I. AGENDA SCHEDULE

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

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

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

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

1. Purchase Orders:

   AVIATION
   A1. ADB Safegate Americas Holdings, Inc. dba ADB Safegate
       Americas LLC (airfield signs, lighting and control equipment as
       needed through 12/31/21) $3,000.00
1. (Cont’d):

A2. Enterprise Roofing & Sheet Metal Company (roofing maintenance, repairs and related items)  
    $30,000.00

A3. Johnson Controls US Holdings LLC dba Johnson Controls Fire Protection LP (fire alarm annual maintenance services, sprinkler inspections and repairs as needed through 12/31/21)  
    $31,000.00

A4. Koorsen Fire and Security (inspection and servicing of fire extinguishers as needed through 12/31/21)  
    $47,000.00

A5. Pelton Environmental Products, Inc. (Gorman-Rupp pump, parts, accessories and service as needed through 12/31/21)  
    $15,000.00

A6. Pickrel Brothers, Inc. (plumbing and related supplies as needed through 12/31/21)  
    $5,000.00

A7. Springfield Overhead Door LLC (overhead door maintenance and related services)  
    $35,000.00

**INFORMATION TECHNOLOGY**

B1. Dell Marketing LP (extended warranty on Dell M1000E chassis, MXL network switches, and PowerEdge R730 Server)  
    $10,203.17

**POLICE**

C1. Friends Service Company, Inc. dba FriendsOffice (office furniture including delivery and installation services)  
    $20,337.46

**RECREATION**

D1. Zan Creative, Inc. dba Nova Creative Group (marketing and rebranding services as needed through 12/31/21)  
    $22,000.00

**WATER**

E1. Daniel Juday LLC. (departmental training as needed through 12/31/21)  
    $17,500.00

E2. Step CG LLC (implementation services for the configuration and installation of network switch hardware)  
    $85,991.49

E3. Process Pump & Seal, Inc. (Chesterton split mechanical seals and spare parts as needed through 12/31/21)  
    $60,000.00

E4. Biss Nuss, Inc. (five slaker grit screw replacements)  
    $151,715.00

E5. VWR Scientific Products Corporation (laboratory equipment and supplies as needed through 12/31/21)  
    $25,000.00

-Depts. of Aviation, Information Technology, Police, Recreation and Water.  
 *Total: 558,747.12*
C. Revenue to the City:

2. Dayton Board of Education (Dayton Public Schools) – Contract
   Modification – for off-duty police to provide traffic control, security, and/or crowd control in various school locations within the municipal corporation limits of the City of Dayton, Ohio - Department of Police. $30,000.00
   (Thru 6/30/22)
   (Paid to the City)

IV. LEGISLATION:

   Emergency Ordinances – First and Second Reading

3. No. 31924-21 Levying Special Assessments for the Purpose of Acquiring, Constructing and Improving Certain Public Improvements in the City of Dayton in Cooperation with the Dayton Regional Energy Special Improvement District and Declaring an Emergency.

4. No. 31925-21 Authorizing and Approving a Cooperative Agreement and Special Assessment Agreement, and Declaring an Emergency.

5. No. 31926-21 Authorizing the Purchase or Real Estate at 2800 Philadelphia Drive and Declaring an Emergency.

   Emergency Resolution – First and Second Reading

VI. MISCELLANEOUS:

ORDINANCE NO. 31927-21

RESOLUTION NO. 6615-21

IMPROVEMENT RESOLUTION NO. 3599-21

INFORMAL RESOLUTION NO. 994-21
City Manager’s Report

From 2730 – PMB/Procurement
Date October 13, 2021
Expense Type Purchase Order
Total Amount $558,747.12

Name See Below
Address See Below

2021 Purchase Orders

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

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

Description

AVIATION

(A1) P0210463 – ADB SAFEGATE AMERICAS HOLDING, INC. dba ADB SAFEGATE AMERICAS LLC, COLUMBUS, OH

- Airfield signs, lighting and control equipment as needed through 12/31/2021.
- These goods are required to maintain airfield lighting and signage at the Dayton International Airport per Federal Aviation Administration (FAA) regulations.
- ADB Safegate Americas Holding, Inc. dba ADB Safegate Americas LLC is the authorized regional distributor of ADB airfield signs, lighting and control equipment; therefore, this purchase was negotiated.
- This amendment increases the previously authorized amount of $23,000.00 by $3,000.00 for a total not to exceed $26,000.00 and therefore requires City Commission approval.
- The Department of Aviation recommends approval of this order.

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

Signatures/Approval

Approved by City Commission

<table>
<thead>
<tr>
<th>Division</th>
<th>Name</th>
<th>Date</th>
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<tbody>
<tr>
<td></td>
<td>Melina A. Wilson, CPA</td>
<td>10.5.21</td>
</tr>
<tr>
<td>Department</td>
<td>Dina A. Shaw</td>
<td></td>
</tr>
<tr>
<td>City Manager</td>
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</table>

FORM NO. MS-16

Updated 06/2016
AVIATION (CONTINUED)

(A2) P0211003 – ENTERPRISE ROOFING & SHEET METAL COMPANY, DAYTON, OH

- Roofing maintenance, repairs and related items.
- These goods and services are required to maintain roofing for the Department of Aviation.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 20015N with pricing through 3/31/2024.
- This amendment increases the previously authorized amount of $10,000.00 by $30,000.00 for a total not to exceed $40,000.00 and therefore requires City Commission approval.
- Enterprise Roofing & Sheet Metal Company qualifies as a Dayton local entity.
- The Department of Aviation recommends approval of this order.

<table>
<thead>
<tr>
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<th>Fund Source(s)</th>
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<td>2021</td>
<td>DIA Airport Operations</td>
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<td>$30,000.00</td>
</tr>
</tbody>
</table>

(A3) P0210706 – JOHNSON CONTROLS US HOLDINGS LLC dba JOHNSON CONTROLS FIRE PROTECTION LP, MILWAUKEE, WI

- Fire alarm annual maintenance services, sprinkler inspections and repairs as needed through 12/31/2021.
- These goods and services are required to maintain fire alarm and sprinkler systems for the Department of Aviation.
- Rates are in accordance with the State of Ohio Term Schedule Contract pricing #800820 and Index #STS846.
- This amendment increases the previously authorized amount of $19,000.00 by $31,000.00 for a total not to exceed $50,000.00 and therefore requires City Commission approval.
- The Department of Aviation recommends approval of this order.

<table>
<thead>
<tr>
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<th>Fund Source(s)</th>
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</tbody>
</table>

(A4) P0210704 – KOORSEN FIRE AND SECURITY, VANDALIA, OH

- Inspection and servicing of fire extinguishers as needed through 12/31/2021.
- These goods and services are required to provide servicing of fire extinguishers for the Department of Aviation.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB N19015 with firm pricing through 7/31/2023.
- This amendment increases the previously authorized amount of $10,000.00 by $47,000.00 for a total not to exceed $57,000.00 and therefore requires City Commission approval.
- The Department of Aviation recommends approval of this order.

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</table>
AVIATION (CONTINUED)

(A5) P0211183 – PELTON ENVIRONMENTAL PRODUCTS, INC., LEWIS CENTER, OH
- Gorman-Rupp pump, parts, accessories and service as needed through 12/31/2021.
- These goods and services are required for maintenance and repairs of the lift stations used for removal of sanitary waste from the airport terminal and surrounding businesses at the airport.
- Pelton Environmental Products, Inc. is recommended as the sole regional distributor; therefore, this purchase was negotiated.
- The Department of Aviation recommends approval of this order.

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

(A6) P0210360 – PICKREL BROTHERS, INC., DAYTON, OH
- Plumbing and related supplies as needed through 12/31/2021.
- These goods and services are required to replenish inventory for maintenance and repairs.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 21006N with pricing through 12/31/2021.
- This amendment increases the previously authorized amount of $8,000.00 by $5,000.00 for a total not to exceed $13,000.00 and therefore requires City Commission approval.
- Pickrel Brothers, Inc. qualifies as a Dayton local entity.
- The Department of Aviation recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<td>DIA Airport Operations</td>
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<td>$5,000.00</td>
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</tbody>
</table>

(A7) P0210220 – SPRINGFIELD OVERHEAD DOOR LLC, SPRINGFIELD, OH
- Overhead door maintenance and related services.
- These goods and services are required to replace doors that are worn beyond economical repair.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB N19007 with pricing through 3/31/2023.
- This amendment increases the previously authorized amount of $31,000.00 by $35,000.00 for a total not to exceed $66,000.00 and therefore requires City Commission approval.
- The Department of Aviation recommends approval of this order.

<table>
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<td>$35,000.00</td>
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</table>
INFORMATION TECHNOLOGY

(B1) P0211182 – DELL MARKETING LP, ROUND ROCK, TX
- Extended warranty on Dell M1000E Chassis, MXL Network Switches, and PowerEdge R730 Server.
- These goods and services are required to maintain the City’s private VMware cloud.
- Rates are in accordance with the State of Ohio Term Schedule Contract #534109 and Index #STS033.
- The Department of Information Technology recommends approval of this order.

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POLICE

(C1) P0211181 – FRIENDS SERVICE COMPANY, INC. dba FRIENDS OFFICE, MORaine, OH
- Office furniture including delivery and installation services.
- These goods and services are required to replace old furnishings worn beyond economical repair for multiple offices with the Department of Police.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 17047D with firm pricing through 9/30/2022.
- The Department of Police recommends approval of this order.

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</table>

RECREATION

(D1) P0210668 – ZAN CREATIVE, INC. dba NOVA CREATIVE GROUP, CENTERVILLE, OH
- Marketing and rebranding services as needed through 12/31/2021.
- These services are required to complete the department’s 2021 marketing projects and rebranding efforts.
- Zan Creative, Inc. dba Nova Creative Group is recommended based upon proven past performance and to ensure continuity of service; therefore, this purchase was negotiated.
- This amendment increases the previously authorized amount of $10,000.00 by $22,000.00 for a total not to exceed $32,000.00 and therefore requires City Commission approval.
- The Department of Recreation recommends approval of this order.

<table>
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</table>
WATER – WATER ADMINISTRATION

(E1) P0211157 – DANIEL JUDAY LLC, WESTERVILLE, OH
- Departmental training as needed through 12/31/2021.
- These services are required to provide training for Department of Water employees.
- Daniel Juday LLC is recommended based upon regional knowledge and proven past performance; therefore, this purchase was negotiated.
- The Department of Water recommends approval of this order.

<table>
<thead>
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WATER – WATER ENGINEERING

(E2) P0211180 – STEP CG LLC., COVINGTON, KY
- Implementation Services for the configuration and installation of network switch hardware.
- These goods and services are required to maintain work connectivity and access to critical applications used across the Department of Water and the City.
- Step CG LLC is recommended based upon proven past performance and to ensure continuity of service; therefore, this purchase was negotiated.
- The Department of Water recommends approval of this order.

<table>
<thead>
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<td>2021</td>
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<tr>
<td>2021</td>
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<td>$19,000.00</td>
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</tbody>
</table>
WATER – WATER RECLAMATION

(E3) **P0210019 – PROCESS PUMP & SEAL, INC., CINCINNATI, OH**

- Chesterton split mechanical seals and spare parts as needed through 12/31/2021.
- These goods are required to repair critical pumps at the City’s Broadway and Westwood pump stations, as well as pumps at other locations.
- Process Pump & Seal, Inc. is recommended as the sole regional municipal distributor for Chesterton products; therefore, this purchase was negotiated.
- This amendment increases the previously authorized amount of $26,000.00 by $60,000.00 for a total not to exceed $86,000.00 and therefore requires City Commission approval.
- The Department of Water recommends approval of this order.

<table>
<thead>
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<td>$60,000.00</td>
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WATER – WATER SUPPLY AND TREATMENT

(E4) **P0211175 – BISS NUSS, INC., CANFIELD, OH**

- Five (5) slaker grit screw replacements.
- These goods are required to add lime to untreated water; the grit screw removes lime substances that will not react with water during the softening process.
- Biss Nuss, Inc. is recommended as the sole authorized distributor for Integrity Municipal Systems brand products in this region; therefore, this purchase was negotiated.
- The Department of Water recommends approval of this order.

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<thead>
<tr>
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<th>Fund Source(s)</th>
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<th>Fund Amount(s)</th>
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<td>2021</td>
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<td>$151,715.00</td>
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</table>

(E5) **P02110105 – VWR SCIENTIFIC PRODUCTS CORPORATION, BATAVIA, IL**

- Laboratory equipment and supplies as needed through 12/31/2021.
- These goods are required to perform laboratory analyses of water samples to ensure compliance with Ohio Environmental Protection Agency (OEPA) regulations.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 18023N with pricing through 2/28/2022.
- This amendment increases the previously authorized amount of $60,000.00 by $25,000.00 for a total not to exceed $85,000.00 and therefore requires City Commission approval.
- The Department of Water recommends approval of this order.

<table>
<thead>
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<td>2021</td>
<td>Water Operating</td>
<td>53000-3430-1301-54</td>
<td>$25,000.00</td>
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</tbody>
</table>

The aforementioned departments recommend approval of this order.
City Commission approval is requested for a modification to a Service Agreement with the Dayton Board of Education for the Dayton Public Schools. The Dayton Board of Education for the Dayton Public Schools has requested off-duty police to provide traffic control, security, and/or crowd control, which are needed by the Dayton Board of Education for requested events (e.g., Dayton Public High School basketball games and for other athletic events and special events, such as dances and graduations), in various locations within the municipal corporation limits of the City of Dayton, Ohio, beginning Saturday, January 9, 2021 through Thursday, June 30, 2022.

The original contracted amount of $9,858.55 was for 145 officer hours at a rate of $66.68 per hour, and 145 night differential hours at a rate of $1.28 per hour. The original contract was under $10,000.00 and did not require Commission approval.

The First Amendment to the agreement is requesting to extend the contract term through June 30, 2022. The total estimated revenue is $30,000.00 and thus requires Commission approval.

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

The Certificate of Revenue is attached.
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information:  Name  Dayton Board of Education (Dayton Public Schools)
Address  115 S. Ludlow Street
City  Dayton  State  Ohio  Zip+4  45402 -
Customer #  316000784  Address Location #  P1
Federal ID#  31-6000784

Revenue Information:  Fund  10000  Organization  6210  Revenue  22611  Program  71

Contract Information:  Contract Start Date  1/9/2021  Contract Expiration Date  6/30/2022

Billing Information:  Rate:  Off. $66.70 - X  Sgt. $77.36
Lt. $89.71  Night Diff $1.29 - X  Veh. $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 – Not to Exceed $30,000.00
Rate Change Date  TBD  Rate Change Amount  TBD

Description of Services (wording on invoice): To provide traffic control, security, and/or crowd control, which are needed by the Dayton Board of Education for requested events (e.g., Dayton Public High School basketball games and for other athletic events and special events, such as dances and graduations), in various locations within the municipal corporation limits of the City of Dayton, Ohio, beginning Saturday, January 9, 2021 through Thursday, June 30, 2022.

E-SIGNED by Eric Henderson on 2021-09-29 23:38:36 GMT

Departmental Approval  ____________________________

TO BE COMPLETED BY FINANCE

Revenue Contract Number  5-0784  Auditor  D Billig  Date  9-30-2021

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

Director of Finance  ____________________________
FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE DAYTON BOARD OF EDUCATION FOR THE DAYTON PUBLIC SCHOOLS AND THE CITY OF DAYTON, OH

This First Amendment to the original Agreement (hereinafter “Agreement”) between the Dayton Board of Education for the Dayton Public Schools and the City of Dayton, Ohio (hereinafter “City”), is effective September 21, 2021.

WHEREAS, the Dayton Board of Education for the Dayton Public Schools and the City entered into the Agreement effective January 9, 2021 (“Original Agreement”); and

WHEREAS, the parties now desire to amend the Agreement. The parties have agreed upon terms and conditions under which the Agreement shall be amended and further desire to reduce such terms and conditions to writing.

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

Replace Section 1, 8, & Exhibit A with the following:

Section 1. Subject to Sections 2 and 3, the City agrees to make available certain off-duty police personnel to perform the police-related functions of traffic control, security, and/or crowd control, which are needed by Contractor beginning January 9, 2021 through June 30, 2022. The police services to be provided under this Agreement will be for requested events (e.g., Dayton Public High School basketball games and for other athletic events and special events, such as dances and graduations) held at various locations within the municipal corporation limits of the City of Dayton.

Contractor understands and agrees that no further use of police personnel provided hereunder will be made without the express written authorization of the City’s Chief of Police or authorized representative.

Section 8. This Agreement shall be effective January 9, 2021 through June 30, 2022.

Exhibit A

1. Scope of Services/Event Information

   To provide traffic control, security, and/or crowd control, which are needed by the Dayton Board of Education for requested events (e.g., Dayton Public High School basketball games and for other athletic events and special events, such as dances and graduations), in various locations within the municipal corporation limits of the City of Dayton, Ohio, beginning January 9, 2021 through June 30, 2022.

2. Payment/Cost/Method of Payment

   A. PAYMENT

   Contractor shall pay $66.68 per hour for each police officer; $77.33 per hour for each police sergeant; and $89.68 per hour for each police lieutenant; $1.28 per hour additional for night differential and $13.00 per vehicle per hour, when applicable.
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.

Said hourly rates listed above reflect an amount equal to 1 1/2 times the current regular hourly rate of pay as established by the current labor agreement between the City and the Fraternal Order of Police, John C. Post Lodge #44 for each rank of police personnel, plus fringe benefits. Contractor agrees to pay any increase in the foregoing hourly rates of pay of police personnel required by said labor agreement or necessitated by negotiation of a new labor agreement or any regulation, order or law related to police personnel compensation binding upon the City. "Fringe benefits," as used herein includes pension, Workers’ Compensation and other similar employer costs, as determined by the City's Finance Department.

The City will bill Contractor for payment of the actual services provided. Contractor shall tender payment upon receipt of the bill.

B. ESTIMATED COST: Not to Exceed $30,000.00

C. METHOD OF PAYMENT: To be Invoiced.

3. Contractor’s Contact for Event
   NAME: Richard E. Wright II, Chief
   ADDRESS: Office of Safety & Security, Truancy Department and Hearing Office
   115 S. Ludlow
   Dayton, Ohio 45402
   PHONE: 937-542-7000

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

CITY OF DAYTON, OHIO

________________________
City Manager

APPROVED BY:

________________________
Director and Chief of Police

DAYTON BOARD OF EDUCATION FOR THE DAYTON PUBLIC SCHOOLS

See attached signature page

________________________
Mohamed Al-Hamdani
Board President

________________________
Hiwot Abraha
Treasurer

EMAIL: rewright@daytonpublic.com
D.Wotring@daytonpublic.com

Federal I.D. Number: 31-6000784
For Dayton Public Schools

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

________________________
Min./Bk. ________ Pg. __________

2021

________________________
CLERK OF THE COMMISSION

APPROVED AS TO FORM AND CORRECTNESS:

8/12/2021

X John Musto for

City Attorney

Signed by: Musto, John
BOARD MEETING DATE: September 17, 2021

CONTRACT AGREEMENT

REQUISITION #: PR051347

SUBMITTED BY: Safety & Security

BID/QUOTE #: P034458

Purchase Order #: P034458

Contract between CITY OF DAYTON (V000101) and the Dayton Board of Education effective in the amount of $30,000.00

DAYTON CITY SCHOOL DISTRICT

By: Mohamed Al-Hamdani
President 
Dayton Board of Education

By: Hiwot Abraha
Treasurer
Dayton Public Schools

INSTRUCTIONS TO VENDOR

Direct all Inquiries To Purchasing Services: 937-542-3560 Fax# 937-542-3590
DO NOT overship, substitute or increase prices without prior approval form Purchasing Services. Submit a separate invoice for each purchase order.
Transportation charges must be pre-paid and added to the invoice as a separate line item. Please mark purchase order number on the outside of all shipments. A packing slip must accompany all shipments. All shipments must be FOB destination.
Firms doing $500, or more, business annually with the school district must have an Affirmative Action Certification from the Human Relations Council of the City of Dayton.

Help us improve our service by taking the short Customer Service Survey at the following link: http://home.dps.k12.oh.us/departments/treasurer.htm
AGREEMENT

THIS AGREEMENT is made this 24th day of January, 2021, between the City of Dayton, Ohio ("City") and the Dayton Board of Education for the Dayton Public Schools, 115 S. Ludlow Street, Dayton, Ohio 45402 ("Contractor").

WITNESSETH THAT:

WHEREAS, the City, upon request by a private person, firm, corporation, or institution, may detail off-duty police officers 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

WHEREAS, because public safety requires the use of off-duty police personnel to perform police-related functions, Contractor requests the services of off-duty police officers, police supervisors, and/or parking enforcement aides (hereinafter collectively referred to as "police personnel"); and

WHEREAS, the City can provide off-duty police personnel and Contractor agrees to remit payment to the City for the total cost of providing such police personnel.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and benefits to be derived hereby, the City and Contractor hereby agree as follows:

Section 1. Subject to Sections 2 and 3, the City agrees to make available certain off-duty police personnel to perform the police-related functions of traffic control, security, and/or crowd control, which are needed by Contractor beginning January 9, 2021 through December 31, 2021. The police services to be provided under this Agreement will be for requested events (e.g., Dayton Public High School basketball games and for other athletic events and special events, such as dances and graduations) held at various locations within the municipal corporation limits of the City of Dayton.

Contractor understands and agrees that no further use of police personnel provided hereunder will be made without the express written authorization of the City’s Chief of Police or authorized representative.

Section 2. Unless waived by the City, Contractor shall notify the City at least seven (7) days in advance of the date(s) for which the police services are requested. The notice shall be given to the City’s Chief of Police or his/her authorized representative, and shall specify the number and rank of police personnel requested and the hours and specific location(s) where the police services are needed.

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).
Section 3. 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.

Off-duty police personnel assigned pursuant to this Agreement may be reassigned, without notice to Contractor, 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.

Section 4. Contractor shall pay the City for the services of the police personnel assigned pursuant to this Agreement as outlined in Exhibit A. 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.

Section 5. Contractor understands and agrees that all police personnel assigned pursuant to this Agreement shall be billed for a minimum of two (2) hours of services, even though the hour(s) of service requested by Contractor and performed by the police personnel is less than two (2) hours.

Section 6. In the event that Contractor cancels the requested police services less than twenty-four (24) hours prior to the specific date(s) for the rendering of such police services, Contractor shall be billed and shall remit payment for two (2) hours of services for each off-duty police personnel assigned to report on that date to perform the requested police services.

