establish a HD-3 Historic Overlay District for the Hallmark Building at 714 Plymouth Avenue and the Meridian Building at 59 Central Avenue, and Declaring an Emergency.

WHEREAS, Application has been made to establish a HD-3 Historic Overlay District for the Hallmark Building at 714 Plymouth Avenue and the Meridian Building at 59 Central Avenue; and

WHEREAS, The HD-3 Historic Overlay District recognizes the Hallmark and Meridian Buildings for their integrity of design, materials, construction and association with the development of downtown commerce; and

WHEREAS, The site shall retain its underlying zoning of Mature Multi-Family; and

WHEREAS, The City Plan Board at its August 11, 2020 meeting recommended approval of the HD-3 Historic Overlay District, Case PLN2019-00292; and

WHEREAS, For the immediate preservation of the public peace, property, health and safety, and in order to protect the historical significance of the Hallmark and Meridian Buildings it is necessary that this Ordinance take effect at the earliest possible date; now, therefore,

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

Section 1. In accordance with the recommendation of the City Plan Board, as made in Case PLN2020-00292, a HD-3 Historic Overlay District is established for the Hallmark Building at 714 Plymouth Avenue and the Meridian Building at 59 Central Avenue. The underlying zoning for the properties shall remain Mature Multi-Family. The City’s official zoning map shall be redrawn to reflect this change.

Section 2. For the reasons stated in the preamble hereof, this Ordinance is declared to be an emergency measure and shall take effect immediately upon its passage.

Passed by the Commission........................................................., 2020

Signed by the Mayor............................................................., 2020

Mayor of the City of Dayton, Ohio

Attest:

Clerk of the Commission

Approved as to form:

City Attorney
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RIVER CORRIDOR CONDOMINIUM
729 W RIVerview AVE
DAYTON OH 45406

ROYAL ARMS LTD
45 N 4TH ST STE 200
COLUMBUS OH 43215

SALEVIEw ASSOC LLC
8322 ARBORCREST DR
CINCINNATI OH 45236

SENIOR RESOURCE CONNECTION
222 SALEM AVE
DAYTON OH 45406

SUNSHINE REAL ESTATE INVESTORS LLC
PO BOX 750401
DAYTON OH 45475

THE BUSINESS CORPORATE LINK
GROUP INC
4755 FAWNWOOD RD
DAYTON OH 45429

TURNER DARYL E
2604 FAIRPORT AVE
DAYTON OH 45406

W C JONES FOUNDATION INC
9905 59TH AVE
FLUSHING NY 11368

WALL JAMES F TR
7000 PETERS PKWY
DAYTON OH 45414

WILBURN MICHAEL
727 RIVERVIEW AVE #603
DAYTON OH 45406

WILMINGTON SAVINGS FUND SOCIETY
FSB DBA CHRISTIANA TRUST
1 MORTGAGE WAY MS SV03
MOUNT LAUREL NJ 08054

Dan Barton
338 Central Avenue
Dayton, OH 45406

Grafton Hill Neighborhood Assoc.
c/o John Edinger
227 E. Belmonte Park
Dayton, OH 45405

Kiya Patrick
Greater Dayton Premier Mgmt.
400 Wayne Avenue
Dayton, OH 45410