CITY COMMISSION MEETING AGENDA

CITY COMMISSION          DAYTON, OHIO          DECEMBER 22, 2021

8:30 A.M.

I. AGENDA SCHEDULE

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

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

II. CITY MANAGER RECOMMENDATIONS (Item #8 above)

The following recommendations are offered for City Commission approval.

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

AVIATION

A1. United Rotary Brush Corp (runway brooms, parts and related items as needed through 12/31/22) $15,000.00
1. (Cont’d):

<table>
<thead>
<tr>
<th>CIVIL SERVICE</th>
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</thead>
<tbody>
<tr>
<td>B1. State of Ohio (background checks as needed through 12-31-25)</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>PUBLIC WORKS</th>
</tr>
</thead>
<tbody>
<tr>
<td>C1. Duncan Oil Company (unleaded gasoline, diesel fuel and related items as needed through 12/31/25)</td>
</tr>
<tr>
<td>C2. Gem City Tire, Inc. (tires, tubes and related goods and services as needed through 12/31/23)</td>
</tr>
<tr>
<td>C3. Pickrel Brothers, Inc. (plumbing and related supplies as needed through 12/31/22)</td>
</tr>
<tr>
<td>C4. Crown Personnel Service, Inc. (temporary staffing services as needed through 12/31/23)</td>
</tr>
</tbody>
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<table>
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<tr>
<th>WATER</th>
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<tbody>
<tr>
<td>D1. Allied Technical Services dba Allied Pump Rentals (maintenance and repair services to the Hydrogen Sulfide Control Plan Speece Cone and Oxygen Controller as needed through 12/31/22)</td>
</tr>
<tr>
<td>D2. Chemical Services, Inc. (odor control chemicals as needed through 12/31/22)</td>
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<tr>
<td>D3. Crane 1 Services, Inc. (annual crane inspection and repair services as needed through 06/30/24)</td>
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<tr>
<td>D4. DXP Enterprises, Inc. (Pulsafeeder pump related items and services as needed through 12/31/25)</td>
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<tr>
<td>D5. ECO Oxygen Technologies LLC (super oxygenated remediation well water infusion to the industrial wastewater gravity interceptor as needed through 12/31/22)</td>
</tr>
<tr>
<td>D6. Genuine Parts Company dba NAPA Auto Parts (oil, lubricants and related items as needed through 12/31/23)</td>
</tr>
<tr>
<td>D7. Metropolitan Environmental Services (industrial tank and pipe cleaning services as needed through 12/31/25)</td>
</tr>
<tr>
<td>D8. Pace Analytical Services, Inc. (total sulfate and dissolved sulfide testing as needed through 12/31/22)</td>
</tr>
<tr>
<td>D9. Pickrel Brothers (plumbing and related supplies as needed through 12/31/22)</td>
</tr>
<tr>
<td>D10. State of Ohio (annual sewage, sludge and landfill permits as needed through 12/31/25)</td>
</tr>
<tr>
<td>D11. M &amp; R Electric Motor Service (electric motor repair, parts, supplies and related items as needed through 9/30/22)</td>
</tr>
</tbody>
</table>
1. (Cont’d):

D12. State of Ohio (for public water system annual licensure fees through 12/31/25)  $196,322.92
D13. Everett J Prescott, Inc. (plumbing and related supplies as needed through 12/31/22)  $50,000.00
D14. Ferguson Waterworks dba PollardWater (plumbing and related supplies as needed through 12/31/22)  $15,000.00
D15. Jack Doohney Supplies Ohio, Inc. (sewer cleaning, maintenance, repair and supplies as needed through 12/31/22)  $15,000.00
D16. Pickrel Brothers, Inc. (plumbing and related supplies as needed through 12/31/22)  $95,000.00
D17. The Safety Company LLC dba M Tech Company (sewer cleaning, maintenance, repair and supplies as needed through 12/31/22)  $20,000.00

-Depts. of Aviation, Civil Service Board, Public Works, and Water.

Total:  $3,327,558.92

2. American Express – Contract Modification – for Third Amendment to accept American Express
   Department of Finance/Tax & Accounting.

   $100,000.00
   (Thru 12/31/24)

3. County Corp. – Service Agreement – for a CDBG Subrecipient Agreement to administer the County Corp Tornado Survivors’ Pathway to Homeownership Program – Department of Planning, Neighborhoods and Development.

   $425,000.00
   (Thru 12/31/23)

4. Daybreak, Inc. – Service Agreement - for a CDBG Subrecipient Agreement to administer the Lindy’s Bakery Job Training and Development Program – Department of Planning, Neighborhoods and Development.

   $193,000.00
   (Thru 12/31/23)


   $327,500.00
   (Thru 12/31/22)
<table>
<thead>
<tr>
<th></th>
<th>Service Agreement</th>
<th>Details</th>
<th>Amount</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.</td>
<td>FlashParking, Inc dba Klever Logic, Inc. – Service Agreement</td>
<td>to remove and replace ticketing and gate equipment at the Municipal and Oregon Parking Garages – Department of Public Works/Property Management.</td>
<td>$531,120.00</td>
<td>(Thru 12/31/26)</td>
</tr>
<tr>
<td>7.</td>
<td>The HomeOwnership Center of Greater Dayton, Inc. – Service Agreement</td>
<td>for a CDBG Subrecipient Agreement to administer the Pathways Tornado Recovery Homeownership Program – Department of Planning, Neighborhoods and Development.</td>
<td>$75,000.00</td>
<td>(Thru 12/31/22)</td>
</tr>
<tr>
<td>8.</td>
<td>LexisNexis, a division of RELX Inc. – Service Agreement</td>
<td>for online research and support services – Department of Law.</td>
<td>$25,902.00</td>
<td>(Thru 12/31/24)</td>
</tr>
<tr>
<td>9.</td>
<td>Meeder Public Funds, Inc. – Service Agreement</td>
<td>second amendment for Investment Advisory Services – Department of Finance/Tax &amp; Accounting.</td>
<td>$60,000.00</td>
<td>(Thru 12/31/22)</td>
</tr>
<tr>
<td>10.</td>
<td>Miami Valley Lighting, LLC – Service Agreement</td>
<td>to provide streetlight services throughout the City illuminating approximately 14,040 streetlights owned by MVLt – Department of Public Works/Property Management.</td>
<td>$10,000,000.00</td>
<td>(Thru 12/31/26)</td>
</tr>
<tr>
<td>11.</td>
<td>Patricia Bretzfelder dba Green World – Service Agreement</td>
<td>to provide and maintain a variety of interior landscaping in the terminal of the Dayton International Airport &amp; Dayton Wright Brothers Airport – Department of Aviation/AP Facilities &amp; Ops.</td>
<td>$61,409.26</td>
<td>(Thru 1/31/25)</td>
</tr>
<tr>
<td>12.</td>
<td>Rebuilding Together Dayton, Inc. Service Agreement</td>
<td>for a CDBG Subrecipient Agreement to administer the Urgent Home Repair Program/Neighborcare – Department of Planning, Neighborhoods and Development.</td>
<td>$300,000.00</td>
<td>(Thru 12/31/22)</td>
</tr>
</tbody>
</table>
13. **Synagro Central, LLC – Contract Modification** – second amendment for additional services/work to manage the Biosolids Land Application and Disposal Program for the Water Reclamation Facility – Department of Water/Water Reclamation. $1,650,000.00 (Thru 12/31/22)

C. **Revenue to City:**

14. **Prior to Tee Time, LLC – Service Agreement** – second renewal for professional golf services and use of space at Community Golf Club – Department of Recreation/Sports. $441,000.00 (Thru 12/31/22)

15. **Greater Dayton Regional Transit Authority – Service Agreement** – to continue Community Policing efforts requested by RTA – Department of Police. $324,435.28 (Thru 12/31/22)

16. **Lynn Alan Farms – Lease Agreement** – for leasing of land referred to as Union Road Wetland in Clark County Ohio – Department of Water/Water Supply and Treatment. $616,704.00 (Thru 12/31/25)

17. **The Connor Group, A Real Estate Investment Firm, LLC – Lease Agreement** - for ground lease agreement at the Dayton-Wright Brothers Airport – Department of Aviation/AP Admin & Finance. $500,940.00 (Thru 12/31/61)

E. **Other – Contribution, Etc.:**

18. **Dayton Power and Light dba AES Corporation – Legal Settlement** - PUCO case settlement – Department of Planning, Neighborhoods and Development. $1,600,000.00 (Thru 12/31/23)

19. **Montgomery County Sheriff’s Office - Other** – for 2022 Regional Dispatch Rates - Department of Police $4,169,576.00 (Thru 12/31/22)
20. Konica Minolta Business Solutions, U.S.A., Inc. – Other – first amendment to adjust the monthly lease payments due to a swap out of equipment from the initial lease – Department of Information Technology. $243,614.82 (Thru 6/30/22)

21. ReliaStar Life Insurance Company, a part of Voya Financial – Other – for stop-loss insurance policy to insure the City of Dayton against liability risks related to significant health insurance claims with Anthem that exceed $200,000.00 per claim – Department of Human Resources. $2,716,000.00 (Thru 12/31/22)

IV. LEGISLATION:

Emergency Ordinances – First & Second Reading

22. No. 31951-21  Amending the City’s Appropriations for the year 2021, and Declaring an Emergency.

23. No. 31952-21  Appropriating Property Designated as Parcel 68A WD & T in Connection with the Salem Avenue Reconstruction Phase 2, and Declaring an Emergency.

24. No. 31953-21  Authorizing the City Manager to Execute a Ground Lease and Related Documents, and Declaring an Emergency.


26. No. 31955-21  Enacting Section 34.54 through 34.61 of the Revised Code of General Ordinances to Create a Use of Force Committee, and Declaring an Emergency.

27. No. 31956-21  Establishing the Position and Responsibilities of an Independent Accountability Auditor, and Declaring an Emergency.
Emergency Resolutions – First Reading & Second Reading

28. No. 6627-21
Establishing the Fiscal Year 2022 Rates, Fees and Charges for the James M. Cox Dayton International Airport, and Declaring an Emergency.

29. No. 6628-21
Repealing the Community Police Council, and Declaring an Emergency.

Ordinance – First Reading

30. No. 31957-21
Enacting R.C.G.O. Section 137.20 Regarding the Ban on Fireworks in the City of Dayton on Account of the Passage of House Bill 172 into Law.

V. PLANNING ACTION

A. PUBLIC HEARING:

31. Establish Planned Development PD-173 for 28.66 +/- acres adjacent to the Stony Hollow Landfill at 2460 South Gettysburg Avenue. Rezone all property within the boundaries of PD-171 from Suburban Single-Family Residential (SR-1) to Light Industrial (I-1), and allow for a soil borrow/sand, limestone, shale, clay, and dirt operation where the material removed shall be used exclusively at the Stony Hollow Landfill. The property that is the subject of proposed PD-173 is owned by the Stony Hollow Landfill and has Parcel Identification Numbers of: R72 16907 0004, R72 16907 0003, R72 16907 0002, R72 16907 0005, R72 16907 0020, R72 16907 0019, R72 16907 0018, R72 16907 0013, R72 16907 0012, R72 16907 0011, R72 16907 0010, R72 16907 0009, R72 16907 0008, R72 16907 0054, R72 16907 0056, and R72 16907 0057.
VI. MISCELLANEOUS:

ORDINANCE NO. 31958-21
RESOLUTION NO. 6629-21
IMPROVEMENT RESOLUTION NO. 3599-21
INFORMAL RESOLUTION NO. 994-21
City Manager’s Report

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

2022 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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</table>

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

Description

AVIATION

(A1) P0220094 – UNITED ROTARY BRUSH CORP., LENEXA, KS
- Runway brooms, parts and related items as needed through 12/31/2022.
- These goods are required to maintain and repair City-owned Aviation equipment.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB D19010 with pricing through 3/31/2023.
- The Department of Aviation recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2022</td>
<td>DIA Airport Operations</td>
<td>51000-3221-1301-43</td>
<td>$15,000.00</td>
</tr>
</tbody>
</table>

Signatures/Approval

Approved by City Commission

Clerk

City Manager

FORM NO. MS-16

Updated 06/2016
CIVIL SERVICE BOARD

(B1) P0220106 – STATE OF OHIO, LONDON, OH
- Background checks, as needed through 12/31/2022.
- These services are required to perform fingerprinting and background checks.
- The State of Ohio is the sole provider and is recommended for this service, therefore this order was established.
- The Civil Service Board requests additional authority of $33,000.00 through 12/31/2025.
- The Civil Service Board recommends approval of this order.

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<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<tbody>
<tr>
<td>2022</td>
<td>General Fund</td>
<td>10000-1300-1159-62</td>
<td>$10,300.00</td>
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<tr>
<td>2023</td>
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<td>10000-1300-1159-62</td>
<td>$11,000.00</td>
</tr>
<tr>
<td>2024</td>
<td>General Fund</td>
<td>10000-1300-1159-62</td>
<td>$11,000.00</td>
</tr>
<tr>
<td>2025</td>
<td>General Fund</td>
<td>10000-1300-1159-62</td>
<td>$11,000.00</td>
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</table>

PUBLIC WORKS – FLEET MANAGEMENT

(C1) P0220027 – DUNCAN OIL COMPANY, BEAVERCREEK, OH
- Unleaded gasoline, diesel fuel and related items as needed through 12/31/2022.
- These goods are required to refuel vehicles and equipment.
- Duncan Oil Company is recommended based on geographic location and systems capability to utilize the City’s fuel card access system; therefore, this purchase was negotiated.
- The Department of Public Works requests additional authority of $900,000.00 through 12/31/2025.
- The Department of Public Works recommends approval of this order.

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</thead>
<tbody>
<tr>
<td>2022</td>
<td>Fleet Management</td>
<td>61000-6470-1360-99</td>
<td>$260,000.00</td>
</tr>
<tr>
<td>2023</td>
<td>Fleet Management</td>
<td>61000-6470-1360-99</td>
<td>$300,000.00</td>
</tr>
<tr>
<td>2024</td>
<td>Fleet Management</td>
<td>61000-6470-1360-99</td>
<td>$300,000.00</td>
</tr>
<tr>
<td>2025</td>
<td>Fleet Management</td>
<td>61000-6470-1360-99</td>
<td>$300,000.00</td>
</tr>
</tbody>
</table>

(C2) P0220115 – GEM CITY TIRE, INC., HARRISON TOWNSHIP, OH
- Tires, tubes and related goods and services as needed through 12/31/2022.
- These goods and services are required to maintain the City’s fleet vehicles.
- Rates are in accordance with the State of Ohio State Term Schedule #RS902819 and Index #GPC027 with pricing through 3/31/2024.
- The Department of Public Works requests additional authority of $35,000.00 through 12/31/2023.
- The Department of Public Works recommends approval of this order.

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<tbody>
<tr>
<td>2022</td>
<td>Fleet Management</td>
<td>61000-6470-1350-99</td>
<td>$20,000.00</td>
</tr>
<tr>
<td>2023</td>
<td>Fleet Management</td>
<td>61000-6470-1350-99</td>
<td>$35,000.00</td>
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</tbody>
</table>
PUBLIC WORKS – PROPERTY MANAGEMENT

(C3) P0220119 – PICKREL BROTHERS, INC., DAYTON, OH
- Plumbing and related supplies as needed through 12/31/2022.
- These goods are required to replenish inventory for maintenance and repairs.
- Twenty (20) possible vendors were solicited and five (5) bids were received. This order establishes a price agreement per IFB 22019N with firm pricing through 12/31/2022.
- Pickrel Brothers, Inc. qualifies as a Dayton local entity.
- The Department of Public Works recommends acceptance of the low bid(s). Multiple awards are recommended to ensure ongoing competition and supply availability.

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<tbody>
<tr>
<td>2022</td>
<td>Plumbing Shop</td>
<td>66000-6480-1301-54</td>
<td>$40,000.00</td>
</tr>
</tbody>
</table>

PUBLIC WORKS – STREET MAINTENANCE

(C4) P0220082 – CROWN PERSONNEL SERVICE, INC., DAYTON, OH
- Temporary staffing services as needed through 12/31/2022.
- These services are required to augment staff to maintain daily operations.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 18066JL with pricing through 12/31/2023.
- Crown Personnel Service, Inc. qualifies as a Dayton local entity.
- The Department of Public Works recommends approval of this order.

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<tbody>
<tr>
<td>2022</td>
<td>Street Maintenance</td>
<td>21000-6430-1159-54</td>
<td>$83,000.00</td>
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<tr>
<td>2022</td>
<td>Issue 9 – General Fund</td>
<td>10001-6420-1159-54</td>
<td>$345,500.00</td>
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<tr>
<td>2022</td>
<td>General Fund</td>
<td>10000-6420-1159-54</td>
<td>$366,200.00</td>
</tr>
<tr>
<td>2022</td>
<td>Highway Maintenance</td>
<td>21100-6430-1159-54</td>
<td>$75,000.00</td>
</tr>
</tbody>
</table>
WATER – WATER RECLAMATION

(D1) P0220100 – ALLIED TECHNICAL SERVICES dba ALLIED PUMP RENTALS, CINCINNATI, OH

- Maintenance and repair services to the Hydrogen Sulfide Control Plan Speece Cone and Oxygen Controller as needed through 12/31/2022.
- These goods and services are required as part of the Hydrogen Sulfide Control Plan.
- Allied Technical Services dba Allied Pump Rentals is recommended by the Hydrogen Sulfide Control Plan Group for continuity of services and proven past performance; therefore, this purchase was negotiated.
- A cost sharing of the Hydrogen Sulfide Control Plan with Cargill and Tate & Lyle was previously negotiated and incorporated into the 4th Amendment Agreement.
- This purchase order is in concurrence with the 4th Amendment Agreement to the Hydrogen Sulfide Control Plan and Study Agreement which has been extended through December 31, 2022.
- The Department of Water recommends approval of this order.

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<tbody>
<tr>
<td>2022</td>
<td>Sanitary Sewer Operating</td>
<td>55000-3460-1202-54-SF1415</td>
<td>$25,000.00</td>
</tr>
</tbody>
</table>

(D2) P0220101 – CHEMICAL SERVICES, INC., HARRISON TOWNSHIP, OH

- Odor control chemicals as needed through 12/31/2022.
- These goods are required as part of the Hydrogen Sulfide Control Plan.
- Chemical Services, Inc. is recommended by the Hydrogen Sulfide Control Plan Group for continuity of services and proven past performance; therefore, this purchase was negotiated.
- A cost sharing of the Hydrogen Sulfide Control Plan with Cargill and Tate & Lyle was previously negotiated and incorporated into the 4th Amendment Agreement.
- This purchase order is to be in concurrence with the 4th Amendment Agreement to the Hydrogen Sulfide Control Plan and Study Agreement which has been extended through December 31, 2022.
- The Department of Water recommends approval of this order.

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<tbody>
<tr>
<td>2022</td>
<td>Sanitary Sewer Operating</td>
<td>55000-3460-1202-54-SF1415</td>
<td>$26,000.00</td>
</tr>
</tbody>
</table>

(D3) P0220133 – CRANE 1 SERVICES, INC., FRANKLIN, OH

- Annual crane inspection and repair services as needed through 12/31/2022.
- These services are required to ensure City owned cranes meet Occupational Safety and Health Administration (OSHA) standards.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB D21017 with pricing through 06/30/2024.
- The Department of Water requests additional authority of $22,000.00 through 06/30/2024.
- The Department of Water recommends approval of this order.

<table>
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<tr>
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<tbody>
<tr>
<td>2022</td>
<td>Sanitary Sewer Operating</td>
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<td>$11,000.00</td>
</tr>
<tr>
<td>2023</td>
<td>Sanitary Sewer Operating</td>
<td>55000-3460-1167-54</td>
<td>$11,000.00</td>
</tr>
<tr>
<td>2024</td>
<td>Sanitary Sewer Operating</td>
<td>55000-3460-1167-54</td>
<td>$11,000.00</td>
</tr>
</tbody>
</table>
WATER – WATER RECLAMATION (CONTINUED)

(D4) P0220110 – DXP ENTERPRISES, INC., CINCINNATI, OH
- Pulsafeeder pump related items and services as needed through 12/31/2022.
- These goods and services are required to rework the pump stations to factory specifications.
- DXP Enterprises, Inc. is recommended as the sole regional distributor for this brand of equipment, therefore this purchase was negotiated.
- The Department of Water requests additional authority of $60,000.00 through 12/31/2025.
- The Department of Water recommends approval of this order.

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<tbody>
<tr>
<td>2022</td>
<td>Sanitary Sewer Operating</td>
<td>55000-3460-1301-54</td>
<td>$20,000.00</td>
</tr>
<tr>
<td>2023</td>
<td>Sanitary Sewer Operating</td>
<td>55000-3460-1301-54</td>
<td>$20,000.00</td>
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<tr>
<td>2024</td>
<td>Sanitary Sewer Operating</td>
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<td>$20,000.00</td>
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<tr>
<td>2025</td>
<td>Sanitary Sewer Operating</td>
<td>55000-3460-1301-54</td>
<td>$20,000.00</td>
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</table>

(D5) P0220103 – ECO OXYGEN TECHNOLOGIES LLC, INDIANAPOLIS, IN
- Super oxygenated remediation well water infusion to the industrial wastewater gravity interceptor as needed through 12/31/2022.
- These goods and services are required as part of the Hydrogen Sulfide Control Plan.
- Eco Oxygen Technologies LLC is recommended by the Hydrogen Sulfide Control Plan Group for continuity of services and proven past performance; therefore, this purchase was negotiated.
- A cost sharing of the Hydrogen Sulfide Control Plan with Cargill and Tate & Lyle was previously negotiated and incorporated into the 4TH Amendment Agreement.
- This purchase order is to be in concurrence with the 4TH Agreement Amendment to the Hydrogen Sulfide Control Plan and Study Agreement which has been extended through December 31, 2022.
- The Department of Water recommends approval of this order.

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<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2022</td>
<td>Sanitary Sewer Operating</td>
<td>55000-3460-1202-54-SF1415</td>
<td>$178,736.00</td>
</tr>
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</table>

(D6) P0220073 – GENUINE PARTS COMPANY dba NAPA AUTO PARTS, DAYTON, OH
- Oil, lubricants and related items as needed through 12/31/2022.
- These goods are required to maintain treatment processing equipment.
- Rates are in accordance with the City of Dayton's existing price agreement IFB 21005D with pricing through 12/31/2023.
- Genuine Parts Company dba NAPA Auto Parts qualifies as a Dayton local entity.
- The Department of Water requests additional authority of $15,000.00 through 12/31/2023.
- The Department of Water recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2022</td>
<td>Sanitary Sewer Operating</td>
<td>55000-3460-1301-54</td>
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<td>2023</td>
<td>Sanitary Sewer Operating</td>
<td>55000-3460-1301-54</td>
<td>$15,000.00</td>
</tr>
</tbody>
</table>
WATER – WATER RECLAMATION (CONTINUED)

(D7) P0220111 – METROPOLITAN ENVIRONMENTAL SERVICES, HILLIARD, OH
- Industrial tank and pipe cleaning services as needed through 12/31/2022.
- These services are required to clean and maintain various tanks and pipes.
- Five (5) possible bidders were solicited and two (2) responses were received. This order establishes a price agreement per IFB 22001S with firm pricing through 12/31/2025.
- The Department of Water requests additional authority of $120,000.00 through 12/31/2025.
- The Department of Water recommends acceptance of the lowest and best bid.

<table>
<thead>
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<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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</thead>
<tbody>
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<td>2022</td>
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<td>2023</td>
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<td>55000-3460-1167-54</td>
<td>$40,000.00</td>
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<td>$40,000.00</td>
</tr>
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</table>

(D8) P0220102 – PACE ANALYTICAL SERVICES, INC., ENGLEWOOD, OH
- Total sulfate and dissolved sulfide testing as needed through 12/31/2022.
- These services are required as part of the Hydrogen Sulfide Control Plan.
- Rates are in accordance with the City of Dayton’s existing price agreement 20004S with pricing through 12/31/2023.
- A cost sharing of the Hydrogen Sulfide Control Plan with Cargill and Tate & Lyle was previously negotiated and incorporated into the 4th Amendment Agreement.
- This purchase order is in concurrence with the 4th Amendment Agreement to the Hydrogen Sulfide Control Plan and Study Agreement which has been extended through December 31, 2022.
- The Department of Water recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
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(D9) P0220120 – PICKREL BROTHERS, INC., DAYTON, OH
- Plumbing and related supplies as needed through 12/31/2022.
- These goods are required to replenish inventory for maintenance and repairs.
- Twenty (20) possible vendors were solicited and five (5) bids were received. This order establishes a price agreement per IFB 22019N with pricing through 12/31/2022.
- Pickrel Brothers, Inc. qualifies as a Dayton local entity.
- The Department of Water recommends acceptance of the low bid(s). Multiple awards are recommended to ensure ongoing competition and supply availability.

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

(D10) **P0220090 – STATE OF OHIO, COLUMBUS, OH**
- Annual sewage, sludge and landfill permit fees.
- These permits are required to comply with State of Ohio Environmental Protection Agency regulations.
- The State of Ohio is the sole licensing entity and is recommended for this service, therefore this order was established.
- The Department of Water requests additional authority of $78,000.00 through 12/31/2025.
- The Department of Water recommends approval of this order.

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</table>

WATER – WATER SUPPLY AND TREATMENT

(D11) **P0220109 – M & R ELECTRIC MOTOR SERVICE, DAYTON, OH**
- Electrical motor repair, parts, supplies and related items as needed through 9/30/2022.
- These goods and services are required to repair motors that are a critical part of the treatment processes.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 15065N with original pricing extended through 9/30/2022.
- M & R Electric Motor Service qualifies as a Dayton local entity.
- The Department of Water recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
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(D12) **P0220089 – STATE OF OHIO, COLUMBUS, OH**
- Public water system annual licensure fees.
- These fees are required by the State of Ohio for the City to operate a public water system in accordance with the Ohio Revised Code.
- The State of Ohio is the sole licensing entity and is recommended for this service, therefore this order was established.
- The Department of Water requests additional authority of $150,000.00 through 12/31/2025.
- The Department of Water recommends approval of this order.

<table>
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<td>2024</td>
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<tr>
<td>2025</td>
<td>Water Operating</td>
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</table>
WATER – WATER UTILITY FIELD OPERATIONS

(D13) P0220122 – EVERETT J PRESCOTT, INC., WEST CARROLLTON, OH

- Plumbing and related supplies as needed through 12/31/2022.
- These goods are required to replenish inventory for maintenance and repairs.
- Twenty (20) possible vendors were solicited and five (5) bids were received. This order establishes a price agreement per IFB 22019N with pricing through 12/31/2022.
- The Department of Water recommends acceptance of the low bid(s). Multiple awards are recommended to ensure ongoing competition and supply availability.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
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<td>$50,000.00</td>
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</tbody>
</table>

(D14) P0220123 – FERGUSON WATERWORKS dba POLLARDWATER, NEW PORT NEWS, VA

- Plumbing and related supplies as needed through 12/31/2022.
- These goods are required to replenish inventory for maintenance and repairs.
- Twenty (20) possible vendors were solicited and five (5) bids were received. This order establishes a price agreement per IFB 22019N with pricing through 12/31/2022.
- The Department of Water recommends acceptance of the low bid(s). Multiple awards are recommended to ensure ongoing competition and supply availability.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
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<td>2022</td>
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<td>$15,000.00</td>
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</table>

(D15) P0220108 – JACK DOHENY SUPPLIES OHIO, INC., TWINSBURG, OH

- Sewer cleaning, maintenance, repair and supplies as needed through 12/31/2022.
- These goods and services are required for the upkeep of the sewer systems.
- Six (6) possible bidders were solicited and zero (0) responses were received; therefore his purchase was negotiated.
- The Department of Water recommends approval of this order. Multiple awards are recommended to ensure ongoing competition and supply availability.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
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<tr>
<td>2022</td>
<td>Sanitary Sewer Operating</td>
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<td>$15,000.00</td>
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</table>

(D16) P0220121 – PICKREL BROTHERS, INC., DAYTON, OH

- Plumbing and related supplies as needed through 12/31/2022.
- These goods are required to replenish inventory for maintenance and repairs.
- Twenty (20) possible vendors were solicited and five (5) bids were received. This order establishes a price agreement per IFB 22019N with pricing through 12/31/2022.
- Pickrel Brothers, Inc. qualifies as a Dayton local entity.
- The Department of Water recommends acceptance of the low bid(s). Multiple awards are recommended to ensure ongoing competition and supply availability.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
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</table>
WATER – WATER UTILITY FIELD OPERATIONS (CONTINUED)

(D17) P0220107 – THE SAFETY COMPANY LLC dba M TECH COMPANY, CLEVELAND, OH

- Sewer cleaning, maintenance, repair and supplies as needed through 12/31/2022.
- These goods and services are required for the upkeep of the sewer systems.
- Six (6) possible bidders were solicited and zero (0) responses were received; therefore his purchase was negotiated.
- The Department of Water recommends approval of this order. Multiple awards are recommended to ensure ongoing competition and supply availability.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
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<td>Sanitary Sewer Operating</td>
<td>55000-3445-1301-54</td>
<td>$20,000.00</td>
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</tbody>
</table>

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

From: 5320 - Finance/Tax & Accounting  
Supplier, Vendor, Company, Individual: American Express  
Address: PO Box 53619  
Phoenix, AZ 85072-9945

Date: December 22, 2021  
Expense Type: Contract Modification  
Total Amount: $100,000.00 thru 12/31/2024

Fund Source(s): Treasury Investment  
Fund Code(s): 16010-5320-1158-64  
Fund Amount(s): $100,000.00

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

Description:
Renewal of Acceptance Agreement for American Express Credit Card Services

The Department of Finance requests City Commission approval to increase the encumbrance of the American Express acceptance agreement in the amount of $100,000.00 through December 31, 2024. The Master Agreement is between the State of Ohio and American Express to accept American Express at all State of Ohio locations. The City of Dayton agreed to accept American Express under the terms of the State of Ohio’s Master Agreement. On June 30, 2015, the State of Ohio notified American Express that the term of the Master Agreement shall remain in effect unless terminated by either party by notice given to the other party at least ninety (90) days prior to the effective date of termination.

The City entered into the original agreement with American Express in 2009 in the amount of $10,000. The volume of customers using American Express cards to pay for water utility and other services has increased through online and interactive voice response (IVR) transactions. The City has numerous terminals that accept American Express, including those in Finance, Recreation and Youth Services, Building Inspection, and Civil Engineering.

The First Amendment was approved by the City Commission on February 26, 2014 in the amount of $25,000. The Second Amendment was approved by the City Commission on April 8, 2015 in the amount of $100,000. The Third Amendment was approved by the City Commission on November 14, 2018 in the amount of $100,000. This renewal in the amount of $100,000 will bring the total expenditure authority to $325,000 for the years 2014 through 2024.

American Express charges the City a discount rate or merchant fee of 2.20% based on the value of the transaction for accepting the American Express card.

Authority is being requested to cover the following periods as needed:

1/1/22 – 12/31/22 $33,000.00  
1/1/23 – 12/31/23 $33,000.00  
1/1/24 – 12/31/24 $34,000.00

A Certificate of Funds in the amount of $33,000.00 through December 31, 2022 is attached.

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 10/2019
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>Contract Start Date</th>
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<tbody>
<tr>
<td>Expiration Date</td>
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<tr>
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<td>Remaining Approval</td>
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<td>Increase Encumbrance</td>
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<tbody>
<tr>
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</table>

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

Attach additional pages for more FOAPALs

Vendor Name: AMERICAN EXPRESS
Vendor Address: PO Box 53619 Phoenix AZ 85072-9945
Federal ID: 00-4299256 AAA Expires: 01/15/23
Commodity Code: 94625
Purpose: CREDIT CARD PROCESSING. After June 30, 2015 contract will remain in effect unless canceled by State of Ohio or American Express.

Contact Person: Brian Smith
Finance/Tax & Accounting Admin: 12/9/2021
Department/Division: Date

SECTION II - to be completed by the Finance Department

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

Finance Director Signature 12/13/21

CF Prepared by 12/13/21
AMENDMENT TO AGREEMENT FOR AMERICAN EXPRESS® CARD
ACCEPTANCE BY AND BETWEEN THE STATE OF OHIO AND AMERICAN
EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.

This instrument (Amendment) amends and supplements the Agreement for American Express® Card Acceptance effective May 24, 2000 by and between AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC. (American Express, we, our or us), and the STATE OF OHIO (State, you or your) including any and all exhibits, amendments, addenda, appendices and supplements thereto respecting the acceptance of the American Express® Card at your Locations (Agreement). This Amendment shall be effective as of the later date of signature below.

For good and valuable consideration, receipt of which is hereby acknowledged, American Express and the State agree as follows:

1. Capitalized terms used but not defined herein shall have the same meaning as in the Agreement unless otherwise specified.

2. The Agreement is hereby extended for a period of one (1) year commencing on July 1, 2014 and expiring on June 30, 2015; after this date the Agreement shall remain in effect unless terminated by either party by notice given to the other party at least ninety (90) days prior to the effective date of such termination.

3. This Amendment modifies the Agreement only as expressly set forth herein. In all other respects the terms and conditions of the Agreement remain unmodified and in full force and effect.

4. This Amendment may be executed in counterparts, each of which shall be deemed an original, but both of which shall together constitute one and the same instrument. Delivery of an executed signature page hereto by facsimile or electronic mail shall be equally effective as delivery of an original signature page.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Amendment as of the dates written below.

STATE OF OHIO

By:

Name:

Title:

Date: 6/20/14

AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.

By: Manal Toukan

Vice President, State Government Services Merchant Services Americas

Date: 6/19/14
City Manager's Report

From: 5320 - Finance/Tax & Accounting
Supplier, Vendor, Company, Individual: American Express
Address: PO Box 53619
Phoenix, AZ 85072-9945

Date: November 14, 2018
Expense Type: Contract Modification
Total Amount: $100,000.00 (thru 12/31/2021)

Fund Source(s) | Fund Code(s) | Fund Amount(s)
---|---|---
Treasury Investment | 16010-5320-1158-64 | $100,000.00

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

THIRD AMENDMENT TO ACCEPTANCE AGREEMENT

The Department of Finance is requesting approval to amend the American Express Card Acceptance Agreement in the amount of $100,000.00. This Third Amendment would be effective through December 31, 2021. The Master Agreement is between the State of Ohio and American Express to accept American Express at all State of Ohio locations. The City of Dayton agreed to accept American Express under the terms of the State of Ohio's Master Agreement. The original agreement was entered into in 2009. The original amount of the agreement was $10,000. The volume of customers using American Express cards to pay water utility and other services has increased through online and interactive voice response system (IVR) transactions. The City has numerous terminals that accept American Express: Finance, Recreation and Youth Services, Building Inspection, Civil Engineering, and Convention Center.

The First Amendment was approved by the City Commission on February 26, 2014 in the amount of $25,000.00. The Second Amendment was approved by the City Commission on April 8, 2015 in the amount of $100,000.00. This Third Amendment in the amount of $100,000.00 will bring the total expenditure authority to $225,000.00 for the years 2014 through 2021.

American Express charges the City a discount rate or merchant fee of 2.20% based on the value of the transaction for accepting the American Express card.

On June 30, 2015, the State of Ohio notified American Express that the term of the Master Agreement shall remain in effect unless terminated by the State of Ohio or American Express by notice given to the other party at least (90) days prior to the effective date of termination.

Authority is being requested to cover the following periods as needed:

1/1/19 - 12/31/19 $30,000.00
1/1/20 - 12/31/20 $33,000.00
1/1/21 - 12/31/21 $37,000.00

A Certificate of Funds in the amount of $30,000.00 through December 31, 2019 is attached.

Signatures/Approval

Approved by City Commission
Rachelle Lavender
Clerk
Date: November 14, 2018

Updated 8/2016
# Certificate of Funds

**CT19-4975**

## Section I - To be completed by User Department

<table>
<thead>
<tr>
<th>New Contract</th>
<th>Renewal Contract</th>
<th>Change Order</th>
</tr>
</thead>
<tbody>
<tr>
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<td>Expiration Date</td>
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<tr>
<td>Remaining Commission Approval</td>
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### Required Documentation

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

## Section II - To be completed by the Finance Department

**FOAPALs**

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<tr>
<td>XXXX-XXXX-XXXX-XXXX</td>
<td>XXXX-XXXX-XXXX-XXXX</td>
</tr>
</tbody>
</table>

**Vendor Information**

- **Vendor Name:** AMERICAN EXPRESS
- **Vendor Address:** PO Box 53619, Phoenix, AZ 85072
- **Federal ID:** 00-4299256
- **Commodity Code:** 94626
- **Purpose:** CREDIT CARD PROCESSING, PREVIOUS CT# - CT184975

**After June 30, 2015 contract will remain in effect unless canceled by State of Ohio or American Express.**

**Contact Person:** LISA WILSON

**Originating Department Director's Signature:** [Signature]

**Date:** 10/24/2018

**Finance Director Signature:** [Signature]

**Date:** 11/6/18

**CF/CT Number:** CT19-4975

**CF Prepared by:** [Signature]

**Date:** 11-6-2018

---

**October 18, 2011**
AMENDMENT TO AGREEMENT FOR AMERICAN EXPRESS® CARD
ACCEPTANCE BY AND BETWEEN THE STATE OF OHIO AND AMERICAN
EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.

This instrument (Amendment) amends and supplements the Agreement for American Express® Card Acceptance effective May 24, 2000 by and between AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC. (American Express, we, our or us), and the STATE OF OHIO (State, you or your) including any and all exhibits, amendments, addenda, appendices and supplements thereto respecting the acceptance of the American Express® Card at your Locations (Agreement). This Amendment shall be effective as of the later date of signature below.

For good and valuable consideration, receipt of which is hereby acknowledged, American Express and the State agree as follows:

1. Capitalized terms used but not defined herein shall have the same meaning as in the Agreement unless otherwise specified.

2. The Agreement is hereby extended for a period of one (1) year commencing on July 1, 2014 and expiring on June 30, 2015; after this date the Agreement shall remain in effect unless terminated by either party by notice given to the other party at least ninety (90) days prior to the effective date of such termination.

3. This Amendment modifies the Agreement only as expressly set forth herein. In all other respects the terms and conditions of the Agreement remain unmodified and in full force and effect.

4. This Amendment may be executed in counterparts, each of which shall be deemed an original, but both of which shall together constitute one and the same instrument. Delivery of an executed signature page hereto by facsimile or electronic mail shall be equally effective as delivery of an original signature page.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Amendment as of the dates written below.

STATE OF OHIO

By: ____________________________
Name: ____________________________
Title: ____________________________
Date: ____________________________

AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.

By: ____________________________
Name: Manal Toukan
Title: Vice President, State Government Services
Merchant Services Americas
Date: ____________________________

19-Jun-2014 AXP Restricted Page 1 of 1
COMMUNITY DEVELOPMENT BLOCK GRANT
SUBRECIPIENT AGREEMENT
COUNTY CORP

The Department of Planning, Neighborhoods and Development requests approval to enter into an Agreement with County Corp in the amount of $425,000.00, to administer the County Corp Tornado Survivors’ Pathway to Homeownership Program. These funds will provide construction and/or rehab of approximately 10 homes within the City of Dayton corporate limits for occupancy and ownership by survivors of the 2019 Memorial Day Tornado Outbreak. Eligible applicants are at or below eighty percent (80%) of the Area Median Income (AMI). In addition, County Corp has secured four properties within the City of Dayton limits for the use in the Tornado Survivors’ Pathway to Homeownership Program. Two of the properties have existing structures that will be rehabbed for occupancy. The other two properties are vacant lots where new storm resilient homes will be built.

This agreement shall commence upon execution by the City and it shall expire December 31, 2023. This agreement is funded with 2018 and 2019 Community Development Block Grant (CDBG) funding.

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

A Certificate of Funds and a copy of the Agreement are attached.
"2021 CM Report- Pathways County Corp" History

- Document created by Ashley Hatton (ashley.hatton@daytonohio.gov)
  2021-12-10 - 2:33:25 PM GMT - IP address: 198.30.33.2

- Document emailed to Chris Lipson (chris.lipson@daytonohio.gov) for signature
  2021-12-10 - 2:33:44 PM GMT

- Email viewed by Chris Lipson (chris.lipson@daytonohio.gov)
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- Document e-signed by Todd Kinskey (todd.kinskey@daytonohio.gov)
  Signature Date: 2021-12-10 - 3:51:15 PM GMT - Time Source: server - IP address: 198.30.33.2

Agreement completed.
2021-12-10 - 3:51:15 PM GMT
### SECTION I - to be completed by User Department

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### Attach additional pages for more FOAPALs

**Vendor Name:** County Corp  
**Vendor Address:** 130 W. Second Street, Suite 1420 Dayton OH 45402  
**Federal ID:** 310978908  
**Commodity Code:** 96199  
**Purpose:** County Corp will provide construction and/or rehab of approximately 10 homes within the City of Dayton corporate limits for occupancy and ownership by survivors of the 2019 Memorial Day Tornado Outbreak.  
**Contact Person:** Ashley Hatton X3696  
**Planning, Neighborhoods & Development Department/Division:**  
**Date:** 12/10/2021  
**Originating Department Director's Signature:** [Signature]

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

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

**Finance Director Signature:** [Signature]  
**Date:** 12/14/21  
**CF Prepared by:** [Signature]  
**Date:** 12/14/21  
**CF/CT Number:** CT21-3143

**October 18, 2011**
"2021 CDBG Pathways County Corp" History

 PEN Document created by Ashley Hatton (ashley.hatton@daytonohio.gov)
 2021-12-10 - 8:32:08 PM GMT- IP address: 198.30.33.2

 PEN Document emailed to Todd Kinskey (todd.kinskey@daytonohio.gov) for signature
 2021-12-10 - 8:32:29 PM GMT

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 2021-12-10 - 8:35:35 PM GMT- IP address: 198.30.33.2

 PEN Document e-signed by Todd Kinskey (todd.kinskey@daytonohio.gov)
 Signature Date: 2021-12-10 - 8:35:42 PM GMT - Time Source: server- IP address: 198.30.33.2

 PEN Agreement completed.
 2021-12-10 - 8:35:42 PM GMT

Adobe Sign
CDBG SUBRECIPIENT AGREEMENT
COUNTY CORP DEVELOPMENT
TORNADO SURVIVORS’ PATHWAY TO HOMEOWNERSHIP PROGRAM
CFDA 14.218

THIS AGREEMENT, entered into this ______ day of ______________, 2021, is between the CITY OF DAYTON OHIO, a municipal corporation in and of the State of Ohio (hereinafter called “City”) and COUNTY CORP, a not-for-profit corporation organized under the laws of the State of Ohio (hereinafter called “Subrecipient”).

WITNESSETH, THAT:

WHEREAS, the City is a grantee of funds from the United States Department of Housing and Urban Development, hereinafter referred to as “HUD,” under Title I of the Housing and Community Development Act of 1974, as amended, Public Law 93-383, responsible for the development, implementation, administration, and evaluation of HUD’s Community Development Block Grant, hereinafter referred to as “CDBG,” program in Dayton; and

WHEREAS, the City has delegated to the Subrecipient the responsibility of rendering housing repair services through the provisions of the CDBG program; and

WHEREAS, the Program set forth herein will meet at least one of the CDBG program’s three national objectives, as defined in 24 Code of Federal Regulations (“CFR”), Part 570.208, which include 1) to benefit low/moderate income persons; 2) to aid in the prevention or elimination of slum and blight; and 3) to meet community development needs having a particular urgency; and

WHEREAS, the City was devastated by the impact of the tornadoes that moved through the Greater Dayton Area on May 27, 2019; and

WHEREAS, to the extent possible, the City is committed to ensure all residents impacted by the tornadoes are able to fully recover, and as part of that commitment recognizes the need for home repair and rehabilitation programs for many residents; and,

WHEREAS, the parties desire to enter into this Agreement to assist the Subrecipient with funds to render housing repair and home rehabilitation services for CDBG eligible households impacted by the Memorial Day Tornadoes of 2019; and,

WHEREAS, the Subrecipient possesses statutory authority and management capability necessary to assist the City in its responsibilities as a CDBG grantee and has been determined by the City to be the most appropriate party to assume the primary administration of an activity described as “Tornado Survivors’ Pathway to Homeownership Program” under the CDBG program in the 2018 and 2019 Action Plan for the City of Dayton and Dayton-Kettering HOME Consortium, Grant Numbers B-18-MC-39-0010 and B-19-MC-39-0010.

NOW, THEREFORE, for the consideration of the mutual promises hereinafter set forth, City and Subrecipient agree as follows:

ARTICLE I. DEFINITIONS

A. “Program Funds” shall mean any funds disbursed to the Subrecipient by the City from the CDBG Program under this agreement.
B. “Program Income” is income received by the Subrecipient directly generated from the use of CDBG funds.

C. “CDBG Program Funds” shall mean funding received by the City from HUD under the City of Dayton’s CDBG Program.

D. “Contract Period” shall mean the effective date of this agreement and time given for performance.

E. “Project Activity” shall mean the activity therein described in Exhibit A — Scope of Services - of this Agreement.

F. “Moderate, Low, and Very Low Income” shall mean 80% or less, 50% or less, and 30% or less — respectively — of the area median income as defined by HUD for the current Agreement period.

ARTICLE 2. PURPOSE

The purpose of this Agreement is to provide funding for project activities approved by the City under the CDBG Program for Program Years 2018 and 2019 as described in Exhibit A — Scope of Services. Project accomplishments will be reported in the 2021 and 2022 Consolidated Annual Performance Evaluation Reports (CAPERs). Project activities, tasks, and budget are included in Exhibits B – Program Budget, C – CDBG Program Monitoring Schedule, and D – Quarterly and Cumulative Reports.

All activities authorized by this Agreement will be performed in accordance with the services and objectives set forth in Exhibit A, the budget set forth in Exhibit B, the program monitoring schedule set forth in Exhibit C, and the conditions, assurances, and requirements set forth in the HUD CDBG Program regulations as detailed in Exhibit A. Subrecipient further agrees that it will notify the City prior to undertaking any activity or authorizing any expenditure that is not clearly consistent with the terms of this Agreement and its appendices and/or with the conditions, assurances, and requirements of the HUD CDBG Program and that no such activity or expenditure of a questionable nature shall be authorized without prior approval of the City.

ARTICLE 3. SCOPE OF SERVICES

Subrecipient shall provide the work and services, in a manner satisfactory to the City and consistent with any standards required as a condition of providing these funds. Subrecipient hereby agrees to use CDBG funds made available to the "Pathways Tornado Recovery Repair Program" ("Program") for the purpose of home repairs and accessibility modifications to low-income homeowners as more fully described in Exhibit A - Scope of Services, which is attached hereto and incorporated herein.

ARTICLE 4. TERM OF CONTRACT

This Agreement shall commence upon execution by the City, and shall be undertaken and completed in such sequence as to assure its expeditious completion in light of the purposes of this Agreement; but in any event, all of the work and services required herein shall be completed and this Agreement shall terminate on December 31, 2023.

ARTICLE 5. GRANT OF FUNDS AND PAYMENT

The City shall make available to Subrecipient the City’s 2018 and 2019 CDBG funds, in the amount of FOUR HUNDRED TWENTY-FIVE THOUSAND DOLLARS AND ZERO CENTS ($425,000.00) for the work and services to be provided by subrecipient for the Program, pursuant to this Agreement. Draws for the payment of eligible expenses shall be made against the line item budgets specified in Exhibit B – Program Budget, which is attached hereto and incorporated herein, and in accordance with
performance. Expenses for general administration shall also be paid against the line item budget specified in Exhibit B and in accordance with performance. Any indirect costs charged must be consistent with the conditions of Article 8 (C) (2) - of this Agreement. Any amendments to the budget must be approved in writing by both the City and Subrecipient.

Expenditures between execution of this agreement and December 31, 2023 are eligible for reimbursement. Payments may be contingent upon certification of Subrecipient’s financial management system in accordance with the standards specified in 2 CFR Part 200, Subparts D & E.

**ARTICLE 6. GENERAL CONDITIONS**

A. Compliance

1. Subrecipient agrees that the HUD regulations set forth in 24 CFR Part 570 and 2 CFR Part 200 are applicable to the grant funds it receives pursuant to this Agreement.

2. Subrecipient agrees that the work and services authorized by this Agreement shall be performed in accordance with any and all applicable local, state, and federal regulations, directives, or guidelines.

3. Subrecipient agrees to prohibit the use of federal funds for lobbying in compliance with the following:

   (a) No federal appropriated funds have been paid or will be paid, by or on behalf of Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with the awarding of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.

   (b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with this federal agreement, grant, loan or cooperative agreement, subrecipient shall notify the City, and complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

4. Subrecipient shall include the requirements of this Subsection A in award documents for all sub-awards at all times (including sub-contracts, sub-grants, and Agreements) and require that all sub-award recipients disclose the same accordingly.

B. "Independent Contractor"

By executing this Agreement, Subrecipient acknowledges and agrees that it will be providing services to the City as an "independent contractor." As an independent contractor for the City, Subrecipient shall be prohibited from representing or allowing others to construe the parties’ relationship in a manner inconsistent with this provision. Subrecipient shall have no authority to assume or create any obligations on behalf of, or in the name of the City, without the express prior written approval of a duly authorized representative of the City.
Subrecipient, its employees and any person retained or hired by Subrecipient to perform duties and responsibilities under this Agreement are not the City employees, and therefore, such persons will not be entitled to, nor will they make a claim for, any of the emoluments of employment with the City of Dayton. Further, Subrecipient will be responsible to withhold and pay, or cause such agents, contractors and subcontractors to withhold and pay, all applicable local, state and federal taxes. Subrecipient further acknowledges and agrees that none of his employees are public employee for the purpose of membership and/or participation in the Ohio Public Employees Retirement System (OPERS).

C. **Indemnification**
Subrecipient agrees to defend, indemnify and hold harmless the City, its elected officials, officers, employees and agents from and against legal liability for all claims, losses, damages, and expenses (including reasonable attorneys’ fees) to the extent that such claims, losses, damages, or expenses are caused by or arise out of the performance or non-performance of this Agreement and/or the acts, omissions or conduct of Subrecipient or its employees, agents, Subrecipient(s), subcontractor(s), and representatives. Further, in the event that Subrecipient violates any CDBG rule, regulation, grant requirement or law governing the use and expenditure of CDBG funds, Subrecipient shall assume full and complete responsibility for said violation(s), including payment of the penalty imposed or re-payment of improperly expended funds, and shall defend, indemnify and hold harmless the City, its elected officials, officers, agents, and employees.

D. **Workers’ Compensation**
Subrecipient shall provide Workers’ Compensation Insurance Coverage for all its employees’ invoices in the performance of this Agreement.

E. **Insurance and Bonding**
Subrecipient shall carry sufficient insurance coverage to protect Agreement assets from loss due to theft, fraud and/or undue physical damage, and, at a minimum, shall purchase a blanket fidelity bond covering all employees in an amount equal to at least **FOUR HUNDRED TWENTY-FIVE THOUSAND DOLLARS AND ZERO CENTS ($425,000.00)**. Subrecipient shall comply with the bonding and insurance requirements of 2 CFR Part 200, Subpart D.

F. **Grantor Recognition**
Subrecipient shall ensure recognition of the grantor agency in providing services through this Agreement. All activities, facilities, and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, Subrecipient will include a reference to the support provided in all publications made possible with funds made available under this Agreement.

G. **Amendments**
The City or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, are executed in writing, signed by a duly authorized representative for each party, approved by City’s Director of the Department of Planning, Neighborhoods, and Development or designee, and, if applicable or required, approved by the City Manager and the Commission of the City of Dayton. Such amendments shall not invalidate this Agreement, nor relieve or release the City or Subrecipient from its obligations under this Agreement.

The City may, in its discretion, amend this Agreement to conform with federal, state, or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities
to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both the City and Subrecipient.

H. **Suspension or Termination**
In accordance with 2 CFR 200.338-200.342, the City may suspend or terminate this Agreement if Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to,) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;

2. Failure, for any reason, of Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;

3. Ineffective or improper use of funds provided under this Agreement;

4. Submission by Subrecipient to the City reports that are incorrect or incomplete in any material respect.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the City or Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the City determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the City may terminate the award in its entirety.

I. **Political Contributions**
Subrecipient affirms and certifies that it is in compliance with Ohio Revised Code §3517.13 limiting political contributions.

**ARTICLE 7. CONTACTS**

All communications or notices required or permitted under this Agreement, including invoices for payment, shall be sufficient if sent to the City or Subrecipient addressed as follows:

**To City:**
City of Dayton, Ohio
Department of Planning, Neighborhoods, and Development
101 West Third Street
Dayton, Ohio 45402
Attn: Ashley Hatton
(937) 333-3696
Ashley.Hatton@daytonohio.gov

**To Subrecipient:**
County Corp
130 W. Second Street, Suite 1420
Dayton, OH 45402
Attn: Kimetta Parker
(937) 531-7050
kparker@countycorp.com
Nothing contained in this subsection shall be construed to restrict the transmission of routine communications between representatives of the City and Subrecipient.

**ARTICLE 8. ADMINISTRATIVE REQUIREMENTS**

**A. Financial Management**

1. **Accounting Standards**
   Subrecipient agrees to comply with 2 CFR Part 200 Subparts, D and E, as applicable, and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. **Cost Principles**
   Subrecipient shall administer its program in conformance with 2 CFR Part 200 Subparts, D and E, as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

3. **Financial Records**
   a. The City may require quarterly reports of all cash receipts, including Program Income, from all sources and disposition thereof, and such other financial statements, as the City deems appropriate. Quarterly reports and financial statements may continue to be required after termination of this Agreement until the collected Program Income has been expended.
   
   b. All costs and expenditures shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement and shall be clearly identified and readily accessible to the City.

**B. Documentation and Record Keeping**

1. **Records to be Maintained**
   Subrecipient shall maintain all records required by the federal regulations specified in 2 CFR Part 200 and 24 CFR 570.506, which are pertinent to the services and activities to be funded under this Agreement. Such records shall include, but not be limited to:
   
   a. Records providing a full description of each activity undertaken;
   
   b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
   
   c. Records required to determine the eligibility of activities;
   
   d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
   
   e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
f. Financial records are required by 24 CFR 570.502, and 2 CFR Part 200; and

g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

2. Client Data
Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to City monitors or their designees for review upon request.

3. Retention of Records and Documentation
The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the submission of the City’s Annual Performance and Evaluation Report to HUD in which the activities assisted under the Agreement are reported on for the final time. Records pertinent to this agreement shall be retained until December 31, 2027.

Within thirty (30) days of the expiration or conclusion of the Agreement, the Subrecipient shall provide the City with full and complete copies of all project files and records associated with the Agreement. Additionally, copies of all files and records pertaining to federal funding contracted through the City shall be provided to the City should the Subrecipient cease operations.

Notwithstanding the above, if there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

4. Disclosure
Subrecipient understands that applicant information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of City's or Subrecipient's responsibilities with respect to work or services to be provided under this Agreement, is prohibited by federal law, unless written consent is obtained from such person receiving service, and in the case of a minor, that of a responsible parent/guardian or otherwise required by law or court order.

5. Close-Outs
Subrecipient's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, Program Income balances, and accounts receivable to City), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that Subrecipient has control over CDBG funds, including Program Income.

6. Audits, Monitoring, and Evaluation
All Subrecipient records with respect to any matters covered by this Agreement shall be made available to City or the Federal Government, or their designees or agents, at any time during normal business hours, as often as City or Federal Government deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data and records. Any deficiencies noted in audit reports must be fully cleared by Subrecipient within thirty (30) days after notice thereof. Failure of Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. Subrecipient hereby agrees to have an annual audit conducted in accordance with current City policy concerning subrecipient audits. Subrecipient shall also comply with 2 CFR Part 200, Subpart F. Upon completion, such audits shall be made available for public inspection.

Subrecipient shall allow City to conduct on-site monitoring, tests, and inspections at such time as proposed in a written notification requesting a monitoring visit. Subrecipient shall provide to City such statements, records, reports, and other information as City may request at the time of scheduled monitoring visits and in such format and detail, as City shall specify.

7. Property Records
Subrecipient shall maintain, as may be applicable, real property inventory records, which clearly identify properties purchased, improved, or sold. Properties retained shall continue to meet eligibility criteria and shall conform to the “changes in use” restrictions specified in 24 CFR 560.503 (b) (8) and 2 CFR Part 200, as applicable.