Section 7. In addition to all other remedies available to the City, this Agreement shall be subject to termination by the City should any one or more of the following events occur or for the following reasons: (i) Without cause, with fifteen (15) days prior written notice, sent Certified U.S. Mail to Contractor at the address set forth above or such other address as may be specified by Contractor; or (ii) if Contractor shall default in or fail to make payment(s) for the police services at the times and in the amounts as required of it under this Agreement, and said default is not cured by amounts due and owing within fifteen (15) days after the City notifies Contractor of such default.

Section 8. This Agreement shall be effective January 9, 2021 through December 31, 2021.
IN WITNESS WHEREOF, the City and Contractor, each by a duly authorized representative, have executed this Agreement as of the day and date set forth above.

CITY OF DAYTON, OHIO

City Manager

APPROVED BY:

Director and Chief of Police

DAYTON BOARD OF EDUCATION

Mohamed Al-Hamdani
Board President

Hiwot Abraha
Treasurer

EMAIL: rewright@daytonpublic.com

Federal I.D. Number: 31-6000784
For Dayton Public Schools

APPROVED AS TO FORM AND CORRECTNESS:

1/15/2021

John Musto for
City Attorney

Signed by: Musto, John

This agreement is approved by the City Attorney. This Agreement has been approved as to form and correctness by the Dayton City Attorney. Any changes to this Agreement, by any party, and/or any contract in an amount over Ten Thousand Dollars ($10,000) must be submitted to the Law Department for approval. This Agreement is in an amount of Ten Thousand Dollars ($10,000) or less and no Commission action is required.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]
Exhibit A

1. Scope of Services/Event Information

To provide traffic control, security, and/or crowd control, which are needed by the Dayton Board of Education for requested events (e.g., Dayton Public High School basketball games and for other athletic events and special events, such as dances and graduations), in various locations within the municipal corporation limits of the City of Dayton, Ohio, beginning January 9, 2021 through December 31, 2021.

2. Payment/Cost/Method of Payment

A. PAYMENT

Contractor shall pay $66.70 per hour for each police officer; $77.36 per hour for each police sergeant; and $89.71 per hour for each police lieutenant; $1.29 per hour additional for night differential and $13.00 per vehicle per hour, when applicable.

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.

Said hourly rates listed above reflect an amount equal to 1 1/2 times the current regular hourly rate of pay as established by the current labor agreement between the City and the Fraternal Order of Police, John C. Post Lodge #44 for each rank of police personnel, plus fringe benefits. Contractor agrees to pay any increase in the foregoing hourly rates of pay of police personnel required by said labor agreement or necessitated by negotiation of a new labor agreement or any regulation, order or law related to police personnel compensation binding upon the City. "Fringe benefits," as used herein includes pension, Workers' Compensation and other similar employer costs, as determined by the City's Finance Department.

The City will bill Contractor for payment of the actual services provided. Contractor shall tender payment upon receipt of the bill.

B. ESTIMATED COST: $9,858.55 (145 Officer Hrs. @ $66.70 per hr.; 145 Night Diff. Hrs. @ $1.29 per hr.)

C. METHOD OF PAYMENT: To be Invoiced.

3. Contractor's Contact for Event

NAME: Richard E. Wright II, Chief
AN ORDINANCE

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

WHEREAS, This Commission of the City of Dayton, Ohio (the “City”) duly adopted Resolution No. 6603-21 on September 1, 2021, (the “Resolution of Necessity”) and declared the necessity of acquiring, constructing, improving and installing special energy improvement projects defined as the Project, as described in the Resolution of Necessity, and as set forth in the Project Petition, requesting those improvements; and,

WHEREAS, This Commission duly passed Ordinance No. 31912-21 on September 8, 2021, and determined to proceed with the Project and adopted the maximum estimated Special Assessments (as defined in the Resolution of Necessity) filed with the Clerk of the Commission and the Director of the Department of Finance pursuant to the Resolution of Necessity; and,

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

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

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

Section 2. Special Assessments. That the list of Special Assessments to be levied and assessed on the Property in an amount sufficient to pay the costs of the Project, $8,180,420.64, together other related financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued to provide a loan to the Owner and its affiliates or otherwise to pay costs of the Authorized Improvements in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued, including any credit enhancement fees, trustee fees, and ESID administrative fees and expenses, which costs were set forth in the Project Petition and previously reported to this Commission and are now on file in the offices of the Clerk of the Commission and the Director of the Department of Finance, is adopted and confirmed, and that the Special Assessments are levied and assessed on the Property. The interest portion of the Special Assessments, together with amounts used to pay administrative expenses, are determined to be substantially equivalent to the fair market rate or
rates of interest that would have been borne by securities issued in anticipation of the collection of the Special Assessments if such securities had been issued by the City.

The Special Assessments are assessed against the Property commencing in tax year 2022 for collection in calendar year 2023 and shall continue through tax year 2035 for collection in calendar year 2036. The semi-annual installment of the Special Assessments shall be collected in each calendar year equal to a maximum semi-annual amount of Special Assessments as shown in Exhibit A, attached to and incorporated into this Ordinance.

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

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

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

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

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

Section 7. **Certification to County Auditor.** That in compliance with Ohio Revised Code Section 319.61, the Clerk of the Commission is directed to deliver or cause to be delivered a certified copy of this Ordinance to the Auditor of Montgomery County, Ohio within twenty (20) days after its passage.

Section 8. **Compliance with Open Meetings Requirements.** That this Commission finds and determines that all formal actions of this Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this Commission, and that all deliberations of this Commission and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Ohio Revised Code Section 121.22.
Section 9. Effective Date. That for the reasons stated in the preamble hereof, this ordinance shall be declared an emergency measure and shall take effect immediately upon its passage.

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

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

MAYOR OF THE CITY OF DAYTON, OHIO

ATTEST:

_________________________________________
Clerk of the Commission

APPROVED AS TO FORM:

_________________________________________
City Attorney
CERTIFICATE

The undersigned Clerk of the Commission hereby certifies that the foregoing is a true copy of Ordinance No. _____ duly adopted by the Commission of the City of Dayton, Ohio on October 13, 2021, and that a true copy thereof was certified to the Auditor of Montgomery County, Ohio.

Clerk of the Commission
City of Dayton, Ohio
EXHIBIT A

LIST OF SPECIAL ASSESSMENTS AND SCHEDULE OF SPECIAL ASSESSMENTS

LIST OF SPECIAL ASSESSMENTS

1619 KUNTZ ROAD PROJECT

<table>
<thead>
<tr>
<th>Name</th>
<th>Assessed Properties Description</th>
<th>Portion of Benefit and Special Assessment</th>
<th>Amount of Special Assessments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dayton-Phoenix Group, Inc.</td>
<td>R72 16701 0085*</td>
<td>100%</td>
<td>$8,180,420.64</td>
</tr>
</tbody>
</table>

*As identified in the records of the Auditor of Montgomery County, Ohio as of August 17, 2021.
SCHEDULE OF SPECIAL ASSESSMENTS

The following schedule of Special Assessment charges shall be levied in twenty-eight (28) semi-annual installments with respect to first-half and second-half real property taxes in calendar years 2023 through 2036:

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<thead>
<tr>
<th>Special Assessment Date**</th>
<th>Special Assessment Amount***</th>
</tr>
</thead>
<tbody>
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<td>February 15, 2023</td>
<td>$292,157.88</td>
</tr>
<tr>
<td>July 15, 2023</td>
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<td>February 15, 2027</td>
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<td>292,157.88</td>
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<tr>
<td>February 15, 2028</td>
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</tr>
<tr>
<td>July 15, 2036</td>
<td>292,157.88</td>
</tr>
</tbody>
</table>

** Pursuant to Ohio Revised Code Chapter 323, the Special Assessment Payment Dates identified in this Schedule of Special Assessments are subject to adjustment by the Montgomery County Auditor under certain conditions.

*** The Auditor of Montgomery County, Ohio may impose a special assessment collection fee with respect to each semi-annual Special Assessment payment. If imposed, this special assessment collection fee will be added by the Auditor of Montgomery County, Ohio to each semi-annual Special Assessment payment.
RECEIPT OF COUNTY AUDITOR FOR
LEGISLATION LEVYING SPECIAL ASSESSMENTS
FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING,
AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS
IN THE CITY OF DAYTON IN COOPERATION WITH
THE DAYTON REGIONAL ENERGY
SPECIAL IMPROVEMENT DISTRICT

I, Karl L. Keith, the duly elected, qualified, and acting Auditor in and for
Montgomery County, Ohio hereby certify that a certified copy of Ordinance No. _____,
duly adopted by the Commission of the City of Dayton, Ohio on October 13, 2021, levying
special assessments for the purpose of acquiring, constructing, and improving certain
public improvements in the City of Dayton, Ohio in cooperation with the Dayton Regional
Energy Special Improvement District, including the List of Special Assessments and
Schedule of Special Assessments, which Special Assessment charges are levied in
twenty-eight (28) semi-annual installments with respect to real property taxes due in
calendar years 2023 through 2036, was filed in this office on __________, 2021.

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

[SEAL]

Auditor
Montgomery County, Ohio
October 5, 2021

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

FROM: Todd Kinskey, Director  
      Department of Planning, Neighborhoods & Development

SUBJECT: Two Emergency Ordinances to Include 1619 Kuntz Road in the Dayton Regional Energy Special Improvement District

The Department of Planning, Neighborhoods & Development requests the adoption of two Ordinances (attached) approving the inclusion of 1619 Kuntz Road in the Dayton Regional Energy Special Improvement District (ESID) and establishing the special assessments. This will enable the property owners to finance energy efficiency improvements for their property. City Commission approved two resolutions for this project at the September 1, 2021 meeting and an Ordinance to Proceed at the September 8, 2021 meeting.

The property is owned by the Dayton-Phoenix Group. In order to meet their financial closing schedule, we request two readings at one meeting for each ordinance during the October 13, 2021 City Commission meeting in the following order:

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

The Dayton-Phoenix Group was created over 80 years ago. It is a leading supplier of electrical and locomotive components for the industrial and railroad markets. With approximately 300 employees it is one of the City’s largest employers. The 640,000 SF building at 1619 Kuntz Road was badly damaged in the tornadoes that occurred over Memorial Day 2019. The company temporarily relocated its operations and employees and is now well into the process of a complete renovation of the property.

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

If you have any questions, please contact me at extension 4209 or Chris Lipson at extension 3820.

TK/cjl
Attachments
BY............................................. NO.............................................

AN ORDINANCE

Authorizing and Approving a Cooperative Agreement and Special Assessment Agreement, and Declaring an Emergency.

WHEREAS, Dayton-Phoenix Group, Inc. (the “Owner”) has submitted to the City Commission of the City of Dayton, Ohio (the “City”) a Petition for Special Assessments for Special Energy Improvement Projects (the “Project Petition”), together with a Supplement to Plan for 1619 Kuntz Road, Dayton, Ohio Project (the “Supplemental Plan”) in order to provide for the completion of a special energy improvement project on real property owned by the Owner and located at 1619 Kuntz Road within the City (the “Project Site”); and,

WHEREAS, On September 1, 2021, this Commission approved the Project Petition and the Supplemental Plan; and,

WHEREAS, On September 1, 2021, this Commission duly adopted a resolution declaring the necessity of acquiring, constructing, and improving certain public improvements in the City in cooperation with the Dayton Regional Energy Special Improvement District (the “ESID”) (the “Resolution of Necessity”), with each capitalized term or definition not otherwise defined in this Ordinance or by reference to another document having the meaning assigned to it in the Resolution of Necessity; and,

WHEREAS, On September 8, 2021, this Commission passed an ordinance determining to proceed with the Project and adopted the estimated Special Assessments filed with the Clerk of the Commission and pursuant to the Resolution of Necessity; and,

WHEREAS, Under an ordinance passed by this Commission on October 13, 2021, the City has levied special assessments to pay costs of the special energy improvement projects described in the Supplemental Plan (the “Special Assessments”); and,

WHEREAS, The City intends to enter into (i) a Cooperative Agreement by and among the Owner, the City, the ESID, the Dayton-Montgomery County Port Authority (the “Investor”), and The Bank of New York Mellon Trust Company, N.A., as Trustee, and (ii) a Special Assessment Agreement by and among the Treasurer of Montgomery County, Ohio (the “County Treasurer”), the City, the Investor, the ESID, and the Owner (collectively, the “Agreements”); and,

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

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

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

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

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

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

**Section 4. Effective Date.** That for the reasons stated in the preamble hereof, this ordinance shall be declared an emergency measure and shall take effect immediately upon its passage.

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

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

____________________________
MAYOR OF THE CITY OF DAYTON, OHIO

ATTEST

____________________________
Clerk of the Commission

APPROVED AS TO FORM:

____________________________
City Attorney
CERTIFICATE

The undersigned Clerk of the Commission hereby certifies that the foregoing is a true copy of Ordinance No. _____ duly adopted by the Commission of the City of Dayton, Ohio on October 13, 2021.

__________________________________________
Clerk of the Commission
City of Dayton, Ohio
SPECIAL ASSESSMENT AGREEMENT
(ORC Sections 5721.33 and 9.482)

by and among

COUNTY TREASURER OF MONTGOMERY COUNTY, OHIO
(“Treasurer”),

And

CITY OF DAYTON, OHIO
(“City”),

And

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

DAYTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.;
(“District”),

And

DAYTON-PHOENIX GROUP, INC.
(“Owner”),

And

DAYTON-MONTGOMERY COUNTY PORT AUTHORITY
(“Investor”)

Dated as of __________, 2021
SPECIAL ASSESSMENT AGREEMENT

THIS SPECIAL ASSESSMENT AGREEMENT (this “Agreement”) is made effective as of __________, 2021, by and among the County Treasurer of Montgomery County, Ohio (the “Treasurer”), the City of Dayton, Ohio (the “City”), the Centerville, Dayton, Kettering, Moraine, Oakwood, Riverside, Springboro, Washington Township Regional Energy Special Improvement District, Inc., doing business under the registered trade name Dayton Regional Energy Special Improvement District, Inc. (“District”), Dayton-Phoenix Group, Inc. (the “Owner”), and the Dayton-Montgomery County Port Authority (together with its permitted successors and assigns, the “Investor”) (the Treasurer, the District, the City, the Owner, and the Investor are collectively referred to herein as the “Parties”).

BACKGROUND:

WHEREAS, The District was created under Ohio Revised Code Chapters 1702 and 1710 and established pursuant to Resolution 6117-15 of the City Commission of the City of Dayton, Ohio (the “City Commission”) approved on June 24, 2015; and

WHEREAS, The District is an energy special improvement district and nonprofit corporation duly organized and validly existing under the laws of the State of Ohio to further the public purpose of implementing special energy improvement projects pursuant to the authority in Ohio Revised Code Chapter 1710 and Article VIII, Section 2o of the Ohio Constitution; and

WHEREAS, On June 24, 2015, by its Resolution No. 6117-15, the City Commission approved the Dayton Regional Energy Special Improvement District Project Plan (the “Original Plan”), as a plan for public improvements or public services for the District under Ohio Revised Code Section 1710.02(F); and

WHEREAS, The Owner has determined that it is in its best interests to cause the acquisition, installation, equipping, and improvement of special energy efficiency improvements, including, without limitation, energy efficient HVAC systems, lighting and lighting controls, and related improvements (collectively, the “Project”) on certain real property located within Montgomery County, Ohio (the “County”) and the City, and as more fully described in Exhibit A to this Agreement (the “Assessed Lands”); and

WHEREAS, The costs of the Project are being funded in part through an advance in the amount of $6,260,000.00 (the “Project Advance”) to the Owner pursuant to a Cooperative Agreement dated as of October 1, 2021 (the “Cooperative Agreement”) between the District, the Investor, the Owner, and the City; and

WHEREAS, To secure the repayment of the principal of, and the payment of any premium, fees, and unpaid interest on, the Project Advance used to finance the Project (the “Project Costs”), (i) the Owner signed and delivered to the Clerk of the City Commission a Petition for Special Assessments for Special Energy Improvement Projects and Affidavit (the “Petition”) for the acquisition, installation, equipping, and improvement of the Project and
evidencing Owner’s agreement to the levy and collection of special assessments by the City (the “Special Assessments”) on the Assessed Lands, which are located within the District, in amounts sufficient to pay the Project Costs, and (ii) the City (a) has taken all the necessary actions required by Ohio Revised Code Chapter 727, including, without limitation, the passage of the assessing resolution or ordinance pursuant to the requirements of Ohio Revised Code Section 727.25, for the levying of the Special Assessments and has caused or will cause the Special Assessments to be certified to the County Auditor of Montgomery County, Ohio (the “County Auditor”) for collection by the Treasurer in semi-annual installments, and (b) hereby has agreed to transfer to the Investor the payments of Special Assessments received to pay the Project Costs.

WHEREAS, The Owner agrees that its delivery of the Petition and the requests and agreements made in the Petition are irrevocable and that the Parties have acted and will act in reliance on the agreements contained in the Petition; and

WHEREAS, Pursuant to the Petition, the Special Assessments have been levied against the Assessed Lands as described in the Petition and pursuant to this Agreement the Owner is willing to agree to make Special Assessment payments in accordance with the Petition; and

WHEREAS, Ohio Revised Code Chapters 323 and 5721 set forth certain parameters and timing requirements for the foreclosure of property on which taxes and assessments, including the Special Assessments, are due and owing and remain unpaid; and

WHEREAS, Upon the occurrence of an Event of Default pursuant to the Cooperative Agreement, it may be necessary for the District to foreclose on the lien of the Special Assessments with respect to the Assessed Lands as set forth in Section 2 of this Agreement; and

WHEREAS, In consideration of the Project Advance, the Owner is willing to consent to an expedited foreclosure process with respect to the lien of the Special Assessments, the form of the consent being attached hereto as Exhibit B (the “Owner Consent”) and the Owner Consent with respect to the foreclosure of the Special Assessments as soon as possible (as referenced in Section 2 hereof) shall be a covenant running with Assessed Lands and binding upon the Owner and upon future owners of the Assessed Lands until the Project Costs are paid in full; and

WHEREAS, Based on the Owner Consent and other considerations, including, without limitation, the right to be indemnified pursuant to this Agreement, at the request of the District and, upon the occurrence of an Event of Default described under Section 7.1 of the Cooperative Agreement, the Treasurer has agreed to foreclose the lien of the Special Assessments as soon as possible as described herein upon an occurrence of an Event of Default under the Cooperative Agreement; and

WHEREAS, If any assessments, including, without limitation, the Special Assessments, payments in lieu of taxes, real property taxes, or other governmental charges levied on the Assessed Lands are not paid when due and thereafter remain delinquent, the Treasurer, pursuant to Ohio Revised Code Sections 5721.30 through 5721.41 (the “Delinquent Tax Lien Sale Act”), specifically Ohio Revised Code Section 5721.33, may, in his discretion, but is not required to,
negotiate with one or more persons the sale of any number of tax certificates ("Tax Certificates") which evidence the liens (the "Tax Liens") of the State of Ohio (the "State") and its applicable taxing districts for such delinquent assessments, including Special Assessments, real property taxes, payments in lieu of taxes, governmental charges, or penalties and interest on such Assessed Lands; and

WHEREAS, Pursuant to the Delinquent Tax Lien Sale Act, the Treasurer, in its discretion, may sell such Tax Certificates at a discount from the full amount of the general real estate taxes, assessments, including the Special Assessments, penalties, and interest that have become delinquent; and

WHEREAS, If the Treasurer were to sell such Tax Certificates at a discount (other than in accordance with the provisions of this Agreement), the proceeds of such sale representing the delinquent Special Assessments might be insufficient to pay the Project Costs; and

WHEREAS, The Treasurer does not desire to take any action with respect to the collection of the Special Assessments that might adversely affect the repayment of the Project Advance without the consent of the District or adversely affect the payment of the Project Costs without the consent of the District; and

WHEREAS, The Treasurer has agreed to remit to the District, in the event of a default under the Cooperative Agreement, as set forth in this Agreement, amounts collected by the Treasurer and relating to the Special Assessments, including without limitation amounts collected by the Treasurer as a result of foreclosure of the lien of the Special Assessments on the Assessed Lands and including amounts received from a sale of Tax Certificates pursuant to the Delinquent Tax Lien Sale Act;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, and desiring to be legally bound hereunder, the Parties hereto covenant and agree as follows:

Section 1. Special Assessments.

1.1 The Owner, prior to the execution and delivery of this Agreement, signed and delivered to the Clerk of the City Commission the Petition for the acquisition, installation, equipping, and improvement of the Project and evidencing the agreement of the Owner to the levy of the Special Assessments as security for the Project Advance. The Owner agrees that its delivery of the Petition and the requests and agreements made therein are irrevocable and that the Parties hereto have acted and will act in reliance on the agreements contained in that Petition. The City shall take all necessary actions required by Ohio Revised Code Chapter 727 to levy and collect the Special Assessments on the Assessed Lands. On [October 13], 2021 the City passed Ordinance No. [_____] pursuant to the requirements of Ohio Revised Code Section 727.25 for the levying of the Special Assessments (the "Assessing Ordinance"). The Clerk of the City
Commission certified (or caused to be certified) the Assessing Ordinance to the County Auditor as set forth in the Petition.

1.2 The City shall cause the Special Assessments, as set forth in the Assessment Schedule attached to the Petition, to be certified to the County Auditor on or before the last date for the certification of special assessments to the County Auditor each year during which the Special Assessments are to be levied pursuant to the Assessment Schedule. The Parties acknowledge that pursuant to such certification, the Special Assessments are expected to be collected and paid to the City pursuant to Ohio Revised Code Chapters 319, 321, 323, and 727.

1.3 In the event the Project Advance is prepaid or redeemed in accordance with the Cooperative Agreement, in whole or in part, the Parties shall, in cooperation with the Owner, and to the extent permitted by law, cause the aggregate lien of the Special Assessments to be no greater than the remaining principal of and interest and premium, if any, on the Project Advance through maturity.

1.4 To the extent that the Owner prepays any of the required payments to the Investor pursuant to the Cooperative Agreement, then the amounts of the Special Assessments shall be reduced in accordance with the appropriate Assessment Schedule attached to the Petition.

1.5 To facilitate the repayment of the Project Advance, the City, pursuant to Section 2.4 of the Cooperative Agreement, assigned to the Investor all of its right, title, and interest in and to the Special Assessments, the funds of the City established to collect and hold the Special Assessments, and any other property received or to be received from the City under the Cooperative Agreement. The Treasurer, the City, the District, the Owner, and the Investor each hereby acknowledges, agrees with, and consents to those assignments.