C. Reporting Procedures

1. Program Income
Subrecipient shall report no less than monthly all “Program Income,” as defined at 24 CFR Part 570.500(a), generated by activities carried out with CDBG funds made available under this Agreement. The use of Program Income by Subrecipient shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, Subrecipient may use such Program Income during the Agreement term for activities permitted under this Agreement and shall reduce requests for additional funds by the amount of any such Program Income balance on-hand. All unused Program Income shall be returned to City at the end of the term of this Agreement. Any interest earned on cash advances from the City or from funds maintained in revolving loan accounts are not Program Income and shall be remitted promptly to City.

2. Indirect Costs
If indirect costs are charged, subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient’s share of administrative cost in accordance with 2 CFR Part 200 and shall submit such plan to the City for approval, in a form specified by the City.

3. Payment Procedures
The City will pay to Subrecipient funds available under this Agreement based upon information submitted by Subrecipient (See Exhibit A) and consistent with any approved budget (See Exhibit B) and City policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the City in
accordance with advance fund and Program Income balances available in Subrecipient accounts. In addition, the City reserves the right to liquidate funds available under this Agreement for costs incurred by the City on behalf of Subrecipient.

4. **Progress Reports**
Subrecipient shall submit regular Progress Reports to City in the form, content, and frequency, as required by City and specified in Exhibit A – Scope of Services.

**D. Procurement**

1. **Compliance**
Subrecipient shall comply with current City policies concerning the purchase of equipment, goods, services, and shall maintain inventory records of all non-expendable personal property, as defined by such City policies as may be procured with the CDBG funds provided herein. All program assets (unexpended Program Income, property, equipment, etc.) shall revert to City upon termination or expiration of this Agreement.

Subrecipient shall procure all materials, property, or services in accordance with the requirements of 2 CFR 200, Subpart D, Procurement, and shall subsequently follow Property Management Standards as modified by 2 CFR 200, Subpart D, covering utilization and disposal of property.

2. **OMB Standards**
Unless specified otherwise within this agreement, Subrecipient shall procure all materials, property, or services in accordance with the requirements of 2 CFR 200.317-200.326.

3. **Travel**
Subrecipient shall obtain written approval from the City for any travel outside the metropolitan area with funds provided under this Agreement.

**E. Use and Reversion of Assets**
The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, 570.504, and 570.505, as applicable, which include but are not limited to the following:

1. Subrecipient shall transfer to the City any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.

2. Real property under Subrecipient’s control that was acquired or improved, in whole or in part, with funds under this Agreement shall be used to meet one of the CDBG National Objectives pursuant to 2 CFR 200.310-200.316 until five (5) years after expiration of this Agreement. If Subrecipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, Subrecipient shall pay the City an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute Program Income to the City. Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five (5) year period.
3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be Program Income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by subrecipient for activities under this Agreement shall be (a) transferred to the City for the CDBG program or (b) retained after compensating the City an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment.

ARTICLE 9. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance
Subrecipient agrees to comply with all local and state civil rights statutes, rules, regulations and ordinances, and with Title VI of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968, as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974, as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246, as amended by Executive Orders 11375, 11478, 12107, and 12086.

2. Nondiscrimination
Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 270.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

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

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

3. Land Covenants
This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City and the United States are beneficiaries of and entitled to enforce such covenants. Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.
4. **Section 504**
Subrecipient shall comply with any federal regulations or orders issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the disabled in any federally assisted program. The City shall provide Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

**B. Affirmative Action**

1. **Approved Plan**
Subrecipient agrees that it shall be committed to carry out, pursuant to the City’s specifications, an Affirmative Action Program keeping with the principles provided in the President’s Executive Order 11246 of September 24, 1966. The City shall provide Affirmative Action guidelines to Subrecipient to assist in the formulation of such program. Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds. Subrecipient must also submit the proper letter of certification from the Dayton Human Relations Council, which will serve as documentation for their Affirmative Action Plan.

2. **Women and Minority-Owned Businesses**
Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women’s business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms “small business” means a business that meets the criteria set forth in Section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and “minority and women’s business enterprise” means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, “minority group members” are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. **Access to Records**
Subrecipient shall furnish and cause each of its own contractors or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records, and accounts by City, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. **Notifications**
Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract of understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker’s representative of Subrecipient’s commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.
Subrecipient will include the provisions of this Paragraph’s Section A, Civil Rights, and Section B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subcontractors.

C. Employment Restrictions

1. Prohibited Activity
Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities, sectarian or inherently religious activities, lobbying, political patronage, or nepotism activities.

2. Labor Standards
Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. Subrecipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request.

Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of **TWO THOUSAND DOLLARS AND NO CENTS ($2,000.00)** for construction, renovation or repair work financed in whole or in part with assistance provided under this Agreement, shall comply with federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve subrecipient of its obligation, if any, to require payment of the higher wage. Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

3. “Section 3” Clause
   a. Compliance
   Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the federal financial assistance provided under this contract and binding upon the City, Subrecipient and any of Subrecipient’s subrecipients and subcontractors. Failure to fulfill these requirements shall subject the City, Subrecipient and any of Subrecipient’s subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which federal assistance is provided. Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.
Subrecipient agrees to comply with the “Section 3” requirements set forth above, and shall include the following language in all subcontracts executed for the program:

“The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this contract agree to comply with HUD’s regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

The contractor agrees to send to each labor organization or representative or workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the contractor’s commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor’s obligations under 24 CFR Part 135.

Noncompliance with HUD’s regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or
suspension from future HUD assisted contracts.

With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract are subject to the provisions of Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b)."

b. **HUD Section 3 Participation Goals**
   Subrecipient agrees that the aspiration sub-contracting goals for certified HUD Section 3 certified business sub-contracting and hiring goals will be:

   Employment: Thirty percent (30%) of the aggregate number of new hires during a one-year period of the project. (Example: A construction contractor hires 10 new workers. Three of the new workers should be Section 3 eligible persons.)

   Contracting: (a) At least 10 percent (10%) of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, construction, and other public construction with federal funds; and (b) At least three percent (3%) of the total dollar amount of all other, including professional services, covered Section 3 contracts to eligible Section 3 business concerns. HUD Section 3 companies can be found at [http://daytonhrc.org/business-technical-assistance/certification/](http://daytonhrc.org/business-technical-assistance/certification/)

c. **Notifications**
   Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

d. **Subcontracts**
   Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by City. Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135, and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. **Conduct**

1. **Assignability**
   Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of City thereto; provided, however, that claims for money due or to become
due to Subrecipient from City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to City.

2. Subcontracts

   a. Approvals
      Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the written consent of City prior to the execution of such agreement.

   b. Monitoring
      Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Evidence of noncompliance shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

   c. Content
      Subrecipient shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

   d. Selection Process
      Subrecipient shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to City along with documentation concerning the selection process.

3. Hatch Act
Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

4. Conflict of Interest
Subrecipient agrees to abide by the provisions of 24 CFR 84.42, 24 CFR 85.36, and 570.611, which include (but are not limited to) the following:

   a. Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by federal funds.

   b. No employee, officer, or agent of subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.

   c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the
CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a “covered person” includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, subrecipient, or any designated public agency.

5. Lobbying
Subrecipient hereby certifies that:

a. No federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;

b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions; and

c. It will require that the language of Paragraph (d) of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly.

d. Lobbying Certification
This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, U.S.C. and 2 CFR 200.450. Any person who fails to file the required certification shall be subject to a civil penalty of not less than TEN THOUSAND DOLLARS AND ZERO CENTS ($10,000.00) and not more than ONE HUNDRED THOUSAND DOLLARS AND ZERO CENTS ($100,000.00) for each such failure.

6. Copyright
If this Agreement results in any copyrightable material or inventions, the City and/or HUD reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.
7. Religious Activities
Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

ARTICLE 10. ENVIRONMENTAL CONDITIONS

A. Air and Water
Subrecipient shall comply with the following requirements insofar as they apply to the performance of this Agreement:


2. Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

3. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR, Part 50, as amended.

B. Environmental Review
Subrecipient shall comply with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, et seq.) as it is applied at 24 CFR Part 58, including any requirements that may be imposed by the City as a result of its responsibility for environmental review, decision-making, and action under NEPA Home. Subrecipient will submit a copy of an Environmental Review & Assessment for each project address to the City as required in 24 CFR Part 58.

Work on a specific project address may not commence until the City of Dayton has given written notice to proceed. Requests for environmental review shall be submitted to the appropriate personnel as described in Exhibit C – Program Monitoring Schedule.

C. Flood Disaster Protection
In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4001), Subrecipient shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the national flood insurance program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

D. Lead-Based Paint
Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR, Part 570.608 and 24 CFR, Part 35. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken.
ARTICLE 11. HISTORIC PRESERVATION

Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement. In general, this requires concurrence from the City and/or State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list. The City and/or State must take into account the effect of a project on any district, site, building, structure, or object listed in or found by the Secretary of the Interior, pursuant to 35 CFR Part 800, to be eligible for inclusion in the National Register of Historic Places, maintained by the National Park Service of the U.S. Department of the Interior, and must make every effort to eliminate or minimize any adverse effect on a historic property.

ARTICLE 12. SEVERABILITY

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

ARTICLE 13. GOVERNING LAW & VENUE

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

ARTICLE 14. SECTION HEADINGS AND SUBHEADINGS

The section heading and subheading contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

ARTICLE 15. WAIVER

The City’s failure to act with respect to a breach by subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the City to exercise or enforce any right or provision shall not constitute a waiver or such right or provision.

ARTICLE 16. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the City and subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the City and subrecipient with respect to this Agreement.
ARTICLE 17. REFERENCES TO LAW

All references to federal, state or local laws, regulations, or orders contained in this Agreement shall include any and all subsequent amendments, modifications, additions or other changes as may be enacted or codified by the proper governmental authority during the term of this Agreement.

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

CITY OF DAYTON, OHIO

City Manager

Date

COUNTY CORP

By: __________________________

Title: President

Date: Nov 19, 2021

APPROVED AS TO FORM
AND CORRECTNESS:

11/18/2021

X John Musto for
City Attorney

Signed by: Musto, John

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

______________________, 2021

Min. / Bk. _____ Pg. _____

Clerk of the Commission
EXHIBIT A
SCOPE OF SERVICES
COUNTY CORP TORNADO SURVIVORS’ PATHWAY TO HOMEOWNERSHIP PROGRAM

1. PROGRAM DESCRIPTION

The Subrecipient will use all funds granted hereunder to operate the “Tornado Survivors’ Pathway to Homeownership Program,” through December 31, 2023. The program will result in construction and/or rehab of approximately 10 homes within the City of Dayton corporate limits for occupancy and ownership by survivors of the 2019 Memorial Day Tornado Outbreak. Eligible applicants are survivors of the 2019 Memorial Day Tornado Outbreak who are at or below eighty percent (80%) of the Area Median Income (AMI). Homeowners are recruited from the case management files of the Long-Term Recovery Operations Group to the program. These potential homeowners will document their loss of rental housing in the aftermath of the 2019 Memorial Day tornadoes. County Corp will market these homes to these survivors. If, after attempting to market these homes to tornado survivors from inception to 60 days after obtaining an occupancy permit, County Corp will market the homes to any income eligible household and/or purchaser.

County Corp has secured four properties within the City of Dayton limits, from the City of Dayton and the Montgomery County Land Bank for use in the Tornado Survivors’ Pathway to Homeownership Program. Two of the properties have existing homes that will be rebbed for occupancy. The other two properties are vacant lots where new storm resilient homes will be built for tornado survivors.

Program Definitions
The services offered through this Program include the substantial rehabilitation of at least two vacant homes and the construction of at least two new homes within the City of Dayton. The average cost per home should be $100,000.00.

Home rehabilitation is defined as substantial improvements made to existing, vacant residential structures to ensure high quality habitable homes for tornado survivors. Rehabilitation includes, but not limited to, resolution of any structural or environmental challenges, mechanical systems, exterior and interior finishing. Home construction is defined as the construction of new storm resilient homes.

If successful in recruiting a tornado survivor who has the need for fully accessible housing, County Corp will revise any rehabilitation or new construction plans to create a fully accessible home.

2. COMMUNITY DEVELOPMENT OBJECTIVES

Subrecipient certifies that the activities carried out under this Agreement are allowable expenses under HCDA Section 105 (a) (4) and 24 CFR 570.202, and that the activities are a provision of residential rehabilitation, CDBG Matrix Code 14A (Rehab; Single-Unit Residential), benefitting low- and moderate-income (LMI) persons under the National Objective of Low/Mod Housing (LMH) Benefit. The program will maintain the supply and availability of safe, decent, and affordable housing for low- and moderate-income residents, improve the general interior and exterior conditions of the housing stock in the City, provide housing rehabilitation opportunities for low- and moderate-income residents of the City, increase the percentage of neighborhood residents who rate their neighborhood desirable, reduce the number of homeowners forced from their homes due to deteriorated housing and substandard living conditions, and encourage private investment in the neighborhoods. The provision of homeowner rehabilitation is considered to address the LMH National Objective per 24 CFR 570.208 (a) (3).

3. PROGRAM GUIDELINES
The Subrecipient shall use the City of Dayton CDBG funds for implementation of a Residential Rehabilitation Program as articulated below, not to exceed **FOUR HUNDRED TWENTY-FIVE THOUSAND DOLLARS AND ZERO CENTS ($425,000.00)**. The period will be through December 31, 2023 as contemplated in this agreement.

A. Tornado Survivors’ Pathway to Homeownership Program

1. The program provides the funding, labor, and materials necessary to correct substandard, unsanitary, and deteriorated conditions of low- and moderate-income single-unit residential properties as described in Exhibit A Section 1.

2. Only single family (one unit) residential structures are eligible to participate in the program.

3. Properties purchased by land contract are not eligible under this program unless the land contract documents have been properly recorded by the Montgomery County Recorder’s Office.

4. Properties in foreclosure are not eligible for funding under this program.

5. Property taxes must be current, or if not current, a payment plan must be in place with the Montgomery County Treasurer’s Office.

6. Eligible geographic areas for the program include the entire municipal corporation limits of the City of Dayton only.

7. Eligible beneficiaries of this program are homeowners within the City of Dayton.

8. Eligible beneficiaries of this program are households earning no more than eighty percent (80%) or less of median income for the area as determined annually by HUD with adjustments for family size, as illustrated below. New income limits will replace the limits listed below when issued and will be made available by the City for the Subrecipient annually.
4. **OUTCOME MEASUREMENTS: PERFORMANCE AND OUTCOME MEASURES**

In accordance with U.S. Department of Housing and Urban Development (HUD) requirements, the City has implemented a performance measurement system that is based on an outcomes-based approach to funding projects. The City requires recipients of federal funds to assess the productivity and impact of their programs. This Performance and Outcome Measurement System will help to quantify the effectiveness of programs and establish clearly defined outcomes.

The City shall report outcomes-based accomplishments to HUD. The City therefore requires subrecipient to submit timely and consistent performance measurement reports that focus on establishing clearly articulated objectives, performance measures, outputs, and program outcomes (desired end results). The City shall review the reports to track progress, provide feedback, and when necessary, provide technical assistance. Program performance is also considered in the decision-making process for fund allocation. The Subrecipient agrees to submit the reports detailed in Section 10, Reporting Procedures.

5. **SUBRECIPIENT RESPONSIBILITIES**

The Subrecipient will be responsible for determination of household eligibility based on income, identification of target households, marketing the program, application intake and processing, development of rehabilitation/repair work specifications, preconstruction conferences, coordination of services for the completion of the repairs, inspection of rehabilitation work, compliance with all CDBG regulations, final inspection of repairs completed, client satisfaction survey, and preparation of reports to City as detailed in Section 10, Reporting Procedures and as displayed in Exhibit D - Quarterly and Cumulative Reports. Subrecipient will respond to all complaints regarding repairs performed by Subrecipient for one year from date of completion, and client satisfaction survey.

Funds will be used to address code violations, health and safety items, and incipient repair items as identified by Subrecipient. All repairs must be performed in accordance with local building code standards.

6. **BUDGET**

The program budget is attached to this document as Exhibit B – Program Budget.

7. **STAFFING**
Subrecipient shall assign the following staff as Key Personnel to the “Tornado Survivors’ Pathway to Homeownership Program”:

<table>
<thead>
<tr>
<th>Staff Member Title</th>
<th>General Program Duties</th>
<th>Average Time Allocation</th>
</tr>
</thead>
</table>
| Kimetta Parker, Contract Development and Compliance Manager | This position manages the program budget and compliance, including:  
  - Updating budget status  
  - Reporting to City | ___ hours/week |
| Ben Deacon, Construction Manager | This position oversees projects and determines scope of work, including:  
  - Performs inspections  
  - Writes specs  
  - Manages bid process and oversees all job site activities | ___ hours/week |
| Adam Blake, Vice President | This position provides overall project management. | ___ hours/week |
| Oxana Makbrayd, Accounting Clerk | This position assists with accounting duties, including:  
  - Processing contractor payments  
  - Providing supporting documents for files and invoices  
  - Other Accounting related tasks | ___ hours/week |
| Tracy Schultz, Controller | This position oversees all accounting duties:  
  - Invoicing funder  
  - Submitting supporting documents for invoices to the funder  
  - Other Accounting related tasks | ___ hours/week |

Any changes in the Key Personnel assigned, their general responsibilities, or their average time allocation under this project are subject to the prior approval of the City.

8. PAYMENT PROCEDURES

The City will reimburse Subrecipient for expenditures for the Project and in accordance with the line-item budget set forth in Exhibit B – Program Budget. Subrecipient shall submit all invoices and supporting documentation to the City’s Department of Planning, Neighborhoods, and Development. Subrecipient shall comply with the following requirements for the submission of requests for reimbursement:

A. Invoice Information

Subrecipient’s invoice shall contain the following:

1. City Contract Number
2. Invoice Number
3. Period Covered
4. Work Done/Accomplishments Summary, etc.

5. Written documentation verifying that weekly payroll reports were reviewed and comply with approved wage determination.

6. Total Amount Requested

7. List of Enclosed Documents

8. Agreement Funding Balance

9. Other information Subrecipient wishes to communicate to the City

10. Signature of Subrecipient’s Chief Financial Officer

B. Supporting Documentation

Subrecipient shall collect, maintain, and submit the following documentation and information with invoices for payment. For Project administration and personnel cost invoicing, the Subrecipient will include the number of hours worked on the program/project funded, and a summary of work performed by employee during the time for which payment was made. For supplies and materials invoicing, the documentation and information shall include an invoice from vendor or company detailing the item(s)/services purchased and a copy of Contractor’s check showing that Subrecipient paid the vendor for goods/services.

Unless disputed or the City determines that there is insufficient documentation to substantiate the invoice, the City will tender payment to Subrecipient in a timely manner.

9. DOCUMENTATION AND RECORD KEEPING

In order to ensure that program participants and activities meet the program eligibility criteria, subrecipient must record the name, address, sex and age of homeowner, the number of people in the household, total household income, racial and ethnic data of household members, a description of work and services to be performed for homeowner, a signed agreement with homeowner, work specifications, and proof of payment to contractor(s).

The following financial records related to the payment of salaries and fringes for operational staff should be included in the project file if applicable:

A. Accounting journals and ledgers

B. Source documentation that costs were eligible and paid (invoices, purchase orders, cancelled checks, etc.)

C. Bank account records

D. Time sheets for personnel

E. Payroll records and reports

F. Documentation of other administrative costs charged
G. Financial reports

H. Audit files

I. Financial correspondence

Subrecipient will maintain case files, including the above information for a period of not less than four years after completion of the program and all affordability requirements. Subrecipient will maintain these and other documents and financial records in accordance with the requirements for record retention specified in Article 8 of the Agreement. Records pertinent to this agreement shall be retained until December 31, 2027.

10. REPORTING PROCEDURES

The City will require timely and consistent reports to ensure that the program is proceeding according to the work program and in accordance with federal regulations. Reporting shall continue until expiration or termination of this Agreement. All reports shall be submitted to the Project Manager and will be retained for 5 years beyond the terms of the contract. The Sub-recipient agrees to submit the following reports.

A. Quarterly Progress Reports

Subrecipient agrees to submit on the fifteenth (15th) day of each quarter, beginning with December 15, 2021, a written progress report covering the agreed upon objectives, activities, and expenditures of the previous quarter. The Quarterly Progress Report must detail, at a minimum, the following information per reporting period:

1. The number of repairs/modifications completed;

2. A brief summary of the repairs/modifications completed and the number of individuals served;

3. Total number of housing units improved, including the number improved through emergency repairs, for accessibility, with energy efficiency improvements, and newly constructed units;

4. The addresses of housing units improved;

5. The race/ethnicity and age for each household assisted;

6. The number of female-headed households;

7. The income level for each household assisted;

8. Lead paint status and remediation data.

9. Additional funding sources leveraged.

A copy of the Quarterly Report is included in Exhibit D – Quarterly and Cumulative Reports.

B. Cumulative Reports
The Subrecipient shall submit an annual Cumulative Report detailing the activities of the Subrecipient to the City no later than December 30, 2021, December 30, 2022 and December 30, 2023. A copy of the Cumulative Report is included in Exhibit D – Quarterly and Cumulative Reports.

Within 60 days after expiration or termination of this Agreement or within 60 days of submitting the final invoice, whichever comes first, Subrecipient shall submit an additional cumulative report to the City. This report shall be in a format approved by the City, and it shall detail all sources and uses of funds and describe Subrecipient’s activities and outcomes of the services provided throughout the course of the Agreement. This exhibit shall survive termination or expiration of this Agreement.

11. COMMUNICATIONS

All notices and correspondence regarding this Agreement and the Project shall be submitted to the parties as specified in Article 7 of the Agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]
## EXHIBIT B
### PROGRAM BUDGET

<table>
<thead>
<tr>
<th>County Corp Pathways Repair Program</th>
<th>City 2019 CDBG</th>
<th>Private</th>
<th>Federal</th>
<th>State</th>
<th>Local</th>
<th>County</th>
<th>In-Kind</th>
<th>Total</th>
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</thead>
<tbody>
<tr>
<td>Developer Fee</td>
<td>$42,500</td>
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<td>$42,500</td>
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<tr>
<td>Housing Construction/Rehab</td>
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<td>$382,500</td>
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<td>Supplies/Materials</td>
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<tr>
<td>Postage/Mailing</td>
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<td><strong>Total</strong></td>
<td><strong>$425,000</strong></td>
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<td></td>
<td></td>
<td></td>
<td><strong>$425,000</strong></td>
</tr>
</tbody>
</table>

Requests for payment of eligible expenses will be associated with the line items as stated above. Expenses for eligible costs incurred after contract execution date may be invoiced and shall be paid upon execution of this agreement.

This budget may only be modified through formal written amendment approved by the City and Subrecipient.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]
EXHIBIT C
CDBG PROGRAM MONITORING SCHEDULE

**Grantee:** City of Dayton Department of Planning, Neighborhoods, and Development  
**Subrecipient:** County Corp  
**Project/Program:** Tornado Survivors’ Pathway to Homeownership Program

<table>
<thead>
<tr>
<th>Monitoring Subject Area</th>
<th>Date of Review</th>
<th>City Representative</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Section I. Required Monitoring for ALL CDBG Subrecipient Agreements</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financial and Program Eligibility</td>
<td>Upon submission of invoice(s)</td>
<td>Sarah Geist or designated staff</td>
</tr>
<tr>
<td>Program Performance and Records Management</td>
<td>Ongoing on a quarterly basis until termination of Agreement</td>
<td>Sarah Geist or designated staff</td>
</tr>
<tr>
<td>Environmental Review</td>
<td>As specific activities warrant</td>
<td>Pete Thornburgh or designated staff</td>
</tr>
<tr>
<td>Historic Properties Protection Review</td>
<td>As specific activities warrant</td>
<td>Designated staff</td>
</tr>
<tr>
<td>On-Site Monitoring Visit</td>
<td>As warranted by Annual Risk Assessment</td>
<td>Sarah Geist or designated staff</td>
</tr>
</tbody>
</table>

**Section II. Specific Monitoring Areas based on Project Type**

<table>
<thead>
<tr>
<th>Monitoring Subject Area</th>
<th>Date of Review</th>
<th>City Representative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Activities (Prevailing Wage Compliance and Record Keeping, Bidding and Procurement Process)</td>
<td>As specific activities warrant</td>
<td>Project Manager or designated staff</td>
</tr>
<tr>
<td>Acquisition and Relocation Compliance</td>
<td>Not Applicable</td>
<td></td>
</tr>
<tr>
<td>Housing Rehabilitation Guidelines</td>
<td>As specific activities warrant</td>
<td>Sarah Geist or designated staff</td>
</tr>
<tr>
<td>Economic Development Guidelines</td>
<td>Not Applicable</td>
<td></td>
</tr>
</tbody>
</table>

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]
EXHIBIT D
QUARTERLY AND CUMULATIVE REPORTS

Quarterly Report

Project Name: Tornado Survivors' Pathway to Homeownership Program
Subrecipient: County Corp
Action Plan Year: 2021

1. Provide a description of all activities and accomplishments occurring during this reporting period. Quantify all accomplishments and identify the location of physical improvements with an address or boundary. (Attach additional documentation, if necessary.)

2. Was the project completed during the current reporting period? _______ YES _______ NO

2a. If YES, indicate completion date. _______________________

2b. If NO, please provide a brief description of the Subrecipient's plan to complete the project and an estimated timeframe for completion.

3. Total number of housing units improved: _____________________

4. Total number of housing units improved through emergency repair(s): _____________________

5. Total number of housing units modified to be accessible: _____________________

6. Total number of newly constructed affordable, accessible housing units: _____________________
7. Addresses of housing units improved (including ZIP)  
*Must match #3*

*Add additional rows as necessary*

1. ____________________________________________

2. ____________________________________________

3. ____________________________________________

4. ____________________________________________

5. ____________________________________________

8. Race/Ethnicity  
*Total must match #3*

<table>
<thead>
<tr>
<th>Race</th>
<th>Total</th>
<th>Hispanic/Latino</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
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<tr>
<td>Black/African-American</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asian</td>
<td></td>
<td></td>
</tr>
<tr>
<td>American Indian/Alaskan Native</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Native Hawaiian/Other Pacific Islander</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black/African-American &amp; White</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asian &amp; White</td>
<td></td>
<td></td>
</tr>
<tr>
<td>American Indian/Alaskan Native &amp; White</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Native Hawaiian/Other Pacific Islander &amp; White</td>
<td></td>
<td></td>
</tr>
<tr>
<td>American Indian/Alaskan Native &amp; Black/African-American</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other multi-racial</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

9. Female-Headed Households: ________________________

10. Income Levels

<table>
<thead>
<tr>
<th>Income Level</th>
<th>Number Households</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extremely Low - 0-30%</td>
<td></td>
</tr>
<tr>
<td>Low - 30-50%</td>
<td></td>
</tr>
<tr>
<td>Moderate - 50-80%</td>
<td></td>
</tr>
<tr>
<td>Non-Low/Moderate</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Percent Low/Moderate</th>
<th>%</th>
</tr>
</thead>
</table>
11. Applicable Lead Paint Requirement

<table>
<thead>
<tr>
<th>Description</th>
<th># Housing Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Housing Constructed before 1978</td>
<td></td>
</tr>
<tr>
<td>Exempt: housing constructed 1978 or later</td>
<td></td>
</tr>
<tr>
<td>Exempt: No paint disturbed</td>
<td></td>
</tr>
<tr>
<td>Otherwise exempt:</td>
<td></td>
</tr>
<tr>
<td>0 bedroom</td>
<td></td>
</tr>
<tr>
<td>Elderly/Disabled with no children under 6</td>
<td></td>
</tr>
<tr>
<td>Lead-based paint free</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
</tr>
</tbody>
</table>

12. Lead Hazard Remediation Actions:

<table>
<thead>
<tr>
<th>Description</th>
<th># Housing Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lead Safe Work Practices (24 CFR 35.930(b)) (Hard costs &lt;= $5k)</td>
<td></td>
</tr>
<tr>
<td>Interim Controls for Standard Practices (24 CFR 35.930(c)) (Hard costs $5k-$25k)</td>
<td></td>
</tr>
<tr>
<td>Abatement (24 CFR 35.930(d)) (Hard costs &gt; $25k)</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
</tr>
</tbody>
</table>

13. Homeowner Rehab Units:

<table>
<thead>
<tr>
<th>Description</th>
<th># Housing Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Units Occupied by Elderly</td>
<td></td>
</tr>
<tr>
<td>Units Moved from Substandard to Standard (HQS or Local Code)</td>
<td></td>
</tr>
<tr>
<td>Section 504 Accessible Units</td>
<td></td>
</tr>
<tr>
<td>Units Qualified as Energy Star</td>
<td></td>
</tr>
<tr>
<td>Units Brought into Compliance with Lead Safety Rules (24 CFR Part 35)</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
</tr>
</tbody>
</table>
Annual Cumulative Report & Post Agreement Report

Project Name: Pathways Tornado Recovery Repair Program
Subrecipient: County Corp
Action Plan Year: 2021
Reporting Period: January 1 – December 31, 2021

1. Does the project generate program income (PI)? YES NO
   PI is defined as the proceeds from the sale of real estate purchased through CDBG, income generated from fees or charges assessed for a CDBG-funded service, or loan repayments from a revolving loan program funded with CDBG dollars

   1a. If YES, how much PI was received during reporting period? $_______

   1b. Program Income balance as of report date: $_______

2. Does the project utilize any funding other than the CDBG allocation? YES NO

2a. If YES, indicate the source, type (Federal, State, Local, or Private), and the amount.

<table>
<thead>
<tr>
<th>Source</th>
<th>Type</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3. Provide a description of all activities and accomplishments occurring during this reporting period. Quantify all accomplishments and identify the location of physical improvements with an address or boundary. (Attach additional documentation, if necessary.)

4. Was the project completed during the current reporting period? YES NO

4a. If YES, indicate completion date. __________________________
4b. If NO, please provide a brief description of the Subrecipient’s plan to complete the project and an estimated timeframe for completion.

5. Total number of housing units improved: 

6. Total number of housing units improved through emergency repair(s): 

7. Total number of housing units modified to be accessible: 

8. Total number of newly constructed affordable, accessible housing units: 

9. Addresses of housing units improved (including ZIP)  
   Add additional rows as necessary
   Must match #3
   
   1. 
   2. 
   3. 
   4. 
   5. 

10. Race/Ethnicity  
    Total must match #3
    
    | Race                                      | Total | Hispanic/Latino |
    |-------------------------------------------|-------|-----------------|
    | White                                     |       |                 |
    | Black/African-American                    |       |                 |
    | Asian                                     |       |                 |
    | American Indian/Alaskan Native            |       |                 |
    | Native Hawaiian/Other Pacific Islander    |       |                 |
    | Black/African-American & White            |       |                 |
    | Asian & White                             |       |                 |
    | American Indian/Alaskan Native & White    |       |                 |
    | Native Hawaiian/Other Pacific Islander & White |   |                 |
    | American Indian/Alaskan Native & Black/African-American | | |
    | Other multi-racial                        |       |                 |
    | TOTAL                                     |       |                 |

11. Female-Headed Households: 

33
12. Income Levels

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<tr>
<td>Non-Low/Moderate</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Percent Low/Mod</strong></td>
<td><strong>%</strong></td>
</tr>
</tbody>
</table>

13. Applicable Lead Paint Requirement

<table>
<thead>
<tr>
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14. Lead Hazard Remediation Actions:

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<tbody>
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</tbody>
</table>

15. Homeowner Rehab Units:

<table>
<thead>
<tr>
<th># Housing Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Units Occupied by Elderly</td>
</tr>
<tr>
<td>Units Moved from Substandard to Standard (HQS or Local Code)</td>
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</tr>
<tr>
<td>Units Brought into Compliance with Lead Safety Rules (24 CFR Part 35)</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
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</table>
"CDBG - County Corp PATHWAYS ELH for SIGNATURE" History

- Document created by Ashley Hatton (ashley.hatton@daytonohio.gov)
  2021-11-19 - 2:39:58 PM GMT

- Document emailed to Steve Naas (snaas@countycorp.com) for signature
  2021-11-19 - 2:42:54 PM GMT

- Email viewed by Steve Naas (snaas@countycorp.com)
  2021-11-19 - 2:52:39 PM GMT - IP address: 64.56.109.6

- Document e-signed by Steve Naas (snaas@countycorp.com)
  Signature Date: 2021-11-19 - 8:29:46 PM GMT - Time Source: server - IP address: 64.56.109.6

- Agreement completed.
  2021-11-19 - 8:29:46 PM GMT
City Manager’s Report

From 2390 - Planning, Neighborhoods & Development
Supplier, Vendor, Company, Individual
Name Daybreak, Inc.
Address 605 S. Patterson Blvd.
Dayton, Ohio 45402

Date December 22, 2021
Expense Type Service Agreement
Total Amount $193,000.00 (thru 12/31/2023)

Fund Source(s) Fund Code(s) Fund Amount(s)
Community Development Block Grant (CDBG) 26304-2390-1159-31-PL2109 193,000.00

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

Description

COMMUNITY DEVELOPMENT BLOCK GRANT SUBRECIPIENT AGREEMENT
DAYBREAK, INC.

The Department of Planning, Neighborhoods and Development requests approval to enter into an Agreement with Daybreak, Inc. in the amount of $193,000.00, to administer the Lindy’s Bakery Job Training and Development Program. These funds will provide for the operation of Lindy’s Bakery and will result in job training programming for approximately 140 homeless and disconnected youth and the creation or retention of jobs for approximately 36 homeless and disconnected youth living in the City of Dayton.

This agreement shall commence upon execution by the City and it shall expire December 31, 2023. This agreement is funded with 2018 and 2021 Community Development Block Grant (CDBG) funding.

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

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

Signatures/Approval
Approved by City Commission

Division

Department
City Manager

FORM NO. MS-16

Updated 10/2019
"2021 CM Report- Daybreak" History

Document created by Ashley Hatton (ashley.hatton@daytonohio.gov)
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2021-12-14 - 2:33:06 PM GMT

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2021-12-14 - 2:35:53 PM GMT- IP address: 198.30.33.2

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Signature Date: 2021-12-14 - 2:36:34 PM GMT - Time Source: server- IP address: 198.30.33.2

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2021-12-14 - 2:58:34 PM GMT
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
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<th>New Contract</th>
<th>Renewal Contract</th>
<th>Change Order</th>
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<tbody>
<tr>
<td>Contract Start Date</td>
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<td></td>
<td></td>
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<tr>
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</tr>
<tr>
<td>Expiration Date</td>
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<td></td>
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<tr>
<td>Original Commission Approval</td>
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<tr>
<td>Initial Encumbrance</td>
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<tr>
<td>$</td>
<td>193,000.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
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<td></td>
<td></td>
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<tr>
<td>$</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

Original CT/CF
- $ -

Increase Encumbrance
- $ -

Decrease Encumbrance
- $ -

Remaining Commission Approval
- $ -

Amount: $ 193,000.00

Fund Code
- 26304
- 2390
- 1159
- 31 - PL2109
- XXXX

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

Amount:

Vendor Name: Daybreak, Inc.
Vendor Address: 605 S. Patterson Blvd. Dayton, OH 45402
Federal ID: 310864474
Commodity Code: 96199
Purpose: Daybreak will provide for the operation of Lindy's Bakery and will result in job training programming for approximately 140 homeless and disconnected youth and the creation or retention of jobs for approximately 36 homeless and disconnected youth living in the City of Dayton.

Contact Person: Ashley Hatton X3696
Originating Department Director's Signature: [Signature]

Date: 12/10/2021

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: [Signature]
Date: 12/14/21

CF Prepared by: [Signature]
Date: 12/14/21

CF/CT Number: CT21-3142

October 18, 2011
"2021 CDBG Daybreak-Lindys Bakery" History

Document created by Ashley Hatton (ashley.hatton@daytonohio.gov)
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Agreement completed.
2021-12-10 - 8:31:33 PM GMT
CDBG SUBRECIPIENT AGREEMENT
DAYBREAK, INC.
LINDY’S BAKERY JOB TRAINING AND DEVELOPMENT PROGRAM
CFDA 14.218

THIS AGREEMENT, entered into this ___ day of ____________, 2021, is between the
CITY OF DAYTON, a municipal corporation in and of the State of Ohio, hereinafter referred to as
“City,” and DAYBREAK, INC., a not-for-profit corporation organized under the laws of the State of
Ohio, hereinafter called “Subrecipient.”

WITNESSETH, THAT:

WHEREAS, the City is a grantee of funds from the United States Department of Housing and
Urban Development, hereinafter referred to as “HUD,” under Title I of the Housing and Community
Development Act of 1974, as amended, Public Law 93-383, responsible for the development,
implementation, administration, and evaluation of HUD’s Community Development Block Grant,
hereinafter referred to as “CDBG,” program in Dayton; and

WHEREAS, the City has delegated to the Subrecipient the responsibility of rendering workforce
training and development through the provisions of the CDBG program; and

WHEREAS, the program set forth herein will meet at least one of the CDBG program’s three
national objectives, as defined in 24 Code of Federal Regulations (“CFR”), Part 570.208, which include
1) to benefit low/moderate income persons; 2) to aid in the prevention or elimination of slum and blight;
and 3) to meet community development needs having a particular urgency; and

WHEREAS, the parties desire to enter into this Agreement to assist the Subrecipient with
operating funds to assist with job creation and retention for low- to moderate-income households; and

WHEREAS, the Subrecipient possesses statutory authority and management capability necessary
to assist the City in the execution of its responsibilities as a CDBG grantee and has been determined by
the City to be the most appropriate party to assume the primary administration of an activity described as
“Lindy’s Bakery Job Training and Development Program” under the CDBG program in the 2018 and
2021 Action Plans for the City of Dayton and Dayton-Kettering HOME Consortium, Grant Number B-

NOW, THEREFORE, for the consideration of the mutual promises hereinafter set forth, City
and Subrecipient agree as follows:

ARTICLE 1. DEFINITIONS

A. “Program Funds” shall mean any funds disbursed to the Subrecipient by the City from the CDBG
Program under this agreement.
B. “Program Income” is income received by the Subrecipient directly generated from the use of
CDBG funds.
C. “CDBG Program Funds” shall mean funding received by the City from HUD under the City of
Dayton’s CDBG Program.
D. “Contract Period” shall mean the effective date of this agreement and time given for performance.
E. “Project Activity” shall mean the activity therein described in Exhibit A of this Agreement.
F. “Moderate, Low, and Very Low Income” shall mean 80% or less, 50% or less, and 30% or less –
respectively – of the area median income as defined by HUD for the current Agreement period.
ARTICLE 2. PURPOSE

The purpose of this Agreement is to provide funding for project activities approved by the City under the CDBG Program for Program Year 2018 and 2021 as described in Exhibit A – Scope of Services. Project accomplishments will be reported in the 2021, 2022 and 2023 Consolidated Annual Performance Evaluation Reports (CAPERs). Project activities, tasks, and budget are included in Exhibits B – Program Budget, C – CDBG Program Monitoring Schedule, and D – Monthly and Cumulative Reports.

All activities authorized by this Agreement will be performed in accordance with the services set forth in Exhibit A – Scope of Services, the budget set forth in Exhibit B – Program Budget, the monitoring scheduling set forth in Exhibit C – CDBG Program Monitoring Schedule, and the conditions, assurances, and requirements set forth in the HUD CDBG Program regulations as detailed in Exhibit A. Subrecipient further agrees that it will notify the City prior to undertaking any activity or authorizing any expenditure that is not clearly consistent with the terms of this Agreement and its appendices and/or with the conditions, assurances, and requirements of the HUD CDBG Program and that no such activity or expenditure of a questionable nature shall be authorized without prior approval of the City.

ARTICLE 3. SCOPE OF SERVICES

Subrecipient shall provide the work and services, in a manner satisfactory to the City consistent with any standards required as a condition of providing these funds. Subrecipient hereby agrees to use CDBG funds made available to the Lindy’s Bakery Job Training and Development Program for the purpose fully described in Exhibit A - Scope of Services, which is attached hereto and incorporated herein.

ARTICLE 4. TERM OF AGREEMENT

This Agreement shall commence upon execution by the City and shall be undertaken and completed in such sequence as to assure its expeditious completion of light of the purposes of this Agreement; but in any event, all of the work and services required herein shall be completed and this Agreement shall terminate on December 31, 2023.

ARTICLE 5. GRANT OF FUNDS AND PAYMENT

The City shall make available to Subrecipient the City’s 2018 and 2021 CDBG funds, in the amount of ONE HUNDRED NINETY-THREE THOUSAND DOLLARS AND ZERO CENTS ($193,000.00) for the work and services to be provided by Subrecipient for the Program, pursuant to this Agreement. Draws for the payment of eligible expenses shall be made against the line item budgets specified in Exhibit B – Program Budget, which is attached hereto and incorporated herein, and in accordance with performance. Expenses for general administration shall also be paid against the line item budget specified in Exhibit B and in accordance with performance. Any indirect costs charged must be consistent with the conditions of Article 8 (C) (2) - of this Agreement. Any amendments to the budget must be approved in writing by both the City and Subrecipient.

Expenditures between execution of this agreement and December 31, 2023 are eligible for reimbursement. Payments may be contingent upon certification of Subrecipient’s financial management system in accordance with the standards specified in 2 CFR Part 200, Subparts D & E.

ARTICLE 6. GENERAL CONDITIONS

A. Compliance
1. Subrecipient agrees that the HUD regulations set forth in 24 CFR Part 570 and 2 CFR Part 200 are applicable to the grant funds it receives pursuant to this Agreement.

2. Subrecipient agrees that the work and services authorized by this Agreement shall be performed in accordance with any and all applicable local, state, and federal regulations, directives, or guidelines.

3. Subrecipient agrees to prohibit the use of federal funds for lobbying in compliance with the following:
   
   (a) No federal appropriated funds have been paid or will be paid, by or on behalf of Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with the awarding of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.

   (b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with this federal agreement, grant, loan or cooperative agreement, Subrecipient shall notify the City, and complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

4. Subrecipient shall include the requirements of this Subsection A in award documents for all sub-awards at all times (including sub-contracts, subgrants, and Agreements) and require that all sub-award recipients disclose the same accordingly.

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

Consultant, its employees and any person retained or hired by Consultant to perform duties and responsibilities under this Agreement are not the City employees, and therefore, such persons will not be entitled to, nor will they make a claim for, any of the emoluments of employment with the City of Dayton. Further, Consultant will be responsible to withhold and pay, or cause such agents, contractors and subcontractors to withhold and pay, all applicable local, state and federal taxes. Consultant further acknowledges and agrees that none of his employees are public employee for the purpose of membership and/or participation in the Ohio Public Employees Retirement System (OPERS).

C. Indemnification
Subrecipient agrees to defend, indemnify and hold harmless the City, its elected officials, officers, employees and agents from and against legal liability for all claims, losses, damages, and expenses (including reasonable attorneys’ fees) to the extent that such claims, losses, damages, or
expenses are caused by or arise out of the performance or non-performance of this Agreement and/or the acts, omissions or conduct of Subrecipient or its employees, agents, Subrecipient(s), subcontractor(s), and representatives. Further, in the event that Subrecipient violates any CDBG rule, regulation, grant requirement or law governing the use and expenditure of CDBG funds, Subrecipient shall assume full and complete responsibility for said violation(s), including payment of the penalty imposed or re-payment of improperly expended funds, and shall defend, indemnify and hold harmless the City, its elected officials, officers, agents, and employees.

D. **Workers’ Compensation**

Subrecipient shall provide Workers’ Compensation Insurance Coverage for all its employees’ invoices in the performance of this Agreement.

E. **Insurance and Bonding**

Subrecipient shall carry sufficient insurance coverage to protect Agreement assets from loss due to theft, fraud and/or undue physical damage, and, at a minimum, shall purchase a blanket fidelity bond covering all employees in an amount equal to at least **ONE HUNDRED NINETY-THREE THOUSAND DOLLARS AND ZERO CENTS ($193,000.00)**. Subrecipient shall comply with the bonding and insurance requirements of 2 CFR Part 200, Subpart D.

F. **Grantor Recognition**

Subrecipient shall ensure recognition of the grantor agency in providing services through this Agreement. All activities, facilities, and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, Subrecipient will include a reference to the support provided in all publications made possible with funds made available under this Agreement.

G. **Amendments**

The City or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, are executed in writing, signed by a duly authorized representative for each party, approved by City’s Director of the Department of Planning, Neighborhoods, and Development or designee, and, if applicable or required, approved by the City Manager and the Commission of the City of Dayton. Such amendments shall not invalidate this Agreement, nor relieve or release the City or Subrecipient from its obligations under this Agreement.

The City may, in its discretion, amend this Agreement to conform with federal, state, or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both the City and Subrecipient.

H. **Suspension or Termination**

In accordance with 2 CFR 200.338-200.342, the City may suspend or terminate this Agreement if Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to,) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;

2. Failure, for any reason, of Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement;

4. Submission by Subrecipient to the City reports that are incorrect or incomplete in any material respect.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the City or Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the City determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the City may terminate the award in its entirety.

I. Political Contributions
Subrecipient affirms and certifies that it is in compliance with Ohio Revised Code §3517.13 limiting political contributions.

ARTICLE 7. CONTACTS

All communications or notices required or permitted under this Agreement, including invoices for payment, shall be sufficient if sent to the City or Subrecipient by regular U. S. Mail, postage pre-paid, and addressed as follows:

To City: City of Dayton, Ohio
          Department of Planning, Neighborhoods & Development
          101 West Third Street
          Dayton, Ohio 45402
          Attn: Ashley Hatton
          (937) 333-3696
          Ashley.Hatton@daytonohio.gov

To Subrecipient: Daybreak, Inc.
                  605 S. Patterson Blvd.
                  Dayton, OH 45402
                  Attn: Cheli Curran
                  (937) 395-4600
                  curran@daybreakdayton.org

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

ARTICLE 8. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards
Subrecipient agrees to comply with 2 CFR Part 200 Subparts, D and E, as applicable, and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles
Subrecipient shall administer its program in conformance with 2 CFR Part 200 Subparts,
D and E, as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

3. **Financial Records**
   a. The City may require quarterly reports of all cash receipts, including Program Income, from all sources and disposition thereof, and such other financial statements, as the City deems appropriate. Quarterly reports and financial statements may continue to be required after termination of this Agreement until the collected Program Income has been expended.

   b. All costs and expenditures shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement and shall be clearly identified and readily accessible to the City.

**B. Documentation and Record Keeping**

1. **Records to be Maintained**
   Subrecipient shall maintain all records required by the federal regulations specified in 2 CFR Part 200 and 24 CFR 570.506, which are pertinent to the services and activities to be funded under this Agreement. Such records shall include, but not be limited to:

   a. Records providing a full description of each activity undertaken;

   b. Records providing a full description and reporting of all accomplishments by Daybreak, Inc. between execution of this agreement and December 31, 2023, regardless of program.

   c. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;

   d. Records required to determine the eligibility of activities;

   e. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;

   f. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;

   g. Financial records are required by 24 CFR 570.502, and 2 CFR Part 200; and

   h. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

2. **Client Data**
   Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, race and ethnicity, and description of service provided. Such information shall be made available to City monitors or their designees for review upon request.

3. **Retention of Records and Documentation**
   Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The
retention period begins on the date of the submission of the City’s Annual Performance and Evaluation Report to HUD in which the activities assisted under the Agreement are reported on for the final time.

Within thirty (30) days of the expiration or conclusion of the Agreement, the Subrecipient shall provide the City with full and complete copies of all program files and records associated with the Agreement. Additionally, copies of all files and records pertaining to federal funding contracted through the City shall be provided to the City should the Subrecipient cease operations.

Notwithstanding the above, if there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

4. Disclosure
Subrecipient understands that applicant information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of City's or Subrecipient's responsibilities with respect to work or services to be provided under this Agreement, is prohibited by federal law, unless written consent is obtained from such person receiving service, and in the case of a minor, that of a responsible parent/guardian or otherwise required by law or court order.

5. Close-Outs
Subrecipient's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, Program Income balances, and accounts receivable to City), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that Subrecipient has control over CDBG funds, including Program Income.

6. Audits, Monitoring, and Evaluation
All Subrecipient records with respect to any matters covered by this Agreement shall be made available to City or the Federal Government, or their designees or agents, at any time during normal business hours, as often as City or Federal Government deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data and records. Any deficiencies noted in audit reports must be fully cleared by Subrecipient within thirty (30) days after notice thereof. Failure of Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. Subrecipient hereby agrees to have an annual audit conducted in accordance with current City policy concerning subrecipient audits. Subrecipient shall also comply with 2 CFR Part 200, Subpart F. Upon completion, such audits shall be made available for public inspection.

Subrecipient shall allow City to conduct on-site monitoring, tests, and inspections at such time as proposed in a written notification requesting a monitoring visit. Subrecipient shall provide to City such statements, records, reports, and other information as City may request at the time of scheduled monitoring visits and in such format and detail, as City shall specify.
7. Property Records
Subrecipient shall maintain, as may be applicable, real property inventory records, which clearly identify properties purchased, improved, or sold. Properties retained shall continue to meet eligibility criteria and shall conform to the “changes in use” restrictions specified in 24 CFR 560.503 (b) (8) and 2 CFR Part 200, as applicable.

C. Reporting Procedures

1. Program Income
Subrecipient shall report no less than quarterly all “Program Income,” as defined at 24 CFR Part 570.500(a), generated by activities carried out with CDBG funds made available under this Agreement. The use of Program Income by Subrecipient shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, Subrecipient may use such Program Income during the Agreement term for activities permitted under this Agreement and shall reduce requests for additional funds by the amount of any such Program Income balance on-hand. All unused Program Income shall be returned to City at the end of the term of this Agreement. Any interest earned on cash advances from the City or from funds maintained in revolving loan accounts are not Program Income and shall be remitted promptly to City.

2. Indirect Costs
If indirect costs are charged, subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient’s share of administrative cost in accordance with 2 CFR Part 200 and shall submit such plan to the City for approval, in a form specified by the City.

3. Payment Procedures
The City will pay to Subrecipient funds available under this Agreement based upon information submitted by Subrecipient and consistent with any approved budget and City policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the City in accordance with advance fund and Program Income balances available in Subrecipient accounts. In addition, the City reserves the right to liquidate funds available under this Agreement for costs incurred by the City on behalf of Subrecipient.

4. Progress Reports
Subrecipient shall submit regular Progress Reports to City in the form, content, and frequency, as required by City and specified in Exhibit A – Scope of Services.

D. Procurement

1. Compliance
Subrecipient shall comply with current City policies concerning the purchase of equipment, goods, services, and shall maintain inventory records of all non-expendable personal property, as defined by such City policies as may be procured with the CDBG funds provided herein. All program assets (unexpended Program Income, property, equipment, etc.) shall revert to City upon termination or expiration of this Agreement.

Subrecipient shall procure all materials, property, or services in accordance with the requirements of 2 CFR 200, Subpart D, Procurement, and shall subsequently follow
Property Management Standards as modified by 2 CFR 200, Subpart D, covering utilization and disposal of property.

2. OMB Standards
Unless specified otherwise within this agreement, Subrecipient shall procure all materials, property, or services in accordance with the requirements of 2 CFR 200.317-200.326.

3. Travel
Subrecipient shall obtain written approval from the City for any travel outside the metropolitan area with funds provided under this Agreement.

E. Use and Reversion of Assets
The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, 570.504, and 570.505, as applicable, which include but are not limited to the following:

1. Subrecipient shall transfer to the City any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.

2. Real property under Subrecipient’s control that was acquired or improved, in whole or in part, with funds under this Agreement shall be used to meet one of the CDBG National Objectives pursuant to 2 CFR 200.310-200.316 until five (5) years after expiration of this Agreement. If Subrecipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, Subrecipient shall pay the City an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute Program Income to the City. Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five (5) year period.

3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be Program Income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by subrecipient for activities under this Agreement shall be (a) transferred to the City for the CDBG program or (b) retained after compensating the City an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment.

ARTICLE 9
PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance
Subrecipient agrees to comply with all local and state civil rights statues, rules, regulations and ordinances, and with Title VI of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968, as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974, as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246, as
amended by Executive Orders 11375, 11478, 12107, and 12086.

2. **Nondiscrimination**
Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 270.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

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

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

3. **Land Covenants**
This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City and the United States are beneficiaries of and entitled to enforce such covenants. Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. **Section 504**
Subrecipient shall comply with any federal regulations or orders issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the disabled in any federally assisted program. The City shall provide Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. **Affirmative Action**

1. **Approved Plan**
Subrecipient agrees that it shall be committed to carry out, pursuant to the City's specifications, an Affirmative Action Program keeping with the principles provided in the President's Executive Order 11246 of September 24, 1966. The City shall provide Affirmative Action guidelines to Subrecipient to assist in the formulation of such program. Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds. Subrecipient must also submit the proper letter of certification from the Dayton Human Relations Council, which will serve as documentation for their Affirmative Action Plan.
2. Women and Minority-Owned Businesses
Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms “small business” means a business that meets the criteria set forth in Section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and “minority and women's business enterprise” means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, “minority group members” are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records
Subrecipient shall furnish and cause each of its own contractors or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records, and accounts by City, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications
Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract of understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

Subrecipient will include the provisions of this Paragraph’s Section A, Civil Rights, and Section B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subcontractors.

C. Employment Restrictions

1. Prohibited Activity
Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities, sectarian or inherently religious activities, lobbying, political patronage, or nepotism activities.

2. Labor Standards
Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. Subrecipient agrees to comply with the Copeland Anti-
Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request.

3. “Section 3” Clause

a. Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the federal financial assistance provided under this Agreement and binding upon the City, Subrecipient and any of Subrecipient’s subrecipients and subcontractors. Failure to fulfill these requirements shall subject the City, Subrecipient and any of Subrecipient’s subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which federal assistance is provided. Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

Subrecipient agrees to comply with the “Section 3” requirements set forth above, and shall include the following language in all subcontracts executed for the program:

“The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this contract agree to comply with HUD’s regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

The contractor agrees to send to each labor organization or representative or workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the contractor’s commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor’s obligations under 24 CFR Part 135.

Noncompliance with HUD’s regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract are subject to the provisions of Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b)."

b. **HUD Section 3 Participation Goals**

   Developer agrees that the aspiration sub-contracting goals for certified HUD Section 3 certified business sub-contracting and hiring goals will be:

   Employment: Thirty percent (30%) of the aggregate number of new hires during a one-year period of the project. (Example: A construction contractor hires 10 new workers. Three of the new workers should be Section 3 eligible persons.)

   Contracting: (a) At least 10 percent (10%) of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, construction, and other public construction with federal funds; and (b) At least three percent (3%) of the total dollar amount of all other, including professional services, covered Section 3 contracts to eligible Section 3 business concerns. HUD Section 3 companies can be found at [http://daytonhrc.org/business-technical-assistance/certification/](http://daytonhrc.org/business-technical-assistance/certification/)

c. **Notifications**

   Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or
understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

d. **Subcontracts**
Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by City. Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135, and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. **Conduct**

1. **Assignability**
Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of City thereto; provided, however, that claims for money due or to become due to Subrecipient from City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to City.

2. **Subcontracts**

   a. **Approvals**
   Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the written consent of City prior to the execution of such agreement.

   b. **Monitoring**
   Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Evidence of noncompliance shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

   c. **Content**
   Subrecipient shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

   d. **Selection Process**
   Subrecipient shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to City along with documentation concerning the selection process.

3. **Hatch Act**
Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political
activities in violation of Chapter 15 of Title V of the U.S.C.

4. Conflict of Interest
Subrecipient agrees to abide by the provisions of 24 CFR 84.42, 24 CFR 85.36, and 570.611, which include (but are not limited to) the following:

a. Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by federal funds.

b. No employee, officer, or agent of subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.

c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a “covered person” includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, subrecipient, or any designated public agency.

5. Lobbying
Subrecipient hereby certifies that:

a. No federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;

b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions; and

c. It will require that the language of Paragraph (d) of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly.

d. Lobbying Certification
   This certification is a material representation of fact upon which reliance was
placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, U.S.C. and 2 CFR 200.450. Any person who fails to file the required certification shall be subject to a civil penalty of not less than TEN THOUSAND DOLLARS AND ZERO CENTS ($10,000.00) and not more than ONE HUNDRED THOUSAND DOLLARS AND ZERO CENTS ($100,000.00) for each such failure.

6. Copyright
If this Agreement results in any copyrightable material or inventions, the City and/or HUD reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. Religious Activities
Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

ARTICLE 10. ENVIRONMENTAL CONDITIONS

A. Air and Water
Subrecipient shall comply with the following requirements insofar as they apply to the performance of this Agreement:


2. Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

3. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR, Part 50, as amended.

B. Flood Disaster Protection
In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4001), Subrecipient shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the national flood insurance program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

C. Lead-Based Paint
Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR, Part 570.608 and 24 CFR, Part 35. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken.
ARTICLE 11. SEVERABILITY
If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

ARTICLE 12. GOVERNING LAW & VENUE
This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws. Any suit regarding this Agreement must be brought in a court of competent jurisdiction in Montgomery County, Ohio.

ARTICLE 13. SECTION HEADINGS AND SUBHEADINGS
The section heading and subheading contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

ARTICLE 14. WAIVER
The City’s failure to act with respect to a breach by subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the City to exercise or enforce any right or provision shall not constitute a waiver or such right or provision.

ARTICLE 15. ENTIRE AGREEMENT
This Agreement constitutes the entire agreement between the City and subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the City and subrecipient with respect to this Agreement.
ARTICLE 16. REFERENCES TO LAW
All references to federal, state or local laws, regulations, or orders contained in this Agreement shall include any and all subsequent amendments, modifications, additions or other changes as may be enacted or codified by the proper governmental authority during the term of this Agreement.

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

CITY OF DAYTON, OHIO

____________________________
City Manager

____________________________
Date

APPROVED AS TO FORM
AND CORRECTNESS:

12/8/2021

X John Musto for
City Attorney

Signed by: Musto, John

DAYBREAK, INC.

Cheli Carran, MSA
By: Cheri Carran, MBA (Born: 2001-08-01)

Title: CEO

Date: Dec 9, 2021

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

____________________________, 2021

Min./Bk. __________Page ______

____________________________
Clerk of the Commission
EXHIBIT A
SCOPE OF SERVICES
DAYBREAK, INC.
LINDY’S BAKERY JOB TRAINING AND DEVELOPMENT PROGRAM

1. PROGRAM DESCRIPTION

Subrecipient will use all funds granted hereunder to operate the “Lindy’s Bakery Job Training and Development Program,” through December 31, 2023. The program will provide for the operation of Lindy’s Bakery and will result in job training programming for approximately 140 homeless and disconnected youth and the creation or retention of jobs for approximately 36 homeless and disconnected youth living in the City of Dayton.

Through Lindy’s Bakery, homeless and at-risk youth served by Daybreak are provided job training, skill building, and pathways to competitive employment. Each youth who completes at least one three-week training module is paid a stipend. Youth employees will participate in nutritional recipe development, meal preparation, commercial kitchen safety, cleaning and quality control, food regulations, and customer service in the bakery, and through exemplification of positive work ethic, mastery of meal preparation skills and services, and appropriate soft skills, participating youth will be better prepared to gain and maintain employment. Each youth participant is also assigned an Employment Specialist who helps them develop a career plan and exit strategy to pursue further education, specialized job training, and/or outside competitive employment. Employment Specialists continue to provide job coaching for the youth and support for the employers once outside employment is secured.

The overall goal of Lindy’s Bakery is to reduce the incidence of youth homelessness, lifetime homelessness, and lifetime poverty through the provision of paid employment training opportunities where homeless youth can master the soft skills needed to maintain outside competitive employment and sustain an independent lifestyle.

The Subrecipient shall provide staff supportive services to Daybreak’s Lindy’s Bakery as well as operating expenses to continue the youth job training and development program. This activity is an eligible public service that provides workforce training and development and is eligible for Community Development Block Grant (CDBG) program funding under the national objective benefiting low/moderate income persons. Under the Limited Clientele presumed benefit designation, this activity is considered to benefit LMI individuals since the beneficiaries are all homeless youth.

2. COMMUNITY DEVELOPMENT OBJECTIVES

Subrecipient certifies that the activities carried out under this Agreement are allowable expenses under HCDA Section 105 (a) (8) and 24 CFR 570.201, CDBG Matrix Code 03T (Operating Costs of Homeless/AIDS Patients Programs), benefitting low- and moderate income (LMI) persons under the National Objective of Low/Mod Clientele (LMC) Benefit. The program will provide staff supportive services and operating expenses to Daybreak in order to provide workforce training and development to homeless youth through Lindy’s Bakery. The provision of youth services is considered to address the LMC National Objective per 24 CFR 570.201 (e).

3. PROGRAM GUIDELINES

The Sub-recipient shall use City of Dayton CDBG funds for provision of Lindy’s Bakery Job Training and Development Program, not to exceed ONE HUNDRED NINETY-THREE THOUSAND DOLLARS AND ZERO CENTS ($193,000.00). The period will be from execution of this agreement
through December 31, 2023, as contemplated in this agreement.

A. Implementation of Workforce Training and Development through Lindy’s Bakery

1. The program provides the funding, labor, and materials necessary to implement a workforce training and development program for homeless youth at Lindy’s Bakery.

2. Eligible beneficiaries of this program are homeless youth served by Daybreak, Inc.

4. OUTCOME MEASUREMENTS: PERFORMANCE AND OUTCOME MEASURES

In accordance with U.S. Department of Housing and Urban Development (HUD) requirements, the City has implemented a performance measurement system that is based on an outcomes-based approach to funding projects. The City requires recipients of federal funds to assess the productivity and impact of their programs. This Performance and Outcome Measurement System will help to quantify the effectiveness of programs and establish clearly defined outcomes.

The City shall report outcomes-based accomplishments to HUD. The City therefore requires Subrecipient to submit timely and consistent performance measurement reports that focus on establishing clearly articulated objectives, performance measures, outputs, and program outcomes (desired end results). The City shall review the reports to track progress, provide feedback, and when necessary, provide technical assistance. Program performance is also considered in the decision-making process for fund allocation. The Subrecipient agrees to submit the reports detailed in Section 10, Reporting Procedures.

5. SUBRECIPIENT RESPONSIBILITIES

The Subrecipient will be responsible for the implementation and execution of workforce training and development services for homeless youth, data tracking and management regarding the number of full-time equivalent (FTE) positions created or retained through the workforce training and development programming, compliance with all CDBG regulations, provision of employment services and job training for program participants, and preparation of reports to the City as detailed in Section 10, Reporting Procedures and as display in Exhibit D – Monthly and Cumulative Reports.

6. BUDGET

The program budget is attached to this document as Exhibit B – Program Budget.

7. PAYMENT PROCEDURES

The City will reimburse Subrecipient for expenditures for the program and in accordance with the line-item budget set forth in Exhibit B – Program Budget. Subrecipient shall submit all invoices and supporting documentation to the City’s Department of Planning, Neighborhoods, and Development on a monthly basis. Subrecipient shall comply with the following requirements for the submission of requests for reimbursement:

A. Invoice Information

Subrecipient’s invoice shall contain the following:

1. City Contract Number
2. Invoice Number
3. Period Covered
4. Work Done/Accomplishments Summary, etc.
5. Written documentation verifying that weekly payroll reports were reviewed and comply with approved wage determination.
6. Total Amount Requested
7. List of Enclosed Documents
8. Agreement Funding Balance
9. Other information Subrecipient desires to communicate to the City’s Project Coordinator
10. Signature of Subrecipient’s Chief Financial Officer

B. Supporting Documentation

Subrecipient shall collect, maintain, and submit the following documentation and information with invoices for payment. For personnel invoicing, the Subrecipient will include the number of hours worked on the program/project funded, and a detailed summary of work performed by the employee during the time for which payment was made. The detailed summary should include a description of each activity/action performed by the personnel as well as a total of the amount of invoiced time spent working on that activity/action. For supplies and materials invoicing, the documentation and information shall include an invoice from the vendor or company detailing the item(s)/services purchased and a copy of the Subrecipient’s check showing that the Subrecipient paid the vendor for the invoiced goods/services. Monthly invoicing documentation should include a copy of the required Monthly Report as enumerated in Exhibit D.

Unless disputed or the City determines that there is insufficient documentation to substantiate the invoice, the City will tender payment to Subrecipient in a timely manner.

8. DOCUMENTATION AND RECORD KEEPING

In order to ensure that program participants and activities meet the program eligibility criteria, subrecipient must record the name, race and ethnicity, income, job descriptions, duties performed by program participants, and proof of payment to contractor(s).

The following financial records related to the payment of salaries and fringes for operational staff should be included in the program file if applicable:

A. Accounting journals and ledgers

B. Source documentation that costs were eligible and paid (invoices, purchase orders, cancelled checks, etc.)

C. Bank account records
D. Time sheets and activity logs for personnel

E. Income verification or self-certification documents verifying the income level or program participants.

F. Payroll records and reports

G. Documentation of other administrative costs charged

H. Financial reports

I. Audit files

J. Financial correspondence

Subrecipient will maintain case files, including the above information for a period of not less than four years after completion of the program and all affordability requirements. Subrecipient will maintain these and other documents and financial records in accordance with the requirements for record retention specified in Article 8 of the Agreement.

9. REPORTING PROCEDURES

The City will require timely and consistent reports to ensure that the program is proceeding according to the work program and in accordance with federal regulations. The Sub-recipient agrees to submit the following reports.

A. Monthly Progress Reports

Subrecipient agrees to submit on the fifteenth (15th) day of each month, regardless of invoicing and beginning on or before February 15, 2022, a written progress report covering the agreed upon objectives, activities, and expenditures of the previous month. The Monthly Progress Report must detail, at a minimum, the following information per reporting period:

1. The total number of persons assisted during the reporting period;

2. The race/ethnicity for each individual assisted;

3. The income level for each individual assisted;

4. The income verification or certification for each individual assisted;

5. The total number of persons with new or continuing access to training;

6. The total number of persons who receive training that are homeless or at risk of homelessness;

7. The total number of part-time and full-time jobs created or retained.

A copy of the Monthly Report is included in Exhibit D – Monthly and Cumulative Reports.
B. Cumulative Reports

The Subrecipient shall submit an annual Cumulative Report detailing the activities of the Subrecipient to the City no later than December 30, 2022 and December 30, 2023. A copy of the report is included in Exhibit D – Monthly and Cumulative Reports.

Within 60 days after expiration or termination of this Agreement or within 60 days of submitting the final invoice, whichever comes first, Subrecipient shall submit an additional cumulative report to the City. This report shall be in a format approved by the City, and it shall detail all sources and uses of funds and describe Subrecipient’s activities and outcomes of the services provided throughout the course of the Agreement.

C. Meetings and Evaluation

Subrecipient shall meet with the City and/or its designees at such times designated by the City to review and discuss the Subrecipient’s performance of this Agreement. The Subrecipient shall allow the City to conduct on-site inspections, tests and monitoring of its financial, personnel and employment activities pursuant to this Agreement, and will cooperate with the City in all respects concerning the review and monitoring of the Subrecipient’s performance.

10. COMMUNICATIONS

All invoices, reports, notices, and/or correspondence regarding this Agreement and the program shall be submitted to the parties as specified in Article 7 of the Agreement.
## EXHIBIT B
### PROGRAM BUDGET

<table>
<thead>
<tr>
<th></th>
<th>City CDBG</th>
<th>Private</th>
<th>Federal</th>
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<th>Local</th>
<th>County</th>
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<td>1 Ramp-Up</td>
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<td>Admin &amp; Maintenance Personnel</td>
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<td><strong>Utilities</strong></td>
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<td>Legal/Auditing Services &amp;</td>
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<td>Compliance</td>
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<td><strong>Equipment</strong></td>
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<td><strong>Training/Conference Events</strong></td>
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<td><strong>Insurance</strong></td>
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<td><strong>Dues, Fees, Licenses</strong></td>
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EXHIBIT C
CDBG MONITORING SCHEDULE

Grantee: City of Dayton Department of Planning, Neighborhoods, and Development

Subrecipient: Daybreak, Inc.

Project/Program: Lindy’s Bakery Job Training and Development Program

<table>
<thead>
<tr>
<th>Monitoring Subject Area</th>
<th>Date of Review</th>
<th>City Representative</th>
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<tbody>
<tr>
<td><strong>Section I. Required Monitoring for ALL CDBG Subrecipient Agreements</strong></td>
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<tr>
<td>Financial and Program Eligibility</td>
<td>Upon submission of invoice(s)</td>
<td>Sarah Geist or designated staff</td>
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<tr>
<td>Program Performance and Records Management</td>
<td>Ongoing on a monthly basis until termination of Agreement</td>
<td>Sarah Geist or designated staff</td>
</tr>
<tr>
<td>Environmental Review</td>
<td>At the start of agreement</td>
<td>Pete Thornburough or designated staff</td>
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<td>Historic Properties Protection Review</td>
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<tr>
<td>On-Site Monitoring Visit</td>
<td>TBD in accordance with CDBG risk assessment policy</td>
<td>Sarah Geist or designated staff</td>
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**Section II. Specific Monitoring Areas based on Project Type**

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<thead>
<tr>
<th>Construction Activities (Prevailing Wage Compliance and Record Keeping, Bidding and Procurement Process)</th>
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<tr>
<td>Acquisition and Relocation Compliance</td>
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<tr>
<td>Housing Rehabilitation Guidelines</td>
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<tr>
<td>Economic Development Guidelines</td>
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</table>
EXHIBIT D
MONTHLY AND CUMULATIVE REPORTS

Monthly and Cumulative Report

Project Name: Lindy’s Bakery Job Training and Development Program
Subrecipient: Daybreak
Action Plan Year: 2021
Period Covered by Report:

1. Provide a description of all activities and accomplishments occurring during this reporting period. Quantify all accomplishments and identify the location of physical improvements with an address

2. Total number of persons assisted: ______________

3. Race/Ethnicity

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<thead>
<tr>
<th>Race</th>
<th>Total</th>
<th>Hispanic/Latino</th>
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<tbody>
<tr>
<td>White</td>
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<td>Black/African-American</td>
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<tr>
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<tr>
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<td>Native Hawaiian/Other Pacific Islander</td>
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<tr>
<td>Black/African-American &amp; White</td>
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<td>Native Hawaiian/Other Pacific Islander &amp; White</td>
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<td>American Indian/Alaskan Native &amp; Black/African-American</td>
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<td>Other multi-racial</td>
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Total must match #2

26
4. Income Levels

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<td>Low - 30-50%</td>
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<td>Moderate - 50-80%</td>
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<td><strong>TOTALS</strong></td>
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<tr>
<td>Percent Low/Mod</td>
<td>%</td>
</tr>
</tbody>
</table>

**NOTE:** Please provide a copy of all income documentation or self-certifications.

5. Job Attainment

<table>
<thead>
<tr>
<th></th>
<th>Part-Time</th>
<th>Part-Time Low/Mod</th>
<th>Part-Time Weekly Hours</th>
<th>Full-Time</th>
<th>Full-Time Low/Mod</th>
<th>Full-Time Weekly Hours</th>
<th>Percent Low/Mod</th>
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</thead>
<tbody>
<tr>
<td>Jobs Attained</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>%</td>
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</table>

6. Total jobs attained: ______________

7. Job Categories – FTE

<table>
<thead>
<tr>
<th>Job Category</th>
<th>Jobs Attained</th>
</tr>
</thead>
<tbody>
<tr>
<td>Officials and Managers</td>
<td></td>
</tr>
<tr>
<td>Professional</td>
<td></td>
</tr>
<tr>
<td>Technicians</td>
<td></td>
</tr>
<tr>
<td>Sales</td>
<td></td>
</tr>
<tr>
<td>Office and Clerical</td>
<td></td>
</tr>
<tr>
<td>Craft Workers (Skilled)</td>
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</tr>
<tr>
<td>Operatives (Semi-Skilled)</td>
<td></td>
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<tr>
<td>Laborers (Unskilled)</td>
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<tr>
<td>Service Workers</td>
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</tbody>
</table>

8. Total Number of Persons Assisted:

<table>
<thead>
<tr>
<th>Description</th>
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<tbody>
<tr>
<td>Persons who started in training but did not fully complete a training module:</td>
<td></td>
</tr>
<tr>
<td>Persons who completed at least 1 three-week training module:</td>
<td></td>
</tr>
<tr>
<td>Persons who completed all 4 three-week training modules:</td>
<td></td>
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</table>

9. Total Number of Persons Assisted:

<table>
<thead>
<tr>
<th>Description</th>
<th></th>
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<tbody>
<tr>
<td>Homeless Persons served:</td>
<td></td>
</tr>
<tr>
<td>Persons at risk of homelessness served:</td>
<td></td>
</tr>
</tbody>
</table>
"CDBG - 2021 Daybreak Lindys - signed by law" History

Document created by Ashley Hatton (ashley.hatton@daytonohio.gov)
2021-12-09 - 5:38:22 PM GMT - IP address: 198.30.33.2

Document emailed to Cheli Curran, MBA (curranc@daybreakdayton.org) for signature
2021-12-09 - 5:39:12 PM GMT

Email viewed by Cheli Curran, MBA (curranc@daybreakdayton.org)
2021-12-09 - 5:41:25 PM GMT - IP address: 104.28.104.214

Document e-signed by Cheli Curran, MBA (curranc@daybreakdayton.org)
Signature Date: 2021-12-09 - 6:34:07 PM GMT - Time Source: server - IP address: 147.0.171.66

Agreement completed.
2021-12-09 - 6:34:07 PM GMT
PROFESSIONAL EMERGENCY MEDICAL SERVICES BILLING AND COLLECTIONS RENEWAL AGREEMENT

The Department of Finance requests City Commission approval to enter into a one (1) year renewal Agreement with Digitech Computer, LLC (“Digitech”) in the amount of $327,500.00, which brings the total amount of the Agreement to $1,347,500.00. The renewal Agreement includes Professional Billing and Collection services for the City’s Emergency Medical Services (EMS) fees.

The original Agreement with Digitech was approved by City Commission on November 21, 2018 in the amount of $1,020,000.00 and expires December 31, 2021. It included two (2) twelve-month renewal periods which could be exercised at the discretion of the City. This renewal is the first of the two twelve month renewal options permitted under the original Agreement.

Since the start of the Agreement through November 30, 2021, Digitech has collected $13,097,953.84 in EMS revenue. The estimated EMS revenue in 2022 is $5,100,000.00, representing an increase of $220,000.00 over 2021. Digitech’s key features included migration to a new EMS Records Management and Billing software solution that provided greater functionality, security, and compliance with governmental mandates such as HIPAA and Medicare/Medicaid billing policies. The vendor has implemented additional features to improve revenue collection, including enhanced technological capabilities and credit card, mail-in, and over-the-phone payment options at no charge to the City or residents, increasing collections, and improving customer service to the residents.

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

A Certificate of Funds in the amount of $327,500.00 is attached to cover the period of January 1, 2022, through December 31, 2022.

Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>NEW CONTRACT</th>
<th>RENEWAL CONTRACT</th>
<th>CHANGE ORDER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Start Date</td>
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<tr>
<td>Expiration Date</td>
<td>December 31, 2022</td>
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<tr>
<td>Original Commission Approval</td>
<td>$327,500.00</td>
<td>Initial City Manager's Report</td>
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<td>Initial Encumbrance</td>
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<td>Remaining Commission Approval</td>
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<td>Initial Agreement/Contract</td>
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<td>Increase Encumbrance</td>
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<td>Copy of City Manager's Report</td>
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<td>Decrease Encumbrance</td>
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<td>Copy of Original Certificate of Funds</td>
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<tr>
<td>Remaining Commission Approval</td>
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<table>
<thead>
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<td>Fund</td>
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<tr>
<td>XXXXX - XXXX - XXXX - XXXX - XXXX - -</td>
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<tbody>
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<td>XXXXX XXXX - XXXX - XXX - XXXX - XXXX</td>
</tr>
<tr>
<td>Fund</td>
<td>Org</td>
</tr>
</tbody>
</table>

Attach additional pages for more FOAPALs

Vendor Name: Digitech Computer, LLC
Vendor Address: 480 Bedford Road Bldg, 600 2nd Floor Chappaqua NY 10514
Federal ID: 11-2693136
Commodity Code: 94633
Purpose: To provide EMS billing service support for the City of Dayton 2022 calendar year.

Contact Person: Latonna Jones
Finance-Tax & Accounting Adm. Department/Division: 12/8/2021
Date:

Originating Department Director's Signature: 

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: 
Date: 12/13/21

CF Prepared by: 
Date: 12/14/21
CF/CT Number: CT2-2140
FIRST RENEWAL AND AMENDMENT TO BILLING SERVICE AGREEMENT

THIS FIRST RENEWAL AND AMENDMENT TO BILLING SERVICE AGREEMENT ("Agreement"), is entered into this ____ day of __________, 2021 between the City of Dayton, Ohio ("City"), a municipal corporation existing by and under the laws and the Constitution of the State of Ohio, and Digitech Computer, LLC ("Contractor"), a Delaware Limited Liability Company.

WITNESSETH THAT:

WHEREAS, City and Contractor entered into an Agreement on November 29, 2018 for professional billing and collection services for Emergency Medical Service fees (hereinafter "Agreement"); and,

WHEREAS, The City requires the continued professional billing and collection services of Contractor; and,

WHEREAS, Contractor represents that it possesses the necessary special skills, knowledge and technical competence to provide such services; and,

WHEREAS, The Agreement expires on December 31, 2021; and,

WHEREAS, Article IV B of the Agreement provides that the Agreement may be renewed for two (2) additional twelve (12) month terms; and,

WHEREAS, The parties desire to renew the Agreement for a first twelve (12) month Renewal term.

NOW, THEREFORE, City and Contractor hereby agree as follows:

1. City and Contractor agree to renew the Agreement for the first twelve (12) month term under the Agreement. This first renewal shall commence on January 1, 2022 and expire on December 31, 2022.

2. Except as modified by this First Renewal and Amendment, the Agreement between the City and Contractor shall remain unchanged and in full force and effect.
IN WITNESS WHEREOF, the City and the Contractor, each by a duly authorized representative, have executed this First Renewal and Amendment as of the day and date first set forth above.

THE CITY OF DAYTON, OHIO

__________________________
City Manager

DIGITECH COMPUTER LLC

By: ________________________

Print: Walter C. Pickett II

Its: ________________________

APPROVED AS TO FORM AND CORRECTNESS:

☑ Recoverable Signature

X John Musto for

__________________________
City Attorney

Signed by: Musto, John

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

__________________________, 2021

Min. Bk. _____ Pg. _____

__________________________
Clerk of the Commission
RENEWAL OF MASTER SUBSCRIPTION AND LICENSE AGREEMENT

THIS RENEWAL AND AMENDMENT TO MASTER SUBSCRIPTION AND LICENSE AGREEMENT ("Agreement"), is entered into this ___ day of ________, 2021 between the City of Dayton, Ohio ("City"), a municipal corporation existing by and under the laws and the Constitution of the State of Ohio, and ESO Solutions, Inc., Inc. ("Contractor"), a Texas corporation.

WITNESSETH THAT:

WHEREAS, City and Contractor entered into an Agreement on December 14, 2018 for technology products (hereinafter "Agreement"); and,

WHEREAS, The City requires the continued services of Contractor; and,

WHEREAS, Contractor represents that it possesses the necessary special skills, knowledge and technical competence to provide such services; and,

WHEREAS, The Agreement expires on December 31, 2021; and,

WHEREAS, Paragraph 6 of the Agreement provides that the Agreement may be renewed for an additional one-year term; and,

WHEREAS, The parties desire to renew the Agreement for an additional one year Renewal term.

NOW, THEREFORE, City and Contractor hereby agree as follows:

1. City and Contractor agree to renew the Agreement for an additional one-year term under the Agreement. This renewal shall commence on January 1, 2022 and expire on December 31, 2022.

2. Except as modified by this First Renewal and Amendment, the Agreement between the City and Contractor shall remain unchanged and in full force and effect.
IN WITNESS WHEREOF, the City and the Contractor, each by a duly authorized representative, have executed this First Renewal and Amendment as of the day and date first set forth above.

THE CITY OF DAYTON, OHIO

City Manager

ESO SOLUTIONS, INC.

By: [Signature]
Print: Robert Munden
Its: Chief Legal & Compliance Officer

APPROVED AS TO FORM AND CORRECTNESS:
11/18/2021

X John Musto for
City Attorney
Signed by: Musto, John

***NO COMMISSION ACTION REQUIRED***
PROFESSIONAL EMERGENCY MEDICAL SERVICES BILLING AND COLLECTIONS AGREEMENT

The Department of Finance is requesting City Commission approval to enter into an Agreement with Digitech for Professional Billing and Collection of Emergency Medical Services (EMS) fees in the amount of $1,020,000.00 for a three-year period. The Agreement for Digitech commences upon execution by the City and ends December 31, 2021. Thereafter, the Agreement may be renewed for two (2) twelve month periods, at the discretion of the City.

The selection was made via the Request for Proposals process. The criteria used to evaluate and ultimately select the billing and collection agency was based on Cost, Proposed Procedures, Compliance, Technical Capabilities, Security and Risk Mitigation, Reference/Retention, Dayton Local Business, and PEP certification. Key features proposed by Digitech include migration to a new EMS Records Management and Billing software solution that provides greater functionality, security, and compliance with governmental mandates such as HIPAA and Medicare/Medicaid billing policies. Additional features include improved technological capabilities and credit card, mail-in and over-the-phone payment options at no charge to the City or residents which will increase collections and improve customer service. Digitech’s services are anticipated to increase EMS revenue by over $500,000.00 in 2019.

The annual approximate costs are as follows:

1/1/19 - 12/31/19 $365,000.00  1/1/20 - 12/31/20 $327,500.00  1/1/21 - 12/31/21 $327,500.00

A Certificate of Funds in the amount of $365,000.00 is attached to cover the period of January 1, 2019, through December 31, 2019. The Department of Law has reviewed and approved the agreement as to form and correctness.
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>X</th>
<th>NEW CONTRACT</th>
<th>RENEWAL CONTRACT</th>
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<td>Contract Start Date</td>
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<td>Required Documentation</td>
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<td>December 31, 2021</td>
<td>Initial City Manager's Report</td>
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Amount: $365,000.00

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<td>Fund</td>
<td>Org</td>
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Amount:

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<tbody>
<tr>
<td>Fund</td>
<td>Org</td>
</tr>
</tbody>
</table>

Attach additional pages for more FOAPALs

Vendor Name: Digitech

Vendor Address: 480 Bedford Road Bldg. 600 2nd Floor Chappaqua NY 10514

Federal ID: 11-2693136

Commodity Code: 94633

Purpose: To provide EMS billing service support for the City of Dayton 2019 calendar year.

This CF is for the 2019 FY only.

Contact Person: Letonna Jones

Finance-Tax & Accounting: A

Department/Division: 11/12/2018

Date: 11/13/18

Originating Department Director's Signature: [Signature]

SECTION II - to be completed by the Finance Department

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

Finance Director's Signature: [Signature] 11/13/18

CF Prepared by: Aaron A. Laumann 11-13-18 CT19-2160

Date: October 18, 2011
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

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<th>NEW CONTRACT</th>
<th>RENEWAL CONTRACT</th>
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<td>Contract Start Date</td>
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<tr>
<td>Expiration Date</td>
<td>December 31, 2021</td>
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<tr>
<td>Original Commission Approval</td>
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<tr>
<td></td>
<td>Fund Org Acct Prog Act Loc</td>
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</tbody>
</table>

Attach additional pages for more FOAPALs

Vendor Name: Digitelch
Vendor Address: 480 Bedford Road Bldg 600 2nd Floor Chappaqua NY 10514
Federal ID: 11-2693136
Commodity Code: 94633
Purpose: To provide EMS billing service support for the City of Dayton 2021 calendar year.

Contact Person: Latonna Jones
Finance-Tax & Accounting Adm. 12/8/2020
Department/Division Date

 Originating Department Director’s Signature: [Signature]
12/17/2020

SECTION II - to be completed by the Finance Department

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

Finance Director Signature 12/29/2020

CF Prepared by: [Signature] 12/28/2020

October 18, 2011
BILLING SERVICE AGREEMENT

This BILLING SERVICE AGREEMENT, dated this 24th day of November, 2018 ("Agreement") between DIGITECH COMPUTER, INC. ("DIGITECH") maintaining its principal place of business at 480 Bedford Road, Bldg. 600, 2nd floor, Chappaqua, NY 10514 and, CITY OF DAYTON, OHIO ("CITY") maintaining its principal place of business at 101 West Third Street, Dayton, Ohio 45402.

WITNESSETH:

The parties hereby agree as follows:

I. SERVICES

   A. DIGITECH shall provide the services in accordance with the provisions of this Agreement as specified in Sections I, II and III of Rider A and attached Exhibits, including, in order of precedence:
      a. Best and Final Offer letter as amended on October 19, 2018 (Exhibits 1 and 1A).
      b. DIGITECH’s presentation to the CITY on October 1, 2018 (Exhibit 2).
      c. DIGITECH’s Proposal, dated August 27, 2018 (Exhibit 3).
      d. CITY’s Request for Proposal (RFP) No. 18025FIN dated July 2018 (Exhibit 4).

II. PAYMENT

   A. CITY agrees to compensate DIGITECH for the Services as described in Rider A, as applicable.

   B. All payments will be due within thirty (30) days of receipt of DIGITECH’s invoice.

   C. In the event an invoice is disputed in good faith, CITY is entitled to withhold only that part of the invoice that is in dispute. If an invoice is in dispute, the parties agree to consult in good faith to resolve any disputes regarding the invoice.

   D. If the uncontested invoice or uncontested portion of an invoice remains unpaid sixty (60) days from the invoice date, DIGITECH, at its option, may elect to suspend its Services under this Agreement upon fifteen (15) days prior written notice to CITY or terminate this contract upon forty-five (45) days prior written notice to CITY.
E. In the event that the Services are terminated or suspended in accordance with paragraph D above, all undisputed outstanding invoices must be paid before the Services will be reactivated. Further, DIGITECH, at its option, may require prepayment for future Services as a condition of reactivating CITY’s account.

F. All of CITY’s contractual obligations as stated herein will remain in full force and effect throughout the suspension period to the extent required to allow DIGITECH to complete work that it has already started. Specifically, CITY shall remain liable for all fees due DIGITECH as if this Agreement were not suspended, regardless of who performs the Services, for items that DIGITECH has commenced working on prior to the suspension. The purpose of this clause is to prevent CITY from terminating this Agreement by not paying DIGITECH. DIGITECH will have no liability to CITY for damages of any type or nature arising from the suspension of Services under this Article II.

III. CONFIDENTIALITY

A. With regard to City’s Protected Health Information (“PHI”), DIGITECH will perform the Services hereunder in accordance with the HIPAA Business Associate Agreement set forth in Rider B and applicable law.

B. DIGITECH acknowledges and agrees that any and all information and material supplied by CITY to DIGITECH hereunder shall remain the property of CITY. DIGITECH will not make copies of such information or material, except to the extent necessary to perform the Services under this Agreement. DIGITECH, its employees, agents, assigns, subcontractors and successors shall keep strictly confidential all information designated by CITY as “confidential”.

C. CITY acknowledges and agrees that the software, and all other systems related to the provision of Services hereunder, are DIGITECH’s confidential proprietary information, and CITY agrees that it will disclose such material only to those of its employees and agents who have a need to know, that it will use such material only in connection with the Services hereunder, and that it will take all reasonable precautions to prevent the disclosure of such confidential information to, or use by, any other party. CITY acknowledges and agrees that all software developed by DIGITECH for CITY using CITY’s specifications, or DIGITECH’s specifications, or a combination of both, will remain DIGITECH’s confidential proprietary property, unless the parties have otherwise agreed in writing.

D. CITY will not be obligated to provide DIGITECH with any information, which by law or its own policy may not be provided to DIGITECH. Upon
any termination of this Agreement, PHI will be treated as set forth in Rider B and applicable law.

E. Each party agrees that during the term of this Agreement, and for a period of one year thereafter, it shall not hire or retain, as an employee or otherwise, any of the other party’s employees, unless the parties have otherwise agreed in writing.

IV. TERM, TERMINATION AND RENEWAL

A. The initial term (“Initial Term”) of this Agreement shall comprise the following: (i) a pre-go-live implementation period commencing with the date of this Agreement, which period may be extended for good faith reasons upon mutual agreement of the parties, ending with a go-live date, on which claim processing commences (“Go-Live Date”); and (ii) a three (3) year claim processing period commencing with the Go-Live Date. The parties shall make best efforts to meet a Go-Live Date of January 1, 2019 and the parties shall specify, in writing, the official Go-Live Date. DIGITECH will be entitled to its fees as described in Rider A for all collections for transports with dates of service from the Go-Live Date through those transports with dates of service prior to the end of the Initial Term.

B. Provided that this Agreement has not been terminated, at the end of the Initial Term, the parties shall have two (2) 12-month options to renew.

C. Except as otherwise provided in the Business Associate Addendum regarding a basis for termination for violation of the obligations of the Business Associate Addendum, either party may, upon thirty (30) days written notice, via certified mail, identifying specifically the basis for such notice, terminate this agreement for breach of a material term or condition of this Agreement, provided that the party in breach shall not have cured such breach, or taken substantial steps toward curing such breach, within the fifteen (15) day period of being notified in writing, via certified mail, of the breach. This paragraph does not apply to nonpayment, which is addressed in paragraph II (D) above.

D. Notwithstanding anything to the contrary in this Agreement, either party may immediately terminate this Agreement upon five (5) days prior written notice in the event:

1. The other party becomes insolvent, bankrupt, files a voluntary petition in bankruptcy, makes an assignment for the benefit of creditors, or consents to appointment of a trustee or receiver, or has an involuntary petition of bankruptcy filed against it; or
2. The legal authority of the other party to operate its facility or provide services as required hereunder is suspended or terminated; or

3. A party hereto is excluded from participation in any state and/or federal health care program; or

4. The Business Associate Addendum between DIGITECH and CITY is terminated.

E. Upon the expiration (by non-renewal or otherwise) or termination of this Agreement, the parties shall proceed in accordance with Section XI – Transition Following Termination or Expiration below.

F. Either party may terminate this Agreement, without cause, with 30 days prior written notice.

V. INDEMNITY AND LIABILITY

A. DIGITECH shall indemnify and hold harmless the CITY and its agents, employees and subcontractors (“Indemnified Party”) from and against losses, liability, fines, suits, demands, arbitration fees, damages and expenses (including reasonable attorney’s fees) due to claims made by third parties against an Indemnified Party arising from any act, omission, misrepresentation, fraud, violation of any law, breach of confidentiality, breach of the Business Associate Addendum, intellectual property violation, or any willful, wanton, reckless, or grossly negligent act committed by the defaulting party, or its agents, employees and subcontractors. Notwithstanding the foregoing, the defaulting party’s liability shall be limited as set forth below in paragraphs V(B) through (I).

B. To the extent permitted by law, DIGITECH’s liability shall be limited to amounts paid by DIGITECH’s errors and omissions insurance policy, excluding any applicable deductible or retention under that policy, for which DIGITECH shall remain liable. DIGITECH agrees to maintain no less than $2,000,000 in errors and omissions insurance covering the performance of its duties set forth herein for the duration of this Agreement. If Digitech fails to obtain and maintain such insurance, there is no limitation of liability as set forth herein. Except as covered by insurance, in no event shall either party be liable to the other for any loss in profits, or for any special, incidental, indirect, consequential or other similar damages (but excluding penalties and fines) suffered in whole, or in part, in connection with this Agreement, even if a party or its agents have been advised of the possibility of such damages. Except as covered
by insurance, in no event shall either party be liable for any delay or failure of performance that is due to causes or conditions beyond that party’s reasonable control (this clause does not apply to CITY’s payment obligations).

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

DIGITECH, its employees and any persons retained or hired by DIGITECH to perform the duties and responsibilities under this Agreement are not CITY employees, and therefore, such persons shall not be entitled to, nor will they make a claim for, any of the emoluments of employment with the City of Dayton. Further, DIGITECH shall be responsible to withhold and pay, or cause such agents, contractors and sub-contractors to withhold and pay, all applicable local, state and federal taxes. DIGITECH further acknowledges and agrees that none of its employees are public employees for the purpose of membership and/or participation in the Ohio Public Employees Retirement System (“OPERS”).

C. CITY specifically agrees that it is responsible to repay any overpayments, denials, recoupments and/or offsets, including interest, penalties and other fees, sought, demanded or initiated by any governmental or commercial carrier, payer or insurer in the event it is determined that CITY is not entitled to payment for its services rendered, or if any such carrier, payer or insurer determines that CITY has been paid any amounts in excess of what is otherwise due and payable under the terms of the applicable governmental or commercial benefit program or insurance policy. Except to the extent covered by insurance (including payment of deductible) or as a result of a fine or penalty, DIGITECH’s liability regarding any such bill or claim will not exceed the fee paid to DIGITECH to process such item, except this limitation of liability shall not apply to any claims or liability that may arise out of misrepresentation, fraud, or violation of any law, or any willful, wanton, or reckless or negligent conduct by DIGITECH. Notwithstanding the foregoing, DIGITECH shall pay any penalties and fees caused by its own negligence or willful misconduct.

D. DIGITECH will not be liable in the event of a recoupment caused by a change in federal or state regulations, or a change in the interpretation of federal or state regulations, or if DIGITECH is directed by the CITY to bill against DIGITECH’s advice and an audit determines that the item/trip should not
have been billed. CITY will not be entitled to any refund or credit of any fee paid to DIGITECH, and DIGITECH will have no liability whatsoever in the event of such recoupment, except where DIGITECH failed to conduct sufficient due diligence to remain current on any changes to, or the interpretation of, applicable regulations.

E. In the event that an internal or external audit of paid claims determines that there was an overpayment for which DIGITECH collected a fee based on claims given an incorrect level of service and/or inaccurate rates, DIGITECH will issue a credit to CITY for an amount equal to the DIGITECH fee earned on the amount overpaid and returned. Except as set forth above, the credit will be capped at the amount of the fee paid to DIGITECH for each adjusted claim.

F. In the event that the CITY receives a duplicate payment or overpayment and must refund the payer (e.g., the insurance company paid the same invoice twice, or the insurance company and patient paid the same claim, or two different insurance companies paid the same claim), DIGITECH will give the CITY a credit in an amount equal to the portion of DIGITECH’s fee that applies to the duplicate payment or overpayment after CITY has refunded the payer.

G. CITY acknowledges that DIGITECH is not a guarantor of collection, and that it shall not be responsible for any uncollected bills. CITY may subcontract with any third party to follow up regarding accounts that DIGITECH deems uncollectible after attempting to collect pursuant to the terms of this Agreement and Rider A.

H. The rights and remedies in this Section constitute the exclusive rights and remedies of the parties with respect to matters indemnified under this Section.

VI. EXCLUSIVITY

A. CITY agrees that all billing Services outlined herein will be performed by DIGITECH exclusively during the term of this Agreement and for a period of at least one hundred twenty (120) days from the last transport date prior to the termination or expiration of this Agreement (the “Winding Down Period”), and any extensions or renewals thereof.

VII. COMPLIANCE

A. DIGITECH warrants and represents that it maintains adherence to the Office of Inspector General of the Department of Health and Human Services Compliance Program Guidance for billing companies as published in the Federal Register.
by the DHHS or OIG in other publications or by the Medicare Administrative Contractor for CITY’s service area, including verification that no one on DIGITECH’s staff is excluded from participation in any state and/or federal health care program.

B. DIGITECH agrees to comply with all applicable federal and state laws, including “anti-kickback,” “excessive charges,” and other regulations relevant to this Agreement.

C. CITY represents and warrants that it is not excluded from participation in any state and/or federal health care programs. CITY further agrees that they shall be responsible for verifying that none of CITY’s employees are excluded from participation in any state and/or federal health care program and that every EMS crew member’s license and certification are current and valid. CITY agrees to notify DIGITECH within five (5) business days of CITY’s discovery that it is the subject of any actions, investigations or other proceedings that could lead to its exclusion from any state and/or federal health care programs.

D. CITY warrants that it will not send DIGITECH any trips provided by any excluded or improperly credentialed individuals.

E. DIGITECH warrants that it will not utilize any excluded individuals to perform any work on any of the CITY’s trip claims.

F. CITY represents and warrants that it is permitted by law to charge a fee and/or otherwise bill and be paid for its services, and that all fees and charges of CITY are solely determined by CITY, and are consistent with CITY’s legal obligations under any local, state and/or federal laws.

G. CITY represents and warrants that it shall submit only truthful and accurate facts and documentation to DIGITECH for billing purposes. CITY is hereby advised that DIGITECH shall rely upon the documentation and factual representations made to it by CITY regarding the eligibility of the services rendered for payment according to applicable reimbursement laws, rules or policies.

H. DIGITECH represents and warrants that all computer software, hardware, firmware, payment card processing policies, procedures and related services utilized to process City of Dayton revenue transactions shall be:

1. Completed by a qualified professional payment card processing firm acceptable and approved by the City of Dayton; and,
2. Fully compliant with standards established by the PCI Security Standards Council (http://www.pcisecuritystandards.org/index.html).
Contractor shall provide and agrees to maintain the PCI compliance reporting Attestation of Compliance ("AOC") Form(s) in its/their latest version(s), and/or in an annual transmittal to the City of Dayton.

VIII. INSURANCE

A. DIGITECH shall maintain, at its expense, at minimum, the following insurance coverage during the term of this Agreement, any Winding Down period, and any extension and/or renewal thereof:

1. Comprehensive General Liability. Comprehensive General Liability Insurance, including Premises and Operations, Contractual Liability, Independent Contractor's Liability, and Broad Form Property Damage Liability coverage:
   a) General Aggregate $2,000,000
   Products and Completed Operations $2,000,000
   Personal and Advertising $1,000,000
   Each Occurrence $1,000,000
   Medical Expense any one Person $5,000

2. DIGITECH also shall maintain errors and omissions insurance coverage in an amount not less than $2,000,000. Prior to the execution of this Agreement, DIGITECH shall provide proof of such coverage to CITY.

IX. NOTICES

A. All notices or other communications required or contemplated herein shall be in writing, sent by certified mail return-receipt-requested, overnight delivery, or personal delivery, addressed to the party at the address indicated below, or as same may be changed from time to time by notice similarly given. Notices shall be deemed given three (3) business days after mailing, if by certified mail, the next business day, if by overnight delivery, or, if hand delivered, on the date of such delivery.

If to DIGITECH:
Jane Silverman, Esq., CACO  
Chief Compliance Officer  
DIGITECH COMPUTER, INC.  
480 Bedford Road, Bldg. 600, 2nd floor  
Chappaqua, NY 10514

If to CITY:

City of Dayton

Attn: Latonna Jones- Finance

101 W. Third St.

Dayton, OH 45401

X. CITY RESPONSIBILITIES

A. CITY agrees to provide DIGITECH all information required to perform the Services. Furthermore, CITY agrees to deliver said information by automated field data:

   Automated Field Data Collection

CITY’s ePCR vendor shall:

a) Produce a daily billing file in the standard NEMSIS XML file format as described in Exhibit 5. The daily billing file will be one file containing all claims approved for billing since the last daily billing file;

b) Include all data elements in the daily billing file required for billing. This includes, but is not limited to date of service, signature information (both a signature signal & image instructions), unique ID per transport, unique ID per transport agency. Please refer to Exhibit 1 - PCR Requirements for Billing for additionally required fields;

c) Produce and provide a PDF copy of the PCR for each call included in the NEMSIS XML file. The PDF must be named with the unique ID of the call.

d) Automatically push the daily billing files via SFTP to DIGITECH's FTP server;
e) Mutually agree on custom data elements with both CITY and DIGITECH for items such as treatments, supplies, etc.
f) Allow DIGITECH employees to login to secure website to:
   (1) Manually produce a billing file based on the same billable claim criterion used to produce the daily billing file;
   (2) Easily look up transports by a unique ID, Date of Service and Patient Name;
   (3) View details of transport including additional documentation such as PCS, Hospital Face Sheet, etc.
g) Provide a method for DIGITECH to produce a Reconciliation Report. The report will:
   (1) Be an Excel spreadsheet;
   (2) Include all billable claims for the specified date of service date range
   (3) Include columns for Unique Transport ID, Patient Name, Date of Service
h) Work with DIGITECH to produce a seamless transport look up integration between DIGITECH’s Ambulance Commander System and the ePCR System.

B. CITY agrees to provide copies of all remittances or electronic remittance files necessary for posting by DIGITECH within four (4) business days of receipt of remittance(s). DIGITECH requires the original, unaltered or “raw” electronic payer file that is produced by the payer. DIGITECH will not accept files which have been modified by any non-payer party. DIGITECH will not accept paper remittances in lieu of electronic remittances. CITY agrees to pay charges incurred to convert a payer file back to its original, unaltered or “raw” state.

C. In cases where DIGITECH has verified payment, but CITY cannot provide remittance advice, DIGITECH will provide such listing to CITY and CLIENT agrees to allow DIGITECH to apply such payments. CLIENT agrees that the application of such payments by DIGITECH will entitle DIGITECH to earn the fees described in Rider A, Section IV above.

D. CITY agrees to establish and maintain a broadband or high speed internet connection, with static IP address, from its place of business to the Internet. CITY shall maintain a bandwidth of at least 1MB free for every 5 active users.

E. CITY agrees to complete and submit all Registration/Change of information Applications with the insurance processors, including, but not limited to
Medicare, Medicaid and Blue Cross Blue Shield. DIGITECH shall confirm receipt of applications and continue follow-up with insurance processors until final approval where possible. DIGITECH will inform CITY if the CITY’s intervention is required by processor.

F. CITY agrees to authorize DIGITECH to execute and submit all Registration/Change of Information Applications with the insurance processors, including, but not limited to Medicare, Medicaid and Blue Cross/Blue Shield, where necessary.

G. CITY agrees to pay for any enrollment or revalidation fees imposed by payers.

H. Where possible, CITY agrees to flag non-billable claims prior to submission to DIGITECH for procedure coding.

I. In the event that the CITY’s lockbox does not provide electronic remittance data, the CITY agrees to email DIGITECH cash posting manager with EFT/ACH amounts deposited and deposit dates for each payer paying via EFT/ACH on a daily basis.

XI. TRANSITION

A. In the event this Agreement terminates or expires under the provisions described in Section IV of this Agreement, the following shall occur (certain Service exclusions apply and may require an additional fee during the 120 day Winding Down Period period. Any such additional fees would be subject to funding and approval requirements of the City):

1. DIGITECH will cease all processing including the collection services described in Rider A. Section II above, sixty (60) days from the last transport date for which Digitech is responsible for processing (“Termination Date”). CITY will provide DIGITECH with remittance advice or cash receipt data for a period of at least one hundred twenty (120) days from the Termination Date (the “Winding Down Period”) and shall pay to DIGITECH its fees on these receipts pursuant to Section IV of Rider A. DIGITECH will be entitled to all fees for its Services for the full 120 days after the Termination Date for which CITY receives remittances. Should the parties agree in writing to extend the Winding Down Period, DIGITECH shall be entitled to all fees for its Services for the entire time that the Winding Down Period is extended.

2. Subsequent to the completion of all processing and cash posting, DIGITECH will provide client with its data in SQL format.
assuming DIGITECH has been fully paid for services rendered.

3. Upon expiration or termination of this Agreement, all additional services under Sections V and VI of Rider A shall cease, unless the parties agree in writing to extend the term of such services to include the Winding Down Period.

4. Upon termination or expiration of this Agreement, DIGITECH agrees to reasonably cooperate with CITY in transitioning from DIGITECH to another service provider of City’s choosing.

XII. MODIFICATION; GOVERNING LAW; ARBITRATION; ENTIRE AGREEMENT; FURTHER ASSURANCES; SEVERABILITY; WAIVER; AUTHORITY; SUCCESSORS AND ASSIGNS

A. This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties. No waiver, supplement, amendment or modification of any provision of this Agreement shall be binding unless it is in writing and signed by all parties.

B. DELAY IN PERFORMANCE

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

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

C. This Agreement shall be governed by the laws of the State of Ohio without giving effect to any choice of law or conflicts of laws, rules or provisions.
D. This Agreement, including the attached rider(s) and exhibit(s), contains the entire agreement between the parties relating to this transaction and supersedes all previous understandings and agreements between the parties relating to this subject matter. Each party acknowledges that it has not relied on any representation, warranty, or other assurance made by, or on behalf of, the other party, except as expressly set forth herein.

E. From time to time, each party will execute and deliver such further instruments, and will take such other action as the other party may reasonably request, in order to discharge and perform its respective obligations and agreements hereunder.

F. Any provision of this Agreement prohibited by applicable law will be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof.

G. This Agreement may be the basis for an Interlocal or Cooperative Procurement Agreement, subject to revision in pricing if Agreement is used as the basis for an Interlocal or Cooperative Procurement Agreement any time after 60 days of execution of this Agreement.

H. The failure of either party to require strict performance of any provision will not diminish that party’s right thereafter to require strict performance of any provision.

I. The signatories below have the authority to sign on behalf of the respective parties.

J. This Agreement shall be binding on, and will inure to the benefit of, the parties hereto and their respective successors and assigns.

K. This Agreement, and the duties and obligations placed on the parties, may not be assigned, except with the express written consent of the other party.

L. DIGITECH affirms and certifies that it complies with the Ohio Revised Code Section 3517.13 limiting political contributions.

M. DIGITECH shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap with respect to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, lay-off, termination, rates of pay or other terms of
compensation, or selection for training, including apprenticeship. It is expressly agreed and understood that Section 35.14 of the Revised Code of General Ordinances of the City of Dayton constitutes a material condition of this Agreement as fully and as if specifically rewritten herein and that failure to comply therewith shall constitute a breach thereof entitling the City to terminate this Agreement at its option and may bar DIGITECH from receiving future City contracts.

[Signature page follows]
The parties hereto have executed this Agreement on the day and year first above written.

CITY OF DAYTON, OHIO

By: [Signature]

Name: Tammi Clements

Title: Deputy City Manager

Date: November 29, 2018

DIGITECH COMPUTER, INC.

By: [Signature]

Name: Mark Schiwitsky

Title: President and COO

Date: 11/28/2018

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

November 21, 2018

Min/Bk: 145 Page 0/10

Randella Fantin
Clerk of the Commission

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]
City Attorney
RIDER A

DESCRIPTION OF SERVICES, FEES AND CLIENT RESPONSIBILITIES

This Rider is a part of the Agreement between DIGITECH and CITY OF DAYTON, OHIO dated ________.

I. BILLING SERVICES

A. DIGITECH shall provide the following billing and collection services which are contingent upon CITY OF DAYTON, OHIO ("CITY") fulfilling the responsibilities outlined in Section X of the Agreement:

1. DIGITECH shall perform Patient Care Report ("PCR") processing including:
   a) Review client prepared PCR’S for content, level of service and diagnosis;
   b) Procedure Coding; and
   c) Eligibility and Insurance Research and Verification.

2. DIGITECH shall perform billing as follows:
   a) Electronic Invoicing
      (1) Medicare;
      (2) Commercial Insurance; and
      (3) Medicaid (billed weekly).
   b) Paper Invoicing
      (1) CMS-1500 for Commercial Insurance;
      (2) Self-Pay;
      (3) Facility (where applicable); and
      (4) CMS-1500 for Medicaid (where applicable).

II. COLLECTION SERVICES

A. DIGITECH will provide the following collection services covering the following types of providers:

1. Facility
   a) Submit a maximum of 3 invoices/notices, at 30 day intervals; and
   b) Make a maximum of 2 follow-up calls.

2. Patient or Self Pay
   a) Mail a maximum of 3 invoices/notices, at 30 day intervals;
   b) Make a maximum of 2 follow-up calls; and
c) Recommend to CITY amounts to be placed in legal proceeding upon the earlier of DIGITECH’s determination that the amount is uncollectible or 120 days from the first invoice date.

3. Insurance

a) Submit a maximum of 3 invoices/notice, at 45 day intervals;
b) Make a maximum of 3 follow-up calls; and
c) File appeals upon notice of denial, where applicable.

4. Medicaid

a) Process denials;
b) Follow-up on pending claims; and
c) Resubmissions.

5. Medicare

a) Process denials;
b) Follow-up on pending claims; and
c) Resubmissions.

B. Claims resolution and appeals

C. Remittance Posting

D. Resubmission of denials, pending and held items

E. Interfacing with carriers on behalf of CITY

F. All payments received by payers for CITY shall be deposited into one or more bank accounts controlled by CITY, pursuant to CITY’s written instructions.

G. DIGITECH will interface with CITY’s collection agency as follows:

1. Create and download one collection file per month using the industry standard XML collection file format as described in Exhibit 6; and

2. In the event CITY’s collection agency requires a format that differs from the industry standard XML format or requires more than one file submission per month, DIGITECH reserves the right to charge CITY additional fees as necessary. DIGITECH will not commence any such additional work without CLIENT’s approval.
3. DIGITECH reserves the right to withdraw claims from collections if payment is received within 10 business days of sending the claim to collections.

III. REPORTING SERVICES

A. DIGITECH will grant CITY access to its billing services reporting system. Such reporting includes but is not limited to, Master Files, Receivable Tracking, Receivable Reporting, Financial Scorecard and System Reporting.

B. DIGITECH shall use best efforts to send to CITY, via email, its standard monthly reporting package by the 5th calendar day of each month, which shall include:

1. Accounting Reports
   a) Sales original, sales payer re-class, adjustments, cash and aged accounts receivable (accounts receivable roll forward for general ledger entry); and

2. Transport Reports
   a) Per Trip Data and Collection Percentages.

IV. FEES/BILLING, COLLECTION AND REPORTING SERVICES

A. DIGITECH will charge a fee for the Services described above as follows:

CITY shall pay to DIGITECH a fee equal to 6.55% of monthly EMS billing collections for the term of this Agreement. However, the CITY shall pay to DIGITECH a fee equal to 6.95% of monthly EMS billing collections billing for 13 months beginning with the first 30 days following the Go Live Date, as set forth in Exhibit 1 attached hereto. DIGITECH'S percentage fee will remain equal to 6.55% of monthly EMS billing collections during any renewal period agreed to by the parties under this Agreement.

DIGITECH'S percentage fee for service covers claims with a date of service commencing on the go-live date of the contract. Unprocessed claims with dates of service 30 days prior to the go-live date will be processed at 6.55% of monthly EMS collections.

Unprocessed claims that are deemed collectible by CLIENT with dates of service that are greater than 30 days prior to the go-live date will be processed for a fee of $30 per claim whether or not they are paid.
CITY shall pay to DIGITECH its collection fee as set forth in this Section IV on all payments received by CITY on any claim process by DIGITECH, including but not limited to revenue received by CITY related to any State administered Ambulance Services Supplemental Payment Program. Said payment shall be in addition to any other fees CITY is obligated to pay to any other entity or subcontractor to analyze and report costs that will help CITY realize said revenue.

Notwithstanding the foregoing, DIGITECH acknowledges that claims for which DIGITECH provided no processing services and that have been processed prior to the go-live date may be assigned by CITY to other third party collectors and that DIGITECH has no interest in or responsibility for such claims.

Note: DIGITECH’s fee in Section IV(A) above does not include the processing of claims in which the CITY has a contractual obligation to transport and not bill (and are therefore uncollectible), such as prisoner transports. In addition, DIGITECH’s fee does not cover non-ambulance transports such as ambulette, wheelchair, and medivan transports. Such additional fees will be negotiated per Rider A, Section V – Fees/Other below.

DIGITECH’s percentage fees above include:

- All costs related to the implementation of billing services for the City of Dayton
- Credit card merchant fees
- Lockbox fees
- All fees related to the provision of mobile reporting devices (see Rugged Depot Sales Quotation attached as Exhibit 7). 12 Panasonic Toughbooks CF-20 devices will become the City of Dayton’s property after the 3 year contract. All associated warranty fees upon contract extension of years 4 and 5.
- All fees associated with ESO Solutions’ Patient Care Reporting Software during the term of the contract (see ESO cost proposal and quote attached as Exhibits 8 and 8a)
- Any fees associated with an electronic interface to the EMS reporting software undertaken by the City of Dayton during the term of the contract
- Training on the Ambulance Commander system for City employees
- All mailing forms, billing forms, insurance forms, and envelopes necessary to perform all billing functions
- Any postage necessary to mail billing or other information to patients, insurance companies, third parties, and attorneys
- Availability of a national toll free 800 number for patients, City of Dayton personnel, insurance companies, attorneys, and third parties to call for information or discussion of account status from 8am – 6pm ET
- All fees related to comprehensive language interpreter services
- All fees related to our national consumer database (Change Healthcare and Experian) searches for patient demographic information
- All fees related to the electronic submission of claims
- Response to requests from patients and payers within two business days when additional information or documentation is required to process a claim
- All fees and expenses associated with the hosting of our application
- All hardware and software required by Digitech personnel to accurately and efficiently perform medical transport billing and collection
- 24-hour technical support
- Ongoing review of ePCR documentation by qualified Digitech staff

Maintenance of all billing records in industry standard electronic formats in accordance with Federal, State, and Municipal record retention schedules, permitting transfer to a new vendor within 30 days.