1.6 Pursuant to Section 2.5 of the Cooperative Agreement, the District assigned to the Investor any and all of its right, title, and interest it may have in and to the Special Assessments related to the District actually received by or on behalf of the City under the Cooperative Agreement. The Treasurer, the City, the District, the Owner, and the Investor each hereby acknowledges, agrees with, and consents to those assignments.

1.7 Notwithstanding anything in this Agreement to the contrary, the Treasurer’s obligations under this Agreement are not and shall not be secured by an obligation or pledge of any moneys raised by taxation. The Treasurer’s obligations shall be limited to the moneys levied, collected, and received in respect of the Special Assessments and any County-imposed collection fees, charges, or penalties. The Treasurer’s obligations under this Agreement do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the County.

1.8 Notwithstanding anything in this Agreement to the contrary, the City’s obligations under this Agreement are not and shall not be secured by an obligation or pledge of
any moneys raised by taxation. The City’s obligation under this Agreement shall be limited to any moneys received from the County in respect of the Special Assessments and any County-imposed collection fees, charges, or penalties. The City’s obligations under this Agreement do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the City.

Section 2. Foreclosure Process.

2.1 The Treasurer, the City, the Investor, and the Owner each acknowledge that the Special Assessments are to secure payments relating to the Project Advance, including the Project Costs and other amounts as provided under the Cooperative Agreement. The Treasurer agrees that so long as the Project Advance is outstanding and the Project Costs and other amounts under the Cooperative Agreement are secured, at least in part, by the revenues derived from the Special Assessments, the Treasurer will, upon receipt of written notice from the Investor or the District (with a copy to the other of the Investor or the District, and to the Owner and the City) that an Event of Default (solely as described under Section 7.1(b) of the Cooperative Agreement) has occurred and is continuing and which notice requests the Treasurer to foreclose on the lien of the Special Assessments, file and diligently prosecute a foreclosure action against the Assessed Lands following the procedures for lien foreclosures established in Ohio Revised Code Section 323.25 and related sections, but not earlier than the sixtieth day following receipt by the Treasurer of the delinquent land list certifying that the Special Assessments are delinquent. The foreclosure action shall be to collect all Special Assessments then due and owing on the Assessed Lands in accordance with the Petition. Without the prior written consent of the District and the Investor, the Treasurer will not confirm the sale of the Assessed Lands for an amount less than 100% of the amount of the Special Assessments and other general real estate taxes, payments in lieu of taxes, and assessments then due and owing with respect to the Assessed Lands, as shall be certified by the District to the Treasurer pursuant to the records of the Treasurer, except and unless the Assessed Lands become forfeited land subject to Ohio Revised Code Chapter 5723. All fees and expenses of the Treasurer in collecting the Special Assessments are to be included and paid for by the Owner. All fees and expenses of the Treasurer in collecting the Special Assessments, including other general real estate taxes, payments in lieu of taxes, and assessments then due and owing are to be included and paid for by the Owner prior to any such amounts being paid to the City and to other affected taxing jurisdictions and special districts. The City, Investor, and Owner understand and agree that the failure of the Treasurer to obtain any consent under Section 2.1 shall not create a cause for action against the Treasurer, the Montgomery County Board of County Commissioners, or Montgomery County, nor shall it subject the Treasurer, the Montgomery County Board of County Commissioners, or Montgomery County to liability for any difference between the foreclosure price and the amount of the delinquent Special Assessments. Further, nothing in this Agreement shall be construed to limit any immunity to which the Treasurer may be entitled pursuant to Chapter 2744 of the Ohio Revised Code.

2.2 The Treasurer hereby acknowledges that the City has assigned all of its right, title, and interest in and to the Special Assessments to the Investor, and that the District has
assigned all of its right, title, and interest it may have in and to the Special Assessments to the
Investor, and the Treasurer hereby agrees that so long as the Project Advance is outstanding and
the Project Costs and other amounts under the Cooperative Agreement are secured, at least in
part, by the revenues derived from the Special Assessments, the Treasurer will not sell or
negotiate the sale of one or more Tax Certificates related to the Assessed Lands for an amount
less than 100% of the amount levied and certified for collection without the prior written consent
of the District and the Investor.

2.3 The Treasurer hereby covenants and agrees that if any of the general real
estate taxes, payments in lieu of taxes, assessments, including the Special Assessments,
governmental charges, or penalties and interest on the Assessed Lands are delinquent and the
Delinquent Tax Lien Sale Act would permit the Treasurer to negotiate the sale of Tax
Certificates with respect thereto, the Treasurer will, prior to giving any notice under the
Delinquent Tax Lien Sale Act of a sale of Tax Certificates with respect to the Assessed Lands,
give written notice to the District and the Investor regarding the same and state therein whether
the Treasurer reasonably anticipates receiving no less than 100% of the general real estate taxes,
payments in lieu of taxes, and assessments, including the Special Assessments, penalties and
interest, originally levied and certified for collection plus other charges, including attorney’s
fees, or whether the Treasurer reasonably expects to receive less than 100% of the general real
estate taxes, payments in lieu of taxes, and assessments, including the Special Assessments,
penalties and interest, levied and certified for collection plus other charges, including attorney’s
fees, and in accordance with this Agreement is requesting the consent of the District and the
Investor for such a sale.

2.4 The Treasurer agrees, on behalf of the County, not to utilize the authority
contained in Ohio Revised Code Chapter 5722 to transfer any of the Assessed Lands to the
county land reutilization corporation, to sell or convey any of the Assessed Lands to any political
subdivision under the authority contained in Ohio Revised Code Chapter 5722, or to clear the
liens and encumbrances applicable to the Assessed Lands under the authority contained in Ohio
Revised Code Chapter 5722 without the express written consent of the District and the Investor.

2.5 Nothing in this Agreement shall, or shall be construed to, prevent the
Treasurer from selling one or more Tax Certificates with respect to the Assessed Lands to a third
party without the consent of the District if the price received for the Tax Certificate or Tax
Certificates equals or exceeds 100% of the delinquent general real estate taxes, assessments,
including the Special Assessments, penalties and interest on the Assessed Lands outstanding
against the Assessed Lands at the time of such sale.

2.6 The District and the Investor each hereby agrees that upon written notice
from the Treasurer pursuant to Section 2.1 of this Agreement, it, within 30 days of receipt of the
Treasurer’s notice, shall give a written response to the Treasurer indicating therein whether it
consents to the request for sale of a Tax Certificate or Tax Certificates.

2.7 Delay or failure of the District or the Investor to give a written response
within 30 days of receipt of such notice shall be construed to be a consent to such request or to
be a waiver of the right to give such consent. No consent or refusal thereof by the District or the Investor in response to a request by the Treasurer shall extend to or affect any subsequent request of the Treasurer or shall impair the rights of the District or the Investor with respect to any such subsequent request.

2.8 So long as the Project Costs are outstanding, the Treasurer hereby covenants and agrees (a) to remit to the Investor, as appropriate and as provided for herein, not more than 30 days from the date of collection by the Treasurer, any amounts collected with respect to the Assessed Lands as payment for delinquent Special Assessments, including any amounts collected from Tax Certificates; and (b) to the extent the Treasurer seeks and is appointed as receiver for the Assessed Lands, as provided for in Chapter 323 of the Revised Code, after payment of reasonable fees and expenses of the Treasurer, all amounts collected by the Treasurer, as receiver for the Assessed Lands and collected as a result of any delinquent Special Assessments, shall be remitted to the Investor.

Section 3. Indemnification by Owner

3.1 The Owner hereby releases the District, the City, the Treasurer, the Investor, and their respective officers, directors, and employees (the “Indemnified Parties”), from, agrees that the Indemnified Parties shall not be liable for, and indemnifies the Indemnified Parties against, all liabilities, claims, costs, and expenses, including out-of-pocket and incidental expenses and legal fees, imposed upon, incurred, or asserted against Indemnified Parties, on account of: (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the acquisition, installation, equipping, improvement, maintenance, operation, and use of the Owner’s Project; (ii) any breach or default on the part of the Owner in the performance of any covenant, obligation, or agreement of the Owner under the Cooperative Agreement, or arising from any act or failure to act by the Owner, or any of the Owner’s agents, contractors, servants, employees, or licensees; (iii) the Owner’s failure to comply with any requirement of this Agreement; (iv) the efforts of the City and the Treasurer to collect Special Assessments; (v) any legal costs or out-of-pocket costs incurred by the District specifically related to additional approvals or actions that may be required by the District arising after the date of the Cooperative Agreement (and in the case of such legal costs or out-of-pocket costs, agrees to pay such costs directly to the District); and (vi) any claim, action or proceeding brought with respect to any matter set forth in clause (i), (ii), (iii), (iv), or (v) above, provided, however that the Owner shall not indemnify the Indemnified Parties as provided above to the extent that any liability, claim, cost, or expenses arises out of or results from the gross negligence, willful misconduct, or breach of this Agreement or the Cooperative Agreement of the Indemnified Parties.

3.2 The Owner agrees to indemnify, to pay, and to hold each of the Indemnified Parties harmless from and against all liabilities, and all reasonable costs and expenses, including out-of-pocket expenses and attorneys’ fees, arising out of any federal, state, or local environmental laws, regulations, resolutions or ordinances, incurred by any of the Indemnified Parties as a result of the existence on or release from the Owner’s Project Site of
Hazardous Materials, which in any way result from any act of omission or commission of the Owner or any of its agents, employees, independent contractors, invitees, licensees, successors, assignees, or tenants.

Section 4. Additional Agreements and Covenants.

4.1 The agreements of the Parties hereafter with respect to the foreclosure process shall be a covenant running with the Assessed Lands and, so long as Project Costs are payable from or secured, at least in part, by the revenues derived from the Special Assessments, such covenant shall be binding upon the Assessed Lands (except as released as provided in the Owner Consent), the Owner and any future owner of all or any portion of the Assessed Lands. The Owner Consent, and all other required documents and agreements, shall be recorded with the Montgomery County, Ohio Recorder’s Office, so that the agreements of the Parties hereafter with respect to the foreclosure process established pursuant to this Agreement is a covenant running with and is enforceable against the Assessed Lands.

4.2 The Investor and the District hereby agree that any future legal cause of action to enforce this Agreement against the Treasurer shall be solely limited to specific performance of this Agreement as the sole remedy, and the Investor and the District agree to provide the Treasurer with 60 days advanced written notice delivered by certified mail prior to bringing an action for specific performance.

4.3 If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

4.4 This Agreement shall inure to the benefit of each of the Parties, and each of their successors and assigns, all subject to the provisions of this Agreement. This Agreement may be amended only by a written instrument of the Parties, and any attempt to amend or modify this Agreement without a written instrument signed by all of the Parties to this Agreement shall be null and void. Notices given hereunder shall be in writing and shall be effective when actually received if delivered by hand or overnight courier, or three days after being sent by registered or certified mail, postage prepaid, the certification receipt therefore being deemed the date of such notice, and addressed to the Parties as follows:

If to City: City of Dayton, Ohio 101 W. Third Street Dayton, Ohio 45402 Attention: City Manager

If to Treasurer: County Treasurer Montgomery County, Ohio 451 W Third St., 2nd Floor Dayton, Ohio 45422
If to the District: Dayton Regional Energy Special Improvement District  
c/o Dayton-Montgomery County Port Authority  
8 North Main Street  
Dayton, Ohio 45402  
Attention: ESID Chairperson

With a Copy To: J. Caleb Bell  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, Ohio 43215  
Phone: (614) 227-2300  
Email: pace@bricker.com

If to the Owner: [Dayton-Phoenix Group, Inc.]  
[_____________]  
[_____________]  
Attention: [_____________]

If to the Investor: Dayton-Montgomery County Port Authority  
8 North Main Street  
Dayton, Ohio 45402  
Attention: President & Executive Director  
Telephone: (937) 226-0457 ext. 120

4.5 (a) The Investor shall have the unrestricted right at any time or from time to time, and without the Treasurer, the City, the District, or the Owner’s consent, to assign all or any portion of its rights and obligations under this Agreement and may sell or assign any and all liens received directly or indirectly from the City to any person (each, an “Investor Assignee”), and the Owner agrees that it shall execute, or cause to be executed, such documents, including without limitation, amendments to this Agreement and to any other documents, instruments and agreements executed in connection with this Agreement as the Investor shall deem necessary to effect the foregoing. Any Investor Assignee shall be a party to this Agreement and shall have all of the rights and obligations of the Investor under this Agreement (and under any and all other guaranties, documents, instruments and agreements executed in connection with this Agreement) to the extent that such rights and obligations have been assigned by the Investor pursuant to the assignment documentation between the Investor and such Assignee, and the Investor shall be released from its obligations under this Agreement and under any and all other guaranties, documents, instruments and agreements executed in connection with this Agreement to a corresponding extent.

(b) The Investor shall have the unrestricted right at any time and from time to time, and without the consent of or notice of the Treasurer, the City, the District, or the Owner, to grant to one or more persons (each, a “Participant”) participating interests in the Investor’s obligation to make Project Advances under the Cooperative Agreement or any or all of the loans
held by Investor under the Cooperative Agreement. In the event of any such grant by the Investor of a participating interest to a Participant, whether or not upon notice to the Treasurer, the City, the District, and the Owner, the Investor shall remain responsible for the performance of its obligations under the Cooperative Agreement and the Owner shall continue to deal solely and directly with the Investor in connection with the Investor’s rights and obligations under the Cooperative Agreement.

(c) The Investor may furnish any information concerning the Owner in its possession from time to time to prospective Investor Assignees and Participants.

4.6 This Agreement shall be construed in accordance with the laws of the State of Ohio.

4.7 This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(Signature Pages Immediately Follow)
IN WITNESS WHEREOF, each party to this Agreement has caused this Agreement to be executed in its respective name and capacity by its respective duly authorized officers, all as of the day and the year first written above.

"TREASURER"
COUNTY TREASURER OF MONTGOMERY COUNTY, OHIO

__________________________
Treasurer
County of Montgomery, Ohio
Approved as to form and correctness:

City Attorney

"CITY"
CITY OF DAYTON, OHIO

By: ____________________________

Name: __________________________

Title: __________________________
“DISTRICT”

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

DAYTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.

By: ____________________________

Name: __________________________

Title: __________________________
“OWNER”
DAYTON-PHOENIX GROUP, INC.

By: ________________________________

Name: ________________________________

Title: ________________________________
"INVESTOR"
DAYTON-MONTGOMERY COUNTY PORT AUTHORITY

By: ________________________________

Name: ______________________________

Title: ______________________________
FISCAL OFFICER’S CERTIFICATE

The undersigned, Fiscal Officer of the City of Dayton, Ohio, hereby certifies that the City will establish a special assessment fund, into which the Special Assessments (as that term is defined in the foregoing Agreement) received by the City shall be deposited, free from any previous encumbrances. The City shall use the moneys deposited in such special assessment fund to meet its obligations under the foregoing Agreement. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44

Dated: _____________, 2021

________________________________________
Fiscal Officer
City of Dayton, Ohio
FISCAL OFFICER’S CERTIFICATE

The undersigned, Fiscal Officer of the Dayton-Montgomery County Port Authority hereby certifies that the moneys required to meet the obligations of the Port Authority during the current fiscal year under the foregoing Special Assessment Agreement have been lawfully appropriated by the Board of Directors of the Port Authority for such purposes and are in the treasury of the Port Authority or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44 of the Ohio Revised Code.

Dated: ____________ , 2021

__________________________________
Fiscal Officer
Dayton-Montgomery County Port Authority

[Port Authority Fiscal Officer Certificate to Special Assessment Agreement]
EXHIBIT A

DESCRIPTION OF ASSESSED LANDS

The Assessed Lands subject to this Special Assessment Agreement and owned by Dayton-Phoenix Group, Inc. are the portion of the real property described in the following legal description that, as of the date hereof, is assigned tax parcel identification number R72 16701 0085 in the records of the Montgomery County, Ohio Auditor’s Office and is located at the commonly used mailing address 1619 Kuntz Road, Dayton, Ohio 45404:

Parcel 1
Comprising part of Lots 74112, 74113, 74114, 74530, 74531 and 74532, all of the revised and consecutive numbers of lots as shown on the Plat of the City of Dayton, and more particularly described as follows:

Beginning at a point in the centerline of Kuntz Road, said point of beginning being in the southeast line of said Lot No. 74530 on the southeast extension of the northeast line of land conveyed to T.R.W., Inc. by deed recorded in Book 2365, Page 460 in the Deed Records of Montgomery County, Ohio; thence with said extension and the northeast line of said T.R.W., Inc. land, north fifty-one degrees one minute no second (51° 1' 0") West for one thousand one hundred ninety-two and 77/100 (1,192.77) feet; thence with the north line of said T.R.W., Inc. land, north eighty-five degrees 42 minutes no seconds (85° 42' 0") west for one hundred ninety-two and 74/100 (192.74) feet to a point located one hundred ninety-two and 00/100 (192.00) feet eastwardly from and measured at right angles to the centerline of the north bound main track of The Baltimore and Ohio Railroad Company; thence parallel to said north bound main track north four degrees seventeen minutes 40 seconds (4° 17' 40") east for three hundred
fifty-five and 57/100 (355.57) feet; thence in an easterly direction on a curve to the right with a radius of five hundred fifty-two and 21/100 (552.21) feet for eight hundred sixty-eight and 27/100 (868.27) feet, the tangent to said curve at its point of beginning bearing north thirty-eight degrees forty-two minutes fifty seconds (38° 42' 50") east, to a point located fifty and 00/100 (50.00) feet southwardly from and measured at right angles to the centerline of a spur track of said The Baltimore and Ohio Railroad Company; thence on a tangent to said curve and parallel to the centerline of said spur track, south fifty-one degrees eleven minutes 50 seconds (51° 11' 50") east for one thousand three and 17/100 (1,003.17) feet to a point in the centerline of said Kuntz Road, said centerline being the southeast line of said Lot No. 74531; thence with the centerline of said Kuntz Road and the southeast line of said Lot No. 74531 and its southwest extension, said extension being the southeast lines of said Lots Numbered 74532, 74112, 74113, and 74530, south thirty-eight degrees fifty-nine minutes no seconds (38° 59' 00") west for seven hundred forty and 64/100 (740.64) feet to the point of beginning, containing twenty-four and 868/1,000 (24.868) acres, more or less, subject, however, to an easement for highway purposes conveyed to the City of Dayton, Ohio, by deed recorded in Book 2014, Page 111 in the Deed Records of Montgomery County, Ohio, said easement being thirty and 00/100 (30.00) feet taken by parallel lines off of the southeast side of the above-described tract of land and containing 510/1,000 (0.510) acres, more or less, leaving a net acreage of twenty-four and 358/1,000 (24.358) acres, more or less. Curved distance is measured on the arc.

Parcel 2

Being parts of Lots numbered 74114, 74115 and 74530 of the revised and consecutive numbers of lots in the City of Dayton and being a tract of land more particularly described as follows:

Beginning at an iron pin in the south line of the 24,868 acre tract of land conveyed to General Motors Corporation by deed recorded in M.F. 79-530A12 of the Deed Records of Montgomery County, Ohio, said point of beginning also being N 51° 01' 00" W a distance of 30.00 feet from the southeast corner of said General Motors Corporation land and a point in the west right-of-way of Kuntz Road; thence from said place of beginning S 38° 59' 00" W with the northwesterly right-of-way of said Kuntz Road a distance
of 19.00 feet to a point; thence N 51° 01' 00" W a distance of 703.47 feet to an iron pin; thence N 85° 36' 30" W a distance of 616.85 feet to an iron pin in the east line of lands of the Chessie System (formerly B&O Railroad), said point being 135.00 feet eastwardly measured at right angles to the centerline of the northbound main track; thence with said Chessie System right-of-way N 04° 17' 40" E parallel to said northbound main track a distance of 276.06 feet to an iron pin; thence S 85° 42' 00" E a distance of 250.00 feet to an iron pin in the south line of said General Motors Corporation land; thence S 51° 01' 00" E with the south line of said General Motors Corporation land a distance of 1162.77 feet to the place of beginning, containing 3.156 acres, more or less.

EXHIBIT B

OWNER CONSENT
(Affidavit of Facts Relating to Title Made Pursuant to O.R.C. §5301.252)

The undersigned, _____________, having been duly cautioned and sworn, deposes and states as follows:

The undersigned is the _____________ of Dayton-Phoenix Group, Inc., an Ohio corporation (the “Owner”).

This Owner Consent, dated as of _____________, 2021, is given by the Owner pursuant to the Special Assessment Agreement dated as of _____________, 2021 (the “Agreement”) by and among the County Treasurer of Montgomery County, Ohio (the “Treasurer”), the City of Dayton, Ohio (the “City”), the Centerville, Dayton, Kettering, Moraine, Oakwood, Riverside, Springboro, Washington Township Regional Energy Special Improvement District, Inc., d/b/a Dayton Regional Energy Special Improvement District (the “District”), the Dayton-Montgomery County Port Authority (together with its permitted successors and assigns under the Agreement, the “Investor”) and the Owner. Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

The Agreement provides for an expedited foreclosure process with respect to certain Special Assessments which have been levied on the Assessed Lands by the City in order to pay the costs of special energy improvement projects under Ohio Revised Code Chapter 1710. The Assessed Lands are described in Exhibit 1 to this Owner Consent, and the Special Assessments are disclosed on Exhibit 2 to this consent.

The Agreement further provides that if an event of default occurs and is continuing with respect to a required semi-annual payment of Special Assessments or an “Event of Default” (as that term is defined in the Cooperative Agreement, as appropriate) under the Cooperative Agreement occurs and is continuing, the Treasurer will pursue an expedited foreclosure of the lien of the Special Assessments, all as provided in the Agreement. In consideration of the Project Advance to finance the Project, the Owner hereby consents to the expedited foreclosure process with respect to the lien of the Special Assessments then due and owing with respect to the Assessed Lands, as provided in the Agreement.

The Owner is the owner of the Assessed Lands. The Owner covenants and agrees that so long as the Project Advance remains outstanding, except as the covenant may be released by the District, the City, and the Investor, as applicable, in writing, the expedited foreclosure process established pursuant to the Agreement shall be a covenant on and running with, and shall be binding upon, the Assessed Lands, the Owner and all future owners of the Assessed Lands. Any release, modification or waiver of the covenant running with the land by the District, the City, or the Investor, as applicable, shall be filed of record with the Montgomery County, Ohio Recorder’s Office. The Owner agrees that this Owner Consent shall be recorded with the Montgomery County, Ohio Recorder’s Office and the Owner covenants and agrees to record
such documents and to take such reasonable steps as are necessary, so that the expedited foreclosure process with respect to the lien of the Special Assessments is a covenant on and running with the Assessed Lands and is binding on the Owner and any and all future owners of all or any portion of the Assessed Lands.

The Special Assessments have been levied by the City and certified to the County Auditor for placement on the tax list and duplicate and collection with and in the same manner as real property taxes as special assessments binding against the Assessed Lands in each of the years disclosed in the schedule of Special Assessments attached to this Owner Consent as Exhibit 2. Unless earlier paid by the Owner or any successor in interest of the Owner to the Assessed Lands, the Special Assessments shall be levied, billed, due and payable, and collected in each of the years in each of the amounts disclosed on Exhibit 2.

Anything in this Owner Consent to the contrary notwithstanding, this Owner Consent shall in no way be construed as a waiver by the Owner of its statutory right of redemption, including the full applicable redemption period.

(Signature Page Immediately Follows)
Further affiant sayeth naught.

“OWNER”

DAYTON-PHOENIX GROUP, INC.

By: ____________________________

Name: __________________________

Title: __________________________

STATE OF OHIO

) ss.

COUNTY OF ____________

) ss.

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named Dayton-Phoenix Group, Inc., by ____________, its __________, who acknowledged that such officer did sign the foregoing instrument and that the same is such officer’s free act and deed as such officer and of said corporation. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this ____ day of _________________, 2021.

__________________________________________

Notary Public

This instrument was prepared by:

J. Caleb Bell, Esq.
Bricker & Eckler LLP
100 South Third St.
Columbus, Ohio 43215
EXHIBIT 1

DESCRIPTION OF ASSESSED LANDS

The Assessed Lands subject to this Owner Consent and owned by Dayton-Phoenix Group, Inc. are the portion of the real property described in the following legal description that, as of the date hereof, is assigned tax parcel identification number R72 16701 0085 in the records of the Montgomery County, Ohio Auditor’s Office and is located at the commonly used mailing address 1619 Kuntz Road, Dayton, Ohio 45404:

Parcel 1
Comprising part of Lots 74112, 74113, 74114, 74530, 74531 and 74532, all of the revised and consecutive numbers of lots as shown on the Plat of the City of Dayton, and more particularly described as follows:

Beginning at a point in the centerline of Kuntz Road, said point of beginning being in the southeast line of said Lot No. 74530 on the southeast extension of the northeast line of land conveyed to T.R.W., Inc. by deed recorded in Book 2365, Page 460 in the Deed Records of Montgomery County, Ohio; thence with said extension and the northeast line of said T.R.W., Inc. land, north fifty-one degrees one minute no second (51° 1’ 0") West for one thousand one hundred ninety-two and 77/100 (1,192.77) feet; thence with the north line of said T.R.W., Inc. land, north eighty-five degrees 42 minutes no seconds (85° 42’ 0") west for one hundred ninety-two and 74/100 (192.74) feet to a point located one hundred ninety-two and 00/100 (192.00) feet eastwardly from and measured at right angles to the centerline of the north bound main track of The Baltimore and Ohio Railroad Company; thence parallel to said north bound main track north four degrees seventeen minutes 40 seconds (4° 17’ 40") east for three hundred
fifty-five and 57/100 (353.57) feet; thence in an easterly direction on a curve to the right with a radius of five hundred fifty-two and 21/100 (552.21) feet for eight hundred sixty-eight and 27/100 (868.27) feet, the tangent to said curve at its point of beginning bearing north thirty-eight degrees forty-two minutes fifty seconds (38° 42' 50") east, to a point located fifty and 00/100 (50.00) feet southwestwardly from and measured at right angles to the centerline of a spur track of said The Baltimore and Ohio Railroad Company; thence on a tangent to said curve and parallel to the centerline of said spur track, south fifty-one degrees eleven minutes fifty seconds (51° 11' 50") east for one thousand three and 17/100 (1,003.17) feet to a point in the centerline of said Kuntz Road, said centerline being the southeast line of said Lot No. 74531; thence with the centerline of said Kuntz Road and the southeast line of said Lot No. 74531 and its southwest extension, said extension being the southeast lines of said Lots Numbered 74532, 74112, 74113, and 74530, south thirty-eight degrees fifty-nine minutes no seconds (38° 59' 00") west for seven hundred forty and 64/100 (740.64) feet to the point of beginning, containing twenty-four and 868/1,000 (24.868) acres, more or less, subject, however, to an easement for highway purposes conveyed to the City of Dayton, Ohio, by deed recorded in Book 2014, Page 111 in the Deed Records of Montgomery County, Ohio, said easement being thirty and 00/100 (30.00) feet taken by parallel lines off of the southeast side of the above-described tract of land and containing 510/1,000 (0.510) acres, more or less, leaving a net acreage of twenty-four and 358/1,000 (24.358) acres, more or less. Curved distance is measured on the arc.

Parcel 2
Being parts of Lots numbered 74114, 74115 and 74530 of the revised and consecutive numbers of lots in the City of Dayton and being a tract of land more particularly described as follows:

Beginning at an iron pin in the south line of the 24,868 acre tract of land conveyed to General Motors Corporation by deed recorded in M.F. 79-530A12 of the Deed Records of Montgomery County, Ohio, said point of beginning also being N 51° 01' 00" W a distance of 30.00 feet from the southeast corner of said General Motors Corporation land and a point in the west right-of-way of Kuntz Road; thence from said place of beginning S 38° 59' 00" W with the northwesterly right-of-way of said Kuntz Road a distance
of 19.00 feet to a point; thence N 51° 01' 00" W a distance of 703.47 feet to an iron pin; thence N 85° 36' 30" W a distance of 616.85 feet to an iron pin in the east line of lands of the Chessie System (formerly B&O Railroad), said point being 135.00 feet eastwardly measured at right angles to the centerline of the northbound main track; thence with said Chessie System right-of-way N 04° 17' 40" E parallel to said northbound main track a distance of 276.06 feet to an iron pin; thence S 85° 42' 00" E a distance of 250.00 feet to an iron pin in the south line of said General Motors Corporation land; thence S 51° 01' 00" E with the south line of said General Motors Corporation land a distance of 1162.77 feet to the place of beginning, containing 3.156 acres, more or less.

EXHIBIT 2

SCHEDULE OF SPECIAL ASSESSMENTS

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<th>Special Assessment Date*</th>
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* Pursuant to Ohio Revised Code Chapter 323, the Special Assessment Payment Dates identified in this Exhibit B are subject to adjustment by the Montgomery County Auditor under certain conditions.

** Pursuant to Ohio Revised Code Section 727.36, the Montgomery County Auditor may charge and collect a fee in addition to the amounts listed in this Exhibit B.
COOPERATIVE AGREEMENT

by and among

DAYTON-MONTGOMERY COUNTY PORT AUTHORITY

and

CITY OF DAYTON, OHIO

and

DAYTON-PHOENIX GROUP, INC.

as Developer

and

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

and

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

as Trustee

$6,260,000
Dayton-Montgomery County Port Authority
Taxable Development Revenue Bonds
(Southwest Ohio Regional Bond Fund)
Series 2021G
(Phoenix PACE Project)

Dated as of

October 1, 2021
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FORM OF ASSIGNMENT AND ASSUMPTION OF COOPERATIVE AGREEMENT
COOPERATIVE AGREEMENT

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

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

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

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

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

E. In order to add the Property to the territory of the ESID and to cause the special assessments to pay a portion of the costs of the Project to be levied, the ESID, the City, and the Developer cooperated to submit to the City a “Petition for Special Assessments for Special Energy Improvement Projects and Affidavit” (the “Petition”) on August 17, 2021.

F. On September 1, 2021, by its Resolution No. 6602-21 and on October 13, 2021 by its Ordinance No. [____], respectively, the City approved the Petition and levied the special assessments described in the Petition (the “Special Assessments”) on the Property in order to pay a portion of the costs of the Project.
G. The Authority, the City, the Developer, and the ESID each have determined that the most efficient and effective way to implement the financing, acquisition, construction, equipment, improvement, and installation of the Project and to further the public purposes set forth above is through this Agreement with (i) the Authority issuing its Series 2021G Bonds in order to make a portion of the proceeds of the Series 2021G Bonds available to pay a portion of the costs of the Project, (ii) the Authority making a portion of the proceeds of the Series 2021G Bonds available to finance the costs of the special energy improvement projects described in the Petition, (iii) the Developer acquiring, constructing, installing, equipping, and improving the Project, (iv) the Developer agreeing to pay special assessments in the maximum amount of the Special Assessments in an aggregate amount that will provide revenues sufficient to pay the Financing Payments.

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

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

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ARTICLE I

Definitions

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

Section 1.2. Definitions. As used in this Agreement:

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

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

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

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

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

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

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

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

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

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

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

“Bond Purchase Agreement” means the Bond Purchase Agreement dated September 30, 2021 between the Underwriter of the Series 2021G Bonds and the Authority relating to the original purchase of the Series 2021G Bonds, as duly amended and supplemented from time to time.

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

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

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

“Closing Date” means October 20, 2021.

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

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

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

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

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

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

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

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

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

“Developer” means Dayton-Phoenix Group, Inc., a corporation organized and validly existing under the laws of the State of Ohio, together with its permitted successors and assigns under this Agreement.

“Disbursement Request” means a request by the Developer for disbursement from the Series 2021G PF Account to pay or reimburse Series 2021G Project Costs in accordance with Section 3.8 of this Agreement, and made on the form attached to this Agreement as Exhibit D.

“Environmental Laws” means all applicable federal, state, and local environmental, land use, zoning, health, chemical use, safety, and sanitation laws, statutes, ordinances, and codes relating to the protection of the environment and/or governing use, storage, treatment, generation,
transportation, processing, handling, production, or disposal of Hazardous Materials and the rules, regulations, policies, guidelines, interpretations, decisions, orders, and directives of federal, state, and local governmental agencies and authorities with respect thereto, including, without limitation, CERCLA and Chapter 3734 of the Ohio Revised Code.

“ESID Fees” means a semi-annual administrative fee of the ESID payable on each date an installment of the Special Assessments becomes due during which the Series 2021G Bonds are outstanding to be paid out of the Financing Payments as shown on Exhibit C to and incorporated into this Agreement. “Event of Default” means any of the events described as an Event of Default in Section 7.1 of this Agreement.

“Excess Special Assessments” means any Assigned Special Assessments received by the Trustee in excess of the amount necessary to pay any Administrative Amounts and Required Amounts and, as provided in this Agreement, to be returned to the Developer.

“Financing Payment” means the portion of the amounts required to be paid by the City under this Agreement as Assigned Service Payments representing Administrative Amounts and Required Amounts.

“Financing Payment Date” means each date on which the City pays to the Trustee the Assigned Special Assessments, which payments shall be made by the City no later than fourteen (14) calendar days following the City’s receipt of Special Assessments from the County Treasurer or any final settlement relating to the Special Assessments, for deposit by the City into the Special Assessment Fund.

“Fiscal Officer” means, the Secretary or an Assistant Secretary of the Legislative Authority of the Authority, or if any of them are unavailable, absent or incapacitated, any member of the Board of Directors of the Authority.

“Force Majeure” means any of the causes, circumstances or events described as constituting Force Majeure in Section 7.1 of this Agreement.


“Holder” or “Holder of a Bond” shall have the meaning assigned to that term in the Indenture.

“Indenture” means the Basic Indenture, as amended and supplemented from time to time under its terms, including, without limitation, by the Series 2021G Supplemental Indenture.
“Interest Payment Date” or “Interest Payment Dates” means the fifteenth day of each May and November, commencing November 15, 2021.

“Interest Rate for Advances” means the rate of 12% per year or a rate which is 2% plus the interest rate then charged by the Trustee (in its lending capacity as a bank or if it has no such rate by the largest bank of which it is an affiliate) to its most creditworthy commercial borrowers in its lending capacity as a bank, whichever is, in whole or part, greater and lawfully chargeable.

“Legislative Authority” means, the Board of Directors of the Authority.

“Notice Address” means:

(a) As to the Authority: Dayton-Montgomery County Port Authority 8 North Main Street Dayton, Ohio 45402 Attention: Executive Director

(b) As to the City: City of Dayton, Ohio 101 W. 3rd Street Dayton, Ohio 45402 Attention: City Manager

(c) As to the Trustee: The Bank of New York Mellon Trust Company, N.A. 4449 Easton Way, Office 2041 Columbus, Ohio 43219 Attention: Corporate Trust Department

(d) As to the Developer: Dayton-Phoenix Group, Inc. 1619 Kuntz Road Dayton, Ohio 45404 Attention: CEO

(e) As to the ESID: Dayton Regional Energy Special Improvement District, Inc. c/o Dayton-Montgomery County Port Authority 8 North Main Street Dayton, Ohio 45402 Attention: ESID Chairperson
or such additional or different address, notice of which is given under Section 9.2 of this Agreement.

“Original Purchaser” means the Original Purchaser as defined in the Series 2021G Supplemental Indenture.

“Petition” means the Petition for Special Assessments for Special Energy Improvement Projects and Affidavit submitted to the City on August 17, 2021 and approved by the City on September 1, 2021 by Resolution No. 6602-21.

“Person” or words importing persons mean firms, associations, partnerships (including without limitation, general and limited partnerships), limited liability companies, joint ventures, societies, estates, trusts, corporations, public or governmental bodies, other legal entities and natural persons.

“Plans and Specifications” means the drawings, surveys, maps, plats or other depiction, as amended through approved change orders, of the Project for construction on the Property.

“Pledged Revenues” shall have the meaning assigned to that term in the Indenture.

“Project” means the special energy improvement projects to be completed by the Developer on the Property constituting a “project” and “port authority facilities” as defined in the Act for the Project Purposes, all as more particularly described in Exhibit B to this Agreement.

“Project Fund” means the Project Fund as defined in the Basic Indenture.

“Project Purposes” means providing funds to pay a portion of the Developer’s costs of constructing the Project for commercial and economic development purposes, or as may otherwise be permitted by this Agreement and the Bond Legislation.

“Property” means the real property more fully described in Exhibit A attached to and made a part of this Agreement.

“Required Amounts” means that portion of the Financing Payments to be paid to the Trustee for application to Bond Service Charges with respect to the Series 2021G Bonds in the amounts shown on Exhibit C attached to, and incorporated into, this Agreement.
“Required Insurance Coverage” means, collectively, the Required Property Insurance Coverage and the Required Public Liability Insurance Coverage, each of which, in addition to the requirements described in their respective definitions, (i) must provide for 10 days’ notice to the Authority in the event of cancellation or nonrenewal and (ii) must name as an additional insured (mortgagee/loss payee) the Authority.

“Required Property Insurance Coverage” means at any time insurance coverage evidenced maintained with generally recognized, responsible insurance companies qualified to do business in the State in the amount of the then full replacement value of the Project and the Property, insuring the Project against loss or damage by fire, windstorm, tornado, and hail and extended coverage risks on a comprehensive all risk/special form insurance policy and containing loss deductible provisions of not to exceed $10,000, which insurance coverage shall name the Authority as loss payee/mortgagee.

“Required Public Liability Insurance Coverage” means at any time commercial general liability insurance against claims for personal injury, death, or property damage suffered by others upon, in or about any premises occupied by the Developer, which insurance coverage shall name the Authority as an additional insured.

“Series 2021G Bonds” means the $6,260,000 aggregate principal amount of Bonds initially issued by the Authority under the Bond Legislation, designated “Taxable Development Revenue Bonds (Southwest Ohio Regional Bond Fund) Series 2021G (Phoenix PACE Project).”


“Series 2021G Supplemental Indenture” means the Thirty-Sixth Supplemental Indenture, between the Authority and the Trustee, dated as of the date of this Agreement containing the terms of the Series 2021G Bonds.

“Special Assessment Act” means, collectively, Ohio Revised Code Section 727.01 et seq., Ohio Revised Code Section 1710.01 et seq., Ohio Revised Code Section 323.01 et seq., Ohio Revised Code Section 319.01 et seq., Ohio Revised Code Section 5721.01 et seq., and related laws.

“Special Assessment Agreement” means the Special Assessment Agreement dated as of the date of this Agreement among the County Treasurer, the City, Developer, the ESID, and the Authority, as duly amended or supplemented from time to time.

“Special Assessment Fund” means the City’s segregated fund established for the collection of the Special Assessments.

“Special Assessment Legislation” means, collectively, the Petition, Resolution No. 6602-21 duly adopted by the City on September 1, 2021 and Ordinance No. [____] duly adopted by the City on [October 13], 2021.
“Special Assessments” means the special assessments levied by the City against the Property under its Ordinance No. [____] duly adopted on [October 13], 2021, to pay a portion of the costs of the Project and certified by the City to the County Auditor for collection with real property taxes.

“Special Funds” means the Special Funds as defined in the Indenture.

“State” means the State of Ohio.

“Transaction Documents” means, collectively, this Agreement, the Indenture, the Construction Agency Agreement, the Special Assessment Agreement, and the Bond Purchase Agreement.

“Trustee” means The Bank of New York Mellon Trust Company, N.A., Columbus, Ohio, until a successor Trustee shall have become such pursuant to the applicable provisions of the Indenture, and thereafter, “Trustee” shall mean the successor Trustee.

“Trustee Fees” means a semi-annual administrative fee of the Trustee equal to an annual rate of 0.06% of the outstanding principal amount, or $1,250 per year, whichever is greater, on each date an installment of the Special Assessments becomes due during which the Series 2021G Bonds are outstanding to be paid out of the Financing Payments as shown on Exhibit C to and incorporated into this Agreement.

“Unassigned Authority Rights” means the rights of the Authority to be held harmless and indemnified under Section 5.2 of this Agreement, to receive notice of litigation under Section 5.3 of this Agreement, to be reimbursed for attorney fees and expenses under Section 7.4 of this Agreement, to make requests and give or withhold consent including, without limitation, requests under Section 3.8 of this Agreement, and consent to amendments, changes, modifications, alterations, and termination of this Agreement under Section 8.5 of this Agreement.

“Underwriter” means KeyBanc Capital Markets, Inc.

Section 1.3. Interpretation. Any reference in this Agreement to the Authority, to the Legislative Authority, or to any member or officer of either includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a Section or provision of the Constitution of the State or the Act, to a section, provision, or chapter of the Ohio Revised Code, or any other legislation or to any statute of the United States of America, includes that section, provision, or chapter as amended, modified, revised, supplemented, or superseded from time to time; provided, that no amendment, modification, revision, supplement, or superseding section, provision, or chapter shall be applicable solely by reason of this provision if it constitutes in any way an impairment of the rights or obligations of the Cooperative Parties under this Agreement.
Unless the context indicates otherwise, words importing the singular number include the plural number and vice versa. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

Section 1.4. **Captions and Headings.** The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses of this Agreement.

(End of Article I)
ARTICLE II

Representations and Covenants

Section 2.1. **Representations of the Authority.** The Authority represents that: (a) it is duly organized and validly existing under the laws of the State; (b) it is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the Authority which would impair its ability to carry out its obligations contained in this Agreement or the Transaction Documents to which it is a party; (c) it is legally empowered to enter into and carry out the transactions contemplated by this Agreement and the other Transaction Documents to which it is a party; (d) it has duly authorized the execution, delivery, and performance of this Agreement and the other Transaction Documents to which it is a Party; (e) it has duly accomplished all conditions necessary to be accomplished by it prior to the execution of the agreements necessary to issue the Series 2021G Bonds and to make the proceeds of the Series 2021G Bonds available for the Project Purposes; and (f) it will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement and the other Transaction Documents to which it is a party by any successor public body.

Section 2.2. **Representations and Covenants of the City.** The City represents and covenants that:

(i) It is a municipal corporation duly organized and validly existing under the Constitution and laws of the State and its Charter.

(ii) To the best of its knowledge, it is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the City which would impair its ability to carry out its obligations contained in this Agreement or the Transaction Documents to which it is a party.

(iii) It is legally empowered to execute, deliver, and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement, the Special Assessment Legislation, and the other Transaction Documents to which it is a party. To the best of its knowledge, that execution, delivery, and performance do not and will not violate or conflict with any provision of law applicable to the City, including but not limited to, its Charter, and do not, and will not, conflict with or result in a default under any agreement or instrument to which the City is a party or by which it is bound.

(iv) It has duly authorized the execution, delivery, and performance of this Agreement and the other Transaction Documents to which it is a party and the transactions contemplated in this Agreement and in those Transaction Documents, and those transactions will enhance, aid, and promote authorized purposes of the City.
(v) It will do all things in its power in order to maintain its existence or assure the assumption by any successor public body of its obligations under this Agreement, the Special Assessment Legislation, and the other Transaction Documents to which it is a party.

(vi) The Special Assessment Legislation has been duly adopted, is in full force and effect, and is not subject to repeal by referendum.

(vii) Upon request of the Authority, the City shall use its best efforts to deliver to the Authority and Trustee such information as the Authority may determine they may need in connection with any obligation they have entered into, or may enter into, for the purpose of permitting an underwriter of the Series 2021G Bonds to satisfy the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Act of 1934.

Section 2.3. Representations and Covenants of the Developer.

(a) The Developer represents and covenants that:

(i) It is a corporation duly organized and validly existing under the laws of the State of Ohio.

(ii) It has full power and authority to execute, deliver, and perform this Agreement and the other Transaction Documents to which it is a party and to enter into and perform the transactions contemplated by those documents. That execution, delivery, and performance do not, and will not, violate any provision of law applicable to the Developer or the Developer’s Articles of Organization or [Code of Regulations], and do not, and will not, conflict with or result in a default under any agreement or instrument to which the Developer is a party or by which it is bound. This Agreement has, by proper action, been duly authorized, executed, and delivered by the Developer and all steps necessary to be taken by the Developer have been taken to constitute this Agreement valid and binding obligations of the Developer.

(iii) The provision of financial assistance to be made available under this Agreement and the commitments for that assistance made by the Authority and the ESID have induced the Developer to undertake the transactions contemplated by this Agreement and the other Transaction Documents to which it is a party and will create and preserve jobs and employment opportunities within the City and the jurisdiction of the Authority.

(iv) The Developer will construct the Project in accordance with the Plans and Specifications and with the terms of this Agreement and the Construction Agency Agreement and will maintain the Project in such
manner as to conform in all material respects with all applicable zoning, planning, building, environmental, and other applicable governmental regulations and as to be consistent with the Act.

(v) The Project will comply in all material respects with all applicable Environmental Laws.

(vi) Upon request of the Authority, the Developer shall deliver to the Authority and the Trustee such information as the Authority may determine they may need in connection with any obligation they have entered into, or may enter into, for the purpose of permitting an underwriter of the Series 2021G Bonds to satisfy the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Act of 1934.

(vii) The Required Insurance Coverage is in place as of the date of this Agreement will be maintained at all times during the term of this Agreement, while the Series 2021G Bonds remain outstanding, and while any Special Assessments remain to be paid. Any return of insurance premium or dividends based upon the Required Insurance Coverage shall be due and payable solely to the Developer, unless such premium shall have been paid by the Authority, in accordance with the distribution priority specified in Section 3.10.

Section 2.4. Special Assessment Payments.

(a) The Special Assessment Proceedings. The City has taken all necessary actions required by the Special Assessment Act to levy and collect the Special Assessments on the Property.

Under Ohio Revised Code Section 727.33, the City has certified the Special Assessments to the County Auditor for collection, and the County Auditor shall collect the unpaid Special Assessments with and in the same manner as other real property taxes and pay the amount collected to the City. The Parties intend that the County Auditor and the County Treasurer shall have the duty to collect the Special Assessments through enforcement proceedings in accordance with applicable law.

(b) Collection of Delinquent Special Assessments. The Authority, the Trustee, and the ESID are hereby authorized to take any and all actions as assignees of and, to the extent required by law, in the name of, for, and on behalf of, the City to collect delinquent Special Assessments levied by the City pursuant to the Special Assessment Act and the Special Assessment Legislation and to cause the lien securing the delinquent Special Assessments to be enforced through prompt and timely foreclosure proceedings, including, but not necessarily limited to, filing and prosecution
of mandamus or other appropriate proceedings to induce the County Prosecutor, the County Auditor, and the County Treasurer, as necessary, to institute such prompt and timely foreclosure proceedings. The proceeds of the enforcement of any such lien shall be deposited and used in accordance with this Agreement.

(c) **Prepayment of Special Assessments.** The Cooperative Parties agree that the Special Assessments assessed against the Property and payable to the City pursuant to the Special Assessment Act may be prepaid to the Trustee by the Developer in accordance with Section 6.1 of this Agreement. Except as set forth in this Section 2.4(c) and Section 6.1 of this Agreement, the Developer shall not prepay any Special Assessments. Notwithstanding the foregoing, if the Developer attempts to cause a prepayment of the Special Assessments by paying to the County Treasurer any amount as a full or partial prepayment of Special Assessments, and if the City shall have knowledge of the same, the City immediately shall notify the Authority and the Trustee, and, unless provided the express written consent of the Authority, the City shall not cause any reduction in the amount of Special Assessments. Except as specifically provided in this Agreement to the contrary, no other action pursuant to any provision of this Agreement shall abate in any way the payment of the Special Assessments by the owners of property or the transfer of the Special Assessments by the City to the Trustee.

(d) **Assignment of Special Assessments.** The City agrees that it shall establish the Special Assessment Fund for the collection of the Special Assessments as a separate fund maintained on the City’s books and records and to be held in the custody of a bank with which the City maintains a depository relationship. The City hereby assigns to the Authority all of its right, title and interest in and to: (i) the Special Assessments received by the City under the Special Assessment Legislation and this Agreement, (ii) the City’s Special Assessment Fund established for the Project, and (iii) any other property received or to be received from the City under the Special Assessment Legislation and this Agreement. The City further shall transfer, set over, and pay the Special Assessments to the Trustee in accordance with this Agreement. The ESID acknowledges and consents to the City’s assignment of the Special Assessments to the Authority. The Cooperative Parties agree that each of the City, the ESID, the Authority, as assignee of the Special Assessments, and the Trustee, as trustee for the Special Assessments and the Series 2021G Bonds, is authorized to take any and all actions, whether at law, or in equity, to collect delinquent Special Assessments levied by the City pursuant to law and to cause the lien securing any delinquent Special Assessments to be enforced through prompt and timely foreclosure proceedings, including, but not necessarily limited to, filing and prosecution of mandamus or other appropriate proceedings to induce the County Prosecutor, the County Auditor, and the
County Treasurer, as necessary, to institute such prompt and timely foreclosure proceedings.

(e) **Transfer of Special Assessments.** The parties anticipate that annual installments of the Special Assessments will be paid to the City by the County Auditor and the County Treasurer in accordance with Ohio Revised Code Chapters 319, 321, 323, and 727, which, without limiting the generality of the foregoing, contemplates that the County Auditor and County Treasurer will pay the semi-annual installments of the Special Assessments to the City on or before June 1 and December 1 of each year. Promptly upon receipt of any moneys received by the City as Special Assessments, but in any event no later than (i) fourteen (14) calendar days after receipt from the County Treasurer or any final settlement relating to the Special Assessments or (ii) each Financing Payment Date, whichever is earlier, the City shall deliver to the Trustee all such moneys received by the City as Special Assessments. The Authority may from time to time provide written payment instructions to the City for payment of Special Assessments by check, wire instructions, or other means. If at any time during the term of this Agreement the County Auditor agrees, on behalf of the City, to disburse the Special Assessments to the Authority or to the Authority’s direction pursuant to instructions or procedures agreed upon by the County Auditor and the City, then, upon each transfer of an installment of the Special Assessments from the County Auditor to the Authority or to the Authority’s direction, the City shall be deemed to have satisfied all of its obligations under this Agreement to transfer that installment of the Special Assessments to the Trustee.

(f) **No Contest of Special Assessments.** The Developer further agrees that it will not contest the amount of the Special Assessments.

Section 2.5. **Security for Advanced Funds.** To secure the transfer of the Special Assessments by the City to the Authority, and in accordance with the Special Assessment Act, the ESID hereby assigns, transfers, sets over, and shall pay all of its right, title, and interest in and to the Special Assessments related to the ESID actually received by or on behalf of the City to the Authority. The Owner and the City hereby agree and consent to that assignment.

(End of Article II)
ARTICLE III

Cooperative Arrangements; Undertaking the Project; Issuance of the Series 2021G Bonds

Section 3.1.  Cooperative Arrangements. The Developer, the City, and the ESID have requested the assistance of the Authority in the financing of the Project as special energy improvement projects within the territory of the ESID. For the reasons set forth in this Agreement’s recitals—which recitals are incorporated into this Agreement by this reference as a statement of the public purposes of this Agreement and the intended arrangements among the Cooperative Parties—the City and the ESID have requested the assistance and cooperation of the Authority and the Trustee in the collection and payment of Special Assessments in accordance with this Agreement. The Cooperative Parties intend this Agreement to be, and it shall be, an agreement among the Cooperative Parties to cooperate in the financing, acquisition, construction, equipping, improvement, and installation of “special energy improvement projects,” pursuant to Ohio Revised Code Chapter 1710, and as that term is defined in Ohio Revised Code Section 1710.01(A) and “port authority facilities” under the Act. The Cooperative Parties intend this Agreement’s provisions to be, and they shall be construed as, agreements to take effective cooperative action and to safeguard the Cooperative Parties’ interests.

To the extent, if any, necessary, desirable or appropriate to implement the intent of this Agreement and in accordance with the Act, the Authority undertakes to, and is authorized by the City to, exercise any power, perform any function and render any service, on behalf of the City, together with all necessary or incidental powers, to the fullest extent that the City is authorized to exercise, perform or render such power, function or service. Each power exercised, function performed, or service rendered by the Authority under this Agreement, to the extent if any necessary to the implementation of this Agreement and the financing of the Project in the manner set forth in this Agreement, is undertaken by the Authority on behalf of the City, pursuant to Revised Code Sections 4582.43 and 4582.431.

Section 3.2.  Undertaking and Improvement of the Project. The Authority, the Developer, and the ESID agree to undertake the Project for the Project Purposes, and the Developer agrees to undertake and construct the Project with all reasonable dispatch and in accordance with the following:

(a)  The Financing of the Project with Special Assessments. In order to provide moneys to finance costs of the Project, the City will cause to be paid to the Trustee, the Assigned Special Assessments received by the City under this Agreement on or before each Financing Payment Date.

(b)  Construction of the Development. The Developer shall, for and on behalf of the Authority, undertake the Project in accordance with all applicable laws, and in accordance with this Article III and the Construction Agency Agreement by constructing the Project.
Section 3.3. **Plans and Specifications.** The Plans and Specifications have been or will be filed with the City by the Developer. The Developer may revise the Plans and Specifications from time to time, provided that no revision shall be made which would (i) change the Project Purposes in any material respect, without the written consent of the Authority which consent shall not be unreasonably withheld, or (ii) change the Project Purposes to other than permitted by the Act.

Section 3.4. **Issuance of the Series 2021G Bonds; Application of Proceeds.** To provide funds to pay for the Project pursuant to the Bond Legislation, the Authority has agreed to issue its Series 2021G Bonds and the Authority has issued, sold and delivered the Series 2021G Bonds to the Original Purchaser. The Series 2021G Bonds are issued pursuant to the Series 2021G Supplemental Indenture and the Bond Legislation in the aggregate principal amount, bear interest, mature and are subject to redemption as stated in the Series 2021G Supplemental Indenture and the Bond Legislation. The Developer hereby approves the terms of the Series 2021G Bonds and the Indenture, and agrees that, in the event of any inconsistency or conflict between this Agreement and the terms of the Indenture, the terms of the Indenture shall control.

The proceeds from the issuance of the Series 2021G Bonds shall be paid to the Trustee and deposited as provided in this Agreement and the Indenture and used to pay or reimburse the Developer for the payment of the costs to construct the Project, to pay costs of issuance of the Series 2021G Bonds, to pay capitalized interest on the Series 2021G Bonds, and to fund the Bond Reserve Deposit.

Section 3.5. **Disbursements of the Series 2021G Bonds Proceeds.** All disbursements of the Series 2021G Bond proceeds shall be made in accordance with the Indenture and this Agreement, the terms of which are hereby approved and agreed to by the Developer, the City, and the ESID.

Section 3.6. **Bond Reserve Deposit.** Concurrently with the issuance of the Series 2021G Bonds, the Bond Reserve Deposit under the Series 2021G Supplemental Indenture shall be funded with proceeds of the Series 2021G Bonds.

Section 3.7. **Construction and Completion of the Project.** The Developer hereby covenants to cause to be constructed on the Property, the Project as described on Exhibit B. The Project shall be completed on or prior to [____]. The Completion Date shall be evidenced to the City, the Authority and the Trustee by a certificate of the Developer, in the form attached to the Construction Agency Agreement, stating that the Project is substantially complete in conformance with the terms of this Agreement and the Construction Agency Agreement. The Developer shall cause the completion of the Project on the Property regardless of whether the amounts made available to the Developer under this Agreement are sufficient to pay all of the costs of the Project. In the event the costs of the Project exceed the amounts made available to the Developer under this Agreement, the Developer nevertheless shall complete the Project in accordance with the Plans and Specifications and shall pay any costs in excess of the amounts made available under this Agreement from any other sources available to the Developer.

(a) Except as provided in the Series 2021G Supplemental Indenture, disbursements from the Series 2021G PF Account shall be made only to reimburse or pay the Developer, or any person designated by the Developer, for Series 2021G Project Costs. Disbursements from the Series 2021G PF Account may only be made pursuant to and in accordance with this Section 3.8.

(b) The Authority hereby authorizes and directs the Trustee, as to money on deposit in the Series 2021G PF Account, to disburse moneys from that account in accordance with this Agreement to pay (or, if paid by the Developer, to reimburse the Developer for payment of), the following costs relating to the Series 2021G Project (the “Series 2021G Project Costs”):

(i) costs incurred directly or indirectly for or in connection with the acquisition, construction, equipment, installation, and/or improvement of the Series 2021G Project, including without limitation, costs incurred in respect of the Series 2021G Project for preliminary planning and studies; architectural, legal, engineering, surveying, accounting, consulting, supervisory and other services; labor, services and materials; and recording of documents and title work;

(ii) financial, legal, recording, title, accounting, and printing and engraving fees, charges and expenses, and all other fees, charges and expenses incurred in connection with the authorization, sale, issuance and delivery of the Series 2021G Bonds, including, without limitation, the fees of the Authority, the Developer, any underwriter or placement agent, or bond purchaser for the Series 2021G Bonds and the fees and expenses of the Trustee and any paying agent properly incurred under the Indenture that may become due and payable;

(iii) premiums attributable to any surety and payment and performance bonds and insurance required to be taken out and maintained until the date on which the Series 2021G Project is final and complete;

(iv) taxes, assessments and other governmental charges in respect of the Series 2021G Project that may become due and payable until the date on which the Series 2021G Project is final and complete;

(v) costs incurred directly or indirectly in seeking to enforce any remedy against any contractor or subcontractor in respect of any actual or claimed default under any contract relating to the Series 2021G Project; and
(vi) any other incidental or necessary costs, expenses, fees and charges properly chargeable to the cost of the acquisition, construction, equipment, installation, and/or improvement of the Series 2021G Project.

(c) Disbursements from the Series 2021G PF Account for the payment of Series 2021G Project Costs (other than disbursements for costs of issuance, as authorized in the Series 2021G Supplemental Indenture, which shall be made by the Trustee upon the written order of the Authority, which written order shall be substantially in the form of the Disbursement Request Form attached hereto as Exhibit E) shall be made by the Trustee only upon the written order of the Authorized Developer Representative on the Disbursement Request Form and the approval of such written order by the Authority. Each such written order shall be substantially in the form of the Disbursement Request Form attached hereto as Exhibit D and shall be consecutively numbered. Each Disbursement Request Form shall be accompanied by invoices or other appropriate documentation supporting the payments or reimbursements requested reasonably satisfactory to the Authority and subject to the requirements set forth in this Agreement for such payment. All Disbursement Request Forms for costs relating to the Series 2021G Project shall be submitted to the Authority. Upon approval of the Disbursement Request by the Authority, the Authority shall deliver the executed and approved Disbursement Request Form to the Trustee for payment, on which Disbursement Request Form the Trustee shall conclusively rely, without investigation or liability. The Developer shall submit no more than one such written order in any given calendar month.

(d) The Authority shall review each Disbursement Request submitted pursuant to this Agreement. The approval of any Disbursement Request by the Authority shall be contingent upon the Authority’s determination, as evidenced by its approval of an applicable Disbursement Request Form that the disbursement request complies with the requirements for a disbursement from the proceeds of the Series 2021G Bonds in accordance with the terms of this Agreement. The Developer hereby releases the Authority and agrees that the Authority shall not be liable for, any and all liabilities and claims imposed upon or asserted against the Authority in connection with any authorization, approval, direction, delivery or review made by the Authority pursuant to this Section 3.8.

(e) Disbursement Requests to be paid or reimbursed under this Section 3.8 shall be paid or reimbursed from available moneys in the Series 2021G Project Subaccount in the Series 2021G PF Account in the Project Fund.

(f) In case any contract provides for the retention by the Developer of a portion of the contract price, there shall be paid from the Series 2021G PF Account only the net amount remaining after deduction of any such portion, and only when that retained amount is due and payable, may it be paid from the Series 2021G PF Account.

(g) Any moneys in the Series 2021G PF Account remaining after the Completion Date and payment, or provision for payment, in full of the appropriate Series 2021G Project Costs, at the direction of the Authorized Developer Representative, promptly shall be:
(i) used to acquire, construct, equip, install, and/or improve such additional real or personal property in connection with the Series 2021G Project as is designated by the Authorized Developer Representative and the acquisition, construction, equipment, installation, and/or improvement of which will be permitted under the Act;

(ii) credited against the Developer’s obligation to make Special Assessment payments under this Agreement;

(iii) used for the purchase of Series 2021G Bonds in the open market for the purpose of cancellation at prices not exceeding the fair market value thereof plus accrued interest thereon to the date of payment therefor;

(iv) paid into the Bond Fund to be applied to the redemption of the Series 2021G Bonds; or

(v) a combination of the foregoing as is provided in that direction.

Section 3.9. Casualties and Takings. The Developer shall promptly notify the Authority and the Trustee if the Project is damaged or destroyed by fire, casualty, injury or any other cause (each such occurrence, a “Casualty”). Upon the occurrence of such Casualty, all proceeds of Required Insurance Coverage shall be applied to pay the costs of the restoration of the Project or to the repayment of the outstanding balance of the Special Assessments, and in which case the Authority shall remain obligated to make disbursements of up to the total amount of the proceeds of the Series 2021G Bonds made available under this Agreement and the Indenture, all in accordance with this Agreement.

In the event restoration of the Project or the Property is pursued, the Developer shall immediately proceed with the restoration of the Project in accordance with the Plans and Specifications. If, in the Authority’s reasonable judgment, the proceeds of the Required Insurance Coverage are insufficient to complete the restoration, the Developer shall deposit with the Authority such amounts as are necessary, in the Authority’s reasonable judgment, to complete the restoration in accordance with the Plans and Specifications.

In the event any part of the Property or the Project shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain (a “Taking”), the Authority’s obligation to make disbursements under this Agreement shall be terminated unless the Property and the Project can be replaced and restored in a manner which will enable the Project to be functionally and economically utilized and occupied as originally intended. If the Property and the Project can be so restored, the Developer shall immediately proceed with the restoration of the Project in accordance with the Plans and Specifications, and the Authority shall release the funds for such purpose. If, in the Authority’s reasonable judgment, the Taking proceeds available to the Developer and the Authority are insufficient to complete the restoration, the Developer shall deposit with the Authority such amounts as are necessary, in the Authority’s reasonable judgment, to complete the restoration in accordance with the Plans and Specifications.
Each of the City and the Authority hereby agree not to take the Property or the Project for public purposes by condemnation as a result of any action or proceedings in eminent domain or to accept the transfer of the Property or the Project in lieu of condemnation during the term of this Agreement.

(End of Article III)
ARTICLE IV
Financing Payments

Section 4.1. Financing Payments. Upon the terms and conditions of this Agreement, the Authority will finance a portion of the costs of the Project by the issuance of the Series 2021G Bonds. In consideration of that undertaking by the Authority, the City shall pay to the Trustee within fourteen (14) calendar days after receipt of, and solely from, Assigned Special Assessments, the Financing Payments due on the next scheduled Financing Payment Date as shown on Exhibit C attached to, and incorporated, into this Agreement.

All Financing Payments shall be paid to the Trustee, who shall transfer the necessary amounts for Bond Service Charges and Administrative Amounts. Any Excess Special Assessments available after transferring amounts accruing to pay Bond Service Charges and Administrative Amounts shall be returned to the Developer.

Notwithstanding anything in this Agreement to the contrary, the City’s obligation under this Agreement to make Financing Payments shall be a special obligation of the City and the Financing Payments shall be required to be made solely from Assigned Special Assessments. The obligations of the City under this Agreement are not and shall not be secured by an obligation or pledge of any moneys raised by taxation. The obligations of the City under this Agreement do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the City, and the Authority does not have and shall not have any right to have taxes levied by the City for the payment of Financing Payments.

Upon the City’s execution and delivery of this Agreement, all moneys received by or on behalf of the City from the collection of the Special Assessments shall be deemed to have been appropriated to pay the City’s obligations under this Agreement. While this Agreement is in effect, the City shall take such further actions as may be necessary or appropriate to appropriate and maintain the moneys received from the collection of the Special Assessments in accordance with this Agreement. The City shall have no obligation to use or apply to the payment of Financing Payments any funds or revenues from any other source other than the Assigned Special Assessments.

Except for such interests as may hereafter arise pursuant to Section 5.06 of the Basic Indenture, the City, the Developer, the ESID, and the Authority each acknowledge that none of the City, the Developer, the ESID, or the Authority has any interest in the Special Funds and any moneys deposited in the Special Funds shall be in the custody of and held by the respective Trustee in trust for the benefit of the Holders of the respective series of Bonds (as defined in the Indenture), in accordance with the respective Indentures.

Section 4.2. Place of Payments. The City shall pay all Financing Payments directly to the Trustee at its corporate trust office or to such other as the Authority may from time to time direct; provided, however, that while the Series 2021G Bonds shall remain outstanding and secured by the Series 2021G Supplemental Indenture, the Authority shall not direct the City to pay Financing Payments to any Person other than the Trustee.
Section 4.3. **Obligations Unconditional.** The obligation of the City to make Financing Payments, solely from Assigned Special Assessments, shall be absolute and unconditional, and the City shall make such payments without abatement, diminution, or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set-off, recoupment, or counterclaim which the City may have or assert against the Authority, the Trustee, the Developer, the ESID, or any other Person. All of the obligations of the City under Sections 2.4, 3.1, 3.2, 4.1, and 4.2 of this Agreement are hereby established as duties specifically enjoined by law and resulting from an office, trust, or station upon the City within the meaning of Section 2731.01 of the Ohio Revised Code and shall be enforceable by mandamus.

Section 4.4. **Assignment of Agreement and Revenues.** To secure the payment of Bond Service Charges, the Authority shall assign to the Trustee by the Series 2021G Supplemental Indenture, its respective rights under and interests in this Agreement (except for the Unassigned Authority Rights), and the Pledged Revenues. The City, the Developer, and the ESID hereby agree and consent to those assignments.

Section 4.5. **Administrative Amounts.** Except to the extent such amounts are paid from the proceeds of the Series 2021G Bonds, in a manner consistent with Section 4.1 of this Agreement, the City and the Developer hereby direct and authorize the Trustee to pay to the Authority, as Administrative Amounts under this Agreement, any and all costs and expenses in excess of such costs and expenses payable from the Administrative Payments shown on Exhibit C to this Agreement incurred or to be paid by the Authority in connection with the issuance and delivery of the Series 2021G Bonds or otherwise related to actions taken by the Authority under this Agreement or the Indenture, including the Administrative Amounts set forth on Exhibit C; provided, however, that such payments shall be made only from Assigned Special Assessments.

The City and the Developer hereby direct and authorize the Trustee to pay to the City, the Trustee, any Registrar and any Paying Agent or Authenticating Agent, their reasonable fees, charges, and expenses for acting as such under the Indenture; provided, however, that such payments from the Trustee shall be made only from Assigned Special Assessments.

(End of Article IV)
ARTICLE V
Additional Agreements and Covenants

Section 5.1. Right of Inspection and Signage Inspection. Subject to reasonable
security and safety regulations and upon reasonable notice to the City and Developer the Authority
and the Trustee, and their respective agents, shall have the right during normal business hours to
inspect the Project during the construction.

(a) Signage. Subject to all applicable City ordinances and procedures, the City
and the Developer hereby agree that the Authority shall have the right to erect a project
financing sign at a prominent location on the Property in order to identify the Authority’s
role in financing the Project.