B. DIGITECH fees do not cover costs or additional fees associated with the placement of delinquent accounts with a third party collection agency. Any fees earned by third party collection agencies from the collection or settlement of past due accounts placed with such agency shall be the responsibility of the CITY.

V. FEES/OTHER

A. Fees for the processing and/or collection of claims not covered by this Agreement shall be negotiated on a case-by-case basis. Such claims may include, but are not limited to, claims with dates of service not covered by this Agreement, non-ambulance claims, non-billable claims and claims where critical processing information may be available at an unreasonable cost.

B. Time expended by DIGITECH, on behalf of CLIENT, to cover services not covered by this Agreement or tasks that fall under the responsibility of the CLIENT shall be billed at a rate to be negotiated, per hour. Such services include, but are not limited to, data entry, scanning and call taking/input. No fees may be charged unless they are preapproved by the CLIENT, in writing, before performed.
C. Time expended by DIGITECH programming staff on behalf of CLIENT, to cover programming changes or additions not covered by this Agreement shall be billed at the then current hourly rate for the resources requirement.

D. DIGITECH may require a work order prior to the provision of such services.

(Remainder of Page Intentionally Left Blank)
The parties hereto have executed this Rider on the day and year first above written on the Agreement.

CITY OF DAYTON, OHIO
By: [Signature]
Name: Tammi Clements
Title: Deputy City Manager
Date: November 29, 2018

DIGITECH COMPUTER, INC.
By: [Signature]
Name: Walter C. Pickett, II
Title: COO
Date: 11/28/2018

APPROVED BY THE COMMISSION
OF THE CITY OF DAYTON, OHIO:
________________________
November 21, 2018
Mnj/Bk. 1-15 Page 04/10
Rachelle Gardner
Clerk of the Commission

APPROVED AS TO FORM AND CORRECTNESS:
________________________
City Attorney
BUSINESS ASSOCIATE ADDENDUM

THIS BUSINESS ASSOCIATE ADDENDUM ("Addendum"), is made and entered into by and between CITY OF DAYTON, OHIO ("Covered Entity") and DIGITECH COMPUTER INC. ("Business Associate"). This Addendum shall form a part of all agreements and other engagements as are currently in effect between the parties under which Protected Health Information ("PHI") (as defined in Article 1 of this Addendum) is provided, created or received by Business Associate from or on behalf of Covered Entity, and shall supersede and replace any business associate agreement or amendment previously entered into between Covered Entity and Business Associate in accordance with the requirements of HIPAA (as defined below) and/or the HITECH Act (as defined below). This Addendum is effective as of the effective date of the Billing Service Agreement (the "Effective Date").

RECITALS

WHEREAS, in connection with the performance of their respective obligations under the terms of the Billing Service Agreement, Covered Entity may disclose certain information to Business Associate, and Business Associate may use and/or disclose certain information, some of which may constitute PHI; and

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to, or created, utilized or disclosed by, Business Associate pursuant to the Billing Service Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, and its implementing regulations and guidance issued by the Secretary of the U.S. Department of Health and Human Services (the "Secretary"), all as amended from time to time ("HIPAA"), as well as the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009, and its implementing regulations and guidance issued by the Secretary, all as amended from time to time (the "HITECH Act"), and other applicable laws;

The parties do hereby agree as follows:

Article 1: Definitions

1.1 Definitions. For the purposes of this Addendum, the following defined terms shall have the following definitions. All capitalized terms used in this Addendum but not otherwise defined herein shall have the meaning given in HIPAA or the HITECH Act, as applicable.
(a) "Breach" has the meaning given to such term under HIPAA and the HITECH Act, including, but not limited to, at § 13400(1) of the HITECH Act and 45 CFR § 164.402.

(b) "Data Aggregation" has the meaning given to such term under the Privacy Standards (as defined below), including, but not limited to, at 45 CFR § 164.501.

(c) "Designated Record Set" has the meaning given to such term under the Privacy Standards, including, but not limited to, at 45 CFR § 164.501.

(d) "Health Care Operations" has the meaning given to such term under the Privacy Standards, including, but not limited to, at 45 CFR § 164.501.

(e) "Limited Data Set" has the meaning given to such term under the Privacy Standards, including, but not limited to, at 45 CFR § 164.514.

(f) "Privacy Standards" means the HIPAA Privacy Rule and HIPAA Security Rule codified at 45 CFR Parts 160, 162 and 164.

(g) "Protected Health Information" or "PHI" has the meaning given to such term under HIPAA, the HITECH Act, and the Privacy Standards, including, but not limited to, at 45 CFR § 160.103.

(h) "Unsecured Protected Health Information" has the meaning given to such term under HIPAA and the HITECH Act, including, but not limited to, at § 13402(h) of the HITECH Act and 45 CFR §164.402.

Article 2: Duties of Business Associate

2.1 Compliance with Privacy Provisions. Business Associate shall only use and disclose PHI in performance of its obligations under the Billing Service Agreement and as permitted or required by law. Business Associate agrees to be in compliance with each applicable requirement of 45 CFR § 164.504(e) and all requirements of the HITECH Act applicable to Business Associate.

2.2 Compliance with Security Provisions. Business Associate shall: (a) implement and maintain administrative safeguards as required by 45 CFR § 164.308, physical safeguards as required by 45 CFR § 164.310 and technical safeguards as required by 45 CFR § 164.312; (b) implement and document reasonable and appropriate policies and procedures as required by 45 CFR § 164.316; (c) use its best efforts to implement and maintain technologies and methodologies that render PHI unusable, unreadable or indecipherable to unauthorized individuals as specified in the HITECH Act; and (d) be in compliance with all requirements of the HITECH Act related to security and applicable to Business Associate.
2.3 **Breach of Unsecured PHI.**

(a) With respect to any suspected or actual unauthorized acquisition, access, use or disclosure ("Acquisition") of Covered Entity’s PHI by Business Associate, its agents or subcontractors, and/or any Acquisition of data in violation of any applicable federal or state law, Business Associate shall (i) investigate such Acquisition; (ii) determine whether such Acquisition constitutes a reportable Breach under HIPAA, the HITECH Act, and/or applicable federal or state law; (iii) document and retain its findings under clauses (i) and (ii); and (iv) take any action pertaining to such Acquisition required by applicable federal or state law.

(b) If Business Associate discovers that a Breach has occurred, Business Associate shall notify Covered Entity in writing without unreasonable delay and in no case later than five (5) days after discovery of the Breach. Business Associate’s written notice shall include all available information required by 45 CFR § 164.410 and other applicable law. Business Associate’s written report shall be promptly supplemented with any new or additional information. Business Associate agrees to cooperate with Covered Entity in meeting Covered Entity’s obligations under the HITECH Act and other applicable law with respect to such Breach. Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s) or others as required by the HITECH Act and other applicable law.

2.4 **Permitted Uses of PHI.** Satisfactory performance of its obligations under the Billing Service Agreement by Business Associate may require Business Associate to receive or use PHI obtained from Covered Entity, or created or received by Business Associate on behalf of Covered Entity; provided, however, that Business Associate shall not use PHI other than for the purpose of performing Business Associate’s obligations under the Billing Service Agreement (including this Addendum), as permitted or required under the Billing Service Agreement (including this Addendum), or as required by law. Business Associate shall not use PHI in any manner that would constitute a violation of HIPAA if so used by Covered Entity.

2.5 **Permitted Disclosures of PHI.** Business Associate shall not disclose PHI other than for the purpose of performing Business Associate’s obligations under the Billing Service Agreement (including this Addendum), as permitted or required under the Billing Service Agreement (including this Addendum), or as required by law. Business Associate shall not disclose PHI in any manner that would constitute a violation of HIPAA if so disclosed by Covered Entity. To the extent that Business Associate discloses PHI to a third party in carrying out its obligations under the Billing Service Agreement, Business Associate must obtain, prior to making any
such disclosure, (i) reasonable assurances from such third party that such PHI will be held confidential as provided pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) an agreement from such third party to immediately notify Business Associate of any breaches of confidentiality of the PHI, to the extent the third party has obtained knowledge of such breach.

2.6 **Minimum Necessary.** Business Associate shall limit its use, disclosure or request of PHI to only the minimum necessary as required by law.

2.7 **Retention of PHI.** Unless otherwise specified in the Billing Service Agreement, Business Associate shall maintain and retain PHI for the term of the Billing Service Agreement, and make such PHI available to Covered Entity as set forth in this Addendum.

2.8 **Safeguarding PHI.** Business Associate shall use appropriate safeguards to prevent the use or disclosure of PHI other than as permitted by the Billing Service Agreement and this Addendum. Business Associate will appropriately safeguard electronic PHI in accordance with the standards specified at 45 CFR § 164.314(a). In particular, Business Associate will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity.

2.9 **Agents and Subcontractors.** Business Associate shall ensure that any agents (including subcontractors) of Business Associate to whom Business Associate provides PHI received from Covered Entity, or PHI created or received by Business Associate on behalf of Covered Entity, agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such PHI, including the requirement to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of PHI. Business Associate shall implement appropriate sanctions against agents and subcontractors that violate such restrictions and conditions, including termination of the agency or subcontractor relationship, if feasible, and shall mitigate the effects of any such violations.

2.10 **Reporting Unauthorized Use orDisclosure.** Business Associate shall report in writing to Covered Entity any use or disclosure of PHI not provided for under the Billing Service Agreement or this Addendum as soon as possible after Business Associate becomes aware of such an incident but in no case later than five (5) days after the date on which Business Associate becomes aware of any such incident; provided, however, that the Parties acknowledge and agree that this Section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below). “Unsuccessful Security Incidents” will include, but not be limited to, pugs
and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI. Business Associate shall take (i) prompt corrective action to cure any deficiencies that caused the unauthorized use or disclosure, and (ii) any corrective action required by applicable federal and state law.

2.11 **Access to Information.** Within five (5) days of Covered Entity's request, Business Associate shall provide Covered Entity with access to Covered Entity's PHI maintained by Business Associate or its agents or subcontractors to enable Covered Entity to fulfill its obligations under the Privacy Standards, including, but not limited to, 45 CFR § 164.524.

2.12 **Availability of PHI for Amendment.** The parties acknowledge that the Privacy Standards permit an individual who is the subject of PHI to request certain amendments of their records. Upon Covered Entity's request for an amendment of PHI or a record about an individual contained in a Designated Record Set, but not later than five (5) days after receipt of such request, Business Associate and its agents or subcontractors shall make such PHI available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under the Privacy Standards, including, but not limited to, 45 CFR § 164.526. If any individual requests an amendment of PHI directly from Business Associate or its agents or subcontractors, Business Associate must notify Covered Entity in writing within five (5) days of the request. Covered Entity has the sole authority to deny a request for amendment of PHI received or created under the terms of the Billing Service Agreement and maintained by Business Associate or its agents or subcontractors.

2.13 **Accounting of Disclosures.** Upon Covered Entity's request, Business Associate, its agents and subcontractors shall make available the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Standards, including, but not limited to, 45 CFR § 164.528. For this purpose, Business Associate shall retain a record of disclosure of PHI for at least six (6) years from the date of disclosure. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years prior to the request, but not before the effective date of the Billing Service Agreement. At a minimum, such information shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. Where a request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall within five (5) days of a request forward it to Covered Entity in writing.
shall be Covered Entity’s responsibility to prepare and deliver any such reply to the requested accounting.

2.14 **Agreement to Restriction on Disclosure.** If Covered Entity is required to comply with a restriction on the disclosure of PHI pursuant to § 13405 of the HITECH Act, then Covered Entity shall provide written notice to Business Associate of the name of the individual requesting the restriction and the PHI affected thereby. Business Associate shall, upon receipt of such notification, not disclose the identified PHI to any health plan for the purposes of carrying out Payment or Health Care Operations, except as otherwise required by law.

2.15 **Accounting of Disclosures of Electronic Health Records (“EHR”).** If Business Associate is deemed to use or maintain an EHR on behalf of Covered Entity, then Business Associate shall maintain an accounting of any disclosures made through an EHR for Treatment, Payment and Health Care Operations, as required by law. Upon request by Covered Entity, Business Associate shall provide such accounting to Covered Entity in the time and manner specified by law. Alternatively, if Covered Entity responds to an individual’s request for an accounting of disclosures made through an EHR by providing the requesting individual with a list of all business associates acting on behalf of Covered Entity, then Business Associate shall provide such accounting directly to the requesting individual in the time and manner specified by the HITECH Act.

2.16 **Access to Electronic Health Records.** If Business Associate is deemed to use or maintain an EHR on behalf of Covered Entity with respect to PHI, then, to the extent an individual has the right to request a copy of the PHI maintained in such EHR pursuant to 45 CFR § 164.524 and makes such a request to Business Associate, Business Associate shall provide such individual with a copy of the PHI in the EHR in an electronic format and, if the individual so chooses, transmit such copy directly to an entity or person designated by the individual. Business Associate may charge a fee, not to exceed Contractor’s labor costs to respond, to the individual for providing the copy of the PHI. The provisions of 45 CFR § 164.524, including the exceptions to the requirement to provide a copy of PHI, shall otherwise apply and Business Associate shall comply therewith as if Business Associate were Covered Entity. At Covered Entity’s request, Business Associate shall provide Covered Entity with a copy of an individual’s PHI maintained in an EHR in an electronic format and in a time and manner designated by Covered Entity in order for Covered Entity to comply with 45 CFR § 164.524, as amended by the HITECH Act.

2.17 **Remuneration for PHI.** Business Associate agrees that it shall not, directly or indirectly, receive remuneration in exchange for any PHI of Covered Entity except as otherwise permitted by law.
2.18 **Limitations on Use of PHI for Marketing Purposes.** Business Associate shall not use or disclose PHI for the purpose of making a communication about a product or service that encourages recipients of the communication to purchase or use the product or service, unless such communication: (a) complies with the requirements of subparagraph (i), (ii) or (iii) of paragraph (1) of the definition of marketing contained in 45 CFR § 164.501, and (b) complies with the requirements of subparagraphs (A), (B) or (C) of § 13406(a)(2) of the HITECH Act. Covered Entity shall cooperate with Business Associate to determine if the foregoing requirements are met with respect to any such marketing communication.

2.19 **Governmental Access to Books and Records.** For purposes of determining Covered Entity’s compliance with the HIPAA, Business Associate agrees to make available to the Secretary its internal practices, books, and records relating to the use and disclosure of PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity.

2.20 **Data Ownership.** Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.

2.21 **Insurance.** Business Associate shall maintain commercial general liability insurance, with commercially reasonable liability limits, that includes coverage for damage to persons or property arising from any breach of the terms of this Addendum.

2.22 **Audits, Inspection and Enforcement.** Within ten (10) days of a written request by Covered Entity, Business Associate and its agents or subcontractors shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of PHI pursuant to this Addendum for the purpose of determining whether Business Associate has complied with this Addendum; provided, however, that (i) Business Associate and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection; (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection; and (iii) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate. Covered Entity and its authorized agents or contractors, may, at Covered Entity’s expense, examine Business Associate’s facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to Covered Entity the extent to which Business Associate’s security safeguards comply with HIPAA, the HITECH Act or this Addendum, to the extent that Covered Entity determines that such examination is necessary to comply with Covered Entity’s legal obligations pursuant to HIPAA or the HITECH Act relating to certification of its security practices. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate’s facilities, systems, books, records, agreements,
policies and procedures does not relieve Business Associate of its responsibility to comply with this Addendum, nor does Covered Entity’s (i) failure to detect or (ii) detection, but failure to notify Business Associate or require Business Associate’s remediation of any unsatisfactory practices, constitute acceptance of such practices or a waiver of Covered Entity’s enforcement rights under the Billing Service Agreement or this Addendum.

2.23 **Return of PHI at Termination.** Upon termination of the Billing Service Agreement, Business Associate shall, where feasible, destroy or return to Covered Entity all PHI received from Covered Entity, or created or received by Business Associate or its agents or subcontractors on behalf of Covered Entity. Where return or destruction is not feasible, the duties of Business Associate under this Addendum shall be extended to protect the PHI retained by Business Associate. Business Associate agrees not to further use or disclose information for which the return or destruction is infeasible. Business Associate shall certify in writing the destruction of the PHI and to the continued protection of PHI that is not feasible to destroy.

2.24 **Retention of PHI.** Business Associate and its contractors or agents shall retain communications and documents required to be maintained by HIPAA for six (6) years after termination of the Billing Service Agreement.

2.25 **Business Associate’s Performance of Obligations of Covered Entity.** To the extent the Business Associate is to carry out one or more of Covered Entity’s obligation(s) under the HIPAA Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity when it carries out such obligation(s).

**Article 3: Duties of Covered Entity**

3.1 **Using Appropriate Safeguards.** Covered Entity shall be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Business Associate pursuant to the Billing Service Agreement, in accordance with the standards and requirements of HIPAA.

**Article 4: Term and Termination**

4.1 **Term.** The provisions of this Addendum shall become effective on the Effective Date and shall continue in effect until all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy the PHI, protections are extended to such information in accordance with the termination provisions in Section 4.2 of this Addendum.
4.2 **Termination by Covered Entity.**

(a) A breach by Business Associate of any material provision of this Addendum, as determined by Covered Entity, shall constitute a material breach of the Billing Service Agreement and shall provide grounds for immediate termination of the Billing Service Agreement by Covered Entity.

(b) If Covered Entity knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate’s obligations under the provisions of this Addendum or another arrangement and does not terminate the Billing Service Agreement pursuant to Section 4.2(a) of this Addendum, then Business Associate shall take reasonable steps to cure such breach or end such violation, as applicable. If Business Associate’s efforts to cure such breach or end such violation are unsuccessful, Covered Entity shall either (i) terminate the Billing Service Agreement, if feasible or (ii) if termination of the Billing Service Agreement is not feasible, Covered Entity shall report Business Associate’s breach or violation to the Secretary.

4.3 **Termination by Business Associate.** If Business Associate knows of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of Covered Entity’s obligations under the Billing Service Agreement or this Addendum, then Business Associate shall immediately notify Covered Entity. With respect to such breach or violation, Business Associate shall (i) take reasonable steps to cure such breach or end such violation, if possible; or (ii) if such steps are either not possible or are unsuccessful, upon written notice to Covered Entity, terminate the Billing Service Agreement; or (iii) if such termination is not feasible, report Covered Entity’s breach or violation to the Secretary.

4.4 **Termination by Either Party.** Either party may terminate the Billing Service Agreement, effective immediately, if (i) the other party is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act or other security or privacy laws, or (ii) a finding or stipulation that the other party has violated any standard or requirement of HIPAA, the HITECH Act or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

**Article 5: Miscellaneous**

5.1 **Acknowledgment.** Business Associate recognizes and agrees that it is obligated by law to comply with the applicable provisions of the HITECH Act.

5.2 **Change in Law.** The parties agree to promptly enter into negotiations concerning the terms of the Billing Service Agreement (including this Addendum), and to negotiate in good faith, if, in either party’s business judgment, modification of the
Billing Service Agreement (including this Addendum) becomes necessary due to legislative, regulatory, or judicial developments regarding HIPAA or the HITECH Act. Covered Entity may terminate the Billing Service Agreement upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend the Billing Service Agreement when requested by Covered Entity pursuant to this § 5.2, or (ii) Business Associate does not enter into an amendment to the Billing Service Agreement providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HITECH Act.

5.3 **Disclaimer.** Covered Entity makes no warranty or representation that compliance by Business Associate with HIPAA, the HITECH Act or this Addendum will be adequate or satisfactory for Business Associate’s own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

5.4 **Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under the Billing Service Agreement or this Addendum, available to Covered Entity, at no cost to Covered Entity, to testify as witness, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its members/shareholders, managers/directors, officers or employees based upon a claimed violation of HIPAA or the HITECH Act or other laws relating to security and privacy, except where Business Associate, or its subcontractor, employee or agent is a named adverse party.

5.5 **No Third-Party Beneficiaries.** Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

5.6 **Interpretation.** Section titles in this Addendum are for convenience only, and shall not be used in interpreting this Addendum. Any ambiguity in this Addendum shall be resolved to permit the parties to comply with the requirements of HIPAA and the HITECH Act. In the event of conflict between the Billing Service Agreement and this Addendum, the provisions of this Addendum shall prevail. Any reference in this Addendum to a section in the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E, the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR part 164, subpart C, or the HITECH Act means the section as in effect or as amended.

[Signature page follows]
The parties hereto have executed this Rider on the day and year first above written on the Billing Service Agreement.

CITY OF DAYTON, OHIO
(Covered Entity)

By: ________________________

Name: ________________________

Title: ________________________

Date: ________________________

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

____________________________

Min./Bk. Page

Clerk of the Commission

APPROVED AS TO FORM
AND CORRECTNESS:

____________________________

City Attorney
1. Fill in Contact Info Below

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2. Sign page 5.

3. Email entire contract to legal@esosolutions.com and your sales representative.

4. Enjoy your ESO Software
MASTER SUBSCRIPTION AND LICENSE AGREEMENT

This Master Subscription and License Agreement (this "Agreement") is entered into as of 1/24/2018 ("Effective Date"), by and between ESO Solutions, Inc., a Texas corporation having its principal place of business at 11500 Alterra Parkway, Suite 100 Austin, TX 78758 ("ESO") and the City of Dayton on behalf of the Dayton Fire Department, having its principal place of business at 101 W 3rd Street, Dayton, Ohio ("Customer"). This Agreement consists of the General Terms & Conditions below and any Addenda (as defined below) executed by the parties, including any attachments to such Addenda.

The parties have agreed that ESO will provide Customer certain technology products and/or services and that Customer will pay ESO certain fees. Therefore, in consideration of the covenants, agreements and promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows.

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS. Capitalized terms not otherwise defined in this Agreement shall have the meanings below:

*Add-On Software* means any complementary software components or reporting services that ESO makes available to Customer through its Licensed Software, Interoperability Software or SaaS.

*Addendum* means a writing addressed an order of a specific set of products or services executed by authorized representatives of each party. An Addendum may be: (a) a Software Schedule, (b) a Statement of Work, (c) a Sales Order, or (d) another writing the parties intend to be incorporated by reference into this Agreement.

*Anonymized Data* means Customer Data from which all personally identifiable information has been removed, as well as the names and addresses of Customer and any of its Users and/or Customer's clients (and which, as a consequence, is neither PHI nor identifiable to or by Customer).

*Customer Data* means information, data and other content in electronic form that is submitted, posted, or otherwise transmitted by or on behalf of Customer through the Software.

*Deliverable* means software, report, or other work product created pursuant to a Statement of Work.

*Documentation* means user guides, operating manuals, and specifications regarding the Software.

*Feedback* refers to any suggestion or idea for improving or otherwise modifying ESO's products or services.

*Intellectual Property* means trade secrets, copyrightable subject matter, patents and patent applications, and other proprietary information, activities, and any ideas, concepts, innovations, inventions and designs.

*Interoperability Software* means SaaS that allows Customer to exchange healthcare data with others. For the avoidance of doubt, Interoperability Software does not include Add-on Software or Licensed Software.

*Licensed Software* means the executable, object code version of software that ESO provides to Customer for its use and installation on Customer's own equipment. For the avoidance of doubt, Licensed Software does not include Add-on Software, Interoperability Software or SaaS.

*New Version* means any new version of Licensed Software that ESO may from time to time introduce and market generally as a distinct licensed product, as may be indicated by Licensor's designation of a new version number, brand or product.

*Outage* means Customer is unable to access SaaS, or such access is materially delayed, impaired or disrupted in each case as caused or controlled by ESO.

*Professional Services* means professional services provided by ESO under a Statement of Work.

*Protected Health Information* or "PHI" shall have the meaning set forth in HIPAA. All references herein to PHI shall be construed to include electronic PHI or ePHI as that term is defined by HIPAA.

*Reporting Services* means, collectively, the different tools or features in the Software allowing Customer to generate compilations of data, including but not limited to ad hoc reports, analysis, benchmarks or any other reporting tool provided through the Software.

*SaaS* means software-as-a-service that ESO hosts (directly or indirectly) for Customer's use. For the avoidance of doubt, SaaS does not include Licensed Software but does include Add-on Software and Interoperability Software.

*Scheduled Downtime* means periods when ESO intentionally interrupts the SaaS for the performance of system maintenance or to otherwise correct service errors.

*Software* means any ESO computer program, programming or modules specified in any Software Schedule or SOW. For the avoidance of doubt, Add-on Software, SaaS, Interoperability Software, and Licensed Software are collectively referred to as Software.

*Software Schedule* refers to an Addendum under which Customer has ordered either Add-on Software, Licensed Software, Interoperability Software or SaaS.

*Statement of Work* or *SOW* refers to an Addendum under which Customer has ordered Professional Services or a Deliverable from ESO.

*Support Services* means those services described in Exhibit B.

*Third-Party Data* means data not owned by ESO but which is (or access to which is) provided by ESO under a Software Schedule.

*Third-Party Service* means a service not provided by ESO but which is (or access to which is) offered by ESO in connection with its Software under a Software Schedule or Addendum.

*Third-Party Software* means software not owned by ESO but which is (or access to which is) provided by ESO under a Software Schedule or Addendum.

*Use Restrictions* means the restrictions imposed on Customer's use of Software as described in Section 3.3.

*User* means any individual who uses the Software on Customer's behalf or through Customer's account or passwords, whether authorized or not.

2. SOFTWARE ORDERS. During the Term, Customer may order Software from ESO by signing an appropriate Software Schedule. Customer's license to Licensed Software and its subscription to SaaS are set forth below. Each such Software Schedule is incorporated herein by reference.

3. LICENSE/SUBSCRIPTION TO SOFTWARE

3.1. Grant of Subscription. SaaS. For SaaS, during the Term Customer may access and use the SaaS and Reporting Services, in such quantities as are set forth on the applicable Software Schedule, subject to Customer's compliance with the Use Restrictions and other limitations contained in this Agreement.

3.2. Grant of License. Licensed Software. For Licensed Software, during the Term ESO hereby grants Customer a limited, non-exclusive, non-transferable, non-assignable, non-sublicensable, revocable license to copy and use the Licensed Software in such quantities as are set forth on the applicable Software Schedule and as necessary for Customer's internal business purposes, in each case subject to Customer's compliance with the Use Restrictions and other limitations and obligations contained in this Agreement.

3.3. Use Restrictions. Except as provided in the Agreement or otherwise authorized by ESO, Customer has no rights and shall not: (a) reverse engineer, disassemble, copy or display the Software or otherwise reproduce the Software in any form; (b) modify or make derivative works from the Software other than to minimize or repair the Software; (c) distribute or transfer the Software to another person or entity; (d) reproduce the Software for the use of or benefit of anyone other than Customer; (e) alter, modify, or create derivative works based on the Software other than in whole or in part by use at permitted by the use of the Software for commercial time sharing arrangements or providing service bureau, data processing, rental, or other services to any third parties including affiliates not specifically listed in the applicable Software Schedule.
3.4. Ownership. The rights granted under the provisions of this Agreement do not constitute a sale of the Software. ESO retains all right, title, and interest in and to the Software, including without limitation all software used to provide the Software and all graphics, user interfaces, logos and trademarks reproduced through the Software, except to the limited extent set forth in this Agreement. This Agreement does not grant Customer any intellectual property rights in the Software or any of its components, except to the limited extent that this Agreement specifically sets forth Customer’s rights to access, use, or copy the Software during the Term. Customer acknowledges that the Software and its components are protected by copyright and other laws.

3.5. Third-Party Software and Services. ESO neither accepts liability for, nor warrants the functionality, utility, availability, reliability or accuracy of, Third-Party Software or Third-Party Services. Additional terms and limitations applicable to Third-Party Software and Third-Party Services may be provided on the applicable Addendum.

3.6. Third-Party Data. If Customer (as indicated on an Addendum) elects to license Third-Party Data (e.g., fire codes), then subject to the terms hereof, ESO hereby grants Customer a non-exclusive, non-sublicensable, and non-transferable license during the Term to use such Third-Party Data via the Software solely for Customer’s internal purposes. Customer will not (i) allow greater access than that set forth in the applicable Software Schedule, (ii) disclose, release, distribute, or deliver Third-Party Data, or any portion thereof, to any third party; (iii) copy, modify, or create derivative works of Third-Party Data; (iv) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available Third-Party Data; or (v) attempt to output in any form more than 10% of the Third-Party Data or otherwise circumvent the usage limitations included in the Software; (vi) remove any proprietary notices included within Third-Party Data or Software; or (vii) use Third-Party Data in any manner or for any purpose that infringes or otherwise violates any proprietary right of a person, or that violates applicable law. ESO does not warrant the functionality, reliability, accuracy, completeness or utility of, Third-Party Data, or accept any liability herefor. Additional terms and limitations applicable to Third-Party Data may be provided on the applicable Addendum.

3.7. New Versions & Sunset. If ESO releases a New Version of Licensed Software, Customer may elect to receive such New Version, subject to a relicensing fee of 75% of the standard price for such new version, to be paid for by the Third-Party Party (as defined below). All New Versions provided under this Agreement will constitute Licensed Software and be subject to the terms and conditions of this Agreement. ESO may discontinue Support Services for Licensed Software upon 12 months’ notice to Customer.

4. HOSTING, SLA & SUPPORT SERVICES

4.1. Hosting & Management. Customer shall be solely responsible for hosting and managing any Licensed Software. ESO shall be responsible for hosting and managing any SunS.

4.2. Service Level Agreement. If an Outage, excluding Scheduled Downtime (as defined below), results in the service level uptime falling below 99.9% for three months in any rolling 12-month period (the “Uptime Commitment”), then Customer may immediately terminate this Agreement, in which case ESO will refund any prepaid, unbilled fees to Customer. This is Customer’s sole remedy for ESO’s breach of the Uptime Commitment.

4.3. Scheduled Downtime. ESO will provide reasonable notice to the Customer (Software Administrator Contact or otherwise) of Scheduled Downtime (usually at least 72 hours in advance), and will plan Scheduled Downtime to occur during non-peak hours (midnight to 6 a.m., Central Time). Scheduled Downtime shall never constitute a failure of performance or outage by ESO.

4.4. Support and Updates. During the Term, ESO shall provide to Customer the Support Services, in accordance with Exhibit B, which is incorporated herein by reference.

5. FEES

5.1. Fees. Customer has elected and Digital, Inc. (“Third-Party Party”) has agreed, to pay for all of the Software and Professional Services as set forth in the Software Schedule(s) or SOW(s) (collectively, “Fees”). The Fees are non-cancelable and non-refundable, except as expressly provided herein. Third-Party Party shall pay all invoices within 30 days of receipt.

5.2. Third-Party Party. Customer has elected to use a third-party to pay all of the Fees on behalf of Customer - specifically, Digital, Inc. Third-Party Party shall enter into a written agreement with ESO regarding such arrangement. Customer may replace the Third-Party Party by written notice to ESO, or may elect to pay for certain Fees directly to ESO with written approval from Customer.

5.3. Upfront on Renewal. Unless Customer has elected to use a Third-Party Party and in the event of any Overages (as defined below), Fees for Software, which recur annually, shall increase by 3% each year this Agreement is in effect.

5.4. Taxes and Fees. The Fees are exclusive of all taxes and credit card processing fees, if applicable. Customer shall provide a certificate of tax exemption to ESO promptly upon or prior to execution of this Agreement.

5.5. Appropriation of Funds. If Customer is a city, county or other government entity, Customer will have the right to terminate the Agreement immediately if Customer provides evidence that its governing body did not appropriate sufficient funds for the next fiscal year. Notwithstanding the foregoing, this provision shall not excuse Customer from past payment obligations or other Fees earned and unpaid.

5.6. Usage Monitoring. Customer is solely responsible for its own adherence to volume and usage limitations indicated on the applicable Software Schedule. ESO may monitor Customer’s use of the Software, and if Customer’s usage exceeds the level for which Customer has paid in the applicable Software Schedule (an “Overage”), then the Third-Party Party (or Customer, if none) shall owe ESO the Fee corresponding to such usage level based on the Software Schedule (or if none, ESO’s then-current rates).

5.7. Grace Period. In the event Third-Party Party does not pay the Fees, ESO shall send written notification of such to Customer. Upon receipt of the written notification, Customer shall be granted a thirty-day period to accept the terms and conditions of this Section 5 “Fees” and any current Software Schedule under the same terms and conditions as the Third-Party Party’s usage (the “Grace Period”). In the event Customer is unable to pay the Fees and desires to continue using the Software, then at ESO’s sole discretion, the parties may enter into a written payment plan and Customer may continue to utilize the Software in accordance with this Agreement as modified by the payment plan. In the event Customer chooses to discontinue use of the Software in lieu of accepting these terms, Customer may terminate this Agreement during the thirty-day period with no further liability, including that of unpaid but earned Fees. If the Customer does not respond to ESO’s written notification (the “Third-Party Party’s non-breaching party”), the breaching party shall have 90 days from receipt of such breach notice to cease any or all breach activity. In the event the breaching party fails to do so, ESO shall be entitled, in its discretion, to take any and all actions necessary to enforce its rights hereunder.

6. TERM AND TERMINATION

6.1. Term. The term of the Agreement (the “Term”) shall commence on the Effective Date and continue for the period set forth in the applicable Software Schedule (or, if none, for one year). Thereafter, Customer may renew this Agreement for successive one-year terms by providing written notice to ESO thirty days prior to the end of the then-current Term. The City shall have the right to terminate the Agreement upon thirty-day written notice to ESO for any reason at all.

6.2. Termination for Cause. Either party may terminate this Agreement or any individual Software Schedule for the other party’s uncured material breach by providing written notice. The breaching party shall have 90 days from receipt of such breach notice to cure such breach, if the breaching party attempts to cure such breach.

6.3. Effect of Termination.

6.3.1. If Customer terminates this Agreement or any Software Schedule as a result of ESO’s material breach, then to the extent that Customer has prepaid any Fees, ESO shall refund to Customer any prepaid Fees on a pro-rata basis to the extent such Fees are attributable to the period after the later to occur of (i) termination date or (ii) date on which Customer actually values use of the Software.
6.3.2. Upon termination of this Agreement or any Software Schedule, Customer shall cease all use of the Software and delete, destroy or return all copies of the Documentation and Licensed Software in its possession or control, except as required by law. Customer shall remain obligated to pay appropriate Fees at ESO’s then current rates if Customer continues to use or access Software after the termination or expiration of this Agreement. If Customer received discounts for any of the two years prior to the date of termination, Customer shall promptly pay ESO’s invoice recouping such discounts.

6.3.3. Termination of this Agreement is without prejudice to any other right or remedy and shall not release a party from any liability.

6.4. Delivery of Data. If Customer requests its data within 180 days of expiration or termination of this Agreement, ESO will provide Customer its Customer Data in a searchable .pdf format. Customer acknowledges that ESO is under no obligation to retain Customer Data more than 180 days after expiration or termination of this Agreement.

7. REPRESENTATIONS AND WARRANTIES

7.1. Material Performance of Software. ESO represents and warrants that the Software will perform in material accordance with any Documentation provided by ESO.

7.2. Due Authority. Each party’s execution, delivery and performance of this Agreement and each agreement or instrument contemplated by this Agreement has been duly authorized by all necessary corporate or government action.

7.3. Customer Cooperation. Customer agrees to use current operating systems and reasonably and timely cooperate with ESO, including providing ESO reasonable access to its equipment, software and data.

8. DISCLAIMER OF WARRANTIES, EXCEPT AS OTHERWISE PROVIDED IN SECTION 7. ESO DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, TITLE, NONINFRINGEMENT, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ESO DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE (X) WILL PERFORM WITHOUT INTERRUPTION OR ERROR, OR (Y) IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7, CUSTOMER ACCEPTS THE SOFTWARE “AS IS” AND “AS AVAILABLE.”

9. CONFIDENTIALITY

9.1 “Confidential Information” refers to the following items: (a) any document marked “Confidential”; (b) any information orally designated as “Confidential” at the time of disclosure, provided the disclosing party confirms such designation in writing within five business days; (c) the Software and Documentation, whether or not designated confidential; (d) ESO’s security controls, policies, procedures, audits, or other information concerning ESO’s internal security posture; (e) any other nonpublic, sensitive information reasonably treated as trade secret or otherwise confidential; and (f) Customer Data which does not comprise PHI. Notwithstanding the foregoing, Confidential Information does not include information that: (g) is in the other party’s possession at the time of disclosure free of duty of non-disclosure; (i) is independently developed without use of or reference to Confidential Information; (ii) becomes known publicly, before or after disclosure, other than as a result of the receiving party’s improper action or inaction; (j) is approved for release in writing by the disclosing party; or (k) PHI (which shall be governed by the Business Associate Agreement rather than this Section).

9.2. Non-disclosure. Each party shall use Confidential Information of the other party solely to fulfill the terms of this Agreement (the “Purpose”). Each party shall (i) ensure that its employees or contractors are bound by confidentiality obligations no less restrictive than those contained herein, and (ii) not disclose Confidential Information to any other third party without confirmation and approval from the disclosing party. Without limiting the generality of the foregoing, the receiving party may disclose Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less reasonable care. A receiving party shall promptly notify the disclosing party of any misuse or misappropriation of Confidential Information of which it is aware.

9.3. Termination & Return. With respect to each item of Confidential Information, the obligations of nondisclosure will terminate three years after the date of disclosure; provided that, such obligations related to Confidential Information constituting ESO’s trade secrets shall continue so long as such information remains subject to trade secret protection pursuant to applicable law. Upon termination of this Agreement, a party shall return all copies of Confidential Information to the other or certify the destruction thereof.

9.4. Retention of Rights. The Agreement does not transfer ownership of Confidential Information or grant a license thereto.

9.5. Open Records and Other Laws. Notwithstanding anything in this Section to the contrary, the parties expressly acknowledge that Confidential Information may be disclosed if such Confidential Information is required to be disclosed by law, a lawful public records request, or judicial order, provided that prior to such disclosure, written notice of such required disclosure shall be given promptly and without unreasonable delay by the receiving party in order to give the disclosing party the opportunity to object to the disclosure and/or to seek a protective order. The receiving party shall reasonably cooperate in this effort. In addition, Customer accepts the Agreement solely for the purpose of completing its review and approval processes under its local rules, if applicable.

10. INSURANCE. Throughout the Term (and for a period of at least three years thereafter for any insurance written on a claims-made form) ESO shall maintain in effect the insurance coverage described below:

10.1. Commercial general liability insurance with a minimum of $1 million per occurrence and $2 million aggregate.

10.2. Commercial automobile liability insurance covering use of all non-owned and hired automobiles with a minimum limit of $1 million for bodily injury and property damage liability.

10.3. Worker’s compensation insurance and employer’s liability insurance or any alternative plan or coverage as permitted or required by applicable law, with a minimum employer’s liability limit of $1 million each accident or disease; and

10.4. Computer processor/computer professional liability insurance (a/k/a technology errors and omissions) covering the liability for financial loss due to error, omission or negligence of ESO, and privacy and network security insurance (“cyber coverage”) covering losses arising from a disclosure of confidential information (including PHI) with a combined aggregate amount of $3 million.

11. INDEMNIFICATION

11.1. IP Infringement. Subject to the limitations in Section 12, ESO shall defend and indemnify Customer from any damages, costs, liabilities, expenses (including reasonable attorney’s fees) (“Damages”) actually incurred or finally adjudicated as to any third-party claim or action alleging that the Software delivered pursuant to this Agreement infringe or misappropriate any third party’s patent, copyright, trade secret, or other intellectual property rights enforceable in the applicable jurisdiction (each, an “Indemnified Claim”). If Customer makes an Indemnified Claim under this Section or if ESO determines that an Indemnified Claim may occur, ESO shall, at its option: (a) obtain a right for Customer to continue using the Software; (b) modify such Software to make it a non-infringing equivalent or (c) replace such Software with a non-infringing equivalent. If (a), (b), or (c) above are not reasonably practicable, either party may, at its option, terminate the relevant Software Schedule, in which case ESO will refund any prepaid Fees on a pro rata basis for such Software Schedule. Notwithstanding the foregoing, ESO shall have no obligation hereunder for any claim resulting or arising from (d) Customer’s breach of this Agreement; (e) modifications made to the Software that were not performed or provided by or on behalf of ESO or the combination, operation or use by Customer (and/or any successor acting on Customer’s behalf) of the Software in connection with any other product or service other than the combination or joint use of which causes the alleged infringement.

This Section 11 states ESO’s sole and entire liability, and Customer’s sole remedy, for potential or actual intellectual property infringement by the Software.
12. LIMITATION OF LIABILITY

12.1. LIMITATION OF DAMAGES. NEITHER ESO NOR CUSTOMER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, INCLUDING CLAIMS FOR DAMAGES FOR LOST PROFITS, GOODWILL, USE OF MONEY INTERRUPTED OR IMPAIRED USE OF THE SOFTWARE, AVAILABILITY OF DATA, STOPPAGE OF WORK OR IMPAIRMENT OF OTHER ASSETS RELATING TO THIS AGREEMENT.

12.2. LIMITATION OF LIABILITY. WITH THE EXCEPTION OF SECTION 12.3 (EXCEPTIONS TO THE LIMITATION OF LIABILITY), ESO’S MAXIMUM AGGREGATE LIABILITY FOR ALL CLAIMS OF LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, SHALL NOT EXCEED THE FEES PAID BY (OR ON BEHALF OF) CUSTOMER WITHIN THE PRECEDING 12-MONTH PERIOD UNDER THE APPLICABLE SOFTWARE SCHEDULE OR SOW GIVING RISE TO THE CLAIM.

12.3. EXCEPTIONS TO LIMITATION OF LIABILITY. NOTWITHSTANDING SECTION 12.2, (A) ESO’S LIABILITY FOR CLAIMS INVOLVING ITS INDEMNIFICATION OBLIGATIONS UNDER SECTION 11.1 SHALL BE LIMITED TO $1,000,000, AND (B) ESO’S LIABILITY SHALL BE LIMITED TO THE AMOUNT OF INSURANCE COVERAGE REQUIRED BY SECTION 10 FOR THE FOLLOWING TYPES OF CLAIMS: (i) CLAIMS ARISING FROM ESO’S WILLFUL MISCONDUCT OR CRIMINAL CONDUCT; AND (ii) CLAIMS ARISING FROM A BREACH OF CONFIDENTIALITY OBLIGATIONS, INCLUDING A BREACH OF OBLIGATIONS REGARDING PROTECTED HEALTH INFORMATION.

12.4. THE FOREGOING LIMITATIONS, EXCLUSIONS, DISCLAIMERS SHALL APPLY REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT OR OTHERWISE. IN SO FAR AS APPLICABLE LAW PROHIBITS ANY LIMITATION HEREIN, THE PARTIES AGREE THAT SUCH LIMITATION SHALL BE AUTOMATICALLY MODIFIED, BUT ONLY TO THE EXTENT SO AS TO MAKE THE LIMITATION PERMITTED TO THE FULLEST EXTENT POSSIBLE UNDER SUCH LAW. THE PARTIES AGREE THAT THE LIMITATIONS SET FORTH HEREIN ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR ESO’S SOFTWARE AND SERVICES TO CUSTOMER, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSES OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES.

12.5. THIS SECTION 12 SHALL SURVIVE EXPIRATION OR TERMINATION OF THE AGREEMENT.

13. CUSTOMER DATA & PRIVACY

13.1. Ownership of Data. As between ESO and Customer, all Customer Data shall be owned by Customer.

13.2. Use of Customer Data. Unless it receives Customer’s prior written consent, ESO shall not: (a) access, process, or otherwise use Customer Data; and (b) intentionally grant any third-party access to Customer Data, including without limitation ESO’s other customers, except sub contractors that are subject to a reasonable nondisclosure agreement or authorized participants in the case of interoperable Software. Notwithstanding the foregoing, ESO may use and disclose Customer Data to fulfill its obligations under this Agreement or as required by applicable law or legal or governmental authority. ESO shall give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer’s expense.

13.3. Anonymized Data. CUSTOMER ACKNOWLEDGES AND AGREES THAT, NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, ESO MAY USE ANONYMIZED DATA FOR INTERNAL AND EXTERNAL PURPOSES (INCLUDING BENCHMARKING AND RESEARCH). PROVIDED THAT ESO WILL NOT SELL ANONYMIZED DATA TO THIRD PARTIES FOR COMMERIAL USE. WITHOUT LIMITING THE FOREGOING, ESO WILL OWN all right, title and interest in all Intellectual Property of any aggregated and de-identified reports, summations, compilations, analyses, statistics or other information derived therefrom.

13.4. Risk of Exposure. Customer acknowledges and agrees that hosting data online involves risks of unauthorized disclosure and that, in accessing and using the SaaS, Customer assumes such risks. Customer has sole responsibility for obtaining, maintaining, and securing its network connections. ESO makes no representations to Customer regarding the reliability, performance or security of any network or provider.

14. FEEDBACK RIGHTS & WORK PRODUCT

14.1. Feedback Rights. ESO does not agree to treat as confidential any Feedback that Customer provides to ESO. Nothing in this Agreement will restrict ESO’s right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensation or crediting Customer. Feedback will not constitute Confidential Information, even if it would otherwise qualify as such pursuant to Section 9 (Confidential Information).

15. GOVERNMENT PROVISIONS

15.1. Compliance with Laws. Both parties shall comply with and give all notices required by all applicable federal, state and local laws, ordinances, rules, regulations and lawful orders of any public authority bearing on use of the Software and the performance of this Agreement.

15.2. Business Associate Addendum. The parties agree to the terms of the Business Associate Addendum attached hereto as Exhibit C and incorporated herein by reference.

15.3. Equal Opportunity. The parties shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(A), and the posting requirements of 29 CFR Part 471, appendix A to subpart A, if applicable. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin.

15.4. Exclusive Parties List. ESO agrees to immediately report to Customer if an employee or contractor is listed by a federal agency as debared, excluded or otherwise ineligible for participation in federally funded health care programs.

16. PHI ACCURACY & COMPLETENESS

16.1. ESO provides the Software to allow Customer (and its respective Users) to enter, document, and disclose Customer Data, and as such, ESO gives no representations or guarantees about the accuracy or completeness of Customer Data (including PHI) entered, uploaded or disclosed through the Software.

16.2. Customer is solely responsible for any decisions or actions taken involving patient care or patient care management, whether made directly or indirectly, or actions were made or taken using information received through the Software.

17. MISCELLANEOUS

17.1. Indemnification. The parties are independent contractors. Neither party is the agent of the other, and neither party makes any representations or commitments on the other’s behalf. The parties agree that no ESO
employee or contractor is or will be considered an employee of Customer.

17.2. Notices. Notices provided under this Agreement must be in writing and delivered by (a) certified mail, return receipt requested to a party's principal place of business as forth in the recitals on page 1 of this Agreement, (b) hand delivered, (c) facsimile with receipt of a "Transmission Confirmed" acknowledgment, or (d) e-mail to a person designated in writing by the receiving party, or (e) delivery by a reputable overnight carrier service. In the case of delivery by facsimile or e-mail, the notice must be followed by a copy of the notice being delivered by a means provided in (a), (b) or (e). The notice will be deemed given on the day the notice is received.

17.3. Merger Clause. In entering into this Agreement, neither party is relying upon any representations or statements of the other that are not fully expressed in this Agreement; rather each party is relying on its own judgment and due diligence and expressly disclaims reliance upon any representation or statement not expressly set forth in this Agreement. In the event the Customer issues a purchase order, letter or any other document addressing the Software or Services to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that any such writing is for the Customer's internal purposes only, and that any terms, provisions, and conditions contained therein shall in no way modify this Agreement.

17.4. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. If a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.

17.5. Subcontracting. Except for training and implementation services related to the Software, neither party may subcontract or delegate its obligations to each other hereunder, nor may it contract with third parties to perform any of its obligations hereunder except as contemplated in this Agreement, without the other party's prior written consent.

17.6. Modifications and Amendments. This Agreement may not be amended except through a written agreement signed by authorized representatives of each party, provided that the Customer agrees that ESO may rely on informal writings (including emails) of Customer's authorized representatives to (i) terminate Software products and services and (ii) approve or ratify rate or fee increases for Software products and services then in use by Customer.

17.7. Force Majeure. No delay, failure, or default will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party’s reasonable control (collectively, "Force Majeure"). In such event, however, the delayed party must promptly provide the other party notice of the Force Majeure. The delayed party's time for performance will be excused for the duration of the Force Majeure, but if the event lasts longer than 30 days, the other party may immediately terminate the applicable Software Schedule.

17.8. Marketing: If requested by ESO, Customer agrees to reasonably cooperate with ESO's promotion and issuance of a public announcement regarding the relationship of the parties.

17.9. Waiver & Breach. Neither party will be deemed to have waived any rights under this Agreement unless it is an explicit written waiver made by an authorized representative. No waiver of a breach of this Agreement will constitute a waiver of any other breach thereof.

17.10. Survival of Terms. Unless otherwise stated, all of ESO's and Customer's respective obligations, representations and warranties under this Agreement which are not, by the express terms of this Agreement, fully to be performed while this Agreement is in effect shall survive the termination of this Agreement.

17.11. Ambiguous Terms. This Agreement will not be construed against any party by reason of its preparation.

17.12. Governing Law. This Agreement, any claim dispute or controversy hereunder (a "Dispute"); will be governed by (i) the laws of the State of Texas, or (ii) if Customer is a city, county, municipality or other governmental entity, the law of state where Customer is located, in each case foregoing without regard to its conflicts of law. The UN Convention for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply. In any Dispute, each party will bear its own attorneys' fees and costs and expressly waives any statutory right to attorneys' fees.

17.13. Bench Trial. The parties agree to waive, to the maximum extent permitted by law, any right to a jury trial with respect to any Dispute.

17.14. No Class Actions. NEITHER PARTY SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER ESO CUSTOMERS, OR PURSUE ANY CLAIM AS A REPRESENTATIVE OR CLASS ACTION OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.

17.15. Limitation Period. Neither party shall be liable for any claim brought more than two years after the cause of action for such claim first arose.

17.16. Dispute Resolution. Customer and ESO will attempt to resolve any Dispute through negotiation or by utilizing a mediator agreed to by the parties, rather than through litigation. Negotiations and mediations will be treated as confidential. If the parties are unable to reach a resolution within 30 days of notice of the Dispute to the other party, the parties may pursue all other courses of action available at law or in equity.

17.17. Technology Export. Customer shall not: (a) permit any third party to access or use the Software in violation of any U.S. law or regulation; or (b) export any software provided by ESO or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Customer shall not permit any third party to access or use the Software in, or export such software to, a country subject to a United States embargo (as of the Effective Date - Cuba, Iran, North Korea, Sudan, and Syria).

17.18. Order of Precedence. In the event of any conflict between this Agreement, Addenda or other attachments incorporated herein, the following order of precedence will govern: (1) the General Terms and Conditions; (2) any Business Associate Agreement; (3) the applicable Software Schedule or SOW, with most recent Software Schedule or SOW taking precedence over earlier ones; and (4) any ESO policy posted online, including without limitation its privacy policy. No amendments incorporated into this Agreement after execution of the General Terms and Conditions will amend such General Terms and Conditions unless it specifically states its intent to do so and cites the section or sections amended.

17.19. Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, and all such counterparts will constitute a single instrument.

17.20. Signatures. Electronic signatures on this Agreement or any Addendum (or copies of signatures sent via electronic means) are the equivalent of handwritten signatures.
IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

City of Dayton, Ohio

By: [Signature]  
City Manager

ESO Solutions, Inc.

By: [Signature]  
Title: CEO & President

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]  
City Attorney

**No Commission Action Required**
EXHIBIT A-1
SAAS SOFTWARE SCHEDULE
(Applications: ESO EHR, ESO Fire, ESO FM, FIREHOUSE Cloud; IFC Codes)

1. The SaaS subscription term shall begin 15 calendar days after the Effective Date ("SaaS Subscription Start Date"). Customer shall be deemed to have accepted the SaaS on the SaaS Subscription Start Date. The parties will make reasonable efforts to ensure that Customer is able to use the SaaS as contemplated as quickly as possible, but in no event will the SaaS Subscription Start Date be modified for implementation delays.

2. The following SaaS may be ordered under this Exhibit:
   
   2.1. ESO Electronic Health Record ("EHR") is a SaaS software application for prehospital patient documentation (https://www.esosolutions.com/software/ehr).
   
   2.2. ESO Personnel Management ("PM") is a SaaS software application for tracking personnel records, training courses and education history (http://www.esosolutions.com/software/personnelmanagement).
   
   2.3. ESO Fire is a SaaS software application for NFIRS reporting (http://www.esosolutions.com/software/fire).


4. Third-Party Payer is responsible for the following products and Fees:

<table>
<thead>
<tr>
<th>Product Name</th>
<th>Product Description</th>
<th>Quantity</th>
<th>Total Price/Discounts</th>
</tr>
</thead>
<tbody>
<tr>
<td>EHR Suite w/ CM &amp; Mobile</td>
<td>Includes Quality Management, Ad Hoc Reports, Analytics, Patient Tracker. Allows unlimited users, unlimited mobile applications live support, state and federal data reporting, ongoing weekly web training, software updates and upgrades. Fee Type: Recurring.</td>
<td>30000 Calls</td>
<td>$34,190.00</td>
</tr>
<tr>
<td>CAD Integration</td>
<td>Allows for integration of CAD data into EHR mobile and web application. Ongoing maintenance included. Additional fees from your CAD vendor may apply. Fee Type: Recurring.</td>
<td>30000 Incidents</td>
<td>$3,995.00</td>
</tr>
<tr>
<td>Cardiac Monitor</td>
<td>Unlimited cardiac monitors, allows for import of cardiac monitor data via local or cloud integration. Ongoing maintenance included. Fee Type: Recurring.</td>
<td>30000 Incidents</td>
<td>$1,865.00</td>
</tr>
<tr>
<td>EHR Billing Standard Interface</td>
<td>Allows for integration of discrete ePCR data into third-party billing software. Ongoing maintenance included. Fee Type: Recurring.</td>
<td>30000 Incidents</td>
<td>$995.00</td>
</tr>
<tr>
<td>EHR Billing Standard Interface Discount</td>
<td>Fee Type: Recurring</td>
<td></td>
<td>($995.00)</td>
</tr>
<tr>
<td>Fax</td>
<td>Allows for faxing of records. Fee Type: Recurring.</td>
<td>30000 Incidents</td>
<td>$2,700.00</td>
</tr>
<tr>
<td>EHR Training</td>
<td>Daily Rate. Fee Type: One-Time.</td>
<td>5 /Month</td>
<td>$4,000.00</td>
</tr>
<tr>
<td>EHR Training Travel Costs</td>
<td>One-time fee - covers all travel costs associated with on-site training option. Fee Type: One Time.</td>
<td>2,500 Travel Cost</td>
<td>$2,500.00</td>
</tr>
</tbody>
</table>

Customer hereby agrees to timely pay for the following products according to the schedule below:

| Unit Price: | $50,275.00 |
| Discounts:  | ($995.00)  |
| Tax:        | $0.00      |
| Total:      | $48,280.00 |
6. Except in the event there is a Third-Party Payer, the Fees above will be invoiced by ESO as follows:

6.1. Training and Training Travel Fees shall be invoiced on the Effective Date.

6.2. During the first year, 100% of the remaining Fees shall be invoiced on the Saas Subscription Start Date.

6.3. During the second year and any renewal years thereafter, 100% of the recurring Fees shall be due on the anniversary of the Saas Subscription Start Date.
EXHIBIT D

SUPPORT SERVICES ADDENDUM

1. DEFINITIONS. Capitalized terms not defined below shall have the same meaning as in the General Terms & Conditions.

1.1. "Enhancement" means a modification, addition or new release of the Software that when added to Software, materially changes its utility, efficiency, functional capability or application.

1.2. "E-mail Support" means ability to make requests for technical support assistance by e-mail at any time concerning the use of the then-current release of Software.

1.3. "Error" means an error in the Software, which significantly degrades performance of such Software as compared to ESO's then published Documentation.

1.4. "Error Correction" means the use of reasonable commercial efforts to correct Errors.

1.5. "Fix" means the repair or replacement of object code for the Software or Documentation to remedy an Error.

1.6. "Initial Response" means the first contact by a Support Representative after the incident has been logged and a ticket generated. This may include an automated email response depending on when the incident is first communicated.

1.7. "Management Escalation" means, if the initial Workaround or Fix does not resolve the Error, notification of management that such Error(s) have been reported and of steps being taken to correct such Error(s).

1.8. "Severity 1 Error" means an Error which renders the Software completely inoperative (e.g., a User cannot access the Software due to unscheduled downtime or an Outage).

1.9. "Severity 2 Error" means an Error in which Software is still operable, however, one or more significant features or functionality are unavailable (e.g., a User cannot access a core component of the Software).

1.10. "Severity 3 Error" means any other error that does not prevent a User from accessing a significant feature of the Software (e.g., User is experiencing latency in reports).

1.11. "Severity 4 Error" means any error related to Documentation or a Customer Enhancement request.

1.12. "Status Update" means if the initial Workaround or Fix cannot resolve the Error, notification of the Customer regarding the progress of the Workaround or Fix.

1.13. "Online Support" means information available through ESO's website (www.esosolutions.com), including frequently asked questions and bug reporting via Live Chat.

1.14. "Support Representative" shall be ESO employee(s) or agent(s) designated to receive Error notifications from Customer, which Customer's Administrator has been unable to resolve.

1.15. "Update" means an update or revision to Software, typically for Error Correction.

1.16. "Upgrade" means a new version or release of Software or a particular component of Software, which improves the functionality or which adds functional capabilities to the Software and is not included in an Update. Upgrades may include Enhancements.

1.17. "Workaround" means a change in the procedures followed or data supplied by Customer to avoid an Error without substantially impeding Customer's use of the Software.

2. SUPPORT SERVICES.

2.1. Customer will provide at least one administrative employee (the "Administrator" or "Administrators") who will handle all requests for first-level support from Customer's employees. ESO will provide prioritized assistance with respect to the Software. Such support is intended to be the "first line" for support and information about the Software to Customer's Employees. ESO will provide training, documentation, and materials to the Administrator to enable the Administrator to provide technical support to Customer's Users. The Administrator will notify a Support Representative of any Errors that the Administrator cannot resolve and assist ESO in information gathering.

2.2. ESO will provide Support Services consisting of (a) Error Correction(s), (b) Enhancements, (c) Updates and (d) Upgrades to the Software. ESO, in its discretion, makes these enhancements generally available to its customers without additional charge, and (e) E-mail Support, (f) Telephone Support, and (g) Online Support. ESO may use multiple forms of communication for purposes of submitting periodic status reports to Customer, including but not limited to, messages in the Software.
messages appearing upon login to the Software or other means of broadcasting Status Update(s) to multiple customers affected by the same Error, such as a customer portal.

2.3. ESO’s support desk will be staffed with competent technical consultants who are trained in and thoroughly familiar with the Software and with Customer’s applicable configuration. Telephone support and all communications will be delivered in intelligible English.

2.4. Normal business hours for ESO’s support desk are Monday through Friday 7:00 am to 7:00 pm CT. Customer will receive a call back from a Support Representative after-hours for a Severity 1 Error.

3. ERROR PRIORITY LEVELS. Customer will report all Errors to ESO via e-mail (support@essolutions.com) or by telephone (866-766-9471, option #3). ESO shall exercise commercially reasonable efforts to correct any Error reported by Customer in accordance with the priority level reasonably assigned to such Error by ESO.

3.1. Severity 1 Error. ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within four hours; (iii) initiate Management Escalation promptly; and (iv) provide Customer with a Status Update within four hours if ESO cannot resolve the Error within four hours.

3.2. Severity 2 Error. ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within eight hours; (iii) initiate Management Escalation within 48 hours if unresolved; and (iv) provide Customer with a Status Update within forty-eight hours if ESO cannot resolve the Error within forty-eight hours.

3.3. Severity 3 Error. ESO shall (i) commence Error Correction promptly; (ii) provide an Initial Response within three business days; and (iii) provide Customer with a Status Update within seven calendar days if ESO cannot resolve the Error within seven calendar days.

3.4. Severity 4 Error. ESO shall (ii) provide an Initial Response within seven calendar days.

4. CONSULTING SERVICES. If ESO reasonably believes that a problem reported by Customer is not due to an Error in the Software, ESO will so notify Customer. At that time, Customer may request ESO to proceed with a root cause analysis at Customer’s expense as set forth herein or in a separate SOW. If ESO agrees to perform the investigation on behalf of Customer, then ESO’s then-current and standard consulting rates will apply for all work performed in connection with such analysis, plus reasonable related expenses incurred. For the avoidance of doubt, Consulting Services will include customized report writing by ESO on behalf of Customer.

5. EXCLUSIONS.

5.1. ESO shall have no obligation to perform Error Corrections or otherwise provide support for; (i) Customer’s repairs, maintenance or modifications to the Software (if permitted); (ii) Customer’s misapplication or unauthorized use of the Software; (iii) altered or damaged Software not caused by ESO; (iv) any third-party software; (v) hardware issues; (vi) Customer’s breach of the Agreement; and (vii) any other causes beyond the ESO’s reasonable control.

5.2. ESO shall have no liability for any changes in Customer’s hardware or software systems that may be necessary to use the Software due to a Workarround or Fix.

5.3. ESO is not required to perform any Error Correction unless ESO can replicate such Error on its own Software and hardware or through remote access to Customer’s software and hardware.

5.4. Customer is solely responsible for its selection of hardware, and ESO shall not be responsible for the performance of such hardware even if ESO makes recommendations regarding the same.

6. MISCELLANEOUS. The parties acknowledge that from time to time ESO may update its support processes specifically addressed in this Exhibit and may do so by posting such updates to ESO’s website or otherwise notifying Customer of such updates. Customer will accept updates to ESO’s support procedures and any other terms in this Exhibit; provided however, that they do not materially decrease the level of Support Services that Customer will receive from ESO. THESE TERMS AND CONDITIONS DO NOT CONSTITUTE A PRODUCT WARRANTY. THIS EXHIBIT IS AN ADDITIONAL PART OF THE AGREEMENT AND DOES NOT CHANGE OR SUPERSEDE ANY TERM OF THE AGREEMENT EXCEPT TO THE EXTENT UNAMBIGUOUSLY CONTRARY THERETO.
EXHIBIT C
HIPAA BUSINESS ASSOCIATE ADDENDUM

Customer and ESO Solutions, Inc. ("Business Associate") agree that this HIPAA Business Associate Addendum is entered into for the benefit of Customer, which is a covered entity under the Privacy Standards ("Covered Entity").

Pursuant to the Master Subscription and License Agreement (the "Agreement") into which this HIPAA Business Associate Addendum (this "Addendum") has been incorporated, Business Associate may perform functions or activities involving the use and/or disclosure of PHI on behalf of the Covered Entity, and therefore, Business Associate may function as a business associate. Business Associate, therefore, agrees to the following terms and conditions.

1. Scope. This Addendum applies to and is hereby automatically incorporated into all present and future agreements and relationships, whether written, oral or implied, between Covered Entity and Business Associate, pursuant to which PHI is created, maintained, received or transmitted by Business Associate from or on behalf of Covered Entity in any form or medium whatsoever.

2. Definitions. For purposes of this Addendum, the terms used herein, unless otherwise defined, shall have the same meanings as used in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and any amendments or implementing regulations, (collectively "HIPAA Rules").

3. Compliance with Applicable Law. The parties acknowledge and agree that, beginning with the relevant effective date, Business Associate shall comply with its obligations under this Addendum and with all obligations of a business associate under HIPAA, HITECH, the HIPAA Rules, and other applicable laws and regulations, as they exist at the time this Addendum is executed and as they are amended, for so long as this Addendum is in place.

4. Permissible Use and Disclosure of PHI. Business Associate may use and disclose PHI as necessary to carry out its duties to a Covered Entity pursuant to the terms of the Agreement and as required by law. Business Associate may also use and disclose PHI (i) for its own proper management and administration, and (ii) to carry out its legal responsibilities. If Business Associate discloses Protected Health Information to a third party for either above reason, prior to making any such disclosure, Business Associate must obtain: (i) reasonable assurances from the receiving party that such PHI will be held confidential and be disclosed only as required by law or for the purposes for which it was disclosed to such receiving party; and (ii) an agreement from such receiving party to immediately notify Business Associate of any known breaches of the confidentiality of the PHI.

5. Limitations on Use and Disclosure of PHI. Business Associate shall not, and shall ensure that its directors, officers, employees, subcontractors, and agents do not, use or disclose PHI in any manner that is not permitted by the Agreement or that would violate Subpart E of 45 C.F.R. 164 ("Privacy Rule") if done by a Covered Entity. All uses and disclosures of, and requests by, Business Associate for PHI are subject to the minimum necessary rule of the Privacy Rule.

6. Required Safeguards to Protect PHI. Business Associate shall use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 ("Security Rule") with respect to electronic PHI, to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Addendum.

7. Reporting to Covered Entity. Business Associate shall report to the affected Covered Entity without unreasonable delay: (a) any use or disclosure of PHI not provided for by the Agreement of which it becomes aware; (b) any breach of unsecured PHI in accordance with 45 C.F.R. Subpart D of 45 C.F.R. 164 ("Breach Notification Rule"); and (c) any security incident of which it becomes aware. With regard to Security Incidents caused by or occurring to Business Associate, Business Associate shall cooperate with the Covered Entity's investigation, analysis, notification and mitigation activities, and except for Security Incidents caused by Covered Entity, shall be responsible for reasonable costs incurred by the Covered Entity for those activities. Notwithstanding the foregoing, Covered Entity acknowledges and shall be deemed to have received advance notice from Business Associate that there are routine occurrences of: (i) unsuccessful attempts to penetrate computer networks or services maintained by Business Associate; and (ii) immaterial incidents such as "pinging" or "denial of services" attacks.

8. Mitigation of Harmful Effects. Business Associate agrees to mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate in violation of the requirements of the Agreement, including, but not limited to, compliance with any state law or contractual data breach requirements.

9. Agreements by Third Parties. Business Associate shall enter into an agreement with any subcontractor of Business Associate that creates, receives, maintains or transmits PHI on behalf of Business Associate. Pursuant to such agreement, the subcontractor shall agree to be bound by the same or greater restrictions, conditions, and requirements that apply to Business Associate under this Addendum with respect to such PHI.

10. Access to PHI. Within five business days of a request by a Covered Entity for access to PHI, Business Associate shall make available to the Covered Entity such PHI for so long as such information is maintained by Business Associate in the Designated Record Set, as required by 45 C.F.R. 164.524, in the event any individual delivers directly to Business Associate a request for access to PHI. Business Associate shall, within five business days of receipt of such request, send such request to the Covered Entity.

11. Amendment of PHI. Within five business days of receipt of a request from a Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set, Business Associate shall make such amendment to the Covered Entity, or make available to the Covered Entity such PHI for so long as such information is maintained by Business Associate in the Designated Record Set, as required by 45 C.F.R. 164.526. In the event any individual delivers directly to Business Associate a request for amendment to PHI, Business Associate shall, within five business days of receipt of such request, forward such request to the Covered Entity.

12. Documentation of Disclosures. Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528 and HITECH.
13. **Accounting of Disclosures.** Within five business days of notice by a Covered Entity to Business Associate that it has received a request for an accounting of disclosures of PHI, Business Associate shall make available to a Covered Entity information to permit the Covered Entity to respond to the request for an accounting of disclosures of PHI, as required by 45 C.F.R. 164.528 and HITECH.

14. **Other Obligations.** To the extent that Business Associate is to carry out one or more of a Covered Entity’s obligations under the Privacy Rule, Business Associate shall comply with such requirements that apply to the Covered Entity in the performance of such obligations.

15. **Judicial and Administrative Proceedings.** In the event Business Associate receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, the affected Covered Entity shall have the right to control Business Associate’s response to such request, provided that such control does not have an adverse impact on Business Associate’s compliance with existing laws. Business Associate shall notify the Covered Entity of the request as soon as reasonably practicable, but in any event within seven business days of receipt of such request.

16. **Availability of Books and Records.** Business Associate hereby agrees to make its internal practices, books, and records available to the Secretary of the Department of Health and Human Services for purposes of determining compliance with the HIPAA Rules.

17. **Breach of Contract by Business Associate.** In addition to any other rights a party may have in the Agreement, this Addendum or by operation of law or in equity, either party may: i) immediately terminate the Agreement if the other party has violated a material term of this Addendum; or ii) at the non-breaching party’s option, permit the breaching party to cure or end any such violation within the time specified by the non-breaching party. The non-breaching party’s option to have cured a breach of this Addendum shall not be construed as a waiver of any other rights the non-breaching party has in the Agreement, this Addendum or by operation of law or in equity.

18. **Effect of Termination of Agreement.** Upon the termination of the Agreement or this Addendum for any reason, Business Associate shall return to a Covered Entity or, at the Covered Entity’s direction, destroy all PHI received from the Covered Entity that Business Associate maintains in any form, recorded on any medium, or stored in any storage system. This provision shall apply to PHI that is in the possession of Business Associate, subcontractors, and agents of Business Associate. Business Associate shall retain no copies of the PHI. Business Associate shall remain bound by the provisions of this Addendum, even after termination of the Agreement or Addendum, until such time as all PHI has been returned or otherwise destroyed as provided in this Section. For the avoidance of doubt, de-identified Customer Data shall not be subject to this provision.

19. **Injunctive Relief.** Business Associate stipulates that its unauthorized use or disclosure of PHI while performing services pursuant to this Addendum would cause irreparable harm to a Covered Entity, and in such event, the Covered Entity shall be entitled to institute proceedings in any court of competent jurisdiction to obtain damages and injunctive relief.

20. **Owner of PHI.** Under no circumstances shall Business Associate be deemed in any respect to be the owner of any PHI created or received by Business Associate on behalf of a Covered Entity.

21. **Safeguards and Appropriate Use of Protected Health Information.** Covered Entity is responsible for implementing appropriate privacy and security safeguards to protect its PHI in compliance with HIPAA. Without limitation, it is Covered Entity’s obligation to:

   21.1. Not include PHI in information Covered Entity submits to technical support personnel through a technical support request or to community support forums. In addition, Business Associate does not act as, or have the obligations of a Business Associate under the HIPAA Rules with respect to Customer Data once it is sent to or from Covered Entity outside ESO’s Software over the public Internet; and

   21.2. Implement privacy and security safeguards in the systems, applications, and software Covered Entity controls, configures and connects to ESO’s Software.

22. **Third Party Rights.** The terms of this Addendum do not grant any rights to any parties other than Business Associate and the Covered Entity.

23. **Signatures.** The signatures to the Agreement (or the document evidencing the parties’ adoption thereof) indicate agreement hereto and shall be deemed signatures hereto, whether manual, electronic or facsimile.
City Manager’s Report

From 6480 - PW/Property Management

Date December 22, 2021

Expense Type Service Agreement

Total Amount $531,120.00 thru 12/31/2026

Supplier, Vendor, Company, Individual

Name FlashParking, Inc. dba Klever Logic, Inc.

Address 3081 S. Capital of Texas Highway

Suite 250

Austin, Texas 78704

Fund Source(s) Fund Code(s) Fund Amount(s)

Facility Improvements 40003-6480-1425-54 $454,020.00

General Fund 10000-6480-1158-54 $77,100.00

Includes Revenue to the City Yes ☑ No ☐

Affirmative Action Program Yes ☑ No ☐ N/A

Description

Service Agreement for Municipal and Oregon Parking Garage Equipment

The Department of Public Works request permission to enter into a Service Agreement with FlashParking, Inc. dba Klever Logic, Inc. in the amount of $531,120.00 to remove and replace ticketing and gate equipment at the Municipal and Oregon Parking Garages. FlashParking, Inc. dba Klever Logic, Inc. was selected based upon their pricing in the NCPA (National Cooperative Purchasing Alliance) Contract #05-60.

The installation of the equipment for this project is $454,020.00 and is being fully funded from the Facility Improvements Fund. Starting in 2022 and for each year thereafter, the annual software expenses shall not exceed $15,420.00 totaling $77,100.00 and is being fully funded from the General Fund. This annual software expense is required to ensure the ticketing gate system remains up to date with the latest software updates, firmware updates, and Payment Card Industry (“PCI”) compliance updates.

This Agreement shall commence upon execution and shall have an initial term which expires on December 31, 2026, unless terminated earlier. This Agreement has a renewable option for five (5) additional twelve (12) month terms.

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

Two Certificate of Funds for 2022 are attached. One in the amount of $454,020.00 for the Capital Fund and one in the amount of $15,040.00 for the General Fund.

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 1/2019
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

New Contract

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<td>Initial Certificate of Funds</td>
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Contract Start Date: Upon execution
Expiration Date: 12/31/2026
Original Commission Approval: $454,020.00
Initial Encumbrance: $454,020.00
Remaining Commission Approval: $0

Original CT/CF Increase Encumbrance: $0
Decrease Encumbrance: $0
Remaining Commission Approval: $0

Amount: $454,020.00

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Vendor Name: FlashParking, Inc. dba Klever Logic, Inc.
Vendor Address: 3081 S. Capital of Texas Highway Suite 250 Austin Texas 78704
Federal ID: 451867889
Commodity Code: 91675
Purpose: Installation of ticketing and gate equipment at Municipal and Oregon Parking garages

Contact Person: Chakan Robinson
Public Works Property Management Department Division: 12/10/2021 Date
Originating Department Director's Signature:

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: 12/14/21 Date
OF Prepared to: 12/14/2021 Date

CT21-3146

October 16, 2021
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

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Attach additional pages for more FOAPALS

Vendor Name: FlashParking, Inc. dba Klever Logic, Inc.
Vendor Address: 3081 S. Capital of Texas Highway Suite 250 Austin Texas 78704
Federal ID: 451867889
Commodity Code: 91875
Purpose: Annual software expenses for new ticketing and gate equipment at Municipal and Oregon Parking garages.

Contact Person: Chatan Robinson
Public Works/Property Management
Department/Division
Date: 12/13/2021

Originating Department Director’s Signature: [Signature]

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: [Signature]
Date: 12/14/21

CF Prepared by: [Signature]
Date: 12/14/21

Finance Department

October 18, 2
EQUIPMENT PURCHASE AND SERVICES AGREEMENT

This Equipment Purchase and Services Agreement (this “Agreement”) is entered into as of __________ (the “Effective Date”), by and between FlashParking, Inc., a Delaware corporation, whose principal place of business is 3801 S. Capital of Texas Highway, Suite 250 Austin, TX 78704 (“FlashParking”) and the City of Dayton, whose principal place of business is 101 W Third Street Dayton, OH 45402 (“Customer”). This Agreement sets forth the terms and conditions governing Customer’s acquisition of parking management systems and services from FlashParking. Each of Customer and FlashParking may be referred to as a “Party”, and together as the “Parties.”

1. DEFINITIONS. Certain capitalized terms in the Agreement have the meanings set forth below. Other terms used in this Agreement but not defined in this Section are defined elsewhere within the Agreement.

(a) “Affiliate” means an entity that controls, is controlled by, or is under common control with a Party to this Agreement. “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and operating policies of an entity: (i) through ownership of fifty percent (50%) or more of the voting or equity securities of such entity; or (ii) pursuant to a contractual agreement with other shareholders or members. Customer’s rights in this Agreement related to an Affiliate shall continue only for so long as such Affiliation continues to exist.

(b) “Authorized Users” means those employees and contractors of Customer who are authorized to use the System by FlashParking, for whom Customer has paid the applicable fees, and who have agreed to the Terms of Use.

(c) “Confidential Information” means any non-public information disclosed by one Party to the other Party in connection with this Agreement (including the terms of this Agreement, and any business, technical, marketing, financial, supplier, and personnel information.

(d) “Equipment” means any gate equipment, ticket dispensers, scanners, RFID readers and other equipment and accessories to be delivered to Customer as specified in Schedule A to this Agreement and any additional Schedules entered into by the Parties from time to time.

(e) “Feedback” means collectively, suggestions, ideas, feedback, reports, error identifications or other information related to the System or Services or Customer’s use and evaluation thereof.

(f) “Improvements” means error corrections, enhancements, extensions, modifications, and new releases to the Software. Improvements constitute Software and are licensed under the terms of this Agreement.

(g) “Initial Order” means the initial purchase commitment of Equipment and Services made by Customer through the execution of this Agreement and further detailed in Schedule A.

(h) “Schedules” means written documents which contain details regarding a Customer order, a description of the Systems or Services to be provided by FlashParking, applicable pricing.
and/or other terms, as applicable. Initial Schedules entered into by the Parties are attached hereto. Additional Schedules entered into hereafter must be signed by both Parties to be effective and shall amend this Agreement.

(i) "Services" means, collectively, the Installation Services, Commissioning Services, Professional Services, and Subscription Services. FlashParking may subcontract a Service, or any part of it, to subcontractors selected by FlashParking, who shall be required to comply with this Agreement and for whom FlashParking is responsible.

(ii) "Installation Services" means those installation, electrical, cabling, and related services required to place the Systems in service at Customer’s sites in advance of Commissioning Services and are further described in Schedule A. Such services may be provided by FlashParking, the Customer, or a third party contractor to the Customer as set forth in such Schedule.

(iii) "Commissioning Services" means those final inspection, configuration, start-up, testing and enrollment services required to bring the System into full operation including confirming appropriate interface/communications with the FlashParking data center(s) as further described in Schedule A.

(iv) "Professional Services" means the consulting, administrative, and technical services provided by FlashParking to Customer as described in Schedules entered into from time to time by the Parties. There are no Professional Services provided hereunder unless expressly specified in a Professional Services Schedule.

(j) "Software" means any software code contained within the Equipment or used by FlashParking in the delivery of any of the Services.

(k) "Specifications" means the functional, performance, operational, compatibility, and other parameters and characteristics of a System as described in any system manuals provided by FlashParking to Customer.

(l) "System" means any configuration of Equipment and Software ordered by Customer initially as specified in a Schedule hereto and any changes to such configuration as specified in additional Schedules to this Agreement entered into thereafter by Customer and FlashParking.

(m) "Terms of Use" means those terms and conditions which apply to Customer’s use of the System and Services, as posted on www.FlashParking.com or linked through any mobile application used to access the Subscription Services, as such terms may be updated from time to time.
2. **PROVISION OF SYSTEMS AND SERVICES; SCOPE OF USE.**

2.1 **Ordering Process.** Customer’s Initial Order of Systems, Services, and scope of work is specified on Schedule A. During the Term, Customer may order additional Systems from FlashParking with terms consistent with those set forth in this Agreement. All orders are subject to acceptance by FlashParking in its sole discretion.

2.2 **Scope of Use.** Customer, including its Affiliates, shall use the Systems and Services solely in the operation of its business. Customer agrees that all such use shall be in the manner described in the System Specifications in order to ensure conformance with any applicable warranties, regulations, or health/safety codes. Use of Subscription Services is governed by the Terms of Use. Customer agrees to accept all mandatory Software Improvements. Charges may apply for Improvements other than mandatory Improvements.

3. **DELIVERY; INSTALLATION**

3.1 **Delivery; Risk of Loss.** FlashParking shall arrange, with Customer’s full cooperation as requested by FlashParking and at Customer’s cost, the delivery of Equipment to the Customer facility where it is to be installed. The method of shipment and carrier shall be selected by FlashParking unless Customer has specified in writing a method of shipment and carrier prior to shipment. If FlashParking selects the carrier, upon delivery at the Customer-designated facility, the title to and the risk of loss for the Equipment shall pass to Customer and, thereafter, the risk of loss for the Equipment shall be borne by Customer. If Customer elects to specify the carrier, title to and the risk of loss for the Equipment shall pass to Customer upon consignment to the carrier and, thereafter, the risk of loss for the Equipment shall be borne by Customer. It is recommended, since Customer bears the risk of loss or damage of the Equipment on-site, that Customer provide a secure, weather-controlled storage facility to store the Equipment prior to its installation.

3.2 **Installation.** The Parties shall cooperate to provide Installation Services of each System in a timely manner. In most cases, FlashParking shall provide the Installation Services as specified on Schedule A. If the Customer, or a third-party contractor to the Customer, provides the Installation Services: (a) FlashParking shall have no obligation respecting and shall bear no risk associated with, the Installation Services and (b) Customer warrants that the Installation Services will be and are consistent with FlashParking Specifications and all documentation, requirements, and procedures made available to Customer. In all cases, regardless of who provides the Installation Services, the cost of obtaining all required local electrical/site/construction licenses, permissions, and permits, necessary to allow the installation to lawfully proceed shall be passed along to the Customer.

3.3 **Commissioning.** After the completion of the Installation Services, FlashParking will provide Commissioning Services in accordance with its standard procedures to confirm the System operates in substantial conformance with the Specifications. Commissioning failures caused by FlashParking’s installation or Equipment shall be rectified at FlashParking’s cost. Failures caused by or substantially contributed to by Customer’s installation (or by its selected contractor’s installation) shall be rectified by FlashParking, at Customer’s sole expense, billed to Customer at FlashParking’s then-standard commercial time and materials rates for all such
services, including travel and per diem expenses ("T&M Rate"), and shall be payable to FlashParking within fifteen (15) days of invoice.

3.4 **Spare Equipment Parts; Discontinuance.** FlashParking will use commercially reasonable efforts to stock spare Equipment parts and make them available for Customer’s purchase. FlashParking will provide Customer with current pricing information upon request. FlashParking may, from time to time, withdraw Equipment from availability.

4. **Subscription Services.**

4.1 **Use of Subscription Services.** During such period as Customer is compliant with this Agreement, FlashParking will provide the Subscription Services for all (but not less than all) of the Systems installed in Customer facilities on a 24/7 basis via FlashParking’s Subscription data system. Use of Subscription Services is governed by the Terms of Use. In the event that Customer elects to stop receiving Subscription Services for a period of time, FlashParking has no obligation to provide such Services for future periods, and if such Services are provided, they may be on different terms.

4.2 **Service Level Commitment; Force Majeure Events.**

(a) Customer acknowledges and agrees that the Subscription Services may be unavailable from time to time for a number of reasons, including; (i) scheduled periodic maintenance procedures or repairs which FlashParking may undertake from time to time ("Scheduled Maintenance"), or (ii) causes beyond FlashParking’s reasonable control or which are not reasonably foreseeable by FlashParking ("Force Majeure Events"), including natural disasters and adverse weather events, acts of God, interruption or failure of telecommunication or digital transmission links, vandalism of Equipment, hostile network attacks, network congestion, third party acts, accidents which impair any Equipment, acts of terrorism, war (declared or undeclared), non-performance by vendors, or other failures outside of FlashParking’s reasonable control.

(b) Subject to the terms and conditions of this Agreement, FlashParking shall use commercially reasonable efforts to provide the Services on an uninterrupted basis, 24 hours a day, seven days a week, with 99.5% availability, excluding downtime due to Scheduled Maintenance and Force Majeure Events. Unavailability of the Services shall be measured over a calendar month and based upon the total downtime of the Services hereunder, excluding unavailability of the Services due to Scheduled Maintenance and Force Majeure Events (collectively, "Downtime"). Downtime shall exist when Customer is unable to use the Services as set forth in this Agreement or an applicable statement of work and such failure is recorded in FlashParking’s trouble ticket system or FlashParking is notified by Customer of such failure. Downtime shall be measured beginning when it is recorded in FlashParking’s trouble ticket system or FlashParking is notified by Customer, whichever is earlier, until the time FlashParking confirms that the affected Services are operational. Upon Customer’s request and reasonable notice, FlashParking shall provide measurements of Downtime to Customer. If FlashParking fails to meet the service level commitment set forth in this Section and Customer provides FlashParking with a written request within five (5) business days of the last day of the calendar month in which such
Downtime occurred, FlashParking shall provide a fee credit to Customer’s account equal to 5% of Customer’s monthly fees for the affected Services (i.e., prorated if only a portion of the System was unavailable) for each cumulative full hour of Downtime during the applicable month, up to the maximum of the total monthly Subscription Service fees charged by FlashParking to Customer for the affected Services during the applicable month. This Section sets forth Customer’s sole and exclusive remedy for Equipment and/or Software failures and/or interruption of the Services of any kind whatsoever.

(c) Notwithstanding anything herein to the contrary, FlashParking shall take commercially reasonable measures, including failover, backup, and security measures that meet or exceed industry standards, to reduce, protect against, and mitigate the effects of Downtime, and FlashParking shall use commercially reasonable efforts not to perform Scheduled Maintenance during (a) Customer’s normal business hours (for entities which have business hours up to 9 hours daily) or (b) Customer’s peak business hours (for entities which have 24/7 operating hours or hours more extensive than those set forth above as standard hours), to the extent such hours or peak times have been communicated in advance in writing to FlashParking. Peak times stipulated by Customer may include peak weekend or holiday periods.

(d) Force Majeure. Neither Party shall be liable for non-performance or delay, other than the payment of fees due hereunder, due in whole or in part to any Force Majeure Event. In the event a Party is hindered or prevented from performing hereunder due to a Force Majeure Event, such Party shall notify the other Party of the Force Majeure Event and the extent of its suspension as soon as reasonably practicable. Failure to give notice as timely as practicable under the circumstances shall result in the forfeiture of a Party’s right to suspend its obligations hereunder. If a Force Majeure Event prevents, hinders, or delays performance of a Party’s obligations hereunder for more than 30 days, the Party not prevented from performing may, at its sole option, terminate this Agreement upon notice to the other Party.

5. INSTALLATION, COMMISSIONING AND PROFESSIONAL SERVICES. FlashParking makes available Services to Customer as follows:

5.1 Professional Services. Customer may request Professional Services; FlashParking will provide Customer with a statement of work describing the Services to be supplied. Each statement of work may also set forth, as applicable, objectives to be accomplished; assumptions upon which the statement of work is based; the responsibilities of the Parties; a description of any works of authorship (other than the Software) to be delivered to Customer (“Work Product”); a description of the completion criteria, if any (“Completion Criteria”); the technical and management resources required to complete the Services; an estimated schedule (including commencement date and duration of Services); pricing and payment terms to provide the Services; and other applicable information. If an estimated timeframe is included, each Party agrees to make reasonable efforts to carry out its responsibilities according to that timeframe. For purposes of clarity, in the absence of a statement of work expressly dealing with Professional Services, no Services provided by FlashParking shall be deemed Professional Services and to the extent that any Work Product is created or deemed to be created, such Work Product belongs solely and exclusively and for all purposes to FlashParking.

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5.2 **Acceptance of the Professional, Installation Services and Commissioning Services.** If the statement of work contains Completion Criteria, Customer agrees to accept the Services performed under such statement of work if they meet the applicable Completion Criteria. Acceptance shall be deemed to occur unless Customer notifies FlashParking in writing of any material non-conformities of the Services with the applicable Completion Criteria (if applicable, or with this Agreement otherwise) within ten (10) business days after FlashParking has provided such Services (or if there are separate discrete sub-components/deliverables of such Services, and FlashParking requests approval of such deliverables, within ten (10) business days after providing each such deliverable/subcomponent) to Customer ("Acceptance Period"). In such event, Customer must have a reasonable basis for its objection, and shall provide sufficient documentation to enable FlashParking to understand the reason such Services are non-conforming, including pertinent details. FlashParking shall use commercially reasonable efforts to correct such non-conformities and make such correction available to Customer for acceptance as provided above. Notwithstanding the foregoing, acceptance shall also be deemed to occur if the Services are put to productive use on behalf of or by Customer. For all other statements of work, acceptance shall be deemed to occur upon completion of the Services described in such statements of work.

5.3 **Modifications to the Professional, Installation and Commissioning Services.** Either Party may request changes to the Professional and Installation Services to be provided under a statement of work (a "Change Order"). Any such change may affect the charges, estimated timeframe, or other terms. Once the Parties agree in principle to a Change Order, FlashParking will prepare a written description of the agreed-upon change which must be signed by both Parties before it is binding on the Parties; executed change orders will amend this Agreement. While the Parties are discussing a Change Order request, FlashParking shall continue to work in accordance with the existing statements of work.

5.4 **Training.** FlashParking shall provide initial training on the proper use of the System and Services to the Designated Representative (defined below) and to such other Customer representatives as may be agreed to by the Parties from time to time (additional training may incur a fee). FlashParking shall provide Customer with training materials and updates thereto for the System and the Services as FlashParking reasonably deems necessary and appropriate from time to time. Training may be provided at FlashParking’s location, on-site, electronically, telephonically, or through other mechanisms, as determined in its sole discretion by FlashParking.

6. **ADDITIONAL CUSTOMER RESPONSIBILITIES.**

6.1 **Designated Representative.** Customer shall provide FlashParking with the name and contact information of the individual whom Customer assigns to manage the Services and interface with FlashParking regarding FlashParking’s provision of Subscription Services ("Designated Representative"). Customer shall notify FlashParking promptly with any changes to such Designated Representative. Each Designated Representative shall be knowledgeable regarding the Subscription Services and empowered to make decisions related thereto.

6.2 **Additional Responsibilities of Customer.** Customer agrees to provide FlashParking (including its agents and contractors) with all reasonable access to Customer facilities that is required for the efficient and timely installation of the Systems and provision of the Services, and with cooperation in all reasonable ways in respect to installation, commissioning,
and the ongoing provision of Services. In addition, Customer agrees: (a) to arrange connectivity
to the Systems and to complete the implementation and set-up process as specified by FlashParking
at Customer’s sole expense; (b) to obtain access to the Internet at Customer’s sole expense; (c) that
it is entirely responsible for maintaining the confidentiality of any passwords and account
information required for access to the Subscription Services, and for all acts that occur in
connection with Customer’s account; (d) to immediately notify FlashParking of any unauthorized
use of Customer’s account, breach of security, or loss or theft of user names or passwords; (e) that
access to and use of the Subscription Services is limited to use by Authorized Users who have
agreed to be bound by the Terms of Use and for which applicable fees have been paid; and (f) that
such use does not include the right to resell or sublicense such Services. Customer further agrees
to abide by all applicable laws and regulations, and not to use Subscription Services for any
purpose that is unlawful, or that is not contemplated by or that is prohibited by this Agreement.
Without limitation, Customer agrees that all of the following are prohibited: altering or modifying
Services, and disassembling, decompiling, or reverse engineering (except to the extent it is
unlawful in any jurisdiction to prohibit same) any Software provided or available in connection
with the Subscription Services.

6.3 Access by Employees and Contractors. Customer acknowledges that online
access to the Systems and use of the Subscription Services by Customer, and Customer employees
and contractors, is governed by the Terms of Use and that only Authorized Users shall be eligible
and entitled to access or use the Systems or Services.

7. PRICES AND PAYMENT TERMS

7.1 Prices. Customer agrees to pay FlashParking as follows:

(a) Initial Order. The pricing for Customer’s initial Systems and Services order
is set forth in Schedule A to this Agreement.

(b) Subsequent Orders. For orders placed after the initial order, including for
new Equipment, spare Equipment parts, other Services (including Professional Services),
and Improvements, Customer shall pay FlashParking as set forth in the applicable
Schedule, Agreement addenda, invoice, or statement of work.

7.2 Travel and Expenses. Unless Travel and Expenses are itemized in Schedule A,
Customer agrees to reimburse FlashParking for all miscellaneous out-of-pocket expenses incurred
by FlashParking in performing the Services as well as for reasonable travel expenses, provided
such expenses have been pre-approved by Customer (which approval shall not be unreasonably
withheld, conditioned, or delayed).

7.3 Payments. Customer shall pay FlashParking the fees and other amounts set
forth on the applicable Schedule. All fees are due and payable in U.S. dollars. FlashParking shall
issue an invoice to Customer in accordance with the applicable Schedule or statement of work, or
if not addressed therein, on a monthly basis for monthly Services. Customer shall pay each correct
and undisputed invoice within 15 days of the invoice date. Invoices shall be deemed correct and
acceptable to Customer unless Customer notifies FlashParking of disputed items within ten (10)
days of Customer’s receipt of such invoices. In order to withhold disputed amounts, all of the
following conditions must be met: (a) the dispute must have a reasonable basis; (b) the reason for the dispute must be set forth in writing to FlashParking within the aforesaid time frame with sufficient specificity to allow FlashParking to understand and attempt to remedy the issue; and (c) the undisputed portion of the invoice must be timely paid. The failure of FlashParking to provide an invoice does not relieve the Customer of its responsibility to pay for the Services provided. Once the dispute is resolved, if resolved in favor of FlashParking, the unpaid amount must be paid within fifteen (15) days and interest shall accrue from the time the invoice was originally due. Customer may pay invoices via wire transfer, check or ACH transfer. Monthly Subscription Services may also be paid by credit card. Notwithstanding the foregoing, FlashParking expressly reserves the right, in its sole discretion, to require a specific method of payment in the event Customer is delinquent in its payments due hereunder. If Customer’s account becomes past due, in addition to other remedies available to FlashParking, FlashParking may refuse to provide any Systems not yet provided, may suspend (without losing the right to terminate) any Services until Customer’s account is current, may terminate this Agreement if the default is not timely cured, and/or may change the method and timing of payments (including accelerating all future amounts due from Customer under the applicable order). In addition, interest shall accrue at the rate of one and one-half percent (1.5%) per month or the highest rate permitted by law, whichever is lower, from the original due date until paid. If Customer’s account becomes more than 30 days past due, FlashParking may in addition to its other rights hereunder, file a mechanic’s lien upon the Equipment or take collection/legal actions. Customer is liable for all attorney’s fees, collection costs, and other costs associated with FlashParking’s attempts to receive payment to which it is due.

7.4 Taxes. Amounts quoted by FlashParking do not include any applicable taxes or similar fees now in force or enacted in the future resulting from any transaction under the Agreement unless otherwise expressly stated. Where practicable, applicable taxes and fees shall be added to the invoice and Customer is responsible for all such amounts and shall pay them in full. Although FlashParking will endeavor to list applicable taxes and fees on the invoice, its failure to do so does not affect Customer’s obligation to pay such taxes. If Customer is entitled to an exemption from any applicable taxes, Customer shall provide FlashParking with a valid exemption certificate. FlashParking will honor any valid exemption certificate provided in accordance with the foregoing sentence to the extent it applies on a going-forward basis starting fifteen (15) days after FlashParking’s receipt of such valid exemption certificate.

8. Warranty; Warranty Limitations

8.1 Warranty.

(a) Equipment. FlashParking agrees to provide a basic one-year warranty (the “Warranty Period”) on all Equipment and Equipment components for each System, running from the date of installation unless otherwise specified in Schedule A. Subject to the limitations set forth in Section 8.2 hereof, if the Equipment fails to perform as warranted, and Customer reports such failure to FlashParking in writing promptly following the appearance of such failure, FlashParking will provide replacement Equipment (or relevant component thereof) as soon as practicable at no additional cost to Customer during the Warranty Period and will assist the
Customer remotely in replacing the defective Equipment (or component). Customer agrees to use commercially reasonable efforts to assist FlashParking in troubleshooting such failure remotely. If FlashParking is unsuccessful in resolving the issue remotely, FlashParking will dispatch a technician to remedy such failure at no cost to Customer. Any such repair and/or replacement parts will carry a warranty equal to the greater of (a) the remaining balance of the initial Warranty Period on the defective item or (b) ninety (90) days.

(b) Other Services. FlashParking warrants that it shall perform Installation and Professional Services in a workmanlike manner consistent with local industry standards. If FlashParking fails to do so, and Customer reports such failure to FlashParking within ten (10) days after the performance of such Services, FlashParking shall re-perform the non-conforming portion of the Services to meet such warranty.

Payment Card Industry (“PCI”) Compliance,

(c) PCI. FlashParking represents and warrants that, for the entirety of any Agreement resulting from this solicitation that involves processing credit and/or debit card revenue transactions on behalf of the City of Dayton that the solution is clearly defined to warrant the following:

1. All computer software, hardware, firmware, payment card processing policies, procedures and related services proposed to be utilized to process City of Dayton revenue transactions shall be:
   
   a. Completed by a qualified professional payment card processing firm acceptable and approved by the City of Dayton; and,


2. FlashParking shall provide and agrees to maintain the PCI compliance reporting Attestation of Compliance (“AOC”) Form(s) in its/their latest version(s), or within the year of records as requested and/or in an annual transmittal to the City of Dayton. (https://www.pcisecuritystandards.org/documents/PCI-DSS-v3_2-AOC-Merchant.docx?agreement=true&time=1493826893795 or https://www.pcisecuritystandards.org/documents/PCI-DSS-v3-AOC-Officer.docx?agreement=true&time=1493826893795).

3. FlashParking, reviewed, understands and hereby acknowledges and affirms that its offer to the City of Dayton satisfies these requirements and shall continue to satisfy these requirements for the duration of any resulting Agreement; current and relevant AOC’s are attached to demonstrate satisfaction of these requirements at the time of offer to the City of Dayton.

8.2 Limitation. The warranties set forth above do not apply to: (a) Equipment which is not defective or which does not fail to perform; (b) failure of any Equipment that occurs outside 3280183.3
of the Warranty Period; (c) any third party equipment or product that is not installed by FlashParking; (d) any malfunction/damage resulting from the use of the Systems in conjunction with accessories or other products or ancillary or peripheral equipment not provided or expressly authorized in writing by FlashParking; (e) any Equipment which is provided as a trial or demo or at no cost to Customer; (f) Equipment that has been subject to: (i) any modifications, tampering, alterations, repair, or servicing by any party other than FlashParking or FlashParking’s authorized representatives; (ii) handling, storage, installation, testing, maintenance, or use not in accordance with the applicable Documentation; (iii) abuse, negligence, neglect, accidents, or misuse; (iv) cosmetic damage only; (v) normal wear and tear; (vi) any breakdowns, fluctuations, or interruptions in electric power or the telecommunications/internet provider network; or (vii) any acts of nature, including fire, flood, tornado, earthquake, hurricane, excessive snow, lightning, riot, insurrection, act of war or other disaster; (h) Equipment that has not had normal maintenance as would be expected of such equipment, including but not limited to cleaning of components and keeping electrical connections debris free; (i) damage caused by vandalism, civil or military authority, civil disturbance, terrorist acts, war or strikes; (j) Equipment that has had its identification labels removed or altered; or (k) issues associated with the failure to timely implement solutions, error corrections, and updates supplied by FlashParking to a System. To the extent FlashParking provides warranty or support services for troubleshooting or repairing any issue caused by any of the foregoing, FlashParking may impose charges at its T&M Rate for all such services. FlashParking will notify Customer as soon as the billable status of the warranty request is determined.

8.3 Disclaimers. EXCEPT FOR THE LIMITED WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION, AND TO THE EXTENT ALLOWED BY APPLICABLE LAW, FLASHPARKING MAKES NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIMS ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AS WELL AS ANY WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, USAGE OR TRADE PRACTICE. The remedies set forth in this Section 8 represent FlashParking’s sole liability for any non-conforming Services and defects in the System, and Customer’s sole remedy for such defects.

9. INTELLECTUAL PROPERTY RIGHTS OWNERSHIP; USE OF INFORMATION.

9.1 Intellectual Property Rights. Use of the Systems and Services includes limited use rights to the Software only while this Agreement is in effect. FlashParking owns all right, title, and interest in the Services, Software, and any Work Product, and all related technology, information, and documents, including all intellectual property and proprietary rights in connection therewith. FlashParking also retains ownership of all FlashParking’s copyrights and trademarks. Except as expressly set forth in this Agreement, no rights or implied licenses in such intellectual property are granted to Customer by this Agreement, and FlashParking reserves all rights not explicitly granted to Customer under this Agreement. Any attempt to disassemble, decompile, create derivative works of, reverse engineer, modify, sublicense, or distribute the Software or to use it for purposes other than in connection with the Systems and Services as specified herein, is strictly prohibited (except in the case of reverse engineering, where and to the extent that, such restriction is contrary to applicable law). If you provide FlashParking with any Feedback, you provide such Feedback volitionally and of your own choosing (i.e., you are not required to provide
Feedback), and FlashParking has the right to use, modify, sell, transfer, assign, distribute, and create derivative works from, such Feedback, for any and all purposes without compensation or attribution to Customer, in perpetuity and without any restrictions.

9.2 LPR Data.

(a) Customer’s Use of LPR Data. Customer acknowledges and agrees that Customer shall be responsible for compliance with all laws regarding the collection, storage, use, management and deletion of all license plate recognition and other data or information ("LPR Data") collected through the use of the System and Services and Equipment.

(b) Customer’s Obligations with Respect to LPR Data. Customer acknowledges that, as between FlashParking and Customer, Customer shall be deemed the end user and/or operator of the Equipment and the entity responsible for the collection, storage, use, management and deletion of all LPR Data. Accordingly, if and to the extent required by applicable law, Customer shall:

(i) Maintain reasonable security procedures and practices, including operational, administrative, technical, and physical safeguards, to protect LPR Data from unauthorized access, destruction, use, modification, or disclosure; and

(ii) Implement a usage and privacy policy in order to ensure that the access, use, sharing, and dissemination of LPR Data is consistent with respect for individuals’ privacy and civil liberties, including (A) the authorized purposes for accessing and using LPR Data; (B) a description of the job title or other designation of the employees and independent contractors who are authorized to access and use LPR Data, including the training requirements necessary for those authorized employees and independent contractors; (C) a description of how the LPR Data will be monitored to ensure the security of the information accessed or used, and compliance with all applicable privacy laws and a process for periodic system audits; (D) the purposes of, process for, and restrictions on, the sale, sharing, or transfer of LPR Data to third parties; (E) the title of the official custodian, or owner, of the LPR Data responsible for implementing this section; (F) description of the reasonable measures that will be used to ensure the accuracy of LPR Data and correct data errors; and (G) the length of time LPR Data will be retained, and the process Customer will utilize to determine if and when to destroy retained LPR Data.

(c) Providing Access to LPR Data. When accessing, or providing access to, LPR Data, Customer agrees to: (i) maintain a record of that access, including (A) the date and time LPR Data is accessed; (B) the license plate number or other data elements used in the query; (C) the username of the person who accesses the LPR Data, and, as applicable, the organization or entity with whom the person is affiliated; and (D) the purpose for accessing the LPR Data; and (ii) require that LPR Data only be used for the authorized purposes described in Section 9.2(b)(ii).
(d) **FlashParking’s License to LPR Data.** Customer hereby grants FlashParking a nonexclusive license to use the LPR Data to perform its obligations under this Agreement. In addition, Customer acknowledges that FlashParking has the right to access, use, modify, store, manipulate, distribute and publish such information in a de-identified format for any legally permissible purpose, including without limitation to improve and enhance FlashParking’s products and services.

10. **INDEMNIFICATION.**

10.1 **By FlashParking.**

   (a) **General.** FlashParking will defend Customer and its Affiliates, and its and their directors, officers, employees, and agents, from and against all third party claims, suits or actions against Customer for bodily injury (including death) and damage to tangible property to the extent directly resulting from FlashParking’s grossly negligent or intentional acts or omissions in providing the Equipment or Services.

   (b) **Infringement.** FlashParking will defend Customer and its Affiliates, and its and their directors, officers, employees, and agents, from and against any third party claim, suit or action to the extent arising out of or based on such third party’s claim that use of the Systems or Services as intended under this Agreement and the Documentation infringes that party’s United States trademark or copyright or to FlashParking’s knowledge any valid and existing United States patent. FlashParking will pay the amount of any final judgment awarded (including reasonable attorney’s fees and costs) or final settlement made by FlashParking with respect to such claim. In addition to, and not in lieu of FlashParking’s defense and indemnity obligations set forth above, if the Systems or Services, or any part thereof, becomes, or in FlashParking’s opinion is likely to become, the subject of a claim of infringement, FlashParking has the right to either (a) correct it; (b) obtain the necessary rights for Customer to continue to use the Systems or Services; (c) replace the potentially infringing component with a replacement that has similar functionality; or (d) if FlashParking concludes that none of these options is commercially practicable, FlashParking has the right and option to terminate provision of the Systems or Services to Customer and reimburse Customer for any pre-paid amounts for the remaining term on a pro rata basis. This is FlashParking’s entire obligation to Customer for these claims.

10.2 **Indemnification Procedure.** The Party wishing to be indemnified hereunder (the “**Indemnified Party**”), in order to be eligible for indemnity shall (a) promptly notify the other Party (the “**Indemnifying Party**”) in writing of the existence of any action for which the Indemnified Party is seeking indemnification; (b) grant the Indemnifying Party sole authority and control for the defense and/or settlement of such action; and (c) provide the Indemnifying Party (at Indemnifying Party’s cost) with all reasonable assistance for the defense or settlement of such action. The Indemnified Party, at its own expense, may participate in the defense of any such action with counsel of its own choosing. Notwithstanding the foregoing, the Indemnifying Party shall not obligate the Indemnified Party to pay any amount in a settlement agreement, admit liability or culpability of the Indemnified Party in any settlement agreement, or require Indemnified Party to take any material action (other than mere administrative actions) in a
settlement agreement, without the Indemnified Party’s prior written permission (not to be unreasonably withheld, conditioned, or delayed).

11. LIMITATION OF LIABILITY. Except with respect to FlashParking’s indemnification obligations hereunder, in no event will FlashParking (including its suppliers) be liable (a) under any claim arising out of this Agreement in excess of the amount of any actual direct damages or loss, up to the total payment (in respect of recurring payments for Subscription Services, only the preceding six (6) months of charges apply) made by Customer to FlashParking for the System or Service which was the subject of the claim; or (b) for lost profits or goodwill or for special, indirect, incidental, exemplary, punitive, or consequential damages, under any theory of liability, even if FlashParking is advised of the possibility of such damages. Under no circumstances will FlashParking be liable for third party claims against Customer for losses or damages except with respect to FlashParking’s express indemnification obligations hereunder.

12. TERM.

12.1 Term. This Agreement shall commence upon full execution of this Agreement by City and it shall expire on December 31, 2026, unless earlier terminated or extended by mutual written agreement and, if necessary, approved by the Commission of the City of Dayton.

The City shall have the option to renew this Agreement for a total of five (5) twelve month (2) terms upon providing notice to FlashParking thirty (30) days prior to the end of the then-current term.

12.2 Termination. If either Party breaches a material provision of this Agreement and does not cure such breach within thirty (30) days after written notice from the other Party, such non-breaching Party shall have the right at its option to: (i) suspend performance or payment until such breach is cured; (ii) terminate this Agreement; or (iii) seek a combination of (i) and (ii), and those remedies available at law or equity to the extent not limited by the terms of this Agreement. The election of any of such options shall not excuse the breaching Party from any obligations arising prior to the date of such election.

12.3 Survival. The terms of any Sections that by their nature are intended to extend beyond termination shall survive termination of this Agreement for any reason, including Section 1 (Definitions); 7.4 (Taxes); 8.2 (Limitation); 8.3 (Disclaimers); 9 (Intellectual Property Rights; LPR Data); 10 (Indemnification); 11 (Limitation of Liability); 12.3 (Survival); and 13 (General).

13. GENERAL.

13.1 Applicable Law and Venue. This Agreement shall be governed and construed under the laws of the State of Ohio. By execution hereof, FlashParking irrevocably submits to the original jurisdiction of the courts located within the County of Montgomery, State of Ohio, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement.

13.2 No Waiver; Severability; Section Headings. No failure of either Party to exercise or enforce any of its rights under this Agreement shall act as a waiver of such rights. If any
provision of this Agreement is determined in any proceeding binding upon the Parties to be invalid or unenforceable, that provision will be deemed severed from the remainder of the Agreement, and the remaining provisions shall continue in full force and effect; provided however, that if a court by limiting such provision determines that the provision would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited so long as the result is consistent with the Parties’ expressed intentions herein. The section headings in this Agreement are solely for the convenience of the Parties and have no legal or contractual effect. The term “including but not limited to.” This Agreement is entered into by sophisticated entities with access to counsel and shall not be construed against either Party as the “drafting” party.

13.3 Relationship between the Parties. FlashParking and Customer acknowledge and agree that this Agreement is not and shall not be construed as an agreement of joint venture, partnership, agency, franchise, or employment between the Parties or their respective employees. For all purposes under this Agreement, each Party shall be and act as an independent contractor to the other and shall not be authorized to, and shall not, bind or attempt to bind the other to any contract or agreement.

13.4 Notices. All notices required to be given under this Agreement shall be given in writing, and sent to the recipient Party’s address in the preamble of this Agreement, unless otherwise updated in writing. All notices shall be given by certified or registered mail, overnight carrier, or personal delivery. Such notices shall be deemed given on the date of receipt of delivery of (or refusal to accept) said notice. Notwithstanding the foregoing, any day-to-day operational correspondence may be made by phone, email, text or other mutually agreeable mechanism.

13.5 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The Parties agree that electronic signatures, whether digital or encrypted, of the Parties have the same force and effect as manual signatures. Delivery of a copy of this Agreement or any other document contemplated hereby bearing an original or electronic signature by facsimile transmission, by electronic mail in portable document format (.pdf) form, or by any other electronic means intended to preserve the original textual, graphic and pictorial appearance of a document, have the same effect as physical delivery of the paper document bearing an original or electronic signature.

13.6 Assignment. Neither Party may sell, assign, or transfer this Agreement without the prior written consent of the other Party; provided, however, that either Party may (with notice but without the prior consent of the other Party) assign this Agreement: by operation of law, pursuant to a merger or acquisition of all or substantially all of its stock or assets, or to its Affiliate. Any other purported attempt to assign this Agreement is voidable by the non-assigning Party. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

13.7 Confidentiality. Each Party agrees to maintain in strict confidence any and all Confidential Information of the other Party. A Party shall be liable to the other Party for any breach of this Section by its employees, agents, and subcontractors and agrees to take, at its sole cost and expense, reasonable measures to restrain its employees, agents, and subcontractors from
unauthorized use or disclosure of any Confidential Information of the other Party. Notwithstanding the foregoing, in the event of Compelled Disclosure, the compelled Party ("Recipient") shall provide the Party which disclosed the information ("Discloser") with prompt prior notice of the disclosure requirement if permitted to do so, shall cooperate with Discloser (at Discloser’s expense and request) to limit or quash such disclosure, and shall in all cases disclose only the minimum amount of information necessary to comply with the Compelled Disclosure. “Compelled Disclosure” means disclosure that is required by applicable law or by the demand (e.g., a warrant or subpoena) of a government body having jurisdiction in the matter.

13.8 No Promises or Representations other than those set forth herein. Each Party stipulates on its own behalf that it has not relied on any promises or statements made by the other Party (whether orally or in writing prior to the Effective Date) in entering into this Agreement, and furthermore that all promises and understandings between the Parties are solely those which are expressly set forth and encompassed within this Agreement itself.

13.9 Entire Agreement This Agreement, including its Schedules and Statements of Work, constitutes the entire Agreement between the Parties pertaining to the subject matter hereof, and supersedes in their entirety any and all written or oral agreements previously existing between the Parties with respect to such subject matter. No supplement, modification, addendum or amendment of this Agreement shall be binding unless executed in writing by both Parties. Any provisions that purport to add, delete, or modify any provisions of this Agreement in any Customer form of purchase order, quotation, acknowledgment, or other forms or purchase documents supplied by Customer shall be ineffective and void ab initio. In the event of any conflict between any terms of this Agreement and any terms of any Schedule, the terms of this Agreement shall supersede, govern and control to the extent of the inconsistency, unless the Schedule expressly states that it is intended to take precedence.

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

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

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

13.11 Political Contributions. FlashParking affirms and certifies that it complies with Ohio Revised Code § 3517.13 limiting political contributions.
13.12 Notice. Any notice required under this Agreement shall be deemed to have been given on the date actually received or forty-eight (48) hours having been deposited in the United States mail, postage prepaid, registered or certified, and addressed to the parties as set forth below, whichever occurs earlier. Either party may change its address from time to time by written notice given in this manner.

If to the City: City of Dayton, Ohio
Division Manager, Property Management
101 W. Third Street
Dayton, Ohio 45402

If to FlashParking: FlashParking, Inc
3801 S. Capital of Texas Highway, Suite 250
Austin, TX 78704

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized representatives.