Section 5.2. Indemnification by the Developer.

(a) The Developer (the “Indemnifying Party”) releases the Authority, the City,
the ESID, the Trustee and their respective officers, directors, and employees, from, agrees
the Authority, the City, the ESID, the Trustee, and their respective officers, directors, and
employees, shall not be liable for and, indemnifies the Authority, the City, the ESID, the
Trustee from, all liabilities, claims, costs, and expenses, including out-of-pocket and
incidental expenses and legal fees, imposed upon, incurred or asserted against the
Authority, the City, the ESID, the Trustee, and their respective officers, directors, agents
and employees, on account of: (i) any loss or damage to property or injury to or death of
or loss by any person that may be occasioned by any cause whatsoever pertaining to the
construction, installation, equipment and improvement, maintenance, operation and use of
the Project; (ii) any breach or default on the part of the Indemnifying Party in the
performance of any covenant, obligation or agreement of the Indemnifying Party under this
Agreement, any contract for the construction of the Project, or other Transaction Document
to which the Indemnifying Party is a party, or arising from any act or failure to act by the
Indemnifying Party or any of the agents, contractors, servants, employees, or licensees of
the Indemnifying Party; (iii) the authorization, issuance, sale, trading, redemption, or
servicing of the Series 2021G Bonds, and the provision of any information or certification
furnished in connection therewith concerning the Series 2021G Bonds or the Project, by
the Developer; (iv) the failure of the Developer to comply with any requirement of this
Agreement or any other Transaction Document; (v) any failure of compliance by the
Developer with the provisions of the Charter of the City, the Act, or any other applicable
provision of law; (vi) any action taken or omitted to be taken by the Authority, the City,
the ESID, or the Trustee pursuant to the terms of this Agreement, the Indenture, any other
Transaction Document or any other related instrument or document, or any action taken or
omitted to be taken by the Authority, the City, the ESID, or the Trustee at the written
request of or with the written consent of the Developer; (vii) any and all costs reasonably
related to and reasonably incurred by the Authority, the City, the ESID, or the Trustee in
connection with its efforts to collect delinquent Special Assessments; and (viii) any claim,
action or proceeding brought with respect to any matter set forth in clause (i), (ii), (iii), (iv),
(v), (vi), (vii) or (viii) above.

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(b) The Indemnifying Party agrees to indemnify and hold the Authority, the City, the ESID, the Trustee, and their respective officers, directors, agents and employees, harmless from and against all liabilities, and all reasonable costs and expenses, including out-of-pocket expenses and attorneys’ fees and expenses incurred by the Authority, the City, the ESID, the Trustee as a result of the existence on, or release from, the Project, or the Property, of Hazardous Materials which in any way result from any act of omission or commission of the Developer, its related entities or any of its agents, employees, independent contractors, invitees, licensees, successors, assignees or tenants or arising out of any federal state or local environmental laws, regulations or ordinances.

The Indemnifying Party further covenants and agrees with the Authority, the City, the ESID, and the Trustee that neither the Indemnifying Party, nor its related entities, any of its agents, employees, independent contractors, invitees, licensees, successors, assignees, or tenants will store, release, or dispose of, or permit the storage, release, or disposal of any Hazardous Materials at the Project at any time from and after the effective date of this Agreement other than in accordance with applicable federal, state and local law and regulation. In the event that any party to this Agreement receives a notification or clean up requirement under 42 U.S.C. §9601 et seq. or other federal, state or local statute, ordinance, or regulation, relating to the Project, that party shall promptly notify the other parties to this Agreement of such receipt, together with a written statement of such party setting forth the details thereof and any action with respect thereto taken or proposed to be taken, to the extent of such party’s knowledge. On receipt by the Indemnifying Party of any such notification or clean up requirement, the Indemnifying Party shall either proceed with appropriate diligence to comply with such notification or clean up requirement or shall commence and continue negotiation concerning or contest the liability of the Indemnifying Party with respect to such notification or clean up requirement. The Indemnifying Party agrees to indemnify and hold the Authority, the City, the ESID, and the Trustee harmless from and against any and all liabilities and all reasonable costs and expenses, including reasonable attorneys’ fees and expenses, arising out of any federal, state, or local environmental laws, regulations, or ordinances, incurred by the Authority, the City, the ESID, or the Trustee as a result of any breach of this covenant or as a result of the presence of Hazardous Materials at the Project.

(c) The Indemnifying Party agrees to indemnify and hold the Trustee and its officers, directors, agents and employees harmless against all liabilities, claims, costs and expenses, including out-of-pocket and incidental expenses and reasonable legal fees (including the allocated costs and expenses of in-house counsel and legal staff) (“Losses”) that may be imposed on, incurred by or asserted against the Trustee for following any instructions or other directions of the Developer upon which the Trustee is authorized to rely pursuant to the terms of the Indentures, this Agreement, or any other Transaction Document. In addition and not in limitation of the immediately preceding sentence, the Indemnifying Party agrees to indemnify and hold the Trustee and its officers, directors, agents and employees, harmless from and against any and all Losses as a result of action or inaction on the part of the Indemnifying Party that may be imposed on, incurred by, or asserted against, the Trustee in connection with or arising out of Trustee’s performance
under the Agreement, the Indenture, or any other Transaction Document provided such Trustee has not acted (or failed to act) with negligence or engaged in willful misconduct.

(d) In case any claim or demand is at any time made, or action or proceeding is brought, against or otherwise involving the Authority, the City, the ESID, the Trustee, or any officer, director, agent or employee of any such entity, in respect of which indemnity may be sought under this Agreement, the Person seeking indemnity promptly shall give notice of that action or proceeding to the Indemnifying Party, who, upon receipt of that notice, shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure of a party to give that notice shall not relieve the Indemnifying Party from any of its obligations under this Section unless, and only to the extent, that failure prejudices the defense of the action or proceeding by the Indemnifying Party. An indemnified party may employ separate counsel and participate in the defense, but the fees and expenses of such counsel shall be paid by the indemnified party unless (a) the employment of such counsel has been specifically authorized by the Indemnifying Party in writing, or (b) the Indemnifying Party has failed to assume the defense and to employ counsel, or (c) the named parties to any such action (including any impleaded parties) include both an indemnified party and the Indemnifying Party and such indemnified party shall have been advised by its counsel that there may one or more legal defenses available to it which are different from or additional to those available to the Indemnifying Party, in which case, if the indemnified party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the Indemnifying Party’s expense, the Indemnifying Party shall not have the right to assume the defense of such action on behalf of such indemnified party and the Indemnifying Party shall be responsible for payment of the fees and expenses of such separate counsel. The Person seeking indemnity agrees to fully cooperate with the Indemnifying Parties to the extent such cooperation does not prejudice the position of such indemnified Person and lend the Indemnifying Party such assistance as the Indemnifying Party shall reasonably request in defense of any claim, demand, action or proceeding. The Indemnifying Party shall not, nor shall any indemnified Person, be liable for any settlement made without its consent.

(e) Nothing in this Agreement is meant to release, extinguish, or otherwise alter or interfere with any rights which the Authority, the City, the ESID, or the Trustee may now or after the date of this Agreement have against the Developer or any other Person for any environmental liabilities as a result of that Person’s former, present, or future ownership, occupancy, or use of, or interest in, any real property included in or in the vicinity of the Project.

(f) The indemnification set forth above is intended to, and shall include, the indemnification of all affected officials, directors, officers, agents, and employees of the Authority, the City, the ESID, and the Trustee, respectively, and their successors and assigns. That indemnification is intended to, and shall be, enforceable to the full extent permitted by law and shall survive the termination of this Agreement and repayment of the Series 2021G Bonds, and the earlier removal or resignation of the Trustee.
Section 5.3.  Litigation Notice; Management. The ESID and the Developer shall give the Authority and the Trustee prompt notice, and the City shall use its best efforts to give the Authority and the Trustee prompt notice, of any action, suit, or proceeding by or against the City, the ESID, or the Developer, at law or in equity, or before any governmental instrumentality or agency, or of any of the same which is threatened in writing, of which the City, the ESID or the Developer has notice, which, if adversely determined, would materially impair the right or ability of the City, the ESID, or the Developer to carry on the business which is contemplated in connection with the Project, or would materially and adversely affect any of their respective businesses, operations, properties, assets, or condition (financial or otherwise) (an “Action”) together with a written statement describing the details of the Action and any actions taken or proposed to be taken by the City, the ESID, or the Developer in response to the Action.

Section 5.4.  Assignment by Developer. This Agreement may not be assigned by the Developer, except (i) to an Affiliate, (ii) to the transferee or resulting surviving entity in a transaction permitted by Section 5.5, and (iii) upon the transfer of its ownership interest in the Property and the Project or any portion of the Property and the Project to an arm’s-length, good faith purchaser of the Property, but only after notice of such assignment is given to the Authority. No assignment of this Agreement by the Developer shall be applicable except upon (a) the execution and delivery to the Authority, the Trustee, and the ESID of an “Assignment and Assumption of Cooperative Agreement” in the form attached to and incorporated into this Agreement as Exhibit F; and (b) if the Project is not completed as of the date of such assignment, the execution and delivery to the Authority of an assignment of all construction contracts for the Project. The Parties acknowledge and agree that the Assignment and Assumption of Cooperative Agreement includes the assignment and assumption of the Special Assessment Agreement, the Owner Consent, and the Construction Agency Agreement. Following any assignment by the Developer as described above, all obligations of the Developer contained in this Agreement, the Special Assessment Agreement, the Owner Consent, and the Construction Agency Agreement, shall be obligations of the assignee, and the assigning Developer shall be released of its obligations to a corresponding extent.

Section 5.5.  Developer to Maintain Its Existence; Sales of Assets or Mergers. The Developer shall do all things necessary to preserve and keep in full force and effect its existence, rights and franchises. In particular, the Developer agrees that it shall not (a) sell, transfer or otherwise dispose of all, or substantially all, of its assets; (b) consolidate with or merge into any other entity; or (c) permit one or more other entities to consolidate with or merge into it. But the Developer may, any time after the Completion Date, without violating the first sentence of this Section, consolidate with, or merge into, another Person, permit one or more other Persons to consolidate or merge into it, or sell or otherwise transfer to another Person all or substantially all of its assets as an entirety and dissolve, only if (a) the surviving, resulting, or transferee Person—whether the Developer or an entity other than the Developer—(i) assumes in writing all of the Developer’s obligations under this Agreement and each of the Transaction Documents to which the Developer is a party and (ii) has a net worth, determined in accordance with generally accepted accounting principles consistently applied, at least equal to that of the Developer prior to dissolution, sale, consolidation, or merger, and (b) that the consolidation, merger, sale, or transfer does not violate or result in the violation of any provision of any document to which the Developer is a party. Upon consummation of a transaction permitted in this Section 5.5, the Developer, if it
is not the surviving, resulting, or transferee entity, shall be released from its obligations under this Agreement and the Transaction Documents to which the Developer is a party.

To the extent permitted by law, the Developer agrees, for its benefit and the benefit of its successors and assigns, that it shall not enter into a written undertaking to pay delinquent taxes in installments under law, including but not limited to, Ohio Revised Code Section 323.31, where the effect of such entry would be to preclude the commencement, continuation, or resolution of foreclosure proceedings, or to otherwise delay the payment in full of any and all delinquent taxes, service payments in lieu of taxes, special assessments, including the Special Assessments, or other governmental charges on the Property.

Section 5.6. Financial Statements. The Developer shall deliver to the Authority, (i) within forty-five (45) calendar days of the end of each fiscal quarter, quarterly financial statements prepared by the Developer, and certified by its financial officer to be true, correct, and complete in all material respects to the best of its knowledge, subject to year-end adjustment, and (ii) annual audited financial statements of the Developer promptly upon their completion but not later than 120 calendar days after the end of each of its fiscal years, prepared by its independent certified public accountants, and (iii) such other financial information or reports as the Authority shall reasonably request.

(End of Article V)
ARTICLE VI

Financing Payment Abatement

Section 6.1. Financing Payment Abatement. If at any time Financing Payments have been paid to the Trustee or the Trustee otherwise holds sufficient moneys available for that purpose in an aggregate amount sufficient to cause the redemption or defeasance of all of the Series 2021G Bonds in accordance with the Indenture so that after such payment or defeasance none of the Series 2021G Bonds will be outstanding under the Indenture, then the Authority shall direct the Trustee to cause that redemption or defeasance in accordance with the Indenture. Except as specifically provided in this Agreement to the contrary, no other action pursuant to any provision of this Agreement shall in any way abate the payment of Financing Payments.

(End of Article VI)
ARTICLE VII

Events of Default and Remedies

Section 7.1. Events of Default. Each of the following shall be an Event of Default:

(a) The City shall fail to transfer the Assigned Special Assessments to the Trustee when due;

(b) The Developer fails to pay an installment of the Special Assessments when due;

(c) The City shall fail to observe and perform any other agreement, term, or condition contained in this Agreement, and the continuation of such failure for a period of thirty (30) calendar days after notice shall have been given to the City by the Authority or the Trustee, or for such longer period as the Authority may agree to in writing; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the City institutes curative action within the applicable period and diligently pursues that action to completion; provided, further, that such action must be completed within 180 days after the delivery of such notice of failure;

(d) The City shall: (A) (i) admit in writing its inability to pay its debts generally as they become due; (ii) file a petition in bankruptcy or a petition to take advantage of any insolvency act; (iii) make a general assignment for the benefit of creditors outside the ordinary course of business; or (iv) consent to the appointment of a receiver for itself or of the whole or any substantial part of its property; or (B) file a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state;

(e) Any representation or warranty made by the City or the Developer in this Agreement or any statement in any report, certificate, financial statement, in the Transaction Documents or any other instrument furnished in connection with this Agreement or with the issuance of the Series 2021G Bonds shall at any time prove to have been false or misleading in any material respect when made or given; or

(f) The Developer shall fail to observe and perform any other agreement, term, or condition contained in this Agreement or any other Transaction Document to which it is a party for a period of 30 days after notice shall have been given to the Developer by the Authority or Trustee, or for such longer period as the Authority may agree to in writing; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the Developer institutes curative action within the applicable period and diligently pursues that action to completion; provided, further, that such action must be completed within 180 days after the delivery of such notice of failure.
(g) The Developer shall: (A) (i) admit in writing its inability to pay its debts generally as they become due; (ii) file a petition in bankruptcy or a petition to take advantage of any insolvency act; (iii) make a general assignment for the benefit of creditors outside the ordinary course of business; or (iv) consent to the appointment of a receiver for itself or of the whole or any substantial part of its property; or (B) file a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state.

Notwithstanding the foregoing, if, by reason of Force Majeure, the City, or the Developer is unable to perform or observe any agreement, term, or condition of this Agreement which would give rise to an Event of Default under subsection (c) or (f) above, neither the City nor the Developer shall be deemed in default during the continuance of such inability. But the City or the Developer, as applicable, shall promptly give notice to the Trustee and the Authority of the existence of an event of Force Majeure and shall use its best efforts to remove the effects of the event of Force Majeure; provided that the settlement of strikes or other industrial disturbances shall be entirely within their discretion.

The term Force Majeure shall mean, without limitation, the following:

(i) acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; droughts; floods; arrests; restraint of government and people; explosions; breakage, malfunction, or accident to facilities, machinery, transmission pipes, or canals; partial or entire failure of utilities; shortages of labor, materials, supplies, or transportation; or

(ii) any cause, circumstance or event not reasonably within the control of the City or Developer, as applicable; provided that inability to obtain necessary financing shall not constitute an event of Force Majeure.

The declaration of an Event of Default under subsection (d) or (g) above, and the exercise of remedies upon any such declaration, shall be subject to any applicable limitations of federal bankruptcy law affecting or precluding that declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation, or reorganization proceedings.

Section 7.2. Remedies on Default. Whenever an Event of Default shall have happened and be subsisting, any one or more of the following remedial steps may be taken:

(a) The Trustee may refuse to honor requests and orders from the Developer for the disbursement of funds from the Series 2021G Project Subaccount in accordance with the Series 2021G Supplemental Indenture or this Agreement;
(b) The Trustee may exercise any or all or any combination of the remedies specified in the Indenture;

(c) The Authority, the ESID, or the Trustee may have access to, inspect, examine and make copies of the books, records, accounts, and financial data of the City and the Developer pertaining to the Special Assessments, if any, any other Assigned Special Assessments, any amounts required to be paid by the Developer under this Agreement, or the Project;

(d) The Authority or the ESID may pursue all remedies available to them under the Special Assessment Agreement; or

(d) The Authority, the ESID, or the Trustee may pursue all remedies now or after the date of this Agreement existing at law or in equity to collect all amounts then due and to become due under this Agreement to enforce the performance and observance of any other obligation or agreement of the City and the Developer under the Transaction Documents.

Notwithstanding the foregoing, none of the Trustee, the ESID, or the Authority shall be obligated to take any step which in its opinion will or might cause it to expend time or money or otherwise incur liability unless and until a satisfactory indemnity bond has been furnished to the Authority, the ESID, or the Trustee at no cost or expense to the Authority or the Trustee. Any amounts collected as Financing Payments or applicable to Financing Payments and any other amounts collected pursuant to action taken under this Section shall be deposited and applied in accordance with the provisions of the Indenture.

Section 7.3. No Remedy Exclusive. No remedy conferred upon or reserved to the Authority, the ESID, or the Trustee by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, or now or after the date of this Agreement existing at law, in equity, or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair that right or power or shall be construed to be a waiver of that right or power, but any right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority, the ESID, or Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than any notice required by law or for which express provision is made in this Agreement.

Section 7.4. Agreement to Pay Attorneys' Fees and Expenses. If an Event of Default by the Developer occurs and the Authority, the City, the ESID, or the Trustee incurs expenses, including attorneys' fees and expenses, in connection with the enforcement of this Agreement against the Developer or the collection of sums due from the Developer under this Agreement, the Developer shall reimburse the Authority, the City, the ESID, and the Trustee, as applicable, for the reasonable expenses so incurred upon demand in the manner provided for Administrative Amounts. If any such expenses are not so reimbursed, the amount of the expenses, together with interest on that amount from the date of demand for payment at the Interest Rate for Advances, to the extent permitted by law, shall constitute indebtedness secured by this Agreement.
and in any action brought to collect that indebtedness or to enforce this Agreement, the Authority, the City, the ESID, or the Trustee, as applicable, shall be entitled to seek the recovery of those expenses in such action except as limited by law or judicial order or decision entered in such proceedings.

Section 7.5.  **No Waiver.** No failure by the Authority, the ESID, or the Trustee to insist upon the strict performance by the City or the Developer of any provision of this Agreement shall constitute a waiver of their right to strict performance and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by the City or the Developer to observe or comply with any provision of this Agreement.

Section 7.6.  **Notice of Default.** The City and the Developer shall notify the Trustee, the ESID, and the Authority promptly if either of them becomes aware of the occurrence of any Event of Default under this Agreement or of any fact, condition, or event which, with the giving of notice or passage of time or both, would become an Event of Default.

(End of Article VII)
ARTICLE VIII

Miscellaneous

Section 8.1. Term of Agreement. This Agreement shall be and remain in full force and effect from the Closing Date (i) until the payment in full of the Special Assessments or (ii) such time as all sums payable under this Agreement shall have been paid (except for obligations of the City and the Developer under Sections 5.2 and 5.3 of this Agreement, and the obligations of the Developer under Sections 2.4 and 7.4 of this Agreement, which shall survive any termination of this Agreement), whichever shall come earlier. Notwithstanding the foregoing, provided that the Series 2021G Bonds shall no longer be outstanding and all other sums under this Agreement have been paid, the City, the ESID, and the Authority, may by written instrument agree to terminate this Agreement except for Sections 2.4, 5.2, 5.3, and 7.4 of this Agreement, provided that the Authority, the ESID, and the City shall have complied with the provisions of Section 8.8 of this Agreement.

Section 8.2. Notices. All notices, certificates, requests, or other communications under this Agreement shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, and addressed to the appropriate Notice Address. A duplicate copy of each notice, certificate, request, or other communication given under this Agreement to any of the Cooperative Parties shall also be given to each of the others, provided that the City shall provide to the Trustee any notice it receives pursuant to the Transaction Documents promptly, but in any event not later than five (5) Business Days after the City’s receipt. Any of the Cooperative Parties, by notice given under this Section, may designate any further or different addresses to which subsequent notices, certificates, requests, or other communications shall be sent. If, because of the suspension of delivery of certified or registered mail or for any other reason, notice, certificates, requests or other communications are unable to be given by the required class of mail, any notice required to be mailed by the provisions of this Agreement shall be given in such other manner as in the judgment of the Trustee shall most effectively approximate mailing, and the giving of that notice in that manner for all purposes of this Agreement shall be deemed to be in compliance with the requirement for the mailing. Except as otherwise provided in this Agreement, the mailing of any notice shall be deemed complete upon deposit of that notice in the mail and the giving of any notice by any other means of delivery shall be deemed complete upon receipt of the notice by the delivery service.

Section 8.3. Extent of Covenants; No Personal Liability. All covenants, obligations, and agreements of the Authority, the ESID, and the City contained in this Agreement and any other Transaction Documents to which they are a party shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation, or agreement shall be deemed to be a covenant, obligation, or agreement of any present or future member, officer, agent, or employee of the Authority, the ESID, the Developer, the City, the Legislative Authority, the board of directors of the ESID, or the Council of the City, in other than his or her official capacity.

Section 8.4. Binding Effect. This Agreement shall inure to the benefit of, and shall be binding in accordance with its terms upon, the Authority, the City, the ESID, the Developer, the Trustee, and their respective permitted successors and assigns; provided that this
Agreement may not be assigned by the City and the respective interests of the Authority under this Agreement may not be assigned by the Authority except by the Authority to Trustee pursuant to the Indenture or as otherwise may be necessary to enforce or secure payment of Financing Payments. This Agreement may be enforced only by the Cooperative Parties, their assignees, and others who may, by law, stand in their respective places.

Section 8.5. Amendments and Supplements. Except as otherwise expressly provided in this Agreement or the Indenture, subsequent to the issuance of the Series 2021G Bonds and prior to all conditions provided for in the Indenture for release of the Series 2021G Supplemental Indenture having been met, this Agreement may not be effectively amended, changed, modified, altered, or terminated except in accordance with the provisions of Article XI of the Basic Indenture. Any attempt to amend, change, modify, alter, or terminate this Agreement expect as provided above shall be void.

Section 8.6. Execution Counterparts. This Agreement may be executed in counterpart and in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

Section 8.7. Severability. If any provision of this Agreement, or any covenant, obligation, or agreement contained in this Agreement is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation, or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained in this Agreement. That invalidity or unenforceability shall not affect any valid and enforceable application of the provision, covenant, obligation, or agreement, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 8.8. Extent of Obligation.

(a) The obligations of the Authority under this Agreement are not and shall not be secured by an obligation or pledge of any moneys raised by taxation. The obligations of the Authority under this Agreement do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the Authority, and neither the City, the Developer, the ESID, the Trustee, or any other party shall have any right to have taxes levied by the Authority for the payment of its obligations under this Agreement.

(b) The obligations of the City under this Agreement are not and shall not be secured by an obligation or pledge of any moneys raised by taxation. The obligations of the City under this Agreement do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the City, and neither the Authority, the Developer, the ESID, the Trustee, or any other party shall have any right to have taxes levied by the City for the payment of its obligations under this Agreement.

(c) The obligations of the City under this Agreement are hereby established as duties specifically enjoined by law and resulting from an office, trust, or station upon the
City within the meaning of Ohio Revised Code Section 2731.01 and shall be enforceable by mandamus, but only by the express beneficiaries of that covenant.

Section 8.9. Continuing Disclosure. The City and the Developer each agrees to provide to the Authority such information at the request of the Authority as shall be sufficient to enable the Authority to comply with its respective continuing disclosure obligations under the Indenture or any continuing disclosure agreement entered into by the Authority relating to the Series 2021G Bonds or any portion thereof.

Section 8.10. Limitation of Rights. With the exception of rights conferred expressly in this Agreement, nothing expressed or mentioned in or to be implied from this Agreement or the Series 2021G Bonds is intended or shall be construed to give to any Person other than the Cooperative Parties and the Holders of the Series 2021G Bonds any legal or equitable right, remedy, power, or claim under or with respect to this Agreement or any covenants, agreements, conditions, and provisions contained in this Agreement. This Agreement and all of those covenants, agreements, conditions, and provisions are intended to be, and are, for the sole and exclusive benefit of the Cooperative Parties and the Holders of the Series 2021G Bonds, as provided in this Agreement.

Section 8.11. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State.

Section 8.12. Trustee. The Trustee shall have the same rights, protections, immunities and indemnities hereunder as accorded to it under this Agreement and the other Transaction Documents.

(End of Article VIII)
IN WITNESS WHEREOF, the Cooperative Parties each have caused this Agreement to be duly executed in their respective names, all as of the date first written above.

THE CITY OF DAYTON, OHIO

By: __________________________

Name: _________________________

Title: __________________________

[Counterpart Signature Page to Cooperative Agreement]
DAYTON-PHOENIX GROUP, INC.

By: ____________________________

Name: __________________________

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

DAYTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.

By: ____________________________

Name: __________________________

Title: ___________________________
THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,

as Trustee

By: ____________________________

Name: __________________________

Title: Vice President

[Counterpart Signature Page to Cooperative Agreement]
AUTHORITY’S FISCAL OFFICER’S CERTIFICATE

The undersigned, assistant secretary and fiscal officer of the Dayton-Montgomery County Port Authority, hereby certifies that the moneys required to meet the obligations of the Authority during the year 2021 under the foregoing Agreement have been lawfully appropriated by the Board of Directors of the Authority for such purposes and are in the treasury of the Authority or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: ________________, 2021

________________________________________
Fiscal Officer
Dayton-Montgomery County Port Authority
CITY FISCAL OFFICER’S CERTIFICATE

The undersigned, fiscal officer of the City, hereby certifies that the moneys required to meet the obligations of the City during the year 2021 ($0.00) under the Agreement have been lawfully appropriated by the Council of the City for such purposes and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: ________________, 2021

__________________________________________
Fiscal Officer
City of Dayton, Ohio

[City Fiscal Officer Certificate to Cooperative Agreement]
EXHIBIT A

Property

The Property is the portion of the real property described in the following legal description that, as of the date of this Agreement, is assigned tax parcel identification number R72 16701 0085 in the records of the Montgomery County, Ohio Auditor's office and is located at the commonly used mailing address 1619 Kuntz Road, Dayton, Ohio 45404:

Parcel 1
Comprising part of Lots 74112, 74113, 74114, 74530, 74531 and 74532, all of the revised and consecutive numbers of lots as shown on the Plat of the City of Dayton, and more particularly described as follows:

Beginning at a point in the centerline of Kuntz Road, said point of beginning being in the southeast line of said Lot No. 74530 on the southeast extension of the northeast line of land conveyed to T.R.W., Inc. by deed recorded in Book 2365, Page 460 in the Deed Records of Montgomery County, Ohio; thence with said extension and the northeast line of said T.R.W., Inc. land, north fifty-one degrees one minute no second (51° 1' 0") West for one thousand one hundred ninety-two and 77/100 (1,192.77) feet; thence with the north line of said T.R.W., Inc. land, north eighty-five degrees 42 minutes no seconds (85° 42' 0") west for one hundred ninety-two and 74/100 (192.74) feet to a point located one hundred ninety-two and 00/100 (192.00) feet eastwardly from and measured at right angles to the centerline of the north bound main track of The Baltimore and Ohio Railroad Company; thence parallel to said north bound main track north four degrees seventeen minutes 40 seconds (4° 17' 40") east for three hundred fifty-five and 57/100 (355.57) feet; thence in an easterly direction on a curve to the right with a radius of five hundred fifty-two and 21/100 (552.21) feet for eight hundred sixty-eight and 27/100 (868.27) feet, the tangent to said curve at its point of beginning bearing north thirty-eight degrees forty-two minutes fifty seconds (38° 42' 50") east, to a point located fifty and 00/100 (50.00) feet southwestwardly from and measured at right angles to the centerline of a spur track of said The Baltimore and Ohio Railroad Company.
of 19.00 feet to a point; thence N 51° 01' 00" W a distance of 703.47 feet to an iron pin; thence N 85° 36' 30" W a distance of 616.85 feet to an iron pin in the east line of lands of the Chessie System (formerly B&O Railroad), said point being 135.00 feet eastwardly measured at right angles to the centerline of the northbound main track; thence with said Chessie System right-of-way N 04° 17' 40" E parallel to said northbound main track a distance of 276.06 feet to an iron pin; thence S 85° 42' 00" E a distance of 250.00 feet to an iron pin in the south line of said General Motors Corporation land; thence S 51° 01' 00" E with the south line of said General Motors Corporation land a distance of 1162.77 feet to the place of beginning, containing 3.156 acres, more or less.

Deed Reference: Ltd W.D. 79-530A12 and G.W.D. 80-82A08.
EXHIBIT B

Project

The Project consists of the acquisition, construction, installation, equipping, and improvement of the following components to be incorporated into the building and improvements located on the Property, as described in Exhibit A to this Agreement, which constitute energy efficiency improvement and special energy improvement projects under Ohio Revised Code Section 1710.01(I):

- HVAC
- Lighting and lighting controls
## EXHIBIT C

### Schedule of Financing Payments

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<th>Dates</th>
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<th>Bondholder Payment Date</th>
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<th>Trustee Fee 0.98%</th>
<th>ESID Admin Fee</th>
<th>Capitalized Interest and Fees</th>
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| Totals     | $6,260,000.00         | $1,845,303.89           | $295,248.61 | $37,484.83     | $56,800.00      | $56,800.00      | $362,041.01 | $8,132,807.32 | $8,132,807.32 | $47,613.32 |

Notes:
- (A) - (B) + (C)
- Based on Max Bond Payment

**C-1**
EXHIBIT D

DISBURSEMENT REQUEST FORM

STATEMENT NO. [___] REQUESTING AND AUTHORIZING DISBURSEMENT OF FUNDS PURSUANT TO SECTION 3.8 OF THE COOPERATIVE AGREEMENT DATED AS OF OCTOBER 1, 2021.

Pursuant to Section 3.8 of the Cooperative Agreement dated as of [October 1], 2021 (the “Cooperative Agreement”) among the Authority, the Developer, the City, and the Trustee, the undersigned Authorized Developer Representative hereby requests the Trustee, having custody of the Series 2021G PF Account, to pay to the Developer or the other person(s) listed on the disbursement schedule attached hereto as Appendix 1 (the “Disbursement Schedule”), the respective amounts specified in the Disbursement Schedule out of the moneys on deposit in the Series 2021G Project Subaccount in the Series 2021G PF Account for the advances, payments and expenditures made in connection with the costs of the Series 2021G Project described in the Disbursement Schedule, all in accordance with Section 3.8 of the Cooperative Agreement (capitalized words and terms not otherwise defined herein having the meanings assigned to them in the Cooperative Agreement).

In connection with this request and authorization (the “Disbursement Request”), the undersigned hereby certifies that:

(i) each of the representations and warranties made by the Developer in the Cooperative Agreement remains true and correct, in all material respects, as of the date of this Disbursement Request and no Event of Default by the Developer under the Cooperative Agreement exists;

(ii) each item for which disbursement is requested by this Disbursement Request is properly payable out of the Series 2021G Project Subaccount in the Series 2021G PF Account in accordance with the terms and conditions of the Cooperative Agreement and, except as otherwise noted, none of those items has formed the basis for any disbursement heretofore made from the Series 2021G Project Subaccount in the Series 2021G PF Account;

(iii) to the extent any portion of the payment requested is for construction work, the Developer has received and herewith delivers to the Trustee, conditional waivers of any mechanics’ or other liens with respect to such work;

(iv) this Disbursement Request and all exhibits hereto, including the Disbursement Schedule, shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warrant, protection and authority to the Trustee for its actions taken pursuant hereto; and
(v) this Disbursement Request constitutes the approval of the Developer of each disbursement hereby requested and authorized.

Dated: ____________________  

Authorized Developer  
Representative

Approved in accordance with the Cooperative Agreement:

Dayton-Montgomery County Port Authority

By: ______________________

Name: ____________________

Title: ____________________

Dated: ____________________
APPENDIX I

DISBURSEMENT SCHEDULE TO STATEMENT NO. [___]
REQUESTING AND AUTHORIZING DISBURSEMENT OF
FUNDS PURSUANT TO SECTION 3.8 OF THE COOPERATIVE
AGREEMENT DATED AS OF OCTOBER 1, 2021.

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<th>PAYEE</th>
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<th>PURPOSE</th>
<th>ACCOUNT</th>
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</table>


EXHIBIT E


Pursuant to: (i) Article V of the Amended and Restated Trust Indenture between the Dayton-Montgomery County Port Authority (the “Port Authority”), the Port of Greater Cincinnati Development Authority, and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”) dated as of April 1, 2015 (the “Master Indenture”); (ii) Section 8 of the Thirty-Sixth Supplemental Trust Indenture between the Port Authority and Trustee dated as of [October] 1, 2021 (the “Series 2021G Supplemental Indenture” and together with the Master Indenture, as it has been supplemented prior to the date hereof, the “Indenture”); and (iii) Section 3.8 of the Cooperative Agreement between the Port Authority, Dayton-Phoenix Group, Inc. (the “Developer”), the City of Dayton, Ohio (the “City”), the Dayton Regional Energy Special Improvement District, Inc., and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”) dated as of October 1, 2021, as the same may be amended, modified, or supplemented from time to time (the “Series 2021G Agreement”), the Port Authority hereby requests and authorizes the Trustee, having custody of the Project Fund, including the Series 2021G PF Account therein, to pay to the Port Authority or the other person(s) listed on the disbursement schedule attached hereto as Appendix I (the “Disbursement Schedule”), the respective amounts specified in the Disbursement Schedule out of the moneys on deposit in the Series 2021G PF Account, for the advances, payments and expenditures made in connection with the costs of issuance of the Bonds described in the Disbursement Schedule, all in accordance with Article V of the Indenture, Section 8 of the Series 2021G Supplemental Indenture, and Section 3.8 of the Series 2021G Agreement (with capitalized words and terms not otherwise defined herein having the meanings assigned to them in the Series 2021G Agreement).

In connection with this request and authorization (the “Disbursement Request”), the Port Authority hereby certifies that:

(i) each item for which disbursement is requested by this Disbursement Request is a cost of issuance and is properly payable out of the Series 2021G Costs of Issuance Subaccount in the Series 2021G PF Account of the Project Fund, in accordance with the terms and conditions of the Indenture, the Series 2021G Supplemental Indenture, and the Series 2021G Agreement and, except as otherwise noted, none of those items has formed the basis for any disbursement heretofore made from the Series 2021G Costs of Issuance Subaccount in the Series 2021G PF Account of the Project Fund;

(ii) this Disbursement Request and all exhibits hereto, including the Disbursement Schedule, shall be conclusive evidence of the facts and statements set forth
herein and shall constitute full warrant, protection, and authority to the Trustee for its actions taken pursuant hereto; and

(iii) this Disbursement Request constitutes the approval of the Port Authority of each disbursement hereby requested and authorized.
DAYTON-MONTGOMERY COUNTY
PORT AUTHORITY

Dated: __________, 2021
**APPENDIX I**


<table>
<thead>
<tr>
<th>PAYEE</th>
<th>AMOUNT</th>
<th>PURPOSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dayton-Montgomery County Port Authority</td>
<td>$62,600.00</td>
<td>Issuer Closing Fee</td>
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<td>DiPerna Advisors</td>
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<td>Financial Advisor Fee</td>
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<td>Bricker &amp; Eckler LLP</td>
<td>35,000.00</td>
<td>Bond &amp; ESID Counsel Fee</td>
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<td>Dayton Regional Energy Special Improvement District, Inc.</td>
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<td>ESID Fee</td>
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<td>Standard &amp; Poor’s Rating Services</td>
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<td>Rating Fee</td>
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<td>The Bank of New York Mellon Trust Company, N.A.</td>
<td>2,000.00</td>
<td>Trustee Fee</td>
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<td>Thompson Hine LLP</td>
<td>18,000.00</td>
<td>Disclosure Counsel Fee</td>
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<tr>
<td>KeyBanc Capital Markets, Inc.</td>
<td>46,950.00</td>
<td>Underwriter Fee and Expenses</td>
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<tr>
<td>The Bank of New York Mellon Trust Company, N.A.</td>
<td>2,000.00</td>
<td>Miscellaneous Expenses</td>
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<tr>
<td>Integra</td>
<td>5,900.00</td>
<td>Appraisal Fee</td>
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<tr>
<td><strong>Total Disbursement:</strong></td>
<td><strong>$273,035.00</strong></td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT F

FORM OF ASSIGNMENT AND ASSUMPTION
OF COOPERATIVE AGREEMENT

ASSIGNMENT AND ASSUMPTION
OF
COOPERATIVE AGREEMENT

[_____________________] (Assignor), in consideration of the sum of $[__________]
in hand paid and other good and valuable consideration, the receipt and sufficiency of which is
acknowledged by Assignor’s execution of this Assignment and Assumption of Cooperative
Agreement (Assignment), assigns, transfers, sets over, and conveys to
[_____________________] (Assignee) all of Assignor’s right, title, and interest in and to that
certain Cooperative Agreement dated as of October 1, 2021 (the Cooperative Agreement) by and
among the Dayton-Montgomery County Port Authority (the Authority), [Dayton-Phoenix Group,
Inc.], an Ohio corporation (the Developer), the Centerville, Dayton, Kettering, Moraine,
Oakwood, Riverside, Springboro, Washington Township Regional Energy Special Improvement
District, Inc., doing business under the registered trade name Dayton Regional Energy Special
Improvement District, Inc. (the ESID), the City of Dayton, Ohio (the City) and The Bank of New
York Mellon Trust Company, N.A., as trustee (the Trustee).

By executing this Assignment, Assignee accepts the assignment of, and assumes all of
Assignor’s duties and obligations under, the Cooperative Agreement. Assignee further represents
and warrants that it has taken title to the “Property,” as that term is defined in the Cooperative
Agreement, subject to the Special Assessment Agreement dated as of even date with the
Cooperative Agreement between the Montgomery County Treasurer, the ESID, the Authority, the
City, and the Developer (the Special Assessment Agreement) and to the Owner Consent dated
[October 20], 2021 by the Owner and recorded in the records of the Montgomery County Recorder
with respect to the Property. By executing this Assignment, Assignee accepts the assignment of,
and assumes all of Assignor’s duties and obligations under, the Special Assessment Agreement
and the Owner Consent. Assignee further represents and warrants that it has assumed the duties of
the Developer under the Construction Agency Agreement (as defined in the Cooperative
Agreement), and by executing this Assignment, Assignee accepts the assignment of, and assumes
all of Assignor’s duties and obligations under, the Construction Agency Agreement.

Assignor and Assignee acknowledge and agree that executed copies of this Assignment
shall be delivered to the Authority, the Trustee, and the ESID, all in accordance with Section 5.4
of the Cooperative Agreement.

In witness of their intent to be bound by this Assignment, each of Assignor and Assignee
have executed this Assignment this ___________ day of ______________, [_____], which
Assignment is effective this date. This Assignment may be executed in any number of
counterparts, which when taken together shall be deemed one agreement.
ASSIGNEE:

[__________________________]

By: ______________________________

Name: ___________________________

Title: ____________________________
AN ORDINANCE

Authorizing the Purchase of Real Estate Located at 2800 Philadelphia Drive and Declaring an Emergency.

WHEREAS, It is found to be in the best interest of the City of Dayton to acquire the real estate hereinafter described for recreational purposes and as part of the Siebenthaler and Philadelphia Signal Upgrade Project; and

WHEREAS, The City of Dayton is in receipt of an offer from the party named herein to convey the real estate hereinafter described to the City of Dayton, for the sum on money and upon the terms and conditions more fully set forth in the offer attached to the original of this ordinance on file in the Office of the Clerk of the Commission; and

WHEREAS, The timely completion of the urban renewal area requires that the subject real estate be purchased without delay, and it is therefore necessary for the immediate preservation of the public peace, property, health and safety that this ordinance take effect at the earliest possible date, for the reason that the offer contains an expiration date within which the City must exercise its acceptance, the delay of which may jeopardized the City’s ability to purchase the real estate at the lowest possible price; now, therefore,

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

Section 1. That the offer to sell the real estate described in this Section 1 is accepted. The City Manager is authorized to accept a general warranty deed from said seller, conveying said real estate to the City of Dayton, subject to the terms and conditions stated in the offer.

Philadelphia Oil, LLC Purchase and Sale Agreement

Address: 2800 Philadelphia Drive

Legal description: See attached Exhibit “A”

Owner: Philadelphia Oil, LLC

Purchase Price: $29,500.00

Auditor’s Parcel No. E20-01106-0204
**Section 2.** That the sum of money set forth below be paid to the owner for the real estate described in Section 1 upon the terms and conditions set forth in the offer to sell attached to the original of this ordinance on file in the office of the Clerk of the Commission. And said sum of money is hereby appropriated to be paid out of the following account:

**Siebenthaler Philadelphia Signal Upgrade**

41982-6450-1421-54

TWENTY NINE THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS ($29,500.00)

**Section 3.** For the reasons stated in the preamble, the Commission declares this ordinance to be an emergency measure that shall take effect immediately upon passage.

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

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

______________________________
Mayor of the City of Dayton, Ohio

ATTEST:

______________________________
Clerk of the Commission

Approved as to form:

______________________________
City Attorney
October 4, 2021

To: Shelley Dickstein  
    City Manager

From: Joseph Weinel, Chief Engineer  
    Division of Civil Engineering

Subject: Ordinance for the Authorization to Purchase Real Estate.

Attached is the Ordinance authorizing the purchase of interest in Parcels 12 SH & T located at 2800 Philadelphia Drive in connection with the Siebenthalter and Philadelphia Signal Upgrade Project. The easement is being purchased from Philadelphia Oil, LLC, in the amount of $29,500.00. Please present the Ordinance as an emergency to the City Commission for their action at the October 13, 2021 meeting.

Also attached are copy of the Easement and Temporary Easement.

If you have any questions, please contact me at extension 4218.

Attachments

Copy: Mr. Stovall
EASEMENT

PHILADELPHIA OIL, LLC AN OHIO LIMITED LIABILITY COMPANY, the
Grantor(s), in consideration of the sum of $29,239.00, to be paid by City of Dayton,
Montgomery County, Ohio, the Grantee, does convey(s) to Grantee, its successors and assigns,
an easement, which is more particularly described in Exhibit A attached, the following described
real estate:

PARCEL(S): 12 SH
MOT-SIEBENTHALER/PHILADELPHIA SIGNAL UPGRADE
SEE EXHIBIT A ATTACHED

Montgomery County Current Tax Parcel No. E20 01106 0204
Recorder’s Office.

Grantor(s), for itself and its successors and assigns, covenant(s) with the Grantee, its
successors and assigns, that it is the true and lawful owner(s) in fee simple, and has the right and
power to convey the property and that the property is free and clear from all liens and
encumbrances, except: (a) easements, restrictions, conditions, and covenants of record; (b) all
legal highways; (c) zoning and building laws, ordinances, rules, and regulations; and (d) any and
all taxes and assessments not yet due and payable; and that Grantor(s) will warrant and defend
the property against all claims of all persons.

The property conveyed is being acquired by Grantee for a public purpose, namely the
establishment, construction, reconstruction, widening, repair or maintenance of a public road.
In the event that the Grantee decides not to use the property conveyed for the above-stated purpose, the Grantor(s) has a right under Section 163.211 of the Revised Code to repurchase the property for its fair market value as determined by an independent appraisal made by an appraiser chosen by agreement of the parties or, if the parties cannot agree, an appraiser chosen by an appropriate court. However, this right to repurchase will be extinguished if any of the following occur: (A) Grantor(s) declines to repurchase the property; (B) Grantor(s) fails to repurchase the property within sixty days after Grantee offers the property for repurchase; (C) Grantee grants or transfers the property to any other person or agency; or (D) Five years have passed since the property was appropriated.

IN WITNESS WHEREOF PHILADELPHIA OIL, LLC AN OHIO LIMITED LIABILITY COMPANY has caused its name to be subscribed by AMARI TAKHAR, its duly authorized Managing Member, and its duly authorized agent on the 19th day of Oct., 2021.

PHILADELPHIA OIL, LLC
AN OHIO LIMITED LIABILITY COMPANY

By:

STATE OF OHIO, COUNTY OF BUTLER SS:

BE IT REMEMBERED, that on the 19th day of Oct., 2021, before me the subscriber, a Notary Public in and for said state and county, personally came the above named AMARI TAKHAR, who acknowledged being the Managing Member and duly authorized agent of PHILADELPHIA OIL, LLC AN OHIO LIMITED LIABILITY COMPANY and who acknowledged the foregoing
instrument to be the voluntary act and deed of said entity. No oath or affirmation was
administered to Amarsit Takhar with regard to the notarial act.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official
seal on the day and year last aforesaid.

[Signature]

Notary Public
My Commission expires: __________

This document was prepared by: the City of Dayton, Montgomery County, Ohio
EXHIBIT A

PARCEL 12-SH
MOT-SIEBENTHALER/PHILADELPHIA SIGNAL UPGRADE
PERPETUAL EASEMENT FOR HIGHWAY PURPOSES
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS
IN THE NAME AND FOR THE USE OF THE
CITY OF DAYTON, MONTGOMERY COUNTY, OHIO

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

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

(Surveyor’s description of the premises follows)

Situated in Section 18, Town 2, Range 6 East, the Harrison Township, Montgomery County, Ohio, and
being part of that real estate conveyed to Philadelphia Oil, LLC by recorded in I. R. Deed 07-039276
(all references to deeds microfiche, plats, surveys, etc: refer to the records of the Montgomery County,
Ohio Recorder's Office, unless noted otherwise) with stations and offsets referenced to the centerline plat
of survey for MOT-Siebenthaler/Philadelphia Signal Upgrade as the same is recorded in Plat Book
2/2, Page 1368, of the Montgomery County, Ohio Recorder’s Office, and being more particularly
described as follows:

BEGINNING at a set iron pin with cap being the intersection of the existing north right-of-way of
Siebenthaler Avenue (a 56.50’ wide right-of-way) and the existing east right-of-way of Philadelphia Drive
(a 65’ wide right-of-way), said point being 16.50 feet left of station 199+26.40 of the centerline of right-
of-way of Siebenthaler Avenue;

Thence North two degrees forty-eight minutes forty-two seconds East (N 02°48’42” E), leaving the
existing north right-of-way of Siebenthaler Avenue along the existing east right-of-way of Philadelphia Drive for a distance of one hundred ninety-three and 67/100 feet (193.67’) to a set iron pin with cap being
in the north line of the grantor’s tract, being located 209.95 feet left of station 199+35.52 of the centerline
of right-of-way of Siebenthaler Avenue;

Thence South eighty-nine degrees forty-five minutes twenty-one seconds East (S 89°45’21” E), leaving the
existing east right-of-way of Philadelphia Drive, along the north line of the grantor’s tract for a
distance of six and 00/100 feet (6.00’) to a set iron pin with cap being the proposed east right-of-way of
EXHIBIT A

Philadelphia Drive, located 209.94 feet left of station 199+41.53 of the centerline of right-of-way of Siebenthaler Avenue;

Thence leaving the north line of the grantor’s tract along the proposed east right-of-way of Philadelphia Drive and the proposed north right-of-way of Siebenthaler Avenue the following seven (7) courses:

1) South two degrees forth-eight minutes forty-two seconds West (S 02°18'42" W) for a distance of one hundred fifty and 14/100 feet (150.14’) to a set iron pin with cap being located 59.96 feet left of station 199+34.46 of the centerline of right-of-way of Siebenthaler Avenue;
2) South eighty-seven degrees eleven minutes eighteen seconds East (S 87°11'18" E) for a distance of ten and 00/100 feet (10.00") to a set iron pin with cap being 59.49 feet left of station 199+44.45 of the centerline of right-of-way of Siebenthaler Avenue;
3) South two degrees forty-eight minutes forty-two seconds West (S 02°48'42" W) for a distance of nine and 52/100 feet (9.52") to a set iron pin with cap being located 49.97 feet left of station 199+44.00 of the centerline of right-of-way of Siebenthaler Avenue;
4) South forty-three degrees thirty-two minutes eighteen seconds East (S 43°32'18" E) for a distance of fourteen and 47/100 feet (14.47") to a set iron pin with cap being located 39.50 feet left of station 199+53.99 of the centerline of right-of-way of Siebenthaler Avenue;
5) South eighty-nine degrees fifty-three minutes eighteen seconds East (S 89°53'18" E) for a distance of fourteen and 43/100 (14.43") to a set iron pin with cap being located 39.50 feet left of station 199+68.42 of the centerline of right-of-way of Siebenthaler Avenue;
6) South zero degrees six minutes forty-two seconds West (S 00°06'42" W) for a distance of thirteen and 00/100 feet (13.00") to a set iron pin with cap being located 26.50 feet left of station 199+68.42 of the centerline of right-of-way of Siebenthaler Avenue;
7) South eighty-nine degrees fifty-three minutes eighteen seconds East (S 89°53'18" E) for a distance of one hundred thirty-three and 48/100 (133.48") to a set iron pin with cap being in the east line of the grantor’s tract, also located 26.50 feet left of station 201+01.90 of the centerline of right-of-way of Siebenthaler Avenue;

Thence South zero degrees six minutes forty-two seconds West (S 00°06'42" W), leaving the proposed north right-of-way of Siebenthaler Avenue, along the east line of the grantor’s tract for a distance of ten and 00/100 feet (10.00") to a set iron pin and cap being in the existing north right-of-way of Siebenthaler Avenue, also located 16.50 feet left of station 201+01.90 of the centerline of right-of-way of Siebenthaler Avenue;

Thence North eighty-nine degrees fifty-three minutes eighteen seconds West (N 89°53'18" W), leaving the east line of the grantor’s tract along the existing north right-of-way of Siebenthaler Avenue for a distance of one hundred seventy-five and 50/100 feet (175.50") to the TRUE PLACE OF BEGINNING.

The above describe parcel contains a total of 820/10,000 acres (0.0820 acres) more or less from Auditor’s Parcel No. E20-01106-0204.
Prior Instrument Reference as of the date of this survey is I. R. Deed 07-039276 of the deed records of the Montgomery County, Ohio Recorder's Office.

Iron pins designated as set are 5/8" diameter rods, 30" long with a yellow plastic cap stamped “BCS, LLS S-7366”

Bearings for this description are based State Plane Coordinate System for the State of Ohio (South Zone), NAD 83, (95) NAVD 88.

The above description was prepared under the direction and supervision of Paul W. Feie, Ohio Registered Surveyor No. 6723 in June of 2020, and is based upon a field survey performed by Briggs Creative Services, LLC for the City of Dayton, Ohio

BRIGGS CREATIVE SERVICES, LLC

By:
Paul W. Feie
Ohio Registered Surveyor No. 6723

Date
TEMPORARY EASEMENT

PHILADELPHIA OIL, LLC AN OHIO LIMITED LIABILITY COMPANY, the Grantor(s), in consideration of the sum of $261.00, to be paid by City of Dayton, Montgomery County, Ohio, the Grantee, does grant to Grantee the temporary easement(s) to exclusively occupy and use for the purposes mentioned in Exhibit A the following described real estate:

PARCEL(S): 12 T
MOT-Siebenthaler/Philadelphia Signal Upgrade

SEE EXHIBIT A ATTACHED

Montgomery County Current Tax Parcel No. E20 01106 0204

To have and to hold the temporary easement(s), for the aforesaid purposes and for the anticipated period of time described below, unto the Grantee, its successors and assigns.

The duration of the temporary easement(s) granted to the Grantee is 12 months immediately following the date on which the work described above is first commenced by the Grantee, or its duly authorized employees, agents, and contractors.

The temporary easement(s) interest granted is being acquired by Grantee for a public purpose, namely the establishment, construction, reconstruction, widening, repair or maintenance of a public road.
IN WITNESS WHEREOF PHILADELPHIA OIL, LLC AN OHIO LIMITED LIABILITY COMPANY has caused its name to be subscribed by AAMRIT TAKHAR, its duly authorized MANAGING MEMBER, and its duly authorized agent on the 1st day of October, 2021.

PHILADELPHIA OIL, LLC
AN OHIO LIMITED LIABILITY COMPANY

By:

STATE OF OHIO, COUNTY OF BUTLER SS:
BE IT REMEMBERED, that on the 1st day of October, 2021, before me the subscriber, a Notary Public in and for said state and county, personally came the above named AAMRIT TAKHAR, who acknowledged being the MANAGING MEMBER and duly authorized agent of PHILADELPHIA OIL, LLC AN OHIO LIMITED LIABILITY COMPANY and who acknowledged the foregoing instrument to be the voluntary act and deed of said entity. No oath or affirmation was administered to AAMRIT TAKHAR with regard to the notarial act.

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

[Signature]

RICHARD H. GLAZER
Attorney at Law
Notary Public State of Ohio
My Commission expires: ______________________
Notary Public State of Ohio
My Commission Has No Expiration Date. Section 147.03 O.R.C.

This document was prepared by the C. Stetson, Montgomery County, Ohio
PARCEL 12-T
MOT - SIEBENTHALER/PHILADELPHIA SIGNAL UPGRADE
TEMPORARY EASEMENT FOR THE PURPOSE OF
PERFORMING THE WORK NECESSARY TO
GRADING AND SEEDING
FOR 12 MONTHS FROM DATE OF ENTRY BY THE
THE CITY OF DAYTON, MONTGOMERY COUNTY, OHIO

[Surveyor's description of the premises follows]

Situated in Section 18, Town 2, Range 6 East, Harrison Township, Montgomery County, Ohio, and being part of that real estate conveyed to Philadelphia Oil, LLC by deed recorded in I. R. Deed 07-039276 (all references to deeds microfiche, plats, surveys, etc. refer to the records of the Montgomery County, Ohio Recorder's Office, unless noted otherwise) with stations and offsets referenced to the centerline plat of survey for MOT-Siebenthaler/Philadelphia Signal Upgrade as the same is recorded in Plat Book 2936, Page 275, of the Montgomery County, Ohio Recorder's Office, and being more particularly described as follows:

COMMENCING at the intersection of the existing east right-of-way of Philadelphia Drive (a 65' wide right-of-way) and the existing north right-of-way of Siebenthaler Avenue (a 56.50 wide right-of-way), said point being 16.50 feet left of station 199+26.40 of the centerline of right-of-way of Siebenthaler Avenue;

Thence North two degrees forty-eight minutes forty-two seconds East (N 02°48'42" E), leaving the existing north right-of-way of Siebenthaler Avenue, along the existing east right-of-way of Philadelphia Drive for a distance of one hundred ninety-three and 67/100 feet (193.67') to a set iron pin with cap being in the north line of the grantor's tract, said point being 209.95 feet left of station 199+35.52 of the centerline of right-of-way of Siebenthaler Avenue;

Thence South eighty-nine degrees forty-five minutes twenty-one seconds East (S 89°45'21" E), leaving the existing east right-of-way of Philadelphia Drive, along the north line of the grantor's tract for a distance of six and 00/100 feet (6.00') to a set iron pin with cap being located 209.94 feet left of station 199+41.53 of the centerline of right-of-way of Siebenthaler Avenue, said point also being in the proposed east right-of-way of Philadelphia Drive;

Thence South two degrees forty-eight minutes forty-two seconds West (S 02°48'42" W), leaving the north line of the grantor's tract along the proposed east right-of-way of Philadelphia Drive for a distance of one hundred thirty-three and 14/100 feet (133.14') to the north line of a proposed temporary construction easement, said point being located 76.94 feet left of station
EXHIBIT A

199+35.26 of the centerline of right-of-way of Siebenthaler Avenue, also being the TRUE
PLACE OF BEGINNING for the land herein described;

Thence continuing along the proposed east right-of-way of Philadelphia Drive and proposed
north right-of-way of Siebenthaler Avenue the following seven (7) courses:

1) South two degrees forty-eight minutes forty-two seconds West (S 02°48'42" W) for a
distance of seventeen and 00/100 feet (17.00') to a set iron pin with cap being located
59.96 feet left of station 199+34.46 of the centerline of right-of-way of Siebenthaler
Avenue;

2) South eighty-seven degrees eleven minutes eighteen seconds East (S 87°11'18" E) for a
distance of ten and 00/100 feet (10.00') to a set iron pin with cap being located 59.49 feet
left of station 199+44.45 of the centerline of right-of-way of Siebenthaler Avenue;

3) South two degrees forty-eight minutes forty-two seconds West (S 02°48'42" W) for a
distance of nine and 52/100 feet (9.52') to a set iron pin with cap being located 49.97 feet
left of station 199+44.00 of the centerline of right-of-way of Siebenthaler Avenue;

4) South forty-three degrees thirty-two minutes eighteen seconds East (S 43°32'18" E) for a
distance of fourteen and 47/100 feet (14.47') to a set iron pin with cap being located 39.50
feet left of station 199+53.99 of the centerline of right-of-way of Siebenthaler Avenue;

5) South eighty-nine degrees fifty-three minutes eighteen seconds East (S 89°53'18" E) for
a distance of fourteen and 43/100 feet (14.43') to a set iron pin with cap being located
39.50 feet left of station 199+68.42 of the centerline of right-of-way of Siebenthaler
Avenue;

6) South zero degrees six minutes forty-two seconds West (S 00°06'42" W) for a distance
of thirteen and 00/100 feet (13.00') to a set iron pin and cap being located 26.50 feet left
of station 199+68.42 of the centerline of right-of-way of Siebenthaler Avenue;

7) South eighty-nine degrees fifty-three minutes eighteen seconds East (S 89°53'18" E) for
a distance of fifty-nine and 34/100 feet (59.34') to the easterly terminus of a proposed
temporary construction easement said point being located 26.50 feet left of station
200+27.76 of the centerline of right-of-way of Siebenthaler Avenue;

Thence leaving the proposed north right-of-way of Siebenthaler Avenue along said proposed
temporary construction easement the following five (5) courses:

1) North zero degrees six minutes forty-two seconds East (N 00°06'42" E) for a distance of
five and 00/100 feet (5.00') to a point being located 31.50 feet left of station 200+27.76
of the centerline of right-of-way of Siebenthaler Avenue;

2) North eighty-nine degrees fifty-three minutes eighteen seconds West (N 89°53'18" W)
for a distance of forty-nine and 23/100 feet (49.23') to a point located 31.50 feet left of
station 199+78.53 of the centerline of right-of-way of Siebenthaler Avenue;
EXHIBIT A

LPA RX 887 T

3) North forty-nine degrees twenty-seven minutes forty-four seconds West (N 49°27'44" W) for a distance of fifty-one and 03/100 feet (51.03') to a point located 64.60 feet left of station 199+39.68 of the centerline of right-of-way of Siebenthaler Avenue;
4) North two degrees forty-eight minutes forty-two seconds East (N 02°48'42" E) for a distance of twelve and 12/100 feet (12.12') to a point being located 76.71 feet left of station 199+40.25 of the centerline of right-of-way of Siebenthaler Avenue;
5) North eighty-seven degrees eleven minutes eighteen seconds West (N 87°11'18" W) for a distance of five and 06/100 feet (5.06') to the TRUE PLACE OF BEGINNING.

The above describe parcel contains a total of 150/10,000 acres (0.0150 acres) more or less, from Auditor’s Parcel No. E20-01106-0204.

Prior Instrument Reference as of the date of this survey is I. R. Deed 07-039276 of the deed records of the Montgomery County, Ohio Recorder’s Office.

Bearings for this description are based State Plane Coordinate System for the State of Ohio (South Zone), NAD 83, (95) NAVD 88.

The above description was prepared under the direction and supervision of Paul W. Feie, Ohio Registered Surveyor No. 6723 in June of 2020, and is based upon a field survey performed by Briggs Creative Services, LLC for the City of Dayton, Ohio

BRIGGS CREATIVE SERVICES, LLC

By: ____________________________ 
Paul W. Feie Date
Ohio Registered Surveyor No. 6723
A RESOLUTION


WHEREAS, The Coronavirus Aid, Relief, and Economic Security Act, 116 Public Law 136, ("CARES Act") was signed into law by the President of the United States on March 27, 2020; and,

WHEREAS, The 133rd Ohio General Assembly ("General Assembly") established a process for distributing funds provided by the "Coronavirus Aid, Relief, and Economic Security Act" to local government "subdivisions"; and,

WHEREAS, The General Assembly required subdivisions receiving funds under Section 1 of the CARES Act, to pass a resolution affirming that funds from the County Coronavirus Relief Distribution Fund may be expended only to cover costs of the political subdivision consistent with the requirements of Section 5001 of the CARES Act as described in 42 U.S.C. 801(d), and any applicable regulations before receiving said funds; and,

WHEREAS, On June 24, 2020 this Commission adopted Resolution Number 6513-20 and affirmed that all funds received from the Montgomery County Coronavirus Relief Distribution Fund be expended only to cover costs of the City of Dayton consistent with the requirements of Section 5001 of the CARES Act as described in 42 U.S.C. 801(d); and,

WHEREAS, The Ohio Office of Budget and Management ("OBM"), in its Guidance & Frequently Asked Questions, updated August 28, 2020 ("OBM Guidance") directed local government subdivisions to "evaluate all proposed expenditures based on guidance contained within the U.S. Department of Treasury Guidance and Coronavirus Relief Fund Frequently Asked Questions"; and,

WHEREAS, The OBM Guidance further advised that "it is presumed for administrative convenience that personnel costs related to [public safety] are substantially dedicated" for purposes of the CARES Act unless the chief executive of the entity receiving the funds determines otherwise; and,

WHEREAS, The United States Department of the Treasury ("Treasury"), in its Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments, dated September 2, 2020 ("Treasury Guidance") advised that "payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency" are eligible expenditures of CARES Act funds; and,

WHEREAS, The Treasury Guidance further advised that local governments subdivisions may presume that "public health and public safety employees meet the substantially dedicated test, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise. This means that, if
this presumption applies, work performed by such employees is considered to be a substantially different use than accounted for in the most recently approved budget as of March 27, 2020. All costs of such employees may be covered using payments from the Fund for services provided during the period that begins on March 1, 2020, and ends on December 30, 2020"; and,

**WHEREAS**, The Treasury Guidance further advised that “public safety employees” include “police officers (including state police officers), sheriffs and deputy sheriffs, firefighters, emergency medical responders, correctional and detention officers, and those who directly support such employees such as dispatchers and supervisory personnel”; and,

**WHEREAS**, On November 18, 2020, the City Commission passed Resolution No. 6550-20, declaring that Dayton’s public safety personnel were substantially dedicated to mitigating or responding to the COVID-19 public health emergency and allowing CARES funds to be expended to cover payroll for public safety personnel between March 1, 2020 and December 30, 2020; and

**WHEREAS**, The Consolidated Appropriations Act of 2021 contained a nearly $900 Billion coronavirus aid package and was signed into law by the President on December 27, 2020; and

**WHEREAS**, The Act extended the deadline for spending CARES funds from December 30, 2020 until December 31, 2021, allowing funds to be spent on eligible costs incurred during the period between March 1, 2020 and December 31, 2021, without altering or amending any of the eligible uses of the CARES funds; and

**WHEREAS**, The Commission wishes to allow for the current and future distributions of the CARES Act funds to the City of Dayton to be expended to cover payroll and benefits of the public safety positions and administrative functions for the period between March 1, 2020 and December 30, 2021; and

**WHEREAS**, For the immediate preservation of the public peace, property, health and safety, it is necessary that this Resolution take effect immediately; now, therefore,

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

**Section 1.** In reliance on the Treasury Guidance and OBM Guidance and having examined the circumstances of the City of Dayton, this Commission finds and determines that the Treasury presumption that City of Dayton public safety employees meet the substantially dedicated test applies and no specific circumstances rebut such presumption. This Commission further finds and determines that the following City of Dayton public safety positions are substantially dedicated to mitigating or responding to the COVID-19 public health emergency:

1. Fire Department
   a) All Fire Lieutenants and Fire Lieutenants Paramedics
   b) All Firefighter Paramedics & all Firefighters (including 48 hour and 40 hour shifts)
   c) All Paramedics
d) All EMT-Bs

c) All other staff associated with or responsible for addressing the 
COVID-19 public health emergency

(2) Police Department

a) The COVID-19 TRU Unit

b) All staff associated with or responsible for the emergency and 
special operations (including, but not limited to, emergency 
operations, decontamination activities, and COVID-19 response, 
treat, and transport crew)

Section 2. In reliance on the Treasury Guidance and OBM Guidance and having 
examined the circumstances of the City of Dayton, this Commission finds and determines 
that the administrative hours of the necessary dedicated staff required to procure goods or 
services, administer CARES LCRF funding, and ensure compliance meet the substantially 
dedicated test as applied by Treasury Guidance and OBM Guidance without rebuttal.

Section 3. That this Commission finds and determines that the current and future 
distributions of the CARES Act funds to the City of Dayton may be expended to cover the 
payroll and benefits of the public safety positions and administrative functions listed in 
Section 1 and Section 2 above between March 1, 2020 and December 30, 2021. Eligible 
payroll and benefits expenditures will be in an amount not to exceed Fifteen Million Dollars 
and Zero Cents ($15,000,000.00).

Section 4. For the reason set forth in the preamble hereof, the Commission declares 
this Resolution to be an emergency measure which shall take effect immediately upon its 
passage.

ADMITTED BY THE COMMISSION....................., 2021

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

Mayor of the City of Dayton, Ohio

Attest:

Clerk of the Commission

Approved as to form:

City Attorney
TO: Shelley Dickstein, City Manager
FROM: Monica Jones, Division Manager
Procurement, Management & Budget

SUBJECT: Resolution for Eligible CARES 2021 Personnel Expenses

CARES Funds can be used toward eligible personnel expenses, including public health and safety wages. Per U.S. Treasury Guidance, governments may presume public health and public safety wages are substantially dedicated to COVID-19 response during the pandemic period. Ohio OBM continues to recommend the local government Chief Executive Official declare a proclamation in some manner and document the individuals or job positions with the specific duties that meet the substantially dedicated criteria.

During the November 18th City Commission meeting, Resolution 6550-20 declaring that public safety personnel are substantially dedicated to mitigating or responding to the COVID-19 public health emergency and allowing CARES funds to be expended to cover payroll for eligible public safety personnel between March 1, 2020 and December 30, 2020.

However, the Consolidated Appropriations Act of 2021, signed into law by the President on December 27, 2020 extended the deadline for spending CARES funds from December 30, 2020 until December 31, 2021. The act also included language extending the period costs could be incurred, also to December 31, 2021.

For these reasons the CARES team, in collaboration with our consultant, Guidehouse, is recommending the passage of a second Resolution that addresses the deadline extension and continues to allow CARES funds to apply to eligible public safety wages. Nothing about the methodology or approach applied to our process or the identified public safety positions has changed other than the ability to apply CARES funds to costs incurred in 2021.

If you have any questions, I can be available at your convenience.

CC: Mr. Parlette, Ms. Lofton, Ms. Shannon, Ms. Wilson, Ms. Browning