CITY OF DAYTON

City Manager

Date

APPROVED AS TO FORM AND CORRECTNESS:

11/30/2021

FLASHPARKING, INC.

Title: Chief Strategy Officer

Signed by: Musto, John

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

, 2021

Min./Bk.: _____ Page: __________

Clerk of the Commission
Proposal for:
City of Dayton Surface Lot

Facility at:
123 W 3rd Street
Dayton, OH 45403
United States

Created By:
Jonathan Evens
FlashParking, Inc.
(800) 213-3706
jonathan.evens@flashparking.com
+1 3175176366
## Software Term: Monthly Subscription

### Quote Summary

<table>
<thead>
<tr>
<th>Product Type</th>
<th>Subtotal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hardware</td>
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</tr>
<tr>
<td>Software</td>
<td>$1,285.00</td>
</tr>
<tr>
<td>Installation</td>
<td>$78,000.00</td>
</tr>
<tr>
<td>Implementation</td>
<td>$32,250.00</td>
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<td>Warranty</td>
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<td>Custom</td>
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Discount Total: $84,154.00

**Taxes not included**
## Hardware

<table>
<thead>
<tr>
<th>Product</th>
<th>Qty</th>
<th>Unit Price</th>
<th>Discount</th>
<th>Sub Total</th>
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<tbody>
<tr>
<td>Smart Station (RFID+Barcode +EMV)</td>
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<td>Flash Care Kit Plus for Touch Screen Kiosk-EMV</td>
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<td>Green Arrow, Red X Sign-Down Arrow, 10x10 Sign, 120-277 VAC</td>
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## Software
## Software Term: Monthly Subscription

<table>
<thead>
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<th>Product</th>
<th>Qty</th>
<th>Monthly Cost</th>
<th>Discount</th>
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</thead>
<tbody>
<tr>
<td>Ongoing PCI compliance + Software Updates and general software patches</td>
<td>1.00</td>
<td>$0.00</td>
<td>$0.00</td>
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<tr>
<td>24/7 Phone and Online Support</td>
<td>1.00</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Managed Network Services with 4G/LTE Back-up</td>
<td>1.00</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Cash Acceptance Module</td>
<td>1.00</td>
<td>$0.00</td>
<td>$100.00</td>
</tr>
<tr>
<td>FlashMobile Reservations</td>
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<td>Flash Reservations</td>
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<td>$0.00</td>
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<td>Transient Pay on Entry Module</td>
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<td>$100.00</td>
</tr>
<tr>
<td>Access via Credit Card and Mobile Number</td>
<td>1.00</td>
<td>$0.00</td>
<td>$150.00</td>
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<tr>
<td>FlashAccess Bluetooth-Module</td>
<td>1.00</td>
<td>$0.00</td>
<td>$150.00</td>
</tr>
<tr>
<td>Real-time Reporting Suite</td>
<td>1.00</td>
<td>$0.00</td>
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<tr>
<td>Validation Module</td>
<td>1.00</td>
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<tr>
<td>Mobile App Module (for managing parking operations)</td>
<td>1.00</td>
<td>$0.00</td>
<td>$0.00</td>
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<tr>
<td>FlashPARCS Software License</td>
<td>17.00</td>
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<td>$2,365.00</td>
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<tr>
<td>SpotHero Integration</td>
<td>1.00</td>
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<tr>
<td>eParking Reservations (Includes three integrations; +$15/integration for additional)</td>
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## Installation

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<td>Smart Station Installation</td>
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<td>Cash Machine Installation</td>
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<td>Directional Lane Sign Installation</td>
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### FLASH

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<tr>
<td>eParking Reservations Setup Fee (per location)</td>
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<tr>
<td>EMV Gateway Setup</td>
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<tr>
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### Implementation

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<tr>
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### Warranty

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## Facility Level Group

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<td>Implementation Fee</td>
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<tr>
<td>Access via Credit Card and Mobile Number</td>
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</tr>
<tr>
<td>eParking Reservations (Includes three integrations; + $15/integration for additional)</td>
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</tr>
<tr>
<td>Custom Hardware CapEx</td>
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**Transport LVL 2 Entry 1**

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# Transport West Exit 3

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<tr>
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<td>$13,375.0</td>
<td>1</td>
<td>$3,125.00</td>
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<tr>
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<td>$3,275.0</td>
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<tr>
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# Transport Lobby CC Only POF

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**Transport Lobby CC**

**POF 2**

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**Muni Garage Third**

**Street Entry 1**

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### Muni Garage Third Street Entry 2

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### Muni Garage Third

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### Muni Garage Monthly

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**Muni Garage Monthly**

**Only Exit 1**

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DISCLAIMERS

FlashPARCS Equipment
- Equipment orders are subject to a 50% deposit payment at time of signing to ensure timely delivery of project. FlashParking reserves the right to charge a cancellation fee of 20% of the total of the contract to be paid immediately at time of cancellation.
- The remaining 50% will be invoiced upon successful installation and commissioning of the FlashPARCS equipment, or within two months of equipment receipt by Customer if Customer delays the installation, whichever comes first.
- Orders for NON-FlashHaaS (FSH) Equipment are subject to a 50% deposit payment at time of signing to ensure timely delivery of project. FlashParking reserves the right to charge a cancellation fee of 20% of the total of the contract to be paid immediately at time of cancellation. The remaining 50% will be invoiced upon successful installation and commissioning of the FlashPARCS equipment, or within two months of equipment receipt by Customer if Customer delays the installation, whichever comes first.

Delivery Lead Time
- Smart Stations and Magnetic Barrier Gates delivered and installed on average within 3-4 weeks for standard installations of 10 units or less - from time of contract signature (contingent upon credit approval and good standing of existing accounts receivable).

Excludes orders with LED Barriers, Custom Wrapping for Smart Stations, LPR Cameras, AVI Readers or any other third-party equipment as these may have longer lead times from manufacturer.

Cash Machine
- Cash Machine can be delivered and installed on average within 6-8 weeks for standard installations of ten (10) units or less - from time of contract signature, and after 50% deposit payment is received.
- Bill acceptor manufacturer provides a limited warranty on its equipment that covers all mechanical and electrical components, but excludes parts subject to wear and tear, for a period of two years for parts and RTF (return to factory or authorized service center) labor warranty.

Standard Installation
- Internet connectivity and electricity is required and is to be provided by venue or parking operator.
- Installation quote is based on the information provided by client. All other requirements not provided by the client before installation are subject to review, and additional fees may be assessed to cover the work.
- Assumes a concrete surface on each lane, that the concrete is in good enough condition to install the saw cut loop, it has no major cracks and is not post tension construction. If the location is post tension construction then please inform install team during the kickoff process to send a concrete contractor to perform a surface penetration scan to ensure it is safe to make the cut for the loop, additional fees will apply.
- All work installation services to be performed during normal business hours, Monday through Friday, excluding holidays, by non-union labor.
- Reusing or running one ethernet cable from the network demarcation point to the FlashPARCS Smart Station Kiosk using existing pathway or conduit **
- Mounting FlashPARCS network kit with back-up LTE in each lot or garage (will be pre-configured prior to shipping)
- Removing old entry (ticket/spitter) or exit (exit verifier) machine
- Removing old gate (when applicable)
- Cutting, installing & calibrating new arming and safety loops
- Connecting both loops to the gate
- Bolting down the Smart Station kiosk (they immediately get their configuration from the cloud infrastructure upon powering-up)
- Bolting down gate
- Running 3 pairs of cables from the Smart Station Kiosk to gate for (a) gate vend, (b) arming loop detection, and (c) closing loop detection
• Clean up: placing old machine and gate in a designated area within the facility (Old Equipment disposal not included)
• Testing all components: getting a ticket, and every entry or exit method including real credit card payment transaction, microphone & speakers (placing a support call), barcode scanner, proximity card reader, Bluetooth access, vending gate and loop detection
• Extending or re-routing existing electrical power lines to new SmartStation Kiosk and gate **

** Not to exceed 15 feet
*** Old Equipment disposal not included in price

EXCLUSIONS:
• All utility company charges, deposits and fees if any; Repairs for unforeseen underground utilities that may become damaged during installation of underground conduits, Performance and Payment Bonds. All other requirements if any are extra and are subject to review; (All Permit and Inspections are a Pass Through - plus Service Fees if applicable).

Gates
• Gates manufacturer provides a limited warranty on its barriers that covers all mechanical and electrical components, but excludes parts subject to wear and tear, for a period of two (2) years from the date of first use provided that the operating instructions have been complied with, no unauthorized servicing of machine components has taken place, and that no mechanical damage to the machines is evident.

* For EMV transactions Client requires to open an account with Windcave. FlashParking is not responsible for Merchant and Gateway fees associated with EMV transactions.

* FlashPARCS Mobile Payments ($0.35 per mobile payment transaction).

* Onsite support available upon request. Fees and response time varies by region.

* All prices are exclusive of taxes, shipping, installation, electrical, or civil work, and any other item not specified in this quote unless otherwise clearly stated in the proposal.

* Merchant services related to the processing of credit card transactions must be sourced and paid for directly by the owner/parking operator. In addition, the following policy related to credit card gateway services applies:
  • Magnetic stripe readers (non-EMV): FlashParking uses USAePay as the gateway for magnetic stripe reader applications. The FlashParking software subscription fee includes gateway related charges for the first 5,000 magnetic stripe card reader-based payment transactions, per location/per month. FlashParking will bill at a rate of $49 per location for each additional 5,000 credit card transactions for those months where the gateway transaction volume allowance is exceeded.
  • Chip readers(EMV): FlashParking uses Windcave as the gateway for chip reader applications. Windcave requires a separate gateway agreement with the owner/parking operator. Payment gateway transaction fees apply and are payable directly to Windcave.
  https://www.windcave.com/

*FlashPARCS Mobile Payments ($0.35 per mobile payment transaction).

*Onsite support available upon request. Fees and response time varies by region.
* All prices are exclusive of taxes, shipping, installation, electrical or civil work, and any other item non specified in this quote unless otherwise clearly stated in the proposal.
From 2390 - Planning, Neighborhoods & Development
Supplier, Vendor, Company, Individual
Name The HomeOwnership Center of Greater Dayton, Inc.
Address 130 W. Second Street, Suite 1420
Dayton, Ohio 45402

Expense Type Service Agreement
Total Amount $75,000.00 (thru 12/31/2022)

Fund Source(s) Fund Code(s) Fund Amount(s)
Community Development Block Grant (CDBG) 26302-2390-1159-31-PL2103 75,000.00

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

Description
COMMUNITY DEVELOPMENT BLOCK GRANT
SUBRECIPIENT AGREEMENT
HOMEOWNERSHIP CENTER OF GREATER DAYTON, INC.

The Department of Planning, Neighborhoods and Development requests approval to enter into an Agreement with the HomeOwnership Center of Greater Dayton, Inc. in the amount of $75,000.00, to administer the Pathways Tornado Recovery Homeownership Program. These funds will provide housing counseling services and homebuyer education for 75 potential homebuyers. Eligible homebuyers are survivors of the 2019 Memorial Day Tornado Outbreak moving or relocating within the City of Dayton corporate limits who are at or below eighty percent (80%) of the Area Median Income (AMI).

This agreement shall commence upon execution by the City and it shall expire December 31, 2022. This agreement is funded with 2019 Community Development Block Grant (CDBG) funding.

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

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

Signatures/Approval
Approved by City Commission

Division

Department

City Manager

FORM NO. MS-16

Updated 10/2019
"2021 CM Report- HOCGD Pathways" History

Document created by Ashley Hatton (ashley.hatton@daytonohio.gov)
2021-12-10 - 2:34:46 PM GMT - IP address: 198.30.33.2

Document emailed to Chris Lipson (chris.lipson@daytonohio.gov) for signature
2021-12-10 - 2:35:06 PM GMT

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## CERTIFICATE OF FUNDS

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

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<td>Remaining Commission Approval</td>
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### SECTION II - to be completed by the Finance Department

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

**Finance Director Signature**

**Date**

**CF Prepared by**

**Date**

**CF/CT Number**

**Vendor Name:** HomeOwnership Center of Greater Dayton, Inc.

**Vendor Address:** 130 W. Second Street, Suite 1420 Dayton OH 45402

**Federal ID:** 364500925

**Commodity Code:** 96199

**Purpose:** HomeOwnership Center of Greater Dayton will provide homeownership education and assistance to CDBG-eligible households impacted by the 2019 Memorial Day Tornado Outbreak.

**Originating Department Director's Signature:**

**Date**

**Contact Person:** Ashley Hatton X3696

**Planning, Neighborhoods & Development Department/Division:**

**Date:** 12/10/2021

**SA 12/15/2021**
"2021 CDBG Pathways HO CGD" History

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Signature Date: 2021-12-10 - 8:32:04 PM GMT - Time Source: server - IP address: 198.30.33.2

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2021-12-10 - 8:32:04 PM GMT
CDBG SUBRECIPIENT AGREEMENT
THE HOMEOWNERSHIP CENTER OF GREATER DAYTON
PATHWAYS TORNADO RECOVERY HOMEOWNERSHIP PROGRAM
CFDA 14.218

THIS AGREEMENT, entered into this ______ day of __________________________, 2021, is
between the CITY OF DAYTON OHIO, a municipal corporation in and of the State of Ohio,
(hereinafter referred to as “City”) and THE HOMEOWNERSHIP CENTER OF GREATER
DAYTON, INC., a not-for-profit corporation organized under the laws of the State of Ohio (hereinafter
called “Subrecipient”)

WITNESSETH, THAT:

WHEREAS, the City is a grantee of funds from the United States Department of Housing and
Urban Development, hereinafter referred to as “HUD,” under Title I of the Housing and Community
Development Act of 1974, as amended, Public Law 93-383, responsible for the development,
implementation, administration, and evaluation of HUD’s Community Development Block Grant,
hereinafter referred to as “CDBG,” Program in Dayton; and

WHEREAS, the City has delegated to the Subrecipient the responsibility of rendering
homeownership assistance services through the provisions of the CDBG program; and

WHEREAS, the Program set forth herein will meet at least one of the CDBG program’s three
national objectives, as defined in 24 Code of Federal Regulations (“CFR”), Part 570.208, which include
1) to benefit low/moderate income persons; 2) to aid in the prevention or elimination of slum and blight;
and 3) to meet community development needs having a particular urgency; and

WHEREAS, the City was devastated by the impact of the tornadoes that moved through the
Greater Dayton Area on May 27, 2019; and

WHEREAS, to the extent possible, the City is committed to ensure all residents impacted by the
tornadoes are able to fully recover, and as part of that commitment recognizes the need for home repair
and rehabilitation programs for many residents; and

WHEREAS, the parties desire to enter into this Agreement to assist the Subrecipient with
operating funds to provide homeownership education and assistance to CDBG-eligible households
impacted by the 2019 Memorial Day Tornado Outbreak; and

WHEREAS, the Subrecipient possesses statutory authority and management capability necessary
to assist the City in the execution of its responsibilities as a CDBG grantee and has been determined by
the City to be the most appropriate party to assume the primary administration of an activity described as
“Pathways Tornado Recovery Homeownership Program” under the CDBG program in the 2019 Action
Plan for the City of Dayton and Dayton-Kettering HOME Consortium, Grant Number B-19-MC-39-0010; and

NOW, THEREFORE, for the consideration of the mutual promises hereinafter set forth, City
and Subrecipient agree as follows:

ARTICLE 1. DEFINITIONS

A. “Program Funds” shall mean any funds disbursed to the Subrecipient by the City from the CDBG
Program under this agreement.

B. “Program Income” is income received by the Subrecipient directly generated from the use of CDBG funds.

C. “CDBG Program Funds” shall mean funding received by the City from HUD under the City of Dayton’s CDBG Program.

D. “Contract Period” shall mean the effective date of this agreement and time given for performance.

E. “Project Activity” shall mean the activity therein described in Exhibit A of this Agreement.

F. “Moderate, Low, and Very Low Income” shall mean 80% or less, 50% or less, and 30% or less – respectively – of the area median income as defined by HUD for the current Agreement period.

ARTICLE 2. PURPOSE

The purpose of this Agreement is to provide funding for project activities approved by the City under the CDBG Program for Program Year 2019 as described in Exhibit A – Scope of Services. Project accomplishments will be reported in the 2021 and 2022 Consolidated Annual Performance Evaluation Reports (CAPER). Project activities, tasks, and budget are included in Exhibits B – Program Budget, C – CDBG Program Monitoring Schedule, and D – Quarterly and Cumulative Reports.

All activities authorized by this Agreement will be performed in accordance with the services set forth in Exhibit A, the budget set forth in Exhibit B, the program monitoring schedule set forth in Exhibit C, and the conditions, assurances, and requirements set forth in the HUD CDBG Program regulations as detailed in Exhibit A. Subrecipient further agrees that it will notify the City prior to undertaking any activity or authorizing any expenditure that is not clearly consistent with the terms of this Agreement and its appendices and/or with the conditions, assurances, and requirements of the HUD CDBG Program and that no such activity or expenditure of a questionable nature shall be authorized without prior approval of the City.

ARTICLE 3. SCOPE OF SERVICES

Subrecipient shall provide the work and services, in a manner satisfactory to the City consistent with any standards required as a condition of providing these funds. Subrecipient hereby agrees to use CDBG funds made available to the Pathways Tornado Recovery Homeownership Program for the purpose fully described in Exhibit A - Scope of Services, which is attached hereto and incorporated herein.

ARTICLE 4. TERM OF AGREEMENT

This Agreement shall commence upon execution by the City, and shall be undertaken and completed in such sequence as to assure its expeditious completion in light of the purposes of this Agreement; but in any event, all of the work and services required herein shall be completed and this Agreement shall terminate on December 31, 2022.

ARTICLE 5. GRANT OF FUNDS AND PAYMENT

The City shall make available to Subrecipient the City’s 2019 CDBG funds, in the amount of SEVENTY-FIVE THOUSAND DOLLARS AND ZERO CENTS ($75,000.00) for the work and services to be provided by Subrecipient for the Program, pursuant to this Agreement. Draws for the payment of eligible expenses shall be made against the line item budgets specified in Exhibit B – Program Budget, which is attached hereto and incorporated herein, and in accordance with performance. Any amendments to the budget must be approved in writing by both the City and Subrecipient.
Expenditures between August 1, 2021 and December 31, 2022 are eligible for reimbursement. Payments may be contingent upon certification of Subrecipient’s financial management system in accordance with the standards specified in 2 CFR Part 200, Subparts D & E.

**ARTICLE 6. GENERAL CONDITIONS**

**A. Compliance**

1. Subrecipient agrees that the HUD regulations set forth in 24 CFR Part 570 and 2 CFR Part 200 are applicable to the grant funds it receives pursuant to this Agreement.

2. Subrecipient agrees that the work and services authorized by this Agreement shall be performed in accordance with any and all applicable local, state, and federal regulations, directives, or guidelines.

3. Subrecipient agrees to prohibit the use of federal funds for lobbying in compliance with the following:

   (a) No federal appropriated funds have been paid or will be paid, by or on behalf of Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with the awarding of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.

   (b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with this federal agreement, grant, loan or cooperative agreement, Subrecipient shall notify the City, and complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

4. Subrecipient shall include the requirements of this Subsection A in award documents for all sub-awards at all times (including sub-contracts, subgrants, and Agreements) and require that all sub-award recipients disclose the same accordingly.

**B. “Independent Contractor”**

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

Subrecipient, its employees and any person retained or hired by Subrecipient to perform duties and responsibilities under this Agreement are not the City employees, and therefore, such persons will not be entitled to, nor will they make a claim for, any of the emoluments of employment with the City of Dayton. Further, Subrecipient will be responsible to withhold and pay, or cause such agents, contractors and subcontractors to withhold and pay, all applicable local, state and federal
taxes. Subrecipient further acknowledges and agrees that none of his employees are public employee for the purpose of membership and/or participation in the Ohio Public Employees Retirement System (OPERS).

C. Indemnification
Subrecipient agrees to defend, indemnify and hold harmless the City, its elected officials, officers, employees and agents from and against legal liability for all claims, losses, damages, and expenses (including reasonable attorneys’ fees) to the extent that such claims, losses, damages, or expenses are caused by or arise out of the performance or non-performance of this Agreement and/or the acts, omissions or conduct of Subrecipient or its employees, agents, Subrecipient(s), subcontractor(s), and representatives. Further, in the event that Subrecipient violates any CDBG rule, regulation, grant requirement or law governing the use and expenditure of CDBG funds, Subrecipient shall assume full and complete responsibility for said violation(s), including payment of the penalty imposed or re-payment of improperly expended funds, and shall defend, indemnify and hold harmless the City, its elected officials, officers, agents, and employees.

D. Workers’ Compensation
Subrecipient shall provide Workers’ Compensation Insurance Coverage for all its employees’ invoices in the performance of this Agreement.

E. Insurance and Bonding
Subrecipient shall carry sufficient insurance coverage to protect Agreement assets from loss due to theft, fraud and/or undue physical damage, and, at a minimum, shall purchase a blanket fidelity bond covering all employees in an amount equal to at least SEVENTY-FIVE THOUSAND DOLLARS AND ZERO CENTS ($75,000.00). Subrecipient shall comply with the bonding and insurance requirements of 2 CFR Part 200, Subpart D.

F. Grantor Recognition
Subrecipient shall ensure recognition of the grantor agency in providing services through this Agreement. All activities, facilities, and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, Subrecipient will include a reference to the support provided in all publications made possible with funds made available under this Agreement.

G. Amendments
The City or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, are executed in writing, signed by a duly authorized representative for each party, approved by City’s Director of the Department of Planning, Neighborhoods, and Development or designee, and, if applicable or required, approved by the City Manager and the Commission of the City of Dayton. Such amendments shall not invalidate this Agreement, nor relieve or release the City or Subrecipient from its obligations under this Agreement.

The City may, in its discretion, amend this Agreement to conform with federal, state, or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both the City and Subrecipient.

H. Suspension or Termination
In accordance with 2 CFR 200.338-200.342, the City may suspend or terminate this Agreement if
Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to,) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;

2. Failure, for any reason, of Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;

3. Ineffective or improper use of funds provided under this Agreement;

4. Submission by Subrecipient to the City reports that are incorrect or incomplete in any material respect.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the City or Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the City determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the City may terminate the award in its entirety.

I. Political Contributions
Subrecipient affirms and certifies that it is in compliance with Ohio Revised Code §3517.13 limiting political contributions.

**ARTICLE 7. CONTACTS**

All communications or notices required or permitted under this Agreement, including invoices for payment, shall be sufficient if sent to the City or Subrecipient by regular U. S. Mail, postage pre-paid, and addressed as follows:

**To City:**
City of Dayton, Ohio  
Department of Planning, Neighborhoods, and Development  
101 West Third Street  
Dayton, Ohio 45402  
Attn: Ashley Hatton  
(937) 333-3696  
Ashley.Hatton@daytonohio.gov

**To Subrecipient:**
HomeOwnership Center of Greater Dayton, Inc.  
130 W. Second Street, Suite 1420  
Dayton, OH 45402  
Attn: Julie Deacon  
(937) 425-0344  
jdeacon@hocgd.org

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

**ARTICLE 8. ADMINISTRATIVE REQUIREMENTS**
A. Financial Management

1. Accounting Standards

Subrecipient agrees to comply with 2 CFR Part 200 Subparts, D and E, as applicable, and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

Subrecipient shall administer its program in conformance with 2 CFR Part 200 Subparts, D and E, as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

3. Financial Records

   a. The City may require quarterly reports of all cash receipts, including Program Income, from all sources and disposition thereof, and such other financial statements, as the City deems appropriate. Quarterly reports and financial statements may continue to be required after termination of this Agreement until the collected Program Income has been expended.

   b. All costs and expenditures shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement and shall be clearly identified and readily accessible to the City.

B. Documentation and Record Keeping

1. Records to be Maintained

Subrecipient shall maintain all records required by the federal regulations specified in 2 CFR Part 200 and 24 CFR 570.506, which are pertinent to the services and activities to be funded under this Agreement. Such records shall include, but not be limited to:

   a. Records providing a full description of each activity undertaken;

   b. Records providing a full description and reporting of all accomplishments by The HomeOwnership Center of Greater Dayton between August 1, 2021 and December 31, 2022, regardless of program.

   c. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;

   d. Records required to determine the eligibility of activities;

   e. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
f. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;

g. Financial records are required by 24 CFR 570.502, and 2 CFR Part 200; and

h. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

2. Client Data
   Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to City monitors or their designees for review upon request.

3. Retention of Records and Documentation
   Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the submission of the City’s Annual Performance and Evaluation Report to HUD in which the activities assisted under the Agreement are reported on for the final time. Records pertinent to this agreement shall be retained through December 31, 2026.
   Within thirty (30) days of the expiration or conclusion of the Agreement, the Subrecipient shall provide the City with full and complete copies of all project files and records associated with the Agreement. Additionally, copies of all files and records pertaining to federal funding contracted through the City shall be provided to the City should the Subrecipient cease operations.

   Notwithstanding the above, if there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

4. Disclosure
   Subrecipient understands that applicant information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of City’s or Subrecipient's responsibilities with respect to work or services to be provided under this Agreement, is prohibited by federal law, unless written consent is obtained from such person receiving service, and in the case of a minor, that of a responsible parent/guardian or otherwise required by law or court order.

5. Close-Out
   Subrecipient's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, Program Income balances, and accounts receivable to City), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that Subrecipient has control over CDBG funds, including Program Income.
6. **Audits, Monitoring, and Evaluation**

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to City or the Federal Government, or their designees or agents, at any time during normal business hours, as often as City or Federal Government deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data and records. Any deficiencies noted in audit reports must be fully cleared by Subrecipient within thirty (30) days after notice thereof. Failure of Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. Subrecipient hereby agrees to have an annual audit conducted in accordance with current City policy concerning subrecipient audits. Subrecipient shall also comply with 2 CFR Part 200, Subpart F. Upon completion, such audits shall be made available for public inspection.

Subrecipient shall allow City to conduct on-site monitoring, tests, and inspections at such time as proposed in a written notification requesting a monitoring visit. Subrecipient shall provide to City such statements, records, reports, and other information as City may request at the time of scheduled monitoring visits and in such format and detail, as City shall specify.

7. **Property Records**

Subrecipient shall maintain, as may be applicable, real property inventory records, which clearly identify properties purchased, improved, or sold. Properties retained shall continue to meet eligibility criteria and shall conform to the “changes in use” restrictions specified in 24 CFR 560.503 (b) (8) and 2 CFR Part 200, as applicable.

C. **Reporting Procedures**

1. **Program Income**

Subrecipient shall report no less than quarterly all “Program Income,” as defined at 24 CFR Part 570.500(a), generated by activities carried out with CDBG funds made available under this Agreement. The use of Program Income by Subrecipient shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, Subrecipient may use such Program Income during the Agreement term for activities permitted under this Agreement, and shall reduce requests for additional funds by the amount of any such Program Income balance on-hand. All unused Program Income shall be returned to City at the end of the term of this Agreement. Any interest earned on cash advances from the City or from funds maintained in revolving loan accounts are not Program Income and shall be remitted promptly to City.

2. **Indirect Costs**

If indirect costs are charged, subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient’s share of administrative cost in accordance with 2 CFR Part 200 and shall submit such plan to the City for approval, in a form specified by the City.

3. **Payment Procedures**

The City will pay to Subrecipient funds available under this Agreement based upon information submitted by Subrecipient (See Exhibit A) and consistent with any approved budget (See Exhibit B) and City policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the City in
accordance with advance fund and Program Income balances available in Subrecipient accounts. In addition, the City reserves the right to liquidate funds available under this Agreement for costs incurred by the City on behalf of Subrecipient.

4. Progress Reports
Subrecipient shall submit regular Progress Reports to City in the form, content, and frequency, as required by City and specified in Exhibit A – Scope of Services.

D. Procurement

1. Compliance
Subrecipient shall comply with current City policies concerning the purchase of equipment, goods, services, and shall maintain inventory records of all non-expendable personal property, as defined by such City policies as may be procured with the CDBG funds provided herein. All program assets (unexpended Program Income, property, equipment, etc.) shall revert to City upon termination or expiration of this Agreement.

Subrecipient shall procure all materials, property, or services in accordance with the requirements of 2 CFR 200, Subpart D, Procurement, and shall subsequently follow Property Management Standards as modified by 2 CFR 200, Subpart D, covering utilization and disposal of property.

2. OMB Standards
Unless specified otherwise within this agreement, Subrecipient shall procure all materials, property, or services in accordance with the requirements of 2 CFR 200.317-200.326.

3. Travel
Subrecipient shall obtain written approval from the City for any travel outside the metropolitan area with funds provided under this Agreement.

E. Use and Reversion of Assets
The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, 570.504, and 570.505, as applicable, which include but are not limited to the following:

1. Subrecipient shall transfer to the City any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.

2. Real property under Subrecipient’s control that was acquired or improved, in whole or in part, with funds under this Agreement shall be used to meet one of the CDBG National Objectives pursuant to 2 CFR 200.310-200.316 until five (5) years after expiration of this Agreement. If Subrecipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, Subrecipient shall pay the City an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute Program Income to the City. Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five (5) year period.

3. In all cases in which equipment acquired, in whole or in part, with funds under this
Agreement is sold, the proceeds shall be Program Income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by subrecipient for activities under this Agreement shall be (a) transferred to the City for the CDBG program or (b) retained after compensating the City an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment.

ARTICLE 9. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance
Subrecipient agrees to comply with all local and state civil rights statues, rules, regulations and ordinances, and with Title VI of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968, as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974, as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246, as amended by Executive Orders 11375, 11478, 12107, and 12086.

2. Nondiscrimination
Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 270.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDCA are still applicable.

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

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

3. Land Covenants
This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City and the United States are beneficiaries of and entitled to enforce such covenants. Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.
4. **Section 504**
Subrecipient shall comply with any federal regulations or orders issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the disabled in any federally assisted program. The City shall provide Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

**B. Affirmative Action**

1. **Approved Plan**
Subrecipient agrees that it shall be committed to carry out, pursuant to the City's specifications, an Affirmative Action Program keeping with the principles provided in the President's Executive Order 11246 of September 24, 1966. The City shall provide Affirmative Action guidelines to Subrecipient to assist in the formulation of such program. Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds. Subrecipient must also submit the proper letter of certification from the Dayton Human Relations Council, which will serve as documentation for their Affirmative Action Plan.

2. **Women and Minority-Owned Businesses**
Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms “small business” means a business that meets the criteria set forth in Section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and “minority and women’s business enterprise” means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, “minority group members” are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. **Access to Records**
Subrecipient shall furnish and cause each of its own contractors or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records, and accounts by City, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. **Notifications**
Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract of understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.
6. **Subcontract Provisions**

Subrecipient will include the provisions of this Paragraph’s Section A, Civil Rights, and Section B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subcontractors.

C. **Employment Restrictions**

1. **Prohibited Activity**

Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities, sectarian or inherently religious activities, lobbying, political patronage, or nepotism activities.

2. **Labor Standards**

Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. Subrecipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request.

3. **“Section 3” Clause**

   a. **Compliance**

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the federal financial assistance provided under this Agreement and binding upon the City, Subrecipient and any of Subrecipient’s subrecipients and subcontractors. Failure to fulfill these requirements shall subject the City, Subrecipient and any of Subrecipient’s subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which federal assistance is provided. Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

Subrecipient agrees to comply with the “Section 3” requirements set forth above, and shall include the following language in all subcontracts executed for the program:

“The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
The parties to this contract agree to comply with HUD’s regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

The contractor agrees to send to each labor organization or representative or workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the contractor’s commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor’s obligations under 24 CFR Part 135.

Noncompliance with HUD’s regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract are subject to the provisions of Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).”
b. **HUD Section 3 Participation Goals**

Subrecipient agrees that the aspiration sub-contracting goals for certified HUD Section 3 certified business sub-contracting and hiring goals will be:

Employment: Thirty percent (30%) of the aggregate number of new hires during a one-year period of the project. (Example: A construction contractor hires 10 new workers. Three of the new workers should be Section 3 eligible persons.)

Contracting: (a) At least 10 percent (10%) of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, construction, and other public construction with federal funds; and
(b) At least three percent (3%) of the total dollar amount of all other, including professional services, covered Section 3 contracts to eligible Section 3 business concerns. HUD Section 3 companies can be found at [http://daytonhrc.org/business-technical-assistance/certification/](http://daytonhrc.org/business-technical-assistance/certification/)

c. **Notifications**

Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

d. **Subcontracts**

Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by City. Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135, and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. **Conduct**

1. **Assignability**

Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of City thereto; provided, however, that claims for money due or to become due to Subrecipient from City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to City.

2. **Subcontracts**

   a. **Approvals**

   Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the written consent of City prior to the execution of such agreement.

   b. **Monitoring**
Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Evidence of noncompliance shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. **Content**
   Subrecipient shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. **Selection Process**
   Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to City along with documentation concerning the selection process.

3. **Hatch Act**
   Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

4. **Conflict of Interest**
   Subrecipient agrees to abide by the provisions of 24 CFR 84.42, 24 CFR 85.36, and 570.611, which include (but are not limited to) the following:

   a. Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by federal funds.

   b. No employee, officer, or agent of subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.

   c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a “covered person” includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, subrecipient, or any designated public agency.

5. **Lobbying**
   Subrecipient hereby certifies that:

   a. No federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee
of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;

b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions; and

c. It will require that the language of Paragraph (d) of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly.

d. Lobbying Certification
This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, U.S.C. and 2 CFR 200.450. Any person who fails to file the required certification shall be subject to a civil penalty of not less than TEN THOUSAND DOLLARS AND ZERO CENTS ($10,000.00) and not more than ONE HUNDRED THOUSAND DOLLARS AND ZERO CENTS ($100,000.00) for each such failure.

6. Copyright
If this Agreement results in any copyrightable material or inventions, the City and/or HUD reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. Religious Activities
Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

ARTICLE 10. ENVIRONMENTAL CONDITIONS

A. Air and Water
Subrecipient shall comply with the following requirements insofar as they apply to the performance of this Agreement:


2. Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and
information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

3. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR, Part 50, as amended.

B. Flood Disaster Protection
In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4001), Subrecipient shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the national flood insurance program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

C. Lead-Based Paint
Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR, Part 570.608 and 24 CFR, Part 35. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken.

ARTICLE 11. SEVERABILITY
If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

ARTICLE 12. GOVERNING LAW & VENUE
This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws. Any suit regarding this Agreement must be brought in a court of competent jurisdiction in Montgomery County, Ohio.

ARTICLE 13. SECTION HEADINGS AND SUBHEADINGS
The section heading and subheading contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

ARTICLE 14. WAIVER
The City’s failure to act with respect to a breach by subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the City to exercise or enforce any right or provision shall not constitute a waiver or such right or provision.

ARTICLE 15. ENTIRE AGREEMENT
This Agreement constitutes the entire agreement between the City and subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the City and subrecipient with respect to this Agreement.
ARTICLE 16. REFERENCES TO LAW
All references to federal, state or local laws, regulations, or orders contained in this Agreement shall include any and all subsequent amendments, modifications, additions or other changes as may be enacted or codified by the proper governmental authority during the term of this Agreement.

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

CITY OF DAYTON, OHIO

______________________________
City Manager

______________________________
Date

APPROVED AS TO FORM
AND CORRECTNESS:

11/22/2021

X John Musto for
City Attorney

Signed by: Musto, John

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

______________________________ , 2021

Min. / Bk. _____ Pg. _____

Clerk of the Commission

THE HOMEOWNERSHIP CENTER OF GREATER DAYTON, INC.

By: ____________
Julie Deacon

Title: Executive Director

Date: Dec 1, 2021

[Signatures]
EXHIBIT A
SCOPE OF SERVICES
THE HOMEOWNERSHIP CENTER OF GREATER DAYTON
PATHWAYS TORNADO RECOVERY HOMEOWNERSHIP PROGRAM

1. PROGRAM DESCRIPTION

Subrecipient will use all funds granted hereunder to operate the “Pathways Tornado Recovery Homeownership Program,” beginning August 1, 2021 through December 31, 2022. The program will result in housing counseling services and homebuyer education for 75 potential homebuyers. Clients will also be informed of down payment assistance and other homeowner assistance opportunities. Eligible homebuyers are survivors of the 2019 Memorial Day Tornado Outbreak moving or relocating within the City of Dayton corporate limits who are at or below eighty percent (80%) of the Area Median Income (AMI). Beneficiaries will likely participate in the Pathways Tornado Recovery Repair Program.

The HomeOwnership Center of Greater Dayton (HOCGD) is a HUD-approved housing counseling agency with three HUD-certified housing counselor. HOCGD strives to create more homeownership opportunities and reduce discriminatory barriers to promote long-term community viability and empowerment of LMI residents to achieve financial success. Their mission is to empower area residents to achieve sustainable homeownership and financial success.

HOCGD will provide homebuyer education and coaching to residents impacted by the 2019 Memorial Day Tornado who are now interested in purchasing a home. Homebuyer Education consists of 8 class hours provided in person or online that cover the entire home buying process for first time homebuyers. Homebuyer Coaching includes one-on-one interaction with a Homeownership Advisor that reviews income, debt, assets, liabilities, credit, and goals. Clients are assigned an advisor that provides steps to mortgage readiness, connects clients to local lenders and specialized CRA mortgage products, and provides education on 203K rehabilitation loans to assist in the purchase of homes in need of repairs. Advisors help clients assess their true affordability in a home purchase, and often work with clients for 1-2 years to help them establish goals and reach mortgage readiness. Advisors also meet with current homeowners to provide foreclosure prevention to assist homeowners to stay in their home or successfully transition out of the home.

Eligible applicants will have the opportunity to purchase a home through the Pathways Tornado Recovery Homeownership Program. Counseling staff work in partnership with County Corp and Miami Valley Long Term Recovery Group to coordinate Options to Purchase for eligible applicants and eligible housing. Counselors will continue to work with applicants through the entire homebuying process. Counselors are a resource as homebuyers work with lenders, insurance agents, closing attorneys, and more. As applicants become homeowners, HOC continues to be a resource and enable sustainable homeownership.

2. COMMUNITY DEVELOPMENT OBJECTIVES

Subrecipient certifies that the activity (ies) carried out under this Agreement are allowable expenses under HCDA Section 105 (a) (8) and 24 CFR 570.201, CDBG Matrix Code 05U (Housing Counseling only, under 24 CFR 5.100), benefitting low- and moderate income (LMI) persons under the National Objective of Low/Mod Clientele (LMC) Benefit. The program will provide staff supportive services and operating expenses to The HomeOwnership Center of Greater Dayton in order to benefit LMI homeowners within the City of Dayton. The provision of housing counseling is considered to address the LMC National Objective per 24 CFR 570.483 (b) (1 and 2).
3. PROGRAM GUIDELINES

The Sub-recipient shall use City of Dayton CDBG funds for the provision of the Pathways Tornado Recovery Homeownership Program as articulated below, not to exceed SEVENTY-FIVE THOUSAND AND ZERO CENTS ($75,000.00). The period will be from August 1, 2021 thru December 31, 2022, as contemplated in this agreement.

A. Housing Counseling and Homeownership Assistance Program

1. The program provides the funding, labor, and materials necessary to implement homebuyer education, homebuyer coaching, financial education, financial counseling, and foreclosure prevention services as described in Exhibit A Section 1.

2. Eligible geographic areas for the program include the entire municipal corporation limits of the City of Dayton only.

3. Eligible beneficiaries of this program are homeowners within the City of Dayton.

4. Eligible beneficiaries of this program are households earning no more than eighty percent (80%) or less of median income for the area as determined annually by HUD with adjustments for family size, as illustrated below. New income limits will replace the limits listed below when issued and will be made available by the City for the Subrecipient annually.

<table>
<thead>
<tr>
<th>(As of 06.01.2021)</th>
<th>FY 2021 Dayton, OH MSA Income Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Household Size</td>
<td>Moderate (80%) Income Limits</td>
</tr>
<tr>
<td>1</td>
<td>$42,400</td>
</tr>
<tr>
<td>2</td>
<td>$48,450</td>
</tr>
<tr>
<td>3</td>
<td>$54,500</td>
</tr>
<tr>
<td>4</td>
<td>$60,550</td>
</tr>
<tr>
<td>5</td>
<td>$65,400</td>
</tr>
<tr>
<td>6</td>
<td>$70,250</td>
</tr>
<tr>
<td>7</td>
<td>$75,100</td>
</tr>
<tr>
<td>8</td>
<td>$79,950</td>
</tr>
</tbody>
</table>

4. OUTCOME MEASUREMENTS: PERFORMANCE AND OUTCOME MEASURES

In accordance with U.S. Department of Housing and Urban Development (HUD) requirements, the City has implemented a performance measurement system that is based on an outcomes-based approach to funding projects. The City requires recipients of federal funds to assess the productivity and impact of their programs. This Performance and Outcome Measurement System will help to quantify the effectiveness of programs and establish clearly defined outcomes.

The City shall report outcomes-based accomplishments to HUD. The City therefore requires Subrecipient to submit timely and consistent performance measurement reports that focus on establishing clearly articulated objectives, performance measures, outputs, and program outcomes (desired end results). The City shall review the reports to track progress, provide feedback, and when necessary, provide technical assistance. Program performance is also considered in the decision-making process for fund allocation. The Subrecipient agrees to submit the reports detailed in Section 10, Reporting Procedures.

5. SUBRECIPIENT RESPONSIBILITIES

20
The Subrecipient will be responsible for the following aspects of managing the program: Complying with all CDBG regulations, providing outreach services within the targeted area, maintaining outreach activity logs for documentation, maintaining proper staff documentation and time logs, maintaining proper beneficiary documentations and proof of participation in the program, preparation of reports to the City as detailed in Section VI, and preparation of reports to City as detailed in Section 10, Reporting Procedures.

6. BUDGET

The program budget is attached to this document as Exhibit B – Program Budget.

7. STAFFING

Subrecipient shall assign the following staff as Key Personnel to the Pathways Tornado Recovery Homeownership Program:

<table>
<thead>
<tr>
<th>Staff Member, Title</th>
<th>General Program Duties</th>
<th>Time Allocation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Julie Deacon, Executive Director</td>
<td>This position is responsible for overseeing the administration, programs, and strategic plan of HOC.</td>
<td>5 hours/week</td>
</tr>
<tr>
<td></td>
<td>• Operate within approved budget to ensure efficient use of HOC resources</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Promote HOC by being active and visible in the community and working closely with other professional, civic, and private organizations</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Monitor compliance related to major grants and funding relationships such as NeighborWorks America, US Dept of HUD and others</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Implement QAPI process and monitor effectiveness of programming</td>
<td></td>
</tr>
<tr>
<td>Jackie Easter, Homeownership Counselor</td>
<td>This position provides housing counseling and education to interested clients:</td>
<td>10 hours/week</td>
</tr>
<tr>
<td></td>
<td>• Conduct individual appointments to review clients’ household budget, credit report and housing goals in an advising/coaching setting.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Assess clients’ capacity/status regarding budgeting skills, credit management and problem-solving skills; provide education in these areas as appropriate.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Educate clients about key issues and options relevant to their circumstances.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• For mortgage-ready buyers assist with facilitation of mortgage application, realtor referral, and closing.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Provide information and referrals to local agencies to address financial, individual and/or housing issues.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Conduct appropriate follow-up with clients and referral sources.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Maintain appropriate documentation regarding client activity.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Conduct workshops in areas of Homebuyer Education, Home Maintenance and Financial Fitness.</td>
<td></td>
</tr>
</tbody>
</table>
### Lisa Roberts, Certified Credit Counselor

This position provides financial education and counseling to interested clients:
- Conduct individual appointments to review clients’ budget, credit report and financial goals in an advising/coaching setting.
- Assess clients’ capacity/status regarding budgeting skills, credit management and problem-solving skills; provide education in these areas as appropriate.
- Educate clients about key issues and options relevant to their circumstances.
- Analyze eligibility for a debt management plan.
- Provide information and referrals to local agencies to address financial, individual and/or housing issues.
- Conduct appropriate follow-up with clients and referral sources.
- Maintain appropriate documentation regarding client activity.
- Conduct workshops in areas of Financial Fitness.

5 hours/week

### Marva Williams-Parker, Administrative Coordinator

This position ensures the operations of the office run smoothly for The HomeOwnership Center:
- Coordinate appointments and class registrations
- Data entry and internal/external reports, pull credit reports
- Data entry – client information to generate reports
- Implement QAPI program through client interaction and survey collection
- Assist in development of forms, marketing materials, website and client document procedures
- Assist staff with grants by collecting data and preparing client files in order to submit them for assistance
- Quality control for files to make sure they have all the information for data collection.
- Upload information needed for Compliance.

5 hours/week

### Rachel Klopfer, Certified Credit Counselor

This position provides financial and housing education and counseling to interested clients:
- Conduct individual appointments to review clients’ budget, credit report and financial goals in an advising/coaching setting.
- Assess clients’ capacity/status regarding budgeting skills, credit management and problem-solving skills; provide education in these areas as appropriate.
- Educate clients about key issues and options relevant to their circumstances.
- Analyze eligibility for a debt management plan.
- Provide information and referrals to local agencies to address financial, individual and/or housing issues.
- Conduct appropriate follow-up with clients and referral sources.
- Maintain appropriate documentation regarding client activity.
- Conduct workshops in areas of Financial Fitness.

5 hours/week
| Lynna Burton, Intake Specialist | This position handles initial review for online applications.  
• Review online application  
• Enter data points and uploaded documents into client management system  
• Contact applicant to notify them of additional documents required to schedule an appointment | 2 hours/week |
| Tracy Schultz, Controller | This position is over accounting activity | 2 hours/week |
| Accounting Manager | This position manages accounting invoices and reports | 2 hours/week |

Any changes in the Key Personnel assigned or their general responsibilities under this project are subject to the prior approval of the City.

8. PAYMENT PROCEDURES

The City will reimburse Subrecipient for expenditures for the Project and in accordance with the line-item budget set forth in Exhibit B – Program Budget. Subrecipient shall submit all invoices and supporting documentation to the City’s Department of Planning, Neighborhoods, and Development. Subrecipient shall comply with the following requirements for the submission of requests for reimbursement:

A. Invoice Information

Subrecipient’s invoice shall contain the following:

1. City Contract Number
2. Invoice Number
3. Period Covered
4. Work Done/Accomplishments Summary, etc.
5. Written documentation verifying that weekly payroll reports were reviewed and comply with approved wage determination.
6. Total Amount Requested
7. List of Enclosed Documents
8. Agreement Funding Balance
9. Other information Subrecipient desires to communicate to the City’s Project Coordinator
10. Signature of Subrecipient’s Chief Financial Officer

B. Supporting Documentation
Subrecipient shall provide documentation of project administration activities, including the number of hours worked on the program/project funded, and a summary of work performed by the employee during the time for which payment was made.

Unless disputed or the City determines that there is insufficient documentation to substantiate the invoice, the City will tender payment to Subrecipient in a timely manner.

9. DOCUMENTATION AND RECORD KEEPING

The following financial records related to the payment of salaries and fringes for operational staff if applicable:

A. Accounting journals and ledgers
B. Source documentation that costs were eligible and paid (invoices, purchase orders, cancelled checks, etc.)
C. Bank account records
D. Time sheets for personnel
E. Time logs and activity reports for personnel
F. Payroll records and reports
G. Documentation of other administrative costs charged
H. Financial reports
I. Audit files
J. Financial correspondence

In order to ensure that program participants and activities meet the program eligibility criteria, Subrecipient must record the name, address, household income, racial and ethnic data, and a description of work and services to be performed.

Subrecipient will maintain case files, including the above information for a period of not less than four years after completion of the program. Subrecipient will maintain these and other documents and financial records in accordance with the requirements for record retention specified in Article 8 of the Agreement. Records pertinent to this agreement shall be retained until December 31, 2027.

10. REPORTING PROCEDURES

The City will require timely and consistent reports to ensure that the program is proceeding according to the work program and in accordance with federal regulations. Reporting shall continue until expiration or termination of this Agreement. All reports shall be submitted to the Project Manager and will be retained for 5 years beyond the terms of the contract. The Sub-recipient agrees to submit the following reports.

A. Monthly Progress Reports
Subrecipient agrees to submit with a monthly invoice or on the fifteenth (15th) day of each month, beginning with October 15, 2021, a written progress report covering the agreed upon objectives, activities, and expenditures of the previous month or the month being invoiced. The Monthly Progress Report must detail, at a minimum, the following information per reporting period:

1. The number of households served;
2. A brief summary of the activities that occurred during the reporting period;
3. The race and ethnicity for each household assisted;
4. The income level for each household assisted;
5. The service definition/ level of service for each household assisted;
6. Additional funding sources leveraged;
7. A comparison of the number of hours worked on the program vs. their total work hours for all employees billing time to the agreement.

A copy of the Monthly Report is included in Exhibit D – Monthly and Cumulative Reports.

B. Cumulative Reports

The Subrecipient shall submit an annual Cumulative Report detailing the activities of the Subrecipient to the City no later than January 15, 2022 and January 16, 2023. A copy of the Cumulative Report is included in Exhibit D – Quarterly and Cumulative Reports.

Within 60 days after expiration or termination of this Agreement or within 60 days of submitting the final invoice, whichever comes first, Subrecipient shall submit an additional cumulative report to the City. This report shall be in a format approved by the City, and it shall detail all sources and uses of funds and describe Subrecipient’s activities and outcomes of the services provided throughout the course of the Agreement. This exhibit shall survive termination or expiration of this Agreement.

11. COMMUNICATIONS

All invoices, reports, notices, and/or correspondence regarding this Agreement and the Project shall be submitted to the parties as specified in Article 7 of the Agreement.

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## EXHIBIT B
### PROGRAM BUDGET

<table>
<thead>
<tr>
<th>HO CGD Pathways Tornado Recovery Homeownership Program</th>
<th>City 2018/2019 CDBG</th>
<th>Private</th>
<th>Federal</th>
<th>State</th>
<th>Local</th>
<th>County</th>
<th>In-Kind</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personnel Costs</td>
<td>$64,100</td>
<td>$15,000</td>
<td>-</td>
<td>-</td>
<td></td>
<td>$34,440</td>
<td>-</td>
<td>$113,287</td>
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<tr>
<td>Rent</td>
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<td>$2,000</td>
<td>-</td>
<td>-</td>
<td>$1,500</td>
<td>-</td>
<td></td>
<td>$5,070</td>
</tr>
<tr>
<td>Supplies/Materials</td>
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<td>-</td>
<td>-</td>
<td>-</td>
<td>$1,000</td>
<td>-</td>
<td></td>
<td>$1,530</td>
</tr>
<tr>
<td>Security System/Personnel</td>
<td>-</td>
<td>$2,500</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
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</tr>
<tr>
<td>Lease Payments</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>Postage/Mailing</td>
<td>$1,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$600</td>
<td>-</td>
<td></td>
<td>$1,530</td>
</tr>
<tr>
<td>Legal/Auditing Services</td>
<td>$1,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$600</td>
<td>-</td>
<td></td>
<td>$1,530</td>
</tr>
<tr>
<td>Equipment</td>
<td>$2,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$1,060</td>
<td>-</td>
<td></td>
<td>$3,060</td>
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<tr>
<td>Other Operating:</td>
<td>-</td>
<td>$3,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>Advertising</td>
<td>$1,500</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$800</td>
<td>-</td>
<td></td>
<td>$2,300</td>
</tr>
<tr>
<td>Bank Fees</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>Credit Reports</td>
<td>$2,400</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
<td>$2,400</td>
</tr>
<tr>
<td>Total</td>
<td>$75,000</td>
<td>$7,500</td>
<td>$15,000</td>
<td>-</td>
<td>$40,000</td>
<td>-</td>
<td></td>
<td>$137,500</td>
</tr>
</tbody>
</table>

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**EXHIBIT C**
CDBG MONITORING SCHEDULE

**Grantee:** City of Dayton Department of Planning, Neighborhoods, and Development

**Subrecipient:** The HomeOwnership Center of Greater Dayton

**Project/Program:** Pathways Tornado Recovery Homeownership Program

<table>
<thead>
<tr>
<th>Monitoring Subject Area</th>
<th>Date of Review</th>
<th>City Representative</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Section I. Required Monitoring for ALL CDBG Subrecipient Agreements</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financial and Program Eligibility</td>
<td>Upon submission of invoice(s)</td>
<td>Sarah Geist or designated staff</td>
</tr>
<tr>
<td>Program Performance and Records Management</td>
<td>Ongoing on a quarterly basis until termination of Agreement</td>
<td>Sarah Geist or designated staff</td>
</tr>
<tr>
<td>Environmental Review</td>
<td>Prior to Contract Execution</td>
<td>Pete Thornburgh</td>
</tr>
<tr>
<td>Historic Properties Protection Review</td>
<td>Not Applicable</td>
<td></td>
</tr>
<tr>
<td>On-Site Monitoring Visit</td>
<td>TBD in accordance with CDBG risk assessment policy</td>
<td>Sarah Geist or designated staff</td>
</tr>
</tbody>
</table>

**Section II. Specific Monitoring Areas based on Project Type**

<table>
<thead>
<tr>
<th>Project Type</th>
<th>Monitoring Subject Area</th>
<th>Date of Review</th>
<th>City Representative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Activities (Prevailing Wage Compliance and Record Keeping, Bidding and Procurement Process)</td>
<td>Not Applicable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acquisition and Relocation Compliance</td>
<td>Not Applicable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Housing Rehabilitation Guidelines</td>
<td>Not Applicable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Economic Development Guidelines</td>
<td>Not Applicable</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT D
MONTHLY AND CUMULATIVE REPORTS

Monthly Report

Project Name: Pathways Tornado Recovery Homeownership Program
Subrecipient: The HomeOwnership Center of Greater Dayton
Action Plan Year: 2021
Reporting Period: Quarter ___, 2021

1. Provide a description of all activities and accomplishments occurring during this reporting period. Quantify all accomplishments and identify the location of physical improvements with an address

2. Total number of persons served: _______________

3. Race/Ethnicity: 

<table>
<thead>
<tr>
<th>Race</th>
<th>Total</th>
<th>Hispanic/Latino</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black/African-American</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asian</td>
<td></td>
<td></td>
</tr>
<tr>
<td>American Indian/Alaskan Native</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Native Hawaiian/Other Pacific Islander</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black/African-American &amp; White</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asian &amp; White</td>
<td></td>
<td></td>
</tr>
<tr>
<td>American Indian/Alaskan Native &amp; White</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Native Hawaiian/Other Pacific Islander &amp; White</td>
<td></td>
<td></td>
</tr>
<tr>
<td>American Indian/Alaskan Native &amp; Black/African-American</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other multi-racial</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

TOTALS

Total must match #2

28
4. Income Levels:

<table>
<thead>
<tr>
<th>Income Level</th>
<th>Number of Persons</th>
<th>Percent Low/Mod</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extremely Low - 0-30%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low - 30-50%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Moderate - 50-80%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-Low/Moderate</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

5. Of the total persons served, number of persons:

<table>
<thead>
<tr>
<th>Number of Persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>With new or continuing access to a service or benefit</td>
</tr>
<tr>
<td>With improved access to a service or benefit</td>
</tr>
<tr>
<td>That receive a service or benefit that is no longer substandard</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
</tr>
</tbody>
</table>

6. Staff Time

Please indicate the number of hours worked by each employee billing time to the grant during this reporting period. The average of the cumulative hours billed per employee should correspond to the agreed upon totals listed under Exhibit A, Section 7 – Staffing.

<table>
<thead>
<tr>
<th>Name</th>
<th>Monthly</th>
<th>Cumulative</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Hours Billed to Housing</td>
<td>Hours Billed to Housing</td>
</tr>
<tr>
<td></td>
<td>Counseling Program</td>
<td>Counseling Program</td>
</tr>
<tr>
<td></td>
<td>Total Hours Worked</td>
<td>Total Hours Worked</td>
</tr>
<tr>
<td></td>
<td>Average</td>
<td>Average</td>
</tr>
<tr>
<td>Julie Deacon</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jackie Easter</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lisa Roberts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marva Williams-Parker</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rachel Klopfer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lynna Burton</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tracy Schultz</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**Annual Cumulative Report & Post-Agreement Report**

**Project Name:** Pathways Tornado Recovery Homeownership Program  
**Subrecipient:** The HomeOwnership Center of Greater Dayton  
**Action Plan Year:** 2021  
**Reporting Period:** January 1 – December 31, 2021

1. Does the project generate program income (PI)?  
   ___________ YES ___________ NO  
   *PI is defined as the proceeds from the sale of real estate purchased through CDBG, income generated from fees or charges assessed for a CDBG-funded service, or loan repayments from a revolving loan program funded with CDBG dollars*

   1a. If YES, how much PI was received during reporting period?  
   ___________

   1b. Program Income balance as of report date:  
   ___________

2. Does the project utilize any funding other than the CDBG allocation?  
   ___________ YES ___________ NO

2a. If YES, indicate the source, type (Federal, State, Local, or Private), and the amount.

<table>
<thead>
<tr>
<th>Source</th>
<th>Type</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
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<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3. Provide a description of all activities and accomplishments occurring during this reporting period.  
   Quantify all accomplishments and identify the location of physical improvements with an address or boundary. (Attach additional documentation, if necessary.)


4. Was the project completed during the current reporting period?  
   ___________ YES ___________ NO  

4a. If YES, indicate completion date.  
   __________________________

30
4b. If NO, please provide a brief description of the Subrecipient’s plan to complete the project and an estimated timeframe for completion.

5. Total number of persons served: __________________________

6. Race/Ethnicity

<table>
<thead>
<tr>
<th>Race</th>
<th>Total</th>
<th>Hispanic/Latino</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black/African-American</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asian</td>
<td></td>
<td></td>
</tr>
<tr>
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<td></td>
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<td></td>
</tr>
<tr>
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<td></td>
<td></td>
</tr>
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7. Income Levels

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<td></td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td></td>
</tr>
</tbody>
</table>

| Percent Low/Mod    | %                 |

8. Of the total persons served, number of persons:

<table>
<thead>
<tr>
<th></th>
<th>Number of Persons</th>
</tr>
</thead>
<tbody>
<tr>
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<td></td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td></td>
</tr>
</tbody>
</table>
"CDBG - HO CGD PATHWAYS - signed by law" History

Document created by Ashley Hatton (ashley.hatton@daytonohio.gov)
2021-11-30 - 1:19:21 PM GMT- IP address: 198.30.33.2

Document emailed to Julie Deacon (jdeacon@hocgd.org) for signature
2021-11-30 - 1:20:18 PM GMT

Email viewed by Julie Deacon (jdeacon@hocgd.org)
2021-11-30 - 2:42:51 PM GMT- IP address: 208.38.225.176

Document e-signed by Julie Deacon (jdeacon@hocgd.org)
Signature Date: 2021-12-01 - 7:52:03 PM GMT - Time Source: server- IP address: 64.56.109.6

Agreement completed.
2021-12-01 - 7:52:03 PM GMT
PROFESSIONAL SERVICES AGREEMENT

Approval is requested to enter into a professional service agreement with LexisNexis for online legal research and support services for the Department of Law.

This Agreement is for a three (3) year commitment as follows:

Year 1 $4,998.00
Year 2 $10,296.00
Year 3 $10,608.00

Contract Period: January 1, 2022 – December 31, 2024

A Certificate of Funds encumbering funds for the first year of the Agreement in the amount of $4,998.00 is attached.

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

Approved by City Commission

FORM NO. MS-16

Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>New Contract</th>
<th>Renewal Contract</th>
<th>Change Order</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Start Date</td>
<td>01/01/22</td>
<td></td>
</tr>
<tr>
<td>Expiration Date</td>
<td>12/31/24</td>
<td></td>
</tr>
<tr>
<td>Original Commission Approval</td>
<td>$25,902.00</td>
<td></td>
</tr>
<tr>
<td>Initial Encumbrance</td>
<td>$4,998.00</td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$20,904.00</td>
<td></td>
</tr>
<tr>
<td>Required Documentation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>x Initial City Manager’s Report</td>
<td></td>
<td></td>
</tr>
<tr>
<td>x Initial Certificate of Funds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>x Initial Agreement/Contract</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Copy of original City Manager’s Report</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Copy of Original Certificate of Funds</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Amount: | $4,998.00 |
| Fund Code | 10000 - 5200 - 1152 - 63 - XXXX - XXXX |
| Fund | Org | Acct | Prog | Act | Loc |

| Amount: |
| Fund Code | XXXX - XXXX - XXXX - XX - XXXX - XXXX |
| Fund | Org | Acct | Prog | Act | Loc |

Attach additional pages for more FOAPALS

Vendor Name: LexisNexis
Vendor Address: 28544 Network Place, Chicago, IL 60673-1285
Federal ID: 52-1471842
Commodity Code: 95670
Purpose: Online legal services agreement with LexisNexis, a division of RELX Inc. Year 1 of 3.

Contact Person: Christina Cox
Law - Civil
Department/Division
12/8/2021
Date

SECTION II - to be completed by the Finance Department

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

Finance Director Signature
Date

CF Prepared by
Date

CF/CT Number
LEXIS® SUBSCRIPTION AGREEMENT
FOR STATE/LOCAL GOVERNMENT
(NEW SUBSCRIBER)

“Subscriber” Name: City of Dayton, Ohio

Account Number:

“LN”: LexisNexis, a division of RELX Inc.

1. Subscription Agreement

LexisNexis, a division of RELX Inc. ("LN") grants Subscriber a non-exclusive, non-transferable limited license to access and use Lexis® and the materials available therein ("Materials") pursuant to terms set forth in the LexisNexis General Terms and Conditions ("General Terms") and the pricing set forth in the Price Schedule ("Price Schedule") (the General Terms together with the Price Schedule is collectively referred to as the "Subscription Agreement"). Both of which are incorporated herein by reference. Subscriber may view and print the Subscription Agreement at: https://www.lexisnexis.com/en-us/terms/GovtAcademic/terms.page.

2. Certification

2.1 Subscriber certifies that the number of government professionals in Subscriber’s organization is as set forth below. A "Government Professional User" is defined as an attorney, judge, librarian, researcher, investigator or analyst who is employed by the Subscriber.

| Number of Government Professional Users: | 19 |

2.2 A "Support Staff User" is defined as a person who supports the Government Professional User, including, but not limited to: paralegals, interns, legal secretaries or other administrative support members. 3 ID’s may be issued to support staff for each Government Professional User accounted for above.

| Number of Support Staff Users: |

2.3 Each LN ID must be issued for individual use by the Government Professional User or Support Staff User.

2.4 If Subscriber, at the time of signing this Agreement has 11 or more Government Professional Users, then Subscriber is required to notify LN if the number of Government Professional Users falls below 11. Subscriber shall, within 30 days of the staffing change, notify LN in writing.

2.5 Subscriber acknowledges that the pricing and menus provided to Subscriber in this Agreement depend in part on the number of Government Professional Users in Subscriber’s organization. Subscriber certifies that as of the date Subscriber signs this Agreement there are the number of Government Professional Users in Subscriber’s organization (the "Reference Number") as Subscriber has specified above.

i. At LN’s request from time to time, Subscriber will certify in writing the then-current Reference Number.

ii. If there is a change in the Reference Number during the Term, LN may, in its sole discretion on at least 30 days prior written notice to Subscriber, increase or decrease the Monthly Commitment by an amount that does not exceed, on a percentage basis, the change in the Reference Number.

3. Lexis Product and Charges

3.1 This Section 3 amends the Subscription Agreement with respect to the Lexis product offering described below. The term of Subscriber’s commitment for the Lexis product offering will begin upon the date Subscriber’s billing account ("Account Number") is activated ("Activation") and will continue for the last period set forth in Section 3.2 below (the "Committed Term"). Subscriber may not terminate this Agreement for convenience under General Terms during the Committed Term. Notwithstanding the foregoing, Subscriber may terminate this Agreement during the Committed Term for a material breach by LN that remains uncured for more than 30 days after LN receives written notice from Subscriber identifying a specific breach.
LEXIS® SUBSCRIPTION AGREEMENT
FOR STATE/LOCAL GOVERNMENT
(NEW SUBSCRIBER)

If Subscriber terminates this Agreement pursuant to this Section, then Subscriber will pay all charges incurred up to the date of termination.

<table>
<thead>
<tr>
<th>Lexis Content &amp; Features</th>
<th>SKU Number</th>
<th>Number of Users</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Primary Enhanced</td>
<td>1011511</td>
<td>19</td>
</tr>
<tr>
<td>Ohio Practice</td>
<td>1010616</td>
<td>19</td>
</tr>
<tr>
<td>All West Jurisprudences</td>
<td>1011516</td>
<td>19</td>
</tr>
<tr>
<td>City and County Attorney Premium</td>
<td>1011966</td>
<td>19</td>
</tr>
</tbody>
</table>

3.2. In exchange for access to the Lexis Content, Feature and/or Service set forth in Section 3.1 above, Subscriber will pay to LN the following amount (the "Monthly Commitment") during the periods set forth below.

<table>
<thead>
<tr>
<th>Committed Term</th>
<th>Monthly Commitment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/1/2022 - 6/30/2022</td>
<td>$0.00</td>
</tr>
<tr>
<td>7/1/2022 - 12/31/2022</td>
<td>$833</td>
</tr>
<tr>
<td>1/1/2023 - 12/31/2023</td>
<td>$855</td>
</tr>
<tr>
<td>1/1/2024 - 12/31/2024</td>
<td>$884</td>
</tr>
</tbody>
</table>

3.3. During the Term, LN may make content and features available to Subscriber that are not included in the Lexis Content described above which will be offered to Subscriber at an additional charge ("Alternate Materials"). Subscriber will be under no obligation to access and use the Alternate Materials, or to incur additional fees beyond the Monthly Installment. If Subscriber elects to access the Alternate Materials by initializing below, Subscriber will be notified that additional charges will apply before the Alternate Materials is displayed. If Subscriber proceeds to access the Alternate Materials, Subscriber will pay the then current, transactional charge(s) for the Alternate Materials that is displayed at the time of access.

Subscriber elects access to the Alternate Materials

3.4. Use of Lexis under this Agreement is available to Subscriber and its Authorized Users (defined in the General Terms).

3.5. LN may temporarily suspend access to Lexis until all unpaid amounts are paid in full. No claims directly or indirectly related to this Agreement with respect to amounts billed or payments made under this Agreement may be initiated by Subscriber more than 6 months after such amounts were first billed to Subscriber.

4. Closed Offer
The prices and other terms are subject to change if Subscriber has not submitted a signed original or copy on or before 12/31/2021.

5. Confidential Information
Subject to any state open records or freedom of information statutes, this Agreement contains confidential pricing information of LN. Subscriber understands that disclosure of the pricing information contained herein could cause competitive harm to LN, and will receive and maintain this Agreement in trust and confidence and take reasonable precautions against such disclosure to any third person. This Section 5 will survive the termination or expiration of this Agreement.
6. Support and Training
   During the Term, Subscriber, with the support of LN, agrees to encourage the effective use of Lexis through:
   (a) Meaningful participation in additional ongoing programs presented by LN to update and train Authorized Users;
   (b)Authorize the periodic distribution of memos or other communications by LN and/or Subscriber to Authorized Users; and
   (c) The periodic review with LN of Subscriber’s Authorized User’s use of materials and training under this Agreement.

7. Miscellaneous
   7.1. This Agreement does not bind either party until it has been accepted by both parties. Subscriber may accept this Agreement by signing below. LN will accept this Agreement by providing Subscriber with access to Lexis or by signing below.
   7.2. If Subscriber issues a purchase order in connection with the Agreement, Subscriber acknowledges and agrees that the purchase order shall be for Subscriber’s internal purposes only and shall not modify or affect any of the other terms or conditions for access to the Online Services.

LEXISNEXIS WILL NOT ACCEPT ANY CHANGES, CORRECTIONS OR ADDITIONS TO THIS AGREEMENT UNLESS SUCH CHANGES ARE EXPRESSLY ACCEPTED BY LN IN WRITING. SUCH CHANGES WILL HAVE NO LEGAL EFFECT.

AGREED TO AND ACCEPTED BY:

Subscriber: City of Dayton, Ohio

[ MUST BE COMPLETED BY SUBSCRIBER ]

Authorized Subscriber Signature: _____________________________

Printed Name: _____________________________

Job Title: City Manager

Date: _____________________________

Number of Professional Users: 19

LexisNexis, a division of RELX Inc.

[COMPLETED BY LEXISNEXIS]

Authorized Signature: _____________________________

Name: Roslan, Joshua

Job Title: City Manager

Digitally signed by Roslan, Joshua (LNG-DAY)

Date: 2021-12-07 11:01:59 -05'00'
LEXIS® SUBSCRIPTION AGREEMENT FOR STATE/LOCAL GOVERNMENT (NEW SUBSCRIBER)

CUSTOMER INFORMATION (Please type or print):

<table>
<thead>
<tr>
<th>Organization Name: City of Dayton, Ohio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Billing Frequency:</td>
</tr>
<tr>
<td>□ Monthly</td>
</tr>
<tr>
<td>Physical Address</td>
</tr>
<tr>
<td>Street Address: 101 W 3rd St</td>
</tr>
<tr>
<td>City: Dayton</td>
</tr>
<tr>
<td>State: OH</td>
</tr>
<tr>
<td>Zip: 45402</td>
</tr>
<tr>
<td>County: Montgomery</td>
</tr>
<tr>
<td>Telephone: 937.333.4100</td>
</tr>
<tr>
<td>Fax:</td>
</tr>
<tr>
<td>Parent Company:</td>
</tr>
<tr>
<td>(If applicable)</td>
</tr>
</tbody>
</table>

TYPE OF ORGANIZATION

□ Legislative  □ Judicial  □ Executive

Professional User: 19  Practicing Area of Law:
Support Staff:  Employer Identification Number:
Bar No:  Issuing State:
Date Issued/Expiration Date: Organization Web Address:
Tax Exempt: Yes (attach Sales Tax Exemption Certificate)  MSA: Yes  No
Tax ID No:  State Contract No: (If applicable)
  PO No: (If applicable)

CONTACTS

<table>
<thead>
<tr>
<th>Name</th>
<th>Telephone</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>Installation: John Musto</td>
<td>(937) 333-4116</td>
<td><a href="mailto:John.Musto@Daytonohio.gov">John.Musto@Daytonohio.gov</a></td>
</tr>
<tr>
<td>Billing: Lynette Burns</td>
<td>(937) 333-4100</td>
<td><a href="mailto:Lynette.Burns@Daytonohio.gov">Lynette.Burns@Daytonohio.gov</a></td>
</tr>
<tr>
<td>Policy/Legal Notification: John Musto</td>
<td>(937) 333-4116</td>
<td><a href="mailto:John.Musto@Daytonohio.gov">John.Musto@Daytonohio.gov</a></td>
</tr>
<tr>
<td>Scheduling/Training: John Musto</td>
<td>(937) 333-4116</td>
<td><a href="mailto:John.Musto@Daytonohio.gov">John.Musto@Daytonohio.gov</a></td>
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Super Admin:

Name: John Musto  Telephone: (937) 333-4116
Email: John.Musto@Daytonohio.gov

LNUS Agreement (SLG) 4819-4575-5330 202111 v3
Page 4 of 5
<table>
<thead>
<tr>
<th>ID Holders' Names</th>
<th>ID Holders' Titles/Positions</th>
<th>ID Holders' Email Addresses</th>
<th>Location/Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>See attached sheet</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

20 Min. Book Page

CLERK OF THE COMMISSION

**APPROVED AS TO FORM AND CORRECTNESS**

CITY ATTORNEY
City of Dayton Attorneys

1. Barbara Doseck, Director of Law: barbara.doseck@daytonohio.gov
2. John Musto, Deputy Director of Law: john.musto@daytonohio.gov
3. Suzanne Beck, Chief Counsel: suzanne.beck@daytonohio.gov
4. Leonard Bazelak, Senior Attorney: leonard.bazelak@daytonohio.gov
5. Norma Dickens, Senior Attorney: norma.dickens@daytonohio.gov
6. Adam Laugle, Assistant Attorney: adam.laugle@daytonohio.gov
7. Christina Cox, Paralegal: christina.cox@daytonohio.gov
8. Stephanie Cook, Chief Prosecutor: stephanie.cook@daytonohio.gov
9. Alissa Schriner, Assistant Attorney: alissa.schriner@daytonohio.gov
10. Amy Musto, Assistant Attorney: amy.musto@daytonohio.gov
11. Ashley Thomas, Assistant Attorney: ashley.thomas@daytonohio.gov
12. Jeff McQuiston, Assistant Attorney: jeff mcquiston@daytonohio.gov
13. Marc Ross, Chief Counsel: marc.ross@daytonohio.gov
14. Debra Barrow-Miller, Paralegal: debra.barrow@daytonohio.gov
15. Edward Utacht, Assistant Attorney: edward.utacht@daytonohio.gov
16. Elizabeth Hudson, Assistant Attorney: elizabeth.hudson@daytonohio.gov
17. Marc Ross, Chief Counsel: marc.ross@daytonohio.gov
18. Elaine Brooks, Assistant Attorney: elaine.brooks@daytonohio.gov
19. Andrew Sexton, Chief Counsel: andrew.sexton@daytonohio.gov
City Manager's Report

From 5320 - Finance/Tax & Accounting
Supplier, Vendor, Company, Individual
Name Meeder Public Funds, Inc.
Address 6125 Memorial Drive
         Dublin, OH 43017

Date December 22, 2021
Expense Type Service Agreement
Total Amount $60,000 thru 12/31/2022

Fund Source(s) Fund Code(s) Fund Amount(s)
Treasury Investment Fund 16010-5320-1158-64 $60,000.00

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

Description
Second Amendment to Agreement for Investment Advisory Services

The Department of Finance requests City Commission approval to enter into a Second Amendment to Agreement for Investment Advisory Services with Meeder Public Funds, Inc. (Meeder) in the amount of $60,000.00 through December 31, 2022. Meeder is the City’s current investment advisor and provides professional oversight and recommendations regarding the investment and reinvestment of City funds. All activity will comply with the Ohio Revised Code, as well as the City’s Investment Ordinance and Investment Policy.

The Department of Finance issued an RFP for Investment Advisor Services on September 28, 2017, and twelve firms submitted written proposals. The selection committee chose United American Capital Corporation (UACC) based on its extensive fixed income investment management experience in the public sector, past proven performance, and the lowest fees. Meeder acquired UACC in November 2018, and all rights and obligations of UACC under its Agreement with the City were assigned to Meeder.

The current Agreement was approved by the City Commission on January 17, 2018 in the amount of $204,000.00 through December 31, 2020. The initial term of the Agreement was for a period of three (3) years, commencing on January 18, 2018, with two (2) successive one-year renewals. The First Amendment was approved by the City Commission on December 16, 2020 in the amount of $68,500.00 through December 31, 2021 for the first one-year renewal. This Second Amendment in the amount of $60,000.00 through December 31, 2022 will be for the second one-year renewal and will bring the overall total to $332,500.00.

Under the Second Amendment, the fixed monthly fee for management of the main operating portfolio will remain at $5,000.00. Copies of the Agreement, First Amendment, and Second Amendment are attached. City Commission approval is requested to cover the estimated fees for the period from January 1, 2022 to December 31, 2022.

The Department of Law has review and approved the Second Amendment as to form and correctness.

A Certificate of Funds in the amount of $60,000.00 is attached.

Signatures/Approval

Approved by City Commission

Division

Department

City Manager

FORM NO. MS-16

Updated 10/2019
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

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Required Documentation

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

| Amount: | $60,000.00 |
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| Amount: | |
| Fund Code: | XXXX - XXXX - XXXX - XX - XXXX - XXXX |
| Fund | Org | Acct | Prog | Act | Loc |
| Amount: | |
| Fund Code: | XXXX - XXXX - XXXX - XX - XXXX - XXXX |
| Fund | Org | Acct | Prog | Act | Loc |

Attach additional pages for more FOAPALs

Vendor Name: Meeder Public Funds, Inc.
Vendor Address: 6125 Memorial Drive, Dublin, OH 43017
Street
City
State
Zipcode + 4
Federal ID: 34-1700641
Commodity Code: 946556
Purpose: Second Amendment to Agreement for Investment Advisor Services

Contact Person: Brian Smith
Finance/Tax & Account Admin: 12/8/2021
Department/Division: Date

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: 12/14/2021
Date: 12/14/2021

CF Prepared by: Janice Williams
Date: 12/14/2021
CF/CT Number: CT22-1944

Finance Department
October 18, 2021
SECOND AMENDMENT TO AGREEMENT
FOR INVESTMENT ADVISORY SERVICES

This Second Amendment to Agreement for Investment Advisory Services ("Second Amendment") is entered into this _____ day of ________________, by and between Meeder Public Funds, Inc. ("Meeder") and the City of Dayton, Ohio ("City").

WHEREAS, The City of Dayton entered into an Agreement for Investment Advisory Services ("Agreement") on January 18, 2018 with United American Capital Corporation ("UACC"); and,

WHEREAS, All rights and obligations of UACC under the Agreement have been assigned to Meeder Public Funds, Inc. ("Meeder") with the consent of the City; and,

WHEREAS, Pursuant to paragraph 6 of the Agreement, the Agreement may be modified by the parties; and,

WHEREAS, On December 16, 2020, the parties entered into a First Amendment to Agreement exercising the first one (1) year renewal pursuant to the Agreement, and,

WHEREAS, Meeder and the City now desire to amend the Agreement to enter into the second one (1) year renewal pursuant to the Agreement.

NOW, THEREFORE, in consideration of the promises contained in this Second Amendment, City and Meeder agree as follows:

1. The parties agree to a second renewal of the Agreement through December 31, 2022 in an amount not to exceed Sixty Thousand Dollars and Zero Cents ($60,000.00).
2. The fees established under the First Amendment to Agreement shall remain the same during the term of the second renewal through December 31, 2022.
3. The remaining terms and provisions of the Agreement shall remain in full force and effect.
IN WITNESS WHEREOF, Meeder and the City, each by a duly authorized representative, have executed this Second Amendment as of the day and date set forth above.

CITY OF DAYTON, OHIO

______________________________
City Manager

MEEDER PUBLIC FUNDS, INC.

By: __________________________
Title: President

APPROVED AS TO FORM
AND CORRECTNESS:

______________________________
City Attorney

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

______________________________ . 2021

Min. Bk. _____  Pg. _____

______________________________
Clerk of the Commission
FIRST AMENDMENT TO AGREEMENT
FOR INVESTMENT ADVISORY SERVICES

This First Amendment to Agreement to for Investment Advisory Services ("First Amendment") is entered into this ___ day of ____________, by and between Meeder Public Funds, Inc. ("Meeder") and the City of Dayton, Ohio ("City").

WHEREAS, The City of Dayton entered into an Agreement for Investment Advisory Services ("Agreement") on January 18, 2018 with United American Capital Corporation ("UACC"); and,

WHEREAS, All rights and obligations of UACC under the Agreement have been assigned to Meeder Public Funds, Inc. ("Meeder") with the consent of the City; and,

WHEREAS, Pursuant to paragraph 6 of the Agreement, the Agreement may be modified by the parties; and,

WHEREAS, Meeder and the City desire to amend the Agreement to set forth the fees payable to Meeder under the Agreement beginning on January 1, 2021.

NOW, THEREFORE, in consideration of the promises contained in this First Amendment, City and Meeder agree as follows:

Paragraph 5 of the Agreement is hereby deleted in its entirety and replaced with the following:

1. 5. In consideration for the Services to be provided under this Agreement, the City will pay UACC a monthly fee, payable in arrears ("Fixed Monthly Fee") during the term of this Agreement. The Fixed Monthly Fee shall be $4,000.00 during the first year of the term, and $4,500 during the second and third year of the term. The City may elect to pay UACC’s monthly fee from its custody account. If such election is made, and at the City’s discretion, UACC will invoice the Custodian for the Fixed Monthly Fee. In such case, the Client must make arrangements with, or otherwise instruct, the Custodian to pay the Fixed Monthly Fee to UACC from Client’s custodial account upon presentation of an invoice by UACC to the Custodian. Effective January 1, 2021, the Fixed Monthly Fee shall be $5,000.00, payable monthly in arrears.

2. Paragraph 6 of the Agreement is hereby modified to add the following additional language:

The parties agree that effective January 1, 2021, the fees for any bond proceeds managed under this Agreement shall be as set forth in the attached Schedule A, which is incorporated by reference into this Agreement.

3. The remaining terms and provisions of the Agreement shall remain in full force and effect.
IN WITNESS WHEREOF, Meeder and the City, each by a duly authorized representative, have executed this First Amendment as of the day and date set forth above.

CITY OF DAYTON, OHIO

[Signature]
City Manager

MEEDER PUBLIC FUNDS, INC.

By: [Signature]
Title: Sr. Vice President

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]
City Attorney

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

December 14, 2020

Mia. Bk. F1, Pg. 0370

[Signature]
Clerk of the Commission
Meeder Public Funds
Schedule of Fees

Flat Fee – Operating Funds

For the services provided in accordance with this Agreement, Client will pay an investment advisory fee at the fixed monthly rate of $4,500, payable monthly in arrears. Beginning January 1, 2021, the fixed monthly rate is $5,000, payable monthly in arrears. Fees are invoiced to Client on a monthly basis.

Asset Based Fee – Bond Proceeds

This schedule sets forth the standard annual investment advisory fee applicable to the Bond Proceeds under this Agreement. The schedule is tiered and each tier of assets under management will be assessed at the rate set forth in the schedule. Fees are calculated and billed monthly in arrears based on the value of the securities, cash and other assets in the account at the end of the billing period. Unless otherwise agreed, fees are deducted directly from the Account.

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AGREEMENT FOR INVESTMENT ADVISORY SERVICES

This Agreement is entered into on this 18th day of January, 2018, by and between the City of Dayton, Ohio ("City") and United American Capital Corporation, 75 East Wilson Bridge Road, Suite C-3, Worthington, Ohio 43085 ("UACC").

WHEREAS, UACC is registered with the Securities and Exchange Commission under the Investment Advisors Act of 1940 and is experienced in providing investment advisory services to public entities; and

WHEREAS, the City and UACC are parties to an Agreement for Investment Advisory Services dated November 18, 2011, as amended by a First Amendment to Agreement for Investment Advisory Services entered into in January 2015 (the “Original Agreement”); and

WHEREAS, on February 24, 2016 the parties entered into an Addendum to the Original Agreement with respect to the City’s Bond Proceeds Account(s), the term of which remains in effect until the later of the termination of the Original Agreement or such time as each project or projects financed by the City’s bonds has been completed and the bond proceeds managed by UACC thereunder have been expended (the “2016 Addendum”); and

WHEREAS, the term of the Original Agreement expired on January 18, 2017; and

WHEREAS, on January 19, 2017 the parties entered into a new Agreement for Investment Advisory Services (the “2017 Agreement”); and

WHEREAS, the term of the 2017 Agreement will expire on January 18, 2018, and the City desires to engage UACC to continue to provide investment advisory services to the City subject to specific conditions as set forth herein; and

WHEREAS, UACC is currently managing bond proceeds of the City under the 2016 Addendum;

NOW, THEREFORE, in consideration of the promises set forth herein, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. UACC accepts appointment by the City as investment advisor and will provide investment advice and recommendations, regarding the investment and reinvestment of funds of the City. Such recommendations and advice will pertain to eligible investments, as defined under relevant ordinances of the City.

2. The City authorizes UACC, on a discretionary basis, to make investment decisions and to execute investment transactions on a delivery vs payment basis, and to trade in any securities as defined under relevant City ordinances, using such funds as designated by the Director of Finance. City funds to be invested may include operating funds and other such funds as determined by the Director of Finance. Upon the purchase or sale of portfolio assets, transaction advice will be transmitted to the Director of Finance or staff persons as designated by the Director of Finance and the City’s designated custodian, representing such investment transactions executed by UACC. The City assumes full responsibility for any and all investment decisions and/or investment transactions not recommended or executed by UACC, including the placement of time deposits, money market funds (or accounts), banking-related services, activity in STAR OHIO, or such funds not managed by
UACC. The selection and use of money market funds, or money market accounts, shall be determined by the Director of Finance.

3. UACC shall issue investment reports to the Director of Finance. UACC shall issue such reports on a monthly basis, or for such periods as requested by the Director of Finance. UACC shall participate in scheduled investment committee meetings, if requested, and at such times as determined by the Director of Finance.

4. The Director of Finance shall designate a custodian ("Custodian") for the safekeeping of cash and securities, accounting for the credit of income and maturities, and reconciling investment transactions and investment assets versus the Custodian statement. Under no circumstances will UACC have control over the duties and responsibilities of the Custodian, except to provide instructions regarding the purchase or sale of eligible investments. The custody agreement will be signed by the custodian bank and the City.

5. In consideration for the services to be provided under this Agreement, the City will pay UACC a monthly fee, payable in arrears ("Fixed Monthly Fee") during the term of this Agreement. The Fixed Monthly Fee shall be $4,000.00 during the first year of the term, and $4,500.00 during the second year and third year of the term. The City may elect to pay UACC’s monthly fee from its custody account. If such election is made, and at the City’s direction, UACC will invoice the Custodian for the Fixed Monthly Fee. In such case, the Client must make arrangements with, or otherwise instruct, the Custodian to pay the Fixed Monthly Fee to UACC from Client’s custodial account upon presentation of an invoice by UACC to the Custodian.

6. The initial term of this Agreement shall be for a period of three (3) years, commencing on January 18, 2018, with the term renewing automatically for two (2) successive one (1) year renewal terms unless either party sends written notice of nonrenewal to the other party at least 30 days prior to the end of the then current term. The renewal terms will be on the same terms and conditions, except the Fixed Monthly Fee which will be negotiated in good faith and agreed to by the parties in writing upon renewal. Upon expiration and/or non-renewal of the term, the Agreement will remain in full force and effect on the same terms and conditions then existing on a month-to-month basis until terminated or renewed for a specific period of time. Upon agreement by the City and UACC, the terms of this Agreement may be revised or modified at any time. If revisions are made, the City may elect to reissue the Agreement for another specific period of time. Either party may terminate this Agreement at any time after giving (60) days written notice. If the Agreement is terminated, UACC shall be paid for services provided under this Agreement up to the date of termination. UACC will provide additional investment advisory services at the request of the City, for an additional fee agreed to by the parties of this Agreement. The terms and conditions of any such additional investment advisory services shall be set forth in an amendment or addendum to this Agreement. For the avoidance of doubt, the parties acknowledge that the 2016 Addendum will remain in effect in accordance with its terms with respect to any bond proceeds being managed by UACC under the 2016 Addendum, notwithstanding the expiration of the Original Agreement and the 2017 Agreement. Any additional bond proceeds accounts hereafter assigned to UACC will be subject to one or more additional addenda entered into pursuant to this Section 6.

7. UACC is registered with the Securities and Exchange Commission under the Investment Advisors Act of 1940. In accordance with the provisions of this Act, UACC shall not assign any portion of the Agreement without the consent of the Director of Finance. The Director of Finance acknowledges that she has received contemporaneously herewith a copy of UACC’s
investment advisor brochure (Part 2 of UACC’s form ADV) and brochure supplements of UACC’s advisory personnel. The City shall have the right to terminate this Agreement without penalty within five (5) business days after the date of this Agreement.

8. All records, data, and information provided by the City pursuant to the Agreement shall be regarded as confidential by UACC, and UACC may release such records, data, and information only to authorized persons of the City or to such other persons as the Director of Finance may authorize in writing or as otherwise required by law.

9. With reasonable advance written notice to UACC, at any time during normal business hours and as often as the City may reasonably deem necessary, UACC shall make available to the City all of its records with respect to all matters covered under the Agreement and will permit the City to audit, examine, and make excerpts or transcripts from such records and to have audits made of all records and documents pertaining in whole or in part to matters covered by the Agreement.

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

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

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

12. During the entire term of the Agreement, including any renewal term, UACC shall maintain a fidelity insurance coverage in an amount not less than One Million Dollars ($1,000,000). UACC shall deliver a copy of its fidelity insurance policy to the Director of Finance upon execution of the Agreement.

13. UACC shall defend, indemnify, and save harmless the City, its officers, employees, and representative from and against all expenses, damages, claims, suits, or liabilities (including reasonable attorney’s fees) of every kind whatsoever by reason of, arising out of, or in any way connected with a material breach in the performance of investment advisory services described herein, including intentional, wrongful and/or negligent conduct or omission of UACC or its employees, agents and contractors, and any violation of applicable federal, state and/or local law, rules, regulations, policies and procedures.
14. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of law. The federal and state courts situated in Montgomery County, Ohio, shall have exclusive original jurisdiction in any dispute regarding the interpretation of the Agreement or performance thereunder.

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

To the City: The City of Dayton, Ohio
Director of Finance
101 W. Third Street
Dayton, Ohio 45402

To UACC: United American Capital Corporation
75 East Wilson Bridge Road
Suite C-3
Worthington, Ohio 43085

Nothing in this Section 15 shall be construed to restrict the transmission of routine communications between representatives of UACC and the City.

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

17. The invalidity, illegality, or unenforceability of any provision of the Agreement or the occurrence of any event rendering any portion or provision of the Agreement void shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void, unenforceable, invalid, or illegal provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision. The parties further agree to amend the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Section 17 shall not prevent the entire Agreement from being void in the event a provision which is of the essence of the Agreement is determined to be void.

18. By executing this Agreement, Consultant acknowledges and agrees that it will be providing services to the City as an “independent contractor.” As an independent contractor for the City, Consultant is prohibited from representing or allowing others to construe the parties’ relationship in a manner inconsistent with this Paragraph. Consultant shall have no authority to assume or create any obligation on behalf of, or in the name of the City, without the express prior written approval of a duly authorized representative of the City. Consultant, its employees and any person retained or hired by Consultant to perform duties and responsibilities under this Agreement are not the City employees, and therefore, such persons will not be entitled to, nor will they make a claim for, any of the emoluments of employment with the City of Dayton. Further, Consultant will be responsible to withhold and pay, or cause such agents, contractors and subcontractors to withhold and pay, all applicable local, state and federal taxes. Consultant further acknowledges and agrees that none of its employees are public employees for the purpose of membership and/or participation in the Ohio Public Employees Retirement System (OPERS).
19. Except as expressly provided in the Agreement, nothing herein shall be construed to give any rights or benefits to anyone other than the City and UACC.

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

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

IN WITNESS WHEREOF, the City and UACC, each by a duly authorized representative, have caused the Agreement to be executed as of the date first written above.

THE CITY OF DAYTON, OHIO

[Signature]
City Manager

UNITED AMERICAN CAPITAL CORPORATION

By [Signature]
Title President

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]
City Attorney

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

January 17, 2018

Min. Bk. I-15 Pg. 0149

[Signature]
Clerk of the Commission
Miami Valley Lighting, LLC – Street Lighting Agreement

The current Street Lighting Agreement Amendment between Miami Valley Lighting, LLC (MVLt) and City of Dayton expires December 31, 2021. The original agreement was executed January 1, 2016. MVLt through this agreement will provide streetlight services throughout the City illuminating approximately 14,040 streetlights owned by MVLt. This new agreement will require MVLt to upgrade approximately 8,307 existing streetlights to LED by December 31, 2023. Upon completion of the LED upgrades all MVLt owned streetlights will be LED. New agreement will cover streetlight services from January 1, 2022 through December 31, 2026.

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

A copy of the Certificate of Funds, Street Lighting Agreement and Renewal to Professional Agreement are attached.
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

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Original CT/CF
Increase Encumbrance
Decrease Encumbrance
Remaining Commission Approval

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

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Attach additional pages for more FOAPALs

Vendor Name: Miami Valley Lighting LLC
Vendor Address: 1065 Woodman Dr. Dayton OH 45432
Street City State Zipcode + 4
Federal ID: 311163136
Commodity Code: 91897
Purpose: Electric for Streetlight Agreement through 12/31/2022

Contact Person: Chatan Robinson x4207
Public Works/Property Management 12/7/2021
Department/Division Date
Originating Department Director's Signature: [Signature]

SECTION II - to be completed by the Finance Department

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

Finance Director Signature 12/14/21
Date
CF Prepared by 12/14/21
Date

Finance Department
October 18, 2021
City of Dayton

Street Lighting Agreement

This AGREEMENT ("Agreement") is between the City of Dayton, Ohio ("City" or "Dayton") and Miami Valley Lighting, LLC ("MVLt"), a subsidiary of AES Ohio

WHEREAS, The lighting of roadways and neighborhoods enhances public safety and security;

WHEREAS, MVLt is willing to own, maintain, and operate lighting luminaires and associated equipment on a long-term basis to provide full service lighting services; and

WHEREAS, The City desires to purchase such full service lighting services from MVLt at prices and on terms stated herein.

NOW, THEREFORE, MVLt proposes to light the streets, roads, and public places within the boundaries of the City on the following terms and conditions:

1. TERM OF AGREEMENT

This Agreement supersedes any previous agreement for street lighting that may currently exist between the parties. This Agreement shall commence on January 1, 2022 and shall expire on December 31, 2026.

2. STREET LIGHTING SERVICE

MVLt shall provide the City's full service street lighting needs and various other related street lighting services, as set forth herein, designed to illuminate the streets, roads, and public places within the City. Full service street lighting is the provision of street lighting by MVLt using MVLt-owned lighting luminaires and associated equipment operated and maintained by MVLt and attached to MVLt, The Dayton Power and Light Company ("DP&L") (now "AES Ohio"), Greater Dayton Regional Transit Authority ("RTA"), other entity, or City-provided poles. Full service street lighting also includes energy, service calls, inspections, system maintenance and installations further described in this Agreement.

3. STREET LIGHTING CHARGES

A. Cobra Head Change-out to LED.
MVLt shall change out all HPS cobra head streetlights to LED in 2022 and 2023 based on the quantities in Appendix B. The change-out charge per LED cobra head streetlight will be as follows:
   i. Tier I LED - $40.00
   ii. Tier II LED - $75.00
   iii. Tier III LED - $115.00
   iv. Tier IV LED - $165.00
MVLt will invoice the City with respect to the change-outs that were performed in the prior month and the City shall pay such invoices monthly. The total charges for the cobra head change-outs performed per schedule shall not exceed Five Hundred Sixty-Seven Thousand Dollars and Zero Cents ($567,000.00).

There is no change-out charge to replace an existing mercury vapor (MV) cobra head streetlight to an equivalent size LED cobra head streetlight. The change out of all HPS streetlights to LED in 2022 and 2023 shall be made in accordance with the order as listed on attached spreadsheet designated as Appendix B and incorporated by reference herein.

B. Non-Cobra Head Change-out to LED
   MVLt shall change out all HPS non-cobra head streetlights to LED based on the quantities in Appendix B. The change-out charge per LED non-cobra head streetlight will be as follows:
   i. Tier I LED Acorn - $325.00
   ii. Tier I LED Traditional - $250.00
   iii. Tier I LED Underpass - $400.00
   iv. Tier I LED Victorian Acorn - $200.00

MVLt will invoice the City with respect to the change-outs that were performed in the prior month and the City shall pay such invoices monthly. The total charges for the non-cobra head change-outs performed per schedule shall not exceed Eighty-Five Thousand, Five Hundred Dollars and Zero Cents ($85,500.00).

C. Full Service Lighting.
   The City will pay MVLt the Full Service Lighting Charges as set forth in Appendix A, which is incorporated herein by reference. The City will pay MVLt the Full Service Lighting Charges beginning the first full month after execution of this Agreement and continuing with each month through December 31, 2026.

MVLt shall submit full-service invoices not more frequently than monthly, for payment of the charges for services actually provided. Such invoices shall state the invoice period, quantities by lighting size and type, and total amount requested provided during the invoice period. The City will remit payment of all invoices, unless disputed within twenty (20) days from receipt thereof. Any undisputed invoice not paid within thirty (30) days from receipt thereof may incur an additional interest charge of 1.0% per month until paid in full.

4. PERIOD OF ILLUMINATION

All lights will be illuminated in accordance with an "ALL NIGHT AND EVERY NIGHT SCHEDULE," which is every night from approximately one-half hour after sunset of one day, until approximately one-half hour before sunrise of the next day. This will result in each luminary being illuminated approximately 4,000 hours per year. MVLt does not guarantee continuous lighting without disruption or interruption and will not be liable to the City or
anyone else for any damage, loss, or injury resulting from or in any way connected to the loss of illumination at any time. MVLt will use its best efforts to restore lighting service when interrupted within the terms described herein.

5. **OUTAGES**

The City will report to MVLt all luminaires which fail to illuminate via www.lightingsimplified.com, email, or call (888) 316-2393. The outage shall be reported utilizing the identification data fields provided on the website (including streetlight address or intersection and/or pole number). Minor repairs will be investigated and MVLt will endeavor to restore service within three (3) working days, on a monthly average basis. Minor repairs are items such as lamp, photocell, refractor, fuse, or starter replacement. A monthly average restoration will be calculated by dividing the number of elapsed days to restore service to all street lights impacted by minor service issues by the number of minor service calls reported by the City in the effective month.

Items such as luminary replacement, ballast replacement, pole repair or replacement, and electrical system failures are major repairs. Major repairs will be investigated and endeavor to restore service within seven (7) working days, on a monthly average basis. A monthly average restoration will be calculated by dividing the number of elapsed days to restore service to all street lights impacted by major service issues by the number of major service calls reported by the City in the effective month.

MVLt will provide the City a monthly minor and major repair report by the 15th of the following month (i.e. the report for January 2022 will be reported to the Customer by February 15th, 2022). If restoration exceeds an average of 3.0 days for minor repairs or 7.0 days for major repairs, MVLt will credit the Customer one thousand dollars ($1,000) monthly for total minor repairs exceeding 3.0 days and for total major repairs exceeding 7.0 days. Repair time delays that are beyond the control of MVLt such as extended time for damage claims, utility electric distribution service, foreign owned poles, etc. will be eliminated from the calculation in the repair report. If minor and major repairs exceed standards the maximum monthly credit will not exceed $2,000. The cumulative credits will be on a one-time basis on each December bill.

For the purpose of this document the term "working day" will mean all days except Saturdays, Sundays, and MVLt-observed holidays.

6. **MAINTENANCE**

As part of our service and maintenance obligations, MVLt agrees to a nighttime inspection system that shall occur semi-annually, Quarter 1 Jan – Mar and Quarter 3 Jul – Sept, for all of the MVLt-owned street lighting systems contained within the City. On an annual basis, MVLt shall conduct a daytime inspection for all of the MVLt-owned street lighting systems contained within the City for purposes of inspecting condition of pole, base, wiring, fixtures and mast arms. All inspections performed by MVLt shall be summarized in a combined written report
to the City that will state the month of the inspection, nature of repairs made by specific pole location, and date repairs were made. MVLt shall perform one night-time inspection starting in 2024 and continue to perform annual inspections through the term of the Agreement.

7. **STEEL POLE REPLACEMENT**

   A. During the term of this Agreement, MVLt will evaluate all existing steel poles and mutually agree to a plan to replace steel poles with spun aluminum poles. MVLt will not replace steel poles with wood poles. The replaced spun aluminum poles will have a new monthly price listed in the Appendix A. There will be no change-out charge to the City for replacement of existing steel poles under the Steel Pole Replacement Program. MVLt shall develop a schedule for pole replacement and consult with Dayton regarding such schedule. The replacement pole(s) shall be either 23 foot or 30 foot spun aluminum poles. Additionally, Dayton shall have the right, but not the obligation, to provide MVLt with a “priority” list that would identify any steel poles that Dayton would prefer to be replaced earlier in the term of the Agreement rather than later. The schedule for replacement shall remain in MVLt’s sole discretion, but it shall make good faith efforts to adjust the schedule to reflect any priority list that Dayton may provide.

   B. After installation, the monthly bills shall reflect the charges set forth in Appendix A for the applicable size of a new or replacement aluminum pole.

   C. Any steel pole replaced due to damage replacement, relocation, etc. will be replaced with a spun aluminum pole. The replaced spun aluminum pole monthly full service charge is listed in Appendix A for the applicable size of a new or replacement aluminum pole.

8. **WOOD POLE INSPECTIONS**

MVLt intends to continue a wood pole inspection program. MVLt shall have a 3rd party vendor inspect all MVLt wood poles. The results of the inspections will be shared with the City. MVLt will identify any poles that fail inspection and/or that MVLt recommends be replaced. There will be no charge for treating a wood pole or other work done on the existing pole. Additionally, there will be no charge for any replacement of a wood pole with another wood pole.

9. **STANDARD LIGHTING INSTALLATIONS**

The standard street lighting installation of MVLt equipment will be light emitting diode (LED) cobra head fixtures at the Tier I, II, III, or IV levels. MVLt will also provide decorative and underpass fixtures as listed in Appendix A. MVLt will not install new High Pressure Sodium (HPS) or Mercury Vapor (MV) luminaires.

The standard luminaires that will be provided by MVLt are:

   LED Luminaires.
   Standard LED cobra head luminaries shall be Tier I (approximately 47 watt LED), Tier II (approximately 82 watt LED), Tier III (approximately 194 watt LED), and Tier IV (approximately 237 watt LED). In recognition of potential technological advances that may take place during the term of this Agreement and that different vendors may produce
LED luminaires operating at slightly different wattage levels, MVLt may provide LED Luminaire installations that deviate from the above referenced Tier I, II, III, and IV levels, but only if the LED Luminaire installation provides the same or better street lighting characteristics with a comparable lighting pattern. Charges for such alternative LED luminaires shall correspond to the closest comparable Tier I, II, III, and IV LED price set forth in Appendix A.

Decorative and Underpass. Standard LED decorative post top and underpass luminaries shall be at a Tier I and Tier II level.

Technology Advances. In recognition of potential technological advances that may take place during the term of this Agreement and that different vendors may produce LED luminaires operating at slightly different wattage levels, MVLt may provide LED Luminaire installations that deviate from the above referenced Tier I, and II levels, but only if the LED Luminaire installation provides the same or better street lighting characteristics with a comparable lighting pattern. Charges for such alternative LED luminaires shall correspond to the closest comparable Tier I, and Tier II LED price set forth in Appendix A.

10. CHANGES TO EXISTING LIGHTING EQUIPMENT

For any permanent relocation of any portion of the system requested by the City, MVLt will develop a relocation proposal for submission to the City for approval. If the City agrees to pay the price on the proposal, then MVLt shall perform the work for the agreed upon price.

As set forth in Section 9, MVLt is offering specified types of LED Luminaires as a standard product type. MVLt will replace any inoperable mercury vapor or HPS Cobra Head luminaires with the appropriately rated LED Luminaire. (Failure shall mean a luminaire that is inoperable for reasons which cannot be resolved by a simple repair such as the replacement of a non-functioning lamp or photocell.) Such replacements shall be done without a separate installation charge and the monthly charges thereafter shall reflect the LED price set forth in Appendix A for that size LED luminaire.

The City may request the change-out of existing LED lighting fixtures to the same style but higher Tier standard LED fixture at a cost of $100 per change-out. The City will pay the monthly full service charge of the higher Tier LED.

For any temporary relocation of any part of the system requested by the City that requires a redesign in the systems electrical feeds (i.e. overhead to underground wiring) MVLt will develop a relocation proposal for submission to the City for approval.

For any temporarily disconnect of any luminaires requested by the City, MVLt shall assess a charge of $100.00 for each physical disconnection and $100.00 for each physical reconnection of a street lighting luminary. During the period a light has been disconnected, but not removed, at the City's request, the monthly service charge will be 60% of the applicable full service lighting charge.
For any deletion of any portion of the system requested by the City, MVLt will develop a removal proposal for submission to the City for approval. The proposal shall factor in the cost to disconnect at the power supply, whether or not the City intends to remove the equipment while on the job site, and if LED installed fixtures and installed spun aluminum poles, the remaining time left in this agreement.

For any permanent removal of any portion of the MVLt system requested by the City, the City will be responsible for the cost of any permanent MVLt removals.

11. NEW INSTALLATIONS

In circumstances where a new LED luminaire (not a replacement luminaire) is being installed, the following per luminaire charge will apply:

- Tier I cobra head $75.00
- Tier II cobra head $100.00
- Tier III cobra head $200.00
- Tier IV cobra head $250.00
- Tier I Post Top Style (Traditional) $465.00
- Tier I Post Top Style (Acorn) $500.00
- Tier I Post Top Style (Victorian) By Project
- Tier I Underpass By Project
- Tier III, IV Flood Lights By Project

In circumstances where a new pole (not a replacement pole) is being installed, the following per pole charge will apply:

Wood Pole:
- 35', Class 5 $450.00
- 40', Class 2 $550.00

Non-wood Pole:
- 17' Direct Bury (12' above ground) Black Aluminum Pole $381.00
- 23' Spun Aluminum Pole $720.00
- 30' Spun Aluminum Pole $800.00

Except as provided below, a wood pole will be installed to replace a wood pole and a spun aluminum pole will be used to replace a spun aluminum or steel pole. MVLt shall not replace a spun aluminum or steel pole with a wood pole.

If the City desires a streetlight luminaire or pole not offered in the Agreement, MVLt and the City will have a mutual discussion whether to develop a proposal for the desired product.

After installation, the Full Service Charges of the applicable type and size of pole and luminaire as set forth in Appendix A shall apply.
12. **TERMINATION**

   A. This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement. The non-performing party shall have fifteen (15) calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the other party.

   B. The City reserves the right to terminate or suspend this Agreement if it is decided whether by referendum, vote of City Commission, or otherwise, to eliminate funding for the provision of street lighting in all or a part of the City of Dayton. In such case, the City shall be responsible for the reasonable cost of disconnecting and removal of the streetlights. MVLt must provide documentation to substantiate the amount invoiced. In order to effectuate a suspension or termination, the City shall provide MVLt with notice at least sixty (60) days in advance of the expected suspension or termination. If funding is restored for lighting during a period when this Agreement would have been in effect, but for loss of funding, MVLt shall have the right of first refusal to provide the City's full service street lighting, subject to the terms and conditions of this Agreement. MVLt's right of first refusal shall survive termination of this Agreement but shall expire on December 31, 2026.

13. **COMMUNICATIONS**

   All notices, demands and other communications under this Agreement shall be in writing and shall be delivered personally, sent by express delivery, certified mail or first class U.S. mail, postage pre-paid to the address specified below:

   **MVLt:** Miami Valley Lighting  
   1065 Woodman Drive  
   Dayton, OH 45432  
   Attn: Mr. Robert Stallman  
   Vice-President

   **City:** City of Dayton  
   Department of Public Works  
   1736 E. Monument Ave.  
   Dayton, Ohio 45402  
   Attn: Mr. Fred Stovall  
   Director of Public Works

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

14. **USE OF RIGHT-OF-WAY**

   A. MVLt shall be entitled to place and maintain its equipment in all public rights-of-way controlled by the City in accordance with and subject to all Federal, State, and local laws. All new equipment installations shall be subject to the approval of the Department of Public Works. Repairs to or replacement of existing equipment does not need prior approval.

   B. The parties recognize that this Agreement will require MVLt to make substantial capital investments. Therefore, replacement or new luminaires or poles installed during the term of this Agreement shall remain in place through December 31, 2026. If this Agreement is not renewed or replaced with an agreement extending beyond December 31, 2026, or is terminated...
prior to that for any reason, MVLt and the City shall have a good faith obligation to negotiate an equitable arrangement under which MVLt and the City shall share the costs of removal for the replacement luminaires and the unrecovered capital investment incurred to add or modify or change-out poles and luminaires on or after January 1, 2022 and to remediate the right of way upon removal consistent with then current guidelines of Dayton for right of way restoration. MVLt shall have the right but not the obligation to leave all such MVLt replacement luminaries and poles in place until such time as such an equitable arrangement is executed.

15. **NEGOTIATIONS**

The parties agree that they shall meet not less than ninety (90) days prior to the expiration of this Agreement to negotiate in good faith for a possible extension or renewal of this Agreement. After such good faith negotiations, should the parties be unable to agree on new terms and conditions within thirty (30) days before the date the Agreement is to terminate, then either party, on or before December 31, 2026, may provide the other party with written notice of termination to become effective as of December 31, 2026.

16. **TREES**

Nothing in this Agreement shall be construed so as to require MVLt to trim any trees located adjacent to any street lighting luminaire.

17. **STANDARD PROVISIONS**

   A. **Governing Law**

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

   B. **Standard of Care**

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

   C. **Equal Employment Opportunity**

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

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

D. Waiver

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

E. Severability

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void, unenforceable, invalid or illegal provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision, which is of the essence of this Agreement, be determined void.

F. Independent Contractor

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

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

G. Assignment

Except where MVLt is merged in whole or in part with another entity, MVLt may not assign any rights or duties under this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld. Unless otherwise stated in the written consent to an
assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article prevents MVLt from employing independent contractors, associates, and subcontractors to assist in the performance of the Services. Any purported assignment in violation hereof will be void.

H. Third Party Rights

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

I. Amendment

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

J. Delay in Performance

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

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

K. Force Majeure

The provision of service is subject only to Force Majeure. The term "Force Majeure" shall mean the occurrence or non-occurrence of any act or event that is not reasonably within the control of the claiming party and which, by the exercise of due diligence, such party could not have prevented or overcome. Force Majeure shall not include changes to market conditions or a party's financial condition or a party's failure to enter into contracts necessary to meet its obligations. Examples of such causes include, but are not limited to, (a) acts of God or of the public enemy; (b) acts of any regulatory body with authority over any party to this Agreement; (c) fires; (d) floods, or; (e) any similar event or occurrence. MVLt shall not be liable to the City or anyone else for any damage, loss, or injury resulting from or in any way connected to the loss of illumination at any time.
18. **POLITICAL CONTRIBUTIONS**

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

19. **INTEGRATION**

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

**IN WITNESS WHEREOF,** the City and MVlt, each by a duly authorized representative, have executed this Agreement as of the date first written above.

**WITNESSED BY:**

**MIAMI VALLEY LIGHTING, LLC**

_Dicki R. Stallman_  
Vice President

**WITNESSED BY:**

**CITY OF DAYTON, OHIO**

____________________________________  
City Manager

**APPROVED AS TO FORM AND CORRECTNESS:**

12/7/2021

_X_ John Musto for  
City Attorney

Signed by: Musto, John

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

______________________________, 2021

Min./Bk. ___________Page ____________

______________________________  
Clerk of the Commission
## Appendix B

<table>
<thead>
<tr>
<th>Neighborhood</th>
<th>Total MV/Street Lights</th>
<th>LED MV/Street Lights</th>
<th>LEDs MV/Street Lights</th>
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## Appendix B

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City Manager’s Report

From 3220 - Aviation/AP Facilities & Ops Terminal
Supplier, Vendor, Company, Individual
Name Patricia Bretzfelder DBA Green World
Address 5618 Poe Ave
Dayton, OH 45414

Date December 22, 2021
Expense Type Service Agreement
Total Amount $61,409.26 thru 1/31/2025

Fund Source(s) Fund Code(s) Fund Amount(s)
Airport Operating Fund 51000-3220-1172-43 $61,409.26

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

Description

Professional Service Agreement

The Department of Aviation requests permission to enter into a Professional Service Agreement with, Patricia Bretzfelder dba Green World (Green World), in the amount not to exceed, $61,409.26 (For the years 2022: $26,626.78; 2023: $17,391.24 and 2024: $17,391.24 or as needed.)

The Department of Aviation conducted a competitive Request for Proposal (RFP No. 21-038AOOP), process beginning in October 2021, one company responded and was selected based upon expertise and previous experience.

Green World will provide and maintain a variety of interior plant landscaping to enhance the passenger experience and air quality in the Terminal of the Dayton International Airport & the Dayton Wright Brothers.

This Service Agreement will be effective upon execution and will expire on January 31, 2025.

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

A Certificate of Funds in the amount of $26,626.78 is attached.

Signatures/Approval

Division
Department
City Manager

Approved by City Commission

Clerk
Date

FORM NO. MS-16

Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

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<td><strong>Decrease Encumbrance</strong></td>
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<td><strong>Remaining Commission Approval</strong></td>
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<td>Fund</td>
<td>Org</td>
</tr>
</tbody>
</table>

**Attach additional pages for more FOAPALS**

**Vendor Name:** Patricia Bretzfelder DBA Green World

**Vendor Address:** 5618 Poe Ave Dayton OH 45414

**Street** | **City** | **State** | **Zipcode + 4** |
|---|---|---|---|

**Federal ID:**

**Commodity Code:** 59561

**Purpose:** Interior Plant Landscaping at the Dayton International Airport

**Contact Person:** Zeana Kitchens | Aviation / Admin Staff | 12/8/2021

**Department/Division** | **Date** |
|---|---|

**Originating Department Director’s Signature:**

SECTION II - to be completed by the Finance Department

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

**Finance Director Signature:**

**Date:** 12/13/21

**Finance Prepared by:**

**Date:** 12/13/21

**CF/CT Number:**

October 18, 2021
PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) is made as of this ___ day of
____________, 20__, by and between Patricia Bretzfelder, dba Green World, an Ohio
corporation and the CITY OF DAYTON, OHIO, a municipal corporation in and of the State of
Ohio.

WITNESSETH THAT:

WHEREAS, The City of Dayton, Ohio (“City”), is the owner and operator of the improved
real property, known and referred to as the James M. Cox Dayton International Airport (“Airport”),
situated in the City of Dayton, counties of Montgomery and Miami, State of Ohio; and,

WHEREAS, The City requested proposals to provide Airport Interior Landscaping
Services; and,

WHEREAS, Patricia Bretzfelder, dba Green World (“Company”), submitted a proposal
in response to the City’s request; and,

WHEREAS, The City selected Company’s proposal as the proposal which best meets its
needs and the City desires to hire Company to provide interior landscaping services for the
Department of aviation at the Airport.

NOW THEREFORE, in consideration of the following mutual covenants and other good
and valuable consideration, the receipt and adequacy of which is hereby acknowledged by all
parties hereto, Company and the City hereby agree as follows:

ARTICLE 1. TERM
The Agreement shall commence upon execution by the City and be in effect for a period of three
(3) years. It will terminate upon expenditure of all funds provided herein or January 31, 2025,
whichever date is earlier. The City, however, reserves the right to extend the term of this
Agreement to a later date by mutual written agreement, as described in Article 11, J.

ARTICLE 2. SERVICES TO BE PERFORMED BY COMPANY
shall provide all professional services necessary to complete the Services that are described in
attachment A, Scope of Services, (“Services”), which is attached hereto and incorporated herein
by reference.

ARTICLE 3. COMPENSATION
The total remuneration of this Agreement shall not exceed, $61,409.26 (Sixty-One Thousand,
Four Hundred Nine Dollars and Twenty-Six Cents) for all Services provided by Patricia
Bretzfelder, dba Green World, pursuant to this Agreement and all direct costs and travel
expenses incurred. The City will, unless disputed, remit payment of all undisputed amounts of
invoices within thirty (30) days from receipt thereof.
ARTICLE 4. CITY’S RESPONSIBILITIES
The City will furnish Company, at no cost or expense, all reports, records, and data that might be necessary or useful to complete the Services required under this Agreement.

ARTICLE 5. STANDARD OF CARE
Company shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily possessed and exercised by a professional under similar circumstances. Company shall have no liability for defects in the Services attributable to Company’s reliance upon or use of data or other information furnished by the City or third parties retained by the City.

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

ARTICLE 6. LIABILITY AND INDEMNIFICATION
Company shall defend, indemnify, and hold harmless the City and its elected officials, officers, agents and employees, from and against all claims, losses, damages, and expenses (including reasonable attorney’s fees) of whatsoever kind and nature, to the extent such claims, losses, damages, or expenses are caused by Company or its agents, employees, contractors, sub-contractors, and representatives negligent or willful acts, errors, or omissions.

This Article 6 shall survive termination of this Agreement.

ARTICLE 7. INSURANCE
During the term of this Agreement, Company shall maintain, at its sole cost and expense, no less than the following insurance issued by an insurance company authorized to conduct business in the State of Ohio and having an “A” rating or better by A.M. Best:

1. General liability insurance, having a combined single limit of $1,000,000 for each occurrence and $1,000,000 in the aggregate.
2. Automobile liability insurance, having a combined single limit of $1,000,000 for each person and $1,000,000 for each accident.
3. Employers’ liability insurance, having a limit of $500,000 for each occurrence.
4. Professional liability insurance, having a limit of $1,000,000 annual aggregate.

Current certificates of insurance for all policies and concurrent policies required to be maintained by Company pursuant to this Article shall be furnished to the City. All such insurance policies, excluding Professional Liability Insurance, shall name the City and its elected officials, officers, agents, employees, and volunteers as additional insureds, but only to the extent of Company’s legal liability and to the extent of the policy limits stated herein. All policies of insurance required hereunder shall contain a provision requiring a minimum of thirty (30) days advance written notice to the City in the event of cancellation or diminution of coverage. In the event of a claim, Company shall make copies of applicable insurance policies available for review by the City. Company however, shall retain its right to restrict disclosure of Company’s proprietary information contained in such policies in accordance with Article 8.

2
Company also, shall maintain Workers’ Compensation Insurance in such amounts as required by law for all employees, and shall furnish to the City evidence of same.

ARTICLE 8. CONFIDENTIALITY
Either party may provide the other party with information that it considers confidential or proprietary. Proprietary information is information that, if made public, would put the disclosing party at a disadvantage in the market place or trade of which the party is a part. Confidential information is information that, under the laws of the State of Ohio, is classified as being “private.” Such information shall be marked “confidential” and/or “proprietary” by the party providing it.

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

Nothing in this Article shall prohibit or limit Patricia Bretzfelder, dba Green World’s, disclosure of confidential information: (i) previously known to it without an agreement of confidentiality, (ii) independently developed by it, (iii) that is or becomes publicly available through no breach of this Agreement, (iv) when such disclosure is required by an order of a Court or under state or federal law, or (v) when such disclosure is authorized in writing by the City.

ARTICLE 9. OWNERSHIP OF DOCUMENTS & INTELLECTUAL PROPERTY
Except as otherwise provided in this Agreement, documents and reports prepared by Company as part of the Services shall become the sole and exclusive property of the City upon payment. However, Company shall have the unrestricted right to their use.

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

ARTICLE 10. TERMINATION
This Agreement may be terminated by the City upon written notice in the event of substantial failure by Company to perform in accordance with the terms of this Agreement. Company submit a plan to cure any performance defects to the City.

The City may terminate or suspend performance of this Agreement for the City’s convenience upon thirty (30) days prior written notice to Company. In the event of termination by the City hereunder, the City will pay Company for Services actually provided up to the date of termination.
ARTICLE 11. STANDARD TERMS

A. DELAY IN PERFORMANCE
Neither the City nor Company shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accessess, or services required to be provided by either the City or Company under this Agreement.

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

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

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

Green World
5618 Poe Ave
Dayton, OH 45414
Attention: Patricia Bretzfelder

City: City of Dayton, Department of Aviation
3600 Terminal Drive, Suite 300
Dayton, Ohio 45377
Attention: Director of Aviation

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

D. EQUAL EMPLOYMENT OPPORTUNITY
Company shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap with respect to employment, upgrading, demotion, transfer, recruitment, or recruitment advertising, lay-off, termination, rates of pay or other forms of compensation, or selection for training, including apprenticeship.
It is expressly agreed and understood that Section 35.14 of the Revised Code of General Ordinances of the City of Dayton constitutes a material condition of this Agreement as fully and as if specifically rewritten herein and that failure to comply therewith shall constitute a breach thereof entitling the City to terminate this Agreement at its option.

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

F. SEVERABILITY
The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void, unenforceable, invalid or illegal provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision, which is of the essence of this Agreement, be determined void.

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

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

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

H. ASSIGNMENT
Company shall not assign any rights or duties under this Agreement without the prior written consent of the City. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent Company from employing independent consultants, associates, and subcontractors to assist in the performance of the Services.
I. THIRD PARTY RIGHTS
Except as expressly provided in this Agreement, nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and Company.

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

The parties may mutually agree to extend the term of this Agreement to a later date. The Director of Aviation is authorized to extend the term of this Agreement for the City.

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

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

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

CITY OF DAYTON, OHIO

_________________________________________
City Manager

Date:_____________________________________

APPROVED AS TO FORM AND CORRECTNESS:

_________________________________________
City Attorney

GREEN WORLD

By:  

Title:  

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

_______________________________________, 20

Min./Bk.______________ Pg._____

______________________________
Clerk of the Commission
ATTACHMENT A

SCOPE OF SERVICES

Services: Company shall include all supervision, expertise, tools, organic fertilizers, organic pesticides, organic insecticides, organic fungicides, organic sprays, soil, equipment, trash bags, and other supplies adequate in kind and quality to perform indoor plant maintenance. The indoor plants and containers shall be supplied by the vendor and leased by the Department of Aviation through this agreement.

The company must perform servicing on a weekly basis by a fully insured staff person with a horticulture degree, or a staff person working under the supervision and direction of a fully insured staff person with a minimum of 5 years employed in the horticulture field or horticulture degree. Services shall include watering, fertilizing, spraying, cleaning, leaching, aerating, re-mulching, plant rotation of annuals, and plant replacement in accordance with sound horticultural practice. If an area containing plants is not readily accessible during the provision of weekly services, the Company shall notify the Department of Aviation project manager prior to leaving the site to arrange for servicing of those plants.

The company shall furnish and maintain holiday plant material and decorations during the Holiday season each year of the contract.

Frequency and Timing of Service: Normal service hours will be between the hours of 7:00 a.m. to 5:00 p.m. Monday through Friday. All work scheduled outside normal service hours needs to be scheduled and approved in advance with the Department of Aviation. All services are to be performed on a non-interfering basis to minimize traffic control and to maximize pedestrian safety. Services will be performed as needed to ensure cleanliness, plants free of pests and unsightly or damaged leaves at all times. Non-routine hours may be required to perform certain aspects of the service such as the setting up and taking down of holiday decorations.

Watering: The Company shall inspect for soil moisture levels and replenish as necessary to meet requirements of the plants. All water spills must be cleaned up immediately to prevent safety issues from occurring. The Company shall provide any equipment or apparatus needed to properly apply the correct amount of water for interior plants.

Pest and Disease Control: Inspection for soil and foliar insect pests, diseases, and other such infestations must be performed during each scheduled maintenance visit. It is imperative that the company take action and treat before there is any sign of damage. All plants shall be treated for fungus gnats with both a systematic and contact pesticide to prevent outbreaks before delivery.

Company must receive prior written approval from the Department of Aviation for any treatment that is not certified organic.

The company shall provide Material Safety Data Sheets (MSDS) to the Department of Aviation for any and all chemicals applied to the plants.
The company shall ensure that all staff member providing chemical services shall be properly licensed in State of Ohio to provide such services. Proof of meeting this requirement shall be made available to the Department of Aviation upon request.

**Pruning:** Each species will be pruned in accordance with the particular varieties' needs to maintain a neat appearance and in accordance with standard horticultural practice to preserve the natural character of the plant. In general, trailers shall not drape over the lip of the container and limbs shall not intrude into surrounding walk space. Dead wood and stubs resulting from pruning shall be removed. The correct pruning procedure will require special equipment and coordination with Airport personnel.

**Fertilization:** Regular checks of the various species and awareness of the proper time, type and amount of fertilization that is essential to promote the right amount of lush, green foliage.

**pH levels:** Regular checks, at a minimum of twice per year, of soil to monitor pH levels and make necessary adjustments to bring levels to acceptable range for each plant.

**Rotation of plants:** Rotate plants as necessary, relative to any predominant light source in order to maintain attractive shape. All plants must retain their upright position without stakes.

**Cleaning:** All foliage will be kept cleaned, trimmed, and free of dust and pollution. Foliage will be hand cleaned as necessary and shall be free of dust, water spots, cobwebs and fungal or pesticide residue. Clean any decorative containers and remove debris from soil surface and tree grates each visit. Adequate time must be allotted for ongoing cleaning due to the high levels of dust prevalent at the Airport.

**Leaching:** Leaching to maintain proper soluble salt levels in the soil. This involves heavy saturation of soil with water to cleanse soil, back pumping excess water out and away from roots.

**Soil Levels:** Service of proper growing medium nutrient levels. Additions of new soil as necessary to retain correct levels and ensure proper appearance of beds where applicable. Auguring and adding soil to large specimen material as needed to promote root development and encourage vigorous growth.

**Foliage Plant Standards:** The Company shall provide plants as specified, of a quality and size equal to or surpassing Foliage No. 1 grade as described in the Interior Plant Specifications section of A Guide to Specifications for Interior Landscaping, published by the Professional Landcare Network (herein after referred to as the PLANT GUIDE). Plant foliage must present an appearance representative of the species. It shall be free of any yellowing or poor chlorophyll formation; as well as any blemishes resulting from mechanical chemical, pathological, or pest-induced damage.

All plants shall be of specimen quality, symmetrical, tightly knit, so trained or favored in their development and appearance as to be unquestionably superior in form and character.
They shall be sound, healthy and vigorous, well branched and densely foliated. They shall be free from disease, insect pests, eggs or larvae, and shall have healthy, well-developed root systems which shall afford firm support and physical stability of the plant parts above the soil. The plants shall be free from physical damage or adverse conditions that would prevent the plant from thriving with the specified results.

**Establishment of Plants:** Plants shall be well established and growing in their container for six (6) months or longer according to specification needs for each variety and size and shall not be in a root bound condition.

The Company shall prepare all plants for existence within the Airport premises by acclimatizing them to lower light, moisture, humidity and fertilization levels in conformance with accepted industry standards and as recommended in the Interior Plant Specifications section of the PLANT GUIDE.

**Containers and Top Dressing:** Each interior container shall contain a top dressing of organic interior mulch or synthetic moss. Top dressing shall completely cover all soil and grow pots within the container and shall be replenished as necessary to maintain a fresh appearance. All interior plant containers shall be kept free of dead leaves, clippings, trash and other debris, the containers shall also be kept clean and free of water marks and dust.

No plant will be accepted that requires permanent staking to keep in an upright position.

The Company shall provide recommendations of appropriate plant selections.

Substitution of plant materials shall not be permitted unless authorized in writing by the Airport.

**Installation/Replacement Policies:** When installing and/or replacing plants, the premises must be left clean of litter and debris when work is complete. All planting and preparation shall be done at the Company’s place of business or in a pre-determined area approved by the Airport.

Upon completion of installation or replacement, the Airport and the Company shall inspect the installation or replacement. Deficiencies shall be corrected by the Company prior to final approval and any invoices being paid.

Grow pots need to remain covered at all times for plants in decorative containers and built-in planters with an agreed upon top dressing. Additional top dressing may need to be added routinely during service and after plant replacements have been made.

All plant replacements must be installed on a timely basis. The Airport will expect prompt replacement of any plant that is not of quality standards. Replaced plants will not be turned over to Airport staff and must be removed from the building. Disposal and recycle of material will be the responsibility of the Company.
Understand basic design concepts and principles in combination with horticultural benefits/practices and follow proper indoor plant maintenance guidelines throughout the Airport.

Never remove plants or decorative containers off the Airport premises due to decline or neglect without written approval from the Airport.

**Plant Replacement Guarantee:** The Department of Aviation will not be held liable for plants that have suffered physical abuse, theft, temperature extremes, care by unauthorized personnel, and Acts of God.

During all phases of work under this Contract, the Company shall replace at its sole expense any plant(s), which deteriorates in health and appearance so as to become of a lesser specification, grade, and value from that which was originally installed or at time of takeover unless otherwise noted in the scope of work or contract.

1. Either the Airport or the Company may make the decision to replace; upon request from the Airport, the Company shall perform any such replacement(s).
2. All plant replacements shall be made with the same species, size and grade plant(s) as was in place at the beginning of the service period: or, with another plant of comparable value which is acceptable to the Airport.
3. Turnaround time for replacements is a maximum of two weeks and may be less to maintain quality standards for the Airport at all times.

**Holiday Decorations:** The Company shall furnish, install, and maintain holiday decorations to further enhance the airport terminal. Decoration installation shall be completed by the 5th day after Thanksgiving (Tuesday). Decoration removal shall be completed by the 6th day of January but not started prior to the 2nd day of January. These decorations have historically included various wreaths installed throughout the airport main terminal and concourses, poinsettias in the ticketing and baggage claim lobby, a Christmas tree and holiday banners in the main atrium at the Dayton International Airport and the lobby of the Dayton Wright Brothers Airport. Proposers shall propose a design and cost for these decorations, to include storage during the off season. The proposer shall include in pricing regular maintenance to ensure that all decorations remain in excellent condition throughout the holiday season. The final details of these decorations will be negotiated annually to meet the demands of the Department of Aviation.

**Personnel Requirements:** The Company shall employ people who are skilled in the performance of indoor plant maintenance duties, with a minimum of five (5) years in the field. The Company shall screen all applicants through the confirmation of references. The Company’s employees shall at all times maintain a good personal appearance and will conduct themselves in a manner which reflects credit on their employer and the Airport.

The Company shall have a minimum of two (2) Security Identification Display Area (SIDS) badged employees at the proposer’s expense. These employees shall be required to pass a fingerprint based criminal history records check and security threat assessment. These employees shall be the primary service providers and are responsible for ensuring
compliance with all Safety and Security regulations as directed during the training phase of the badging process.

**Supervisor of Record:** Prior to starting the service, the Company will provide the Airport with a list of the names, addresses, and mobile phone number for a Supervisor of Record who will be responsible for supervising the Services during normal business hours and after business hours. The Company will be required to notify the Airport of any changes in the name or contact information for the Supervisor of Record at least two (2) weeks in advance.

**Reporting:** The Company shall provide a weekly report to the Airport summarizing all maintenance (routine and special) performed by service location areas, replacements as well as, any problems encountered, changes made or recommendations to be offered. At the conclusion of each service, the Company shall supply an electronically generated report (preferably Microsoft Excel format).

The company must assign a designee for their company to be an authorized signature for the purposes of fingerprinting and badging their employees at the airport. The appointed authorized signatory must be badged at the company’s expense.

All of the Company’s employees including supervisors must abide by the following rules at all times when on Airport property:

A. Employees shall wear an identification badge at all times and uniforms shall clearly identify the person’s name and the company name.

B. Employee shall sign in when beginning work and sign out when leaving work as designated by the Airport.

C. Employees shall not engage in idle or unnecessary conversation with Airport employees or visitors in the building and shall not loiter in any areas where cleaning is complete.

D. Employees shall refrain from using the telephones while in public areas.

E. Employees shall not be under the influence of alcohol or illegal drugs.

F. Employees shall refrain from using tobacco products of any type while on the premises.

G. The Company shall provide a designated supervisor on premises at all times. Supervisor shall immediately correct any employee misbehavior that is reported to them and otherwise insure employee and Airport rule compliance.

H. Employee shall be of good integrity and moral character.

I. Employees immediately shall report any damages done to property to their supervisor. Supervisor shall then report such damage to the Airport.

J. Employees shall not leave building keys in doors or admit unauthorized people into the Airport.

K. Employees shall refrain from belligerent behavior and/or profanity.

L. Employees shall abide by additional rules and regulations set forth by the Airport.

M. The Company shall ensure that their employees receive up-to-date training to maintain their expertise in the horticultural industry.

The Airport will have the right to require the removal and replacement of any personnel of the Company who are assigned to provide services to the Airport.
Green World  
5201 Beechview Drive  
Huber Heights, OH 45424  
USA  

Voice: 937-236-3204  
Fax: 937-236-3241

Quoted To:  
Airport Operations Manager  
Terminal Maintenance/Terminal  
3600 Terminal Drive  
Vandalia, OH 45377

<table>
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<th>Item</th>
<th>Description</th>
<th>Unit Price</th>
<th>Amount</th>
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<tbody>
<tr>
<td>2.00</td>
<td></td>
<td>Wright Bros Tropical plants</td>
<td>359.99</td>
<td>719.98</td>
</tr>
<tr>
<td></td>
<td></td>
<td>tall (Anthracite Metallic colored) containers</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>20&quot; X 20&quot; X 37&quot; tall to the left and right of</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>entrance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.00</td>
<td></td>
<td>Palm type plants in above planters</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.00</td>
<td></td>
<td>Low containers on wall to right of entrance</td>
<td>59.99</td>
<td>59.99</td>
</tr>
<tr>
<td>3.00</td>
<td></td>
<td>plants for above containers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.00</td>
<td></td>
<td>low containers to set on right side</td>
<td>59.99</td>
<td>179.97</td>
</tr>
<tr>
<td>3.00</td>
<td></td>
<td>plants for each container</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.00</td>
<td></td>
<td>shipping estimate</td>
<td>115.00</td>
<td>115.00</td>
</tr>
<tr>
<td>1.00</td>
<td></td>
<td>install with top dress/liners</td>
<td>175.00</td>
<td>175.00</td>
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Subtotal 1,249.94  
Sales Tax  
TOTAL 1,249.94
Quotated To:
Airport Operations Manager
Terminal Maintenance/Terminal
3600 Terminal Drive
Vandalia, OH 45377

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<th>Unit Price</th>
<th>Amount</th>
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<tbody>
<tr>
<td>3.00</td>
<td></td>
<td>Holiday Decor for Wright Bro Airport</td>
<td>412.70</td>
<td>1,238.10</td>
</tr>
<tr>
<td>3.00</td>
<td></td>
<td>8' Birch tree in front window</td>
<td>301.00</td>
<td>903.00</td>
</tr>
<tr>
<td>1.00</td>
<td></td>
<td><strong>We will need electric to plug trees in</strong></td>
<td>312.00</td>
<td>312.00</td>
</tr>
<tr>
<td>1.00</td>
<td></td>
<td>install/shipping/snow draping cloth/cords</td>
<td>312.00</td>
<td>312.00</td>
</tr>
<tr>
<td>1.00</td>
<td></td>
<td>12' artificial Christmas tree USE from DAY</td>
<td>250.00</td>
<td>250.00</td>
</tr>
<tr>
<td>1.00</td>
<td></td>
<td>decor package for tree/skirt Use from DAY</td>
<td>385.00</td>
<td>385.00</td>
</tr>
<tr>
<td>1.00</td>
<td></td>
<td>Installation/set up of tree</td>
<td>250.00</td>
<td>250.00</td>
</tr>
<tr>
<td>1.00</td>
<td></td>
<td>storage and removal of holiday decor</td>
<td>385.00</td>
<td>385.00</td>
</tr>
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Subtotal            3,088.10
Sales Tax                |
TOTAL                3,088.10
**Green World**  
5201 Beechview Drive  
Huber Heights, OH 45424  
USA  
Voice: 937-236-3204  
Fax: 937-236-3241

**Quotation**  
Quote Number: 238  
Quote Date: Oct 31, 2021  
Page: 1

**Quoted To:**  
Airport Operations Manager  
Terminal Maintenance/Terminal  
3600 Terminal Drive  
Vandalia, OH 45377

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<tbody>
<tr>
<td>1.00</td>
<td></td>
<td>Continue current plant maintenance with current plant material and containers per month</td>
<td>902.21</td>
<td>902.21</td>
</tr>
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Subtotal 902.21  
Sales Tax  
**TOTAL** 902.21
Green World
5201 Beechview Drive
Huber Heights, OH 45424
USA

Voice: 937-236-3204
Fax: 937-236-3241

Quoted To:
Airport Operations Manager
Terminal Maintenance/Terminal
3600 Terminal Drive
Vandalia, OH 45377

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<tr>
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<td>12/12/21</td>
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<table>
<thead>
<tr>
<th>Quantity</th>
<th>Item</th>
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<th>Unit Price</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.00</td>
<td></td>
<td>Current Holiday Package installation at Airport</td>
<td>3,778.28</td>
<td>3,778.28</td>
</tr>
<tr>
<td>1.00</td>
<td></td>
<td>storage and removal of decor per year</td>
<td>385.00</td>
<td>385.00</td>
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<tr>
<td>-1.00</td>
<td></td>
<td>Install the new tree and put up all other decor with lift (snow flakes/garland/wreaths) use the airport lift</td>
<td>389.00</td>
<td>-389.00</td>
</tr>
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Subtotal 3,774.28
Sales Tax
TOTAL 3,774.28
**Green World**  
5201 Beechview Drive  
Huber Heights, OH  45424  
USA

Voice:  937-236-3204  
Fax:  937-236-3241

**Quotation**

Quote Number:  240  
Quote Date:  Oct 31, 2021  
Page:  1

**Quoted To:**  
Airport Operations Manager  
Terminal Maintenance/Terminal  
3600 Terminal Drive  
Vandalia, OH  45377

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<th>Amount</th>
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<tbody>
<tr>
<td>1.00</td>
<td></td>
<td>Maintenance leasing fee for tropical plants on quote # 235 per month</td>
<td>203.37</td>
<td>203.37</td>
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Subtotal  203.37  
Sales Tax  
TOTAL  203.37
## Quotation

**Quote Number:** 242  
**Quote Date:** Nov 12, 2021  
**Page:** 1

### Quoted To:
Airport Operations Manager  
Terminal Maintenance/Terminal  
3600 Terminal Drive  
Vandalia, OH 45377

### Customer Information

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### Item Details

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<th>Unit Price</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1.00</td>
<td>15' flocked black mountain Spruce tree 108&quot; wide with 2,500 warm white lights LED</td>
<td>4,337.50</td>
<td>4,337.50</td>
<td></td>
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<tr>
<td>1.00</td>
<td>Decor for the above tree</td>
<td>545.00</td>
<td>545.00</td>
<td></td>
</tr>
<tr>
<td>1.00</td>
<td>shipping for tree</td>
<td>365.00</td>
<td>365.00</td>
<td></td>
</tr>
<tr>
<td>1.00</td>
<td>set up of tree/removal (lift will be needed)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Subtotal:** 5,247.50  
**Sales Tax:**  
**Total:** 5,247.50
**Green World**  
5201 Beechview Drive  
Huber Heights, OH 45424  
USA

Voice: 937-236-3204  
Fax: 937-236-3241

### Quotation

**Quote Number:** 243  
**Quote Date:** Nov 13, 2021  
**Page:** 1

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**Quoted To:**  
Airport Operations Manager  
Terminal Maintenance/Terminal  
3600 Terminal Drive  
Vandalia, OH 45377

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<th>Item</th>
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<th>Unit Price</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1.00</td>
<td></td>
<td>2023 Holiday Set for DWBA Using Current purchased decor (tree/birch trees/snow) installation/removal and storage</td>
<td>350.00</td>
<td>350.00</td>
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Subtotal: 350.00  
Sales Tax:  
**TOTAL**: 350.00
Evaluator Name: Todd Strouse

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<td>References</td>
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<tr>
<td>Previous Experience</td>
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</tr>
<tr>
<td>Dayton Local Business</td>
<td>5%</td>
<td>5</td>
</tr>
<tr>
<td>PEP Certified</td>
<td>5%</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total Score</strong></td>
<td>100</td>
<td><strong>85</strong></td>
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Please return to: Zeana Kitchens
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<th>Tiffany Boone Points Possible/</th>
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</tr>
<tr>
<td>Qualifications of Firm</td>
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<td>References</td>
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<tr>
<td>Dayton Local Business</td>
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<td>PEP Certified</td>
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<tr>
<td><strong>Total Score</strong></td>
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Return by date: [ ]
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<td>Qualifications of Firm</td>
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<td>References</td>
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<tr>
<td>Previous Experience</td>
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<tr>
<td>Dayton Local Business</td>
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<td>PEP Certified</td>
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<tr>
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<tr>
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Please return to:  
Return by date:  
Zeana Kitchens
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<td>40</td>
</tr>
<tr>
<td>Qualifications of Firm</td>
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<tr>
<td>References</td>
<td>15%</td>
<td>15</td>
</tr>
<tr>
<td>Previous Experience</td>
<td>15%</td>
<td>15</td>
</tr>
<tr>
<td>Dayton Local Business</td>
<td>5%</td>
<td>0</td>
</tr>
<tr>
<td>PEP Certified</td>
<td>5%</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total Score</strong></td>
<td>100</td>
<td>90</td>
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Please return to: Zean Kitchens
Return by date: 

Evaluator Name: Donerik Black  RFP No 18030AOOP
Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

Patricia Bretzfelder

2 Business name/disregarded entity name, if different from above

Green World

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.

☐ Individual/sole proprietor or single-member LLC

☐ C Corporation

☐ S Corporation

☐ Partnership

☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=Corporation, S=Corporation, P=Partnership) ▶

Note: Check the appropriate box in the line above for your tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) ▶

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) ________

Exemption from FATCA reporting code (if any) ________

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.

5201 Beechview Drive

6 City, state, and ZIP code

Huber Heights, Ohio 45424

7 List account number(s) here (optional)

Requestor’s name and address (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see What Name and Number To Give the Requester for guidelines on whose number to enter.

Social security number

or

Employer identification number

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and

2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and

3. I am a U.S. citizen or other U.S. person (defined below); and

4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here

Signature of U.S. person ▶ Patricia Bretzfelder

Date ▶ 31 Oct 2021

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

• Form 1099-INT (interest earned or paid)

• Form 1099-DIV (dividends, including those from stocks or mutual funds)

• Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)

• Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)

• Form 1099-S (proceeds from real estate transactions)

• Form 1099-K (merchant card and third party network transactions)

• Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)

• Form 1099-C (canceled debt)

• Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.
By signing the filled-out form, you:
1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.
   If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners’ share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See What is FATCA reporting, later, for further information.

Note: If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester’s form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

• An individual who is a U.S. citizen or U.S. resident alien;
• A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
• An estate (other than a foreign estate); or
• A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners’ share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

• In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
• In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
• In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a “saving clause.” Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called “backup withholding.” Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester, or
2. You do not certify your TIN when required (see the instructions for Part II for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See Exempt payee code, later, and the separate instructions for the Requester of Form W-9 for more information.

Also see Special rules for partnerships, earlier.

What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See Exemption from FATCA reporting code, later, and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, if you are a C corporation that elects to be an S corporation, or if you no longer have tax exempt status. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of $50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a $500 penalty.
Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Line 1
You must enter one of the following on this line; do not leave this line blank. The name should match the name on your tax return.

If this form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose name you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

a. Individual. Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note: TIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. Sole proprietor or single-member LLC. Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or “doing business as” (DBA) name on line 2.

c. Partnership, LLC that is not a single-member LLC, C corporation, or S corporation. Enter the entity’s name as shown on the entity’s tax return on line 1 and any business, trade, or DBA name on line 2.

d. Other entities. Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. Disregarded entity. For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a “disregarded entity.” See Regulations section 301.7701-2(c)(3)(ii). Enter the owner’s name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner’s name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity’s name on line 2, “Business name/disregarded entity name.” If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2
If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

Line 3
Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

<table>
<thead>
<tr>
<th>IF the entity/person on line 1 is a(n) . . .</th>
<th>THEN check the box for . . .</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporation</td>
<td>Corporatipn</td>
</tr>
<tr>
<td>Individual</td>
<td>Individual/sole proprietor or single-member LLC</td>
</tr>
<tr>
<td>Sole proprietorship, or</td>
<td></td>
</tr>
<tr>
<td>Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.</td>
<td></td>
</tr>
<tr>
<td>LLC treated as a partnership for U.S. federal tax purposes,</td>
<td>Limited liability company and enter the appropriate tax classification. (P= Partnership; C= C corporation; or S= S corporation)</td>
</tr>
<tr>
<td>LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or</td>
<td></td>
</tr>
<tr>
<td>LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes.</td>
<td></td>
</tr>
<tr>
<td>Partnership</td>
<td>Partnership</td>
</tr>
<tr>
<td>Trust/estate</td>
<td>Trust/estate</td>
</tr>
</tbody>
</table>

Line 4, Exemptions
If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

Exempt payee code.

• Generally, individuals (including sole proprietors) are not exempt from backup withholding.
• Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
• Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
• Corporations are not exempt from backup withholding with respect to attorneys’ fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
2—The United States or any of its agencies or instrumentalities
3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
5—A corporation
6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
7—A futures commission merchant registered with the Commodity Futures Trading Commission
8—A real estate investment trust
9—An entity registered at all times during the tax year under the Investment Company Act of 1940
10—A common trust fund operated by a bank under section 584(a)
11—A financial institution
12—A middleman known in the investment community as a nominee or custodian
13—A trust exempt from tax under section 664 or described in section 4947
The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

<table>
<thead>
<tr>
<th>IF the payment is for . . .</th>
<th>THEN the payment is exempt for . . .</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest and dividend payments</td>
<td>All exempt payees except for 7</td>
</tr>
<tr>
<td>Broker transactions</td>
<td>Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.</td>
</tr>
<tr>
<td>Barter exchange transactions and patronage dividends</td>
<td>Exempt payees 1 through 4</td>
</tr>
<tr>
<td>Payments over $600 required to be reported and direct sales over $5,000</td>
<td>Generally, exempt payees 1 through 5^2</td>
</tr>
<tr>
<td>Payments made in settlement of payment card or third party network transactions</td>
<td>Exempt payees 1 through 4</td>
</tr>
</tbody>
</table>

^1 See Form 1099-MISC, Miscellaneous Income, and its instructions.

^2 However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys’ fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with “Not Applicable” (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)
B—The United States or any of its agencies or instrumentalities
C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)
E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)
F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state
G—A real estate investment trust
H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940
I—A common trust fund as defined in section 584(a)
J—A bank as defined in section 581
K—A broker
L—A trust exempt from tax under section 664 or described in section 4947(a)(1)
M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Note: You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5
Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

Line 6
Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)
Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see How to get a TIN below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner’s SSN (or EIN, if the owner has one). Do not enter the disregarded entity’s EIN. If the LLC is classified as a corporation or partnership, enter the entity’s EIN.

Note: See What Name and Number To Give the Requester, later, for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at www.SSA.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/Businesses and clicking on Employer Identification Number (EIN) under Starting a Business. Go to www.irs.gov/Forms to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to www.irs.gov/OrderForms to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write “Applied For” in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: Entering “Applied For” means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification
To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see Exempt payee code, earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.
1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" includes payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

<table>
<thead>
<tr>
<th>For this type of account:</th>
<th>Give name and SSN of:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Individual</td>
<td>The individual</td>
</tr>
</tbody>
</table>
| 2. Two or more individuals (joint account) other than an account maintained by an FFI | The actual owner of the account or, if combined funds, the first individual on the account
| 3. Two or more U.S. persons (joint account maintained by an FFI) | Each holder of the account
| 4. Custodial account of a minor (Uniform Gift to Minors Act) | The minor
| 5. a. The usual revocable savings trust (grantor is also trustee) | The grantor-trustee
| b. So-called trust account that is not a legal or valid trust under state law | The actual owner
| 6. Sole proprietorship or disregarded entity owned by an individual | The owner
| 7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(ii)) (All) | The grantor

For this type of account:

<table>
<thead>
<tr>
<th>Give name and EIN of:</th>
</tr>
</thead>
<tbody>
<tr>
<td>8. Disregarded entity not owned by an individual</td>
</tr>
</tbody>
</table>
| 9. A valid trust, estate, or pension trust | Legal entity
| 10. Corporation or LLC electing corporate status on Form 8822 or Form 2553 | The corporation |
| 11. Association, club, religious, charitable, educational, or other tax-exempt organization | The organization |
| 12. Partnership or multi-member LLC | The partnership |
| 13. A broker or registered nominee | The broker or nominee |

1. List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

2. Circle the minor's name and furnish the minor's SSN.

3. You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

4. List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see Special rules for partnerships, earlier.

*Note: The grantor also must provide a Form W-9 to trustee of trust.

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records From Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:
- Protect your SSN.
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter. If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.
The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at spam@uce.gov or report them at www.ftc.gov/complaint. You can contact the FTC at www.ftc.gov/idtheft or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see www.identitytheft.gov and Pub. 5027.

Visit www.irs.gov/identityTheft to learn more about identity theft and how to reduce your risk.

Privacy Act Notice
Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.
<table>
<thead>
<tr>
<th>Quote</th>
<th>2022 DAY</th>
<th>2022 MGY</th>
<th>2023 DAY</th>
<th>2023 MGY</th>
<th>2024 DAY</th>
<th>2024 MGY</th>
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City Manager’s Report

From: 2390 - Planning, Neighborhoods & Development
Supplier, Vendor, Company, Individual: Rebuilding Together Dayton, Inc.
Address: 30 S. Main Street, Suite B Dayton, Ohio 45402

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<tr>
<td>Community Development Block Grant (CDBG)</td>
<td>26304-2390-1159-31-PL2107</td>
<td>300,000.00</td>
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Date: December 22, 2021
Expense Type: Service Agreement
Total Amount: $300,000.00 (thru 12/31/2022)

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

Description

COMMUNITY DEVELOPMENT BLOCK GRANT SUBRECIPIENT AGREEMENT REBUILDING TOGETHER DAYTON, INC.

The Department of Planning, Neighborhoods and Development requests approval to enter into an Agreement with Rebuilding Together Dayton in the amount of $300,000.00, to administer the Urgent Home Repair Program/NeighborCare. These funds will provide urgent home repairs and accessibility modifications for homeowners in the City of Dayton. The home repair grants will provide for the repair or replacement of a housing component that poses a threat to the health and safety of the household or structure, and the accessibility grants will provide housing modifications that eliminate barriers for an occupant who demonstrates mobility impairments.

This agreement shall commence upon execution by the City and it shall expire December 31, 2022. This agreement is funded with 2018 and 2021 Community Development Block Grant (CDBG) funding.

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

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

Signatures/Approval

Approved by City Commission

Division

Department

City Manager

FORM NO. MS-16

Updated 10/2019
2021 CM Report- RTD
Final Audit Report

 Created: 2021-12-14
 By: Sarah Geist (sarah.geist@daytonohio.gov)
 Status: Signed
 Transaction ID: CBJCHBCAAABAAp7XQC1jSS5Q7zk8kvzhg4WXPelj4blID

"2021 CM Report- RTD" History

 Document created by Sarah Geist (sarah.geist@daytonohio.gov)
 2021-12-14 - 10:57:54 PM GMT - IP address: 198.30.33.2

 Document emailed to Chris Lipson (chris.lipson@daytonohio.gov) for signature
 2021-12-14 - 10:58:13 PM GMT

 Email viewed by Chris Lipson (chris.lipson@daytonohio.gov)
 2021-12-15 - 12:59:59 PM GMT

 Document e-signed by Chris Lipson (chris.lipson@daytonohio.gov)
 Signature Date: 2021-12-15 - 1:00:54 PM GMT - Time Source: server

 Document emailed to Todd Kinskey (todd.kinskey@daytonohio.gov) for signature
 2021-12-15 - 1:00:55 PM GMT

 Email viewed by Todd Kinskey (todd.kinskey@daytonohio.gov)
 2021-12-15 - 1:13:29 PM GMT

 Document e-signed by Todd Kinskey (todd.kinskey@daytonohio.gov)
 Signature Date: 2021-12-15 - 1:13:37 PM GMT - Time Source: server

 Agreement completed.
 2021-12-15 - 1:13:37 PM GMT

Adobe Sign
# CERTIFICATE OF FUNDS

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

<table>
<thead>
<tr>
<th>Option</th>
<th>Description</th>
<th>Amount</th>
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<td>Execution by the City</td>
<td>$300,000.00</td>
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<tr>
<td>Renewal Contract</td>
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<tr>
<td>Change Order:</td>
<td>Required Documentation</td>
<td>Copy of City Manager's Report</td>
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</tbody>
</table>

**Vendor Name:** Rebuilding Together Dayton, Inc.

**Vendor Address:** 30 S. Main Street, Suite B

**Federal ID:** 311457626

**Commodity Code:** 96199

**Purpose:** Rebuilding Together Dayton will administer the Urgent Home Repair Program/Neighborcare to provide urgent home repairs and accessibility modifications for homeowners in the City of Dayton.

**Contact Person:** Ashley Hatton

**Originating Department Director's Signature:**

---

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

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

**Finance Director Signature:**

**CF Prepared by:**

---

**Date:** 12/14/21

**CF/CT Number:** C721-3145

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**Copy of Original Certificate of Funds**

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**SA 10/13/2021**
"2021 CDBG RTD" History

Document created by Ashley Hatton (ashley.hatton@daytonohio.gov)
2021-12-10 - 8:32:59 PM GMT - IP address: 198.30.33.2

Document emailed to Todd Kinskey (todd.kinskey@daytonohio.gov) for signature
2021-12-10 - 8:33:18 PM GMT

Email viewed by Todd Kinskey (todd.kinskey@daytonohio.gov)
2021-12-10 - 8:35:49 PM GMT - IP address: 198.30.33.2

Document e-signed by Todd Kinskey (todd.kinskey@daytonohio.gov)
Signature Date: 2021-12-10 - 8:35:56 PM GMT - Time Source: server - IP address: 198.30.33.2

Agreement completed.
2021-12-10 - 8:35:56 PM GMT
CDBG SUBRECIPIENT AGREEMENT
REBUILDING TOGETHER DAYTON, INC.
URGENT HOME REPAIR PROGRAM/NEIGHBORCARE
CFDA 14.218

THIS AGREEMENT, entered into this __________ day of _________________, 2021, is between the CITY OF DAYTON OHIO, a municipal corporation in and of the State of Ohio, (hereinafter called “City”) and REBUILDING TOGETHER DAYTON, INC., a not-for-profit corporation organized under the laws of the State of Ohio, (hereinafter called “Subrecipient”).

WITNESSETH, THAT:

WHEREAS, the City is a grantee of funds from the United States Department of Housing and Urban Development, hereinafter referred to as “HUD,” under Title I of the Housing and Community Development Act of 1974, as amended, Public Law 93-383, responsible for the development, implementation, administration, and evaluation of HUD’s Community Development Block Grant, hereinafter referred to as “CDBG,” Program in Dayton; and

WHEREAS, the City has delegated to the Subrecipient the responsibility of rendering housing repair and accessibility modification services through the provisions of the CDBG program; and

WHEREAS, the Program set forth herein will meet at least one of the CDBG program’s three national objectives, as defined in 24 Code of Federal Regulations (“CFR”), Part 570.208, which include 1) to benefit low/moderate income persons; 2) to aid in the prevention or elimination of slum and blight; and 3) to meet community development needs having a particular urgency; and

WHEREAS, the parties desire to enter into this Agreement to assist the Subrecipient with funds to render housing repair and accessibility modification services for CDBG eligible households; and

WHEREAS, the Subrecipient possesses statutory authority and management capability necessary to assist the City in the execution of its responsibilities as a CDBG grantee and has been determined by the City to be the most appropriate party to assume the primary administration of an activity described as “Urgent Home Repair/NeighborCare Program” under the CDBG program in the 2018 and 2021 Action Plans for the City of Dayton and Dayton-Kettering HOME Consortium, Grant Numbers B-18-MC-39-0010 and B-21-MC-39-0010.

NOW, THEREFORE, for the consideration of the mutual promises hereinafter set forth, City and Subrecipient agree as follows:

ARTICLE 1. DEFINITIONS

A. “Program Funds” shall mean any funds disbursed to the Subrecipient by the City from the CDBG Program under this agreement.
B. “Program Income” is income received by the Subrecipient directly generated from the use of CDBG funds.
C. “CDBG Program Funds” shall mean funding received by the City from HUD under the City of Dayton’s CDBG Program.
D. “Contract Period” shall mean the effective date of this agreement and time given for performance.
E. “Project Activity” shall mean the activity therein described in Exhibit A – Scope of Services - of this Agreement.
F. “Moderate, Low, and Very Low Income” shall mean 80% or less, 50% or less, and 30% or less – respectively – of the area median income as defined by HUD for the current Agreement period.

ARTICLE 2. PURPOSE

The purpose of this Agreement is to provide funding for project activities approved by the City under the
CDBG Program for Program Year 2018 and 2021 as described in Exhibit A – Scope of Services. Project accomplishments will be reported in the 2021 and 2022 Consolidated Annual Performance Evaluation Reports (CAPERs). Project activities, tasks, and budget are included in Exhibits B – Program Budget, C – CDBG Program Monitoring Schedule, and D – Monthly and Cumulative Reports.

All activities authorized by this Agreement will be performed in accordance with the scope of services set forth in Exhibit A, the budget set forth in Exhibit B, the program monitoring schedule set forth in Exhibit C, and the conditions, assurances, and requirements set forth in the HUD CDBG Program regulations as detailed in Exhibit A. Subrecipient further agrees that it will notify the City prior to undertaking any activity or authorizing any expenditure that is not clearly consistent with the terms of this Agreement and its appendices and/or with the conditions, assurances, and requirements of the HUD CDBG Program and that no such activity or expenditure of a questionable nature shall be authorized without prior approval of the City.

**ARTICLE 3. SCOPE OF SERVICES**

Subrecipient shall provide the work and services, in a manner satisfactory to the City and consistent with any standards required as a condition of providing these funds. Subrecipient hereby agrees to use CDBG funds made available to the Urgent Home Repair/NeighborCare Program (“Program”) for the purpose of home repairs and accessibility modifications to low-income homeowners as more fully described in Exhibit A - Scope of Services, which is attached hereto and incorporated herein.

**ARTICLE 4. TERM OF CONTRACT**

This Agreement shall commence upon execution by the City and shall be undertaken and completed in such sequence as to assure its expeditious completion in light of the purposes of this Agreement; but in any event, all of the work and services required herein shall be completed and this Agreement shall terminate on December 31, 2022.

**ARTICLE 5. GRANT OF FUNDS AND PAYMENT**

The City shall make available to Subrecipient the City’s 2018 and 2021 funds, in the amount of THREE HUNDRED THOUSAND DOLLARS AND ZERO CENTS ($300,000.00) for the work and services to be provided by Subrecipient for the Program, pursuant to this Agreement. Draws for the payment of eligible expenses shall be made against the line-item budgets specified in Exhibit B – Program Budget, which is attached hereto and incorporated herein, and in accordance with performance. Expenses for general administration shall also be paid against the line-item budget specified in Exhibit B and in accordance with performance. Any indirect costs charged must be consistent with the conditions of Article 8 (C) (2) - of this Agreement. Any amendments to the budget must be approved in writing by both the City and Subrecipient.

Expenditures between execution of this agreement and December 31, 2022, are eligible for reimbursement. Payments may be contingent upon certification of Subrecipient’s financial management system in accordance with the standards specified in 2 CFR Part 200, Subparts D & E.

**ARTICLE 6. GENERAL CONDITIONS**

A. Compliance

1. Subrecipient agrees that the HUD regulations set forth in 24 CFR Part 570 and 2 CFR Part 200 are applicable to the grant funds it receives pursuant to this Agreement.
2. Subrecipient agrees that the work and services authorized by this Agreement shall be performed in accordance with any and all applicable local, state, and federal regulations, directives, or guidelines.

3. Subrecipient agrees to prohibit the use of federal funds for lobbying in compliance with the following:

   (a) No federal appropriated funds have been paid or will be paid, by or on behalf of Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with the awarding of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.

   (b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with this federal agreement, grant, loan or cooperative agreement, subrecipient shall notify the City, and complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

4. Subrecipient shall include the requirements of this Subsection A in award documents for all sub-awards at all times (including sub-contracts, sub-grants, and Agreements) and require that all sub-award recipients disclose the same accordingly.

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

Subrecipient, its employees and any person retained or hired by Subrecipient to perform duties and responsibilities under this Agreement are not the City employees, and therefore, such persons will not be entitled to, nor will they make a claim for, any of the emoluments of employment with the City of Dayton. Further, Subrecipient will be responsible to withhold and pay, or cause such agents, contractors and subcontractors to withhold and pay, all applicable local, state and federal taxes. Subrecipient further acknowledges and agrees that none of his employees are public employee for the purpose of membership and/or participation in the Ohio Public Employees Retirement System (OPERS).

C. Indemnification
Subrecipient agrees to defend, indemnify and hold harmless the City, its elected officials, officers, employees and agents from and against legal liability for all claims, losses, damages, and expenses (including reasonable attorneys' fees) to the extent that such claims, losses, damages, or expenses are caused by or arise out of the performance or non-performance of this Agreement and/or the acts, omissions or conduct of Subrecipient or its employees, agents, Subrecipient(s),
subcontractor(s), and representatives. Further, in the event that Subrecipient violates any CDBG rule, regulation, grant requirement or law governing the use and expenditure of CDBG funds, Subrecipient shall assume full and complete responsibility for said violation(s), including payment of the penalty imposed or re-payment of improperly expended funds, and shall defend, indemnify and hold harmless the City, its elected officials, officers, agents, and employees.

D. Workers’ Compensation
Subrecipient shall provide Workers’ Compensation Insurance Coverage for all its employees’ invoices in the performance of this Agreement.

E. Insurance and Bonding
Subrecipient shall carry sufficient insurance coverage to protect Agreement assets from loss due to theft, fraud and/or undue physical damage, and, at a minimum, shall purchase a blanket fidelity bond covering all employees in an amount equal to at least THREE HUNDRED THOUSAND DOLLARS AND ZERO CENTS ($300,000.00). Subrecipient shall comply with the bonding and insurance requirements of 2 CFR Part 200, Subpart D.

F. Grantor Recognition
Subrecipient shall ensure recognition of the grantor agency in providing services through this Agreement. All activities, facilities, and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, Subrecipient will include a reference to the support provided in all publications made possible with funds made available under this Agreement.

G. Amendments
The City or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, are executed in writing, signed by a duly authorized representative for each party, approved by City’s Director of the Department of Planning, Neighborhoods, and Development or designee, and, if applicable or required, approved by the City Manager and the Commission of the City of Dayton. Such amendments shall not invalidate this Agreement, nor relieve or release the City or Subrecipient from its obligations under this Agreement.

The City may, in its discretion, amend this Agreement to conform with federal, state, or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both the City and Subrecipient.

H. Suspension or Termination
In accordance with 2 CFR 200.338-200.342, the City may suspend or terminate this Agreement if Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to,) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;

2. Failure, for any reason, of Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement;

4. Submission by Subrecipient to the City reports that are incorrect or incomplete in any material respect.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the City or Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the City determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the City may terminate the award in its entirety.

I. Political Contributions
Subrecipient affirms and certifies that it is in compliance with Ohio Revised Code §3517.13 limiting political contributions.

ARTICLE 7. CONTACTS
All communications or notices required or permitted under this Agreement, including invoices for payment, shall be sufficient if sent to the City or Subrecipient addressed as follows:

To City: City of Dayton, Ohio
Department of Planning, Neighborhoods, and Development
101 West Third Street
Dayton, Ohio 45402
Attn: Sarah Geist
(937) 333-3814
Sarah.Geist@daytonohio.gov

To Subrecipient: Rebuilding Together Dayton, Inc.
30 S. Main Street, Suite B
Dayton, OH 45402
Attn: Amy Radachi
(937) 232-7961
amy@rtdayton.org

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

ARTICLE 8. ADMINISTRATIVE REQUIREMENTS
A. Financial Management

1. Accounting Standards
Subrecipient agrees to comply with 2 CFR Part 200 Subparts, D and E, as applicable, and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles
Subrecipient shall administer its program in conformance with 2 CFR Part 200 Subparts, D and E, as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

3. Financial Records

   a. The City may require quarterly reports of all cash receipts, including Program Income, from all sources and disposition thereof, and such other financial statements, as the City deems appropriate. Quarterly reports and financial statements may continue to be required after termination of this Agreement until the collected Program Income has been expended.

   b. All costs and expenditures shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement and shall be clearly identified and readily accessible to the City.

B. Documentation and Record Keeping

1. Records to be Maintained

   Subrecipient shall maintain all records required by the federal regulations specified in 2 CFR Part 200 and 24 CFR 570.506, which are pertinent to the services and activities to be funded under this Agreement. Such records shall include, but not be limited to:

   a. Records providing a full description of each activity undertaken;

   b. Records providing a full description and reporting of all accomplishments by Rebuilding Together Dayton between execution of this agreement and December 31, 2022, regardless of program.

   c. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;

   d. Records required to determine the eligibility of activities;

   e. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;

   f. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;

   g. Financial records are required by 24 CFR 570.502, and 2 CFR Part 200; and

   h. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

2. Client Data

   Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such
information shall be made available to City monitors or their designees for review upon request.

3. Retention of Records and Documentation
The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the submission of the City’s Annual Performance and Evaluation Report to HUD in which the activities assisted under the Agreement are reported on for the final time.

Within thirty (30) days of the expiration or conclusion of the Agreement, the Subrecipient shall provide the City with full and complete copies of all project files and records associated with the Agreement. Additionally, copies of all files and records pertaining to federal funding contracted through the City shall be provided to the City should the Subrecipient cease operations.

Notwithstanding the above, if there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

4. Disclosure
Subrecipient understands that applicant information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of City’s or Subrecipient’s responsibilities with respect to work or services to be provided under this Agreement, is prohibited by federal law, unless written consent is obtained from such person receiving service, and in the case of a minor, that of a responsible parent/guardian or otherwise required by law or court order.

5. Close-Outs
Subrecipient's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, Program Income balances, and accounts receivable to City), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that Subrecipient has control over CDBG funds, including Program Income.

6. Audits, Monitoring, and Evaluation
All Subrecipient records with respect to any matters covered by this Agreement shall be made available to City or the Federal Government, or their designees or agents, at any time during normal business hours, as often as City or Federal Government deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data and records. Any deficiencies noted in audit reports must be fully cleared by Subrecipient within thirty (30) days after notice thereof. Failure of Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. Subrecipient hereby agrees to have an annual audit conducted in accordance with current City policy concerning subrecipient audits. Subrecipient shall also comply with 2 CFR Part 200, Subpart F. Upon completion, such audits shall be made available for public inspection.
Subrecipient shall allow City to conduct on-site monitoring, tests, and inspections at such time as proposed in a written notification requesting a monitoring visit. Subrecipient shall provide to City such statements, records, reports, and other information as City may request at the time of scheduled monitoring visits and in such format and detail, as City shall specify.

7. Property Records
Subrecipient shall maintain, as may be applicable, real property inventory records, which clearly identify properties purchased, improved, or sold. Properties retained shall continue to meet eligibility criteria and shall conform to the “changes in use” restrictions specified in 24 CFR 560.503 (b) (8) and 2 CFR Part 200, as applicable.

C. Reporting Procedures

1. Program Income
Subrecipient shall report no less than monthly all “Program Income,” as defined at 24 CFR Part 570.500(a), generated by activities carried out with CDBG funds made available under this Agreement. The use of Program Income by Subrecipient shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, Subrecipient may use such Program Income during the Agreement term for activities permitted under this Agreement and shall reduce requests for additional funds by the amount of any such Program Income balance on-hand. All unused Program Income shall be returned to City at the end of the term of this Agreement. Any interest earned on cash advances from the City or from funds maintained in revolving loan accounts are not Program Income and shall be remitted promptly to City.

2. Indirect Costs
If indirect costs are charged, subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient’s share of administrative cost in accordance with 2 CFR Part 200 and shall submit such plan to the City for approval, in a form specified by the City.

3. Payment Procedures
The City will pay to Subrecipient funds available under this Agreement based upon information submitted by Subrecipient and consistent with any approved budget and City policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the City in accordance with advance fund and Program Income balances available in Subrecipient accounts. In addition, the City reserves the right to liquidate funds available under this Agreement for costs incurred by the City on behalf of Subrecipient.

4. Progress Reports
Subrecipient shall submit regular Progress Reports to City in the form, content, and frequency, as required by City and specified in Exhibit A – Scope of Services.

D. Procurement

1. Compliance
Subrecipient shall comply with current City policies concerning the purchase of equipment, goods, services, and shall maintain inventory records of all non-expendable personal property, as defined by such City policies as may be procured with the CDBG funds provided herein. All program assets (unexpended Program Income, property, equipment, etc.) shall revert to City upon termination or expiration of this Agreement.

Subrecipient shall procure all materials, property, or services in accordance with the requirements of 2 CFR 200, Subpart D, Procurement, and shall subsequently follow Property Management Standards as modified by 2 CFR 200, Subpart D, covering utilization and disposal of property.

2. **OMB Standards**
   Unless specified otherwise within this agreement, Subrecipient shall procure all materials, property, or services in accordance with the requirements of 2 CFR 200.317-200.326.

3. **Travel**
   Subrecipient shall obtain written approval from the City for any travel outside the metropolitan area with funds provided under this Agreement.

**E. Use and Reversion of Assets**

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, 570.504, and 570.505, as applicable, which include but are not limited to the following:

1. Subrecipient shall transfer to the City any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.

2. Real property under Subrecipient’s control that was acquired or improved, in whole or in part, with funds under this Agreement shall be used to meet one of the CDBG National Objectives pursuant to 2 CFR 200.310-200.316 until five (5) years after expiration of this Agreement. If Subrecipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, Subrecipient shall pay the City an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute Program Income to the City. Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five (5) year period.

3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be Program Income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by subrecipient for activities under this Agreement shall be (a) transferred to the City for the CDBG program or (b) retained after compensating the City an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment.

**ARTICLE 9. PERSONNEL & PARTICIPANT CONDITIONS**

A. **Civil Rights**
1. **Compliance**
Subrecipient agrees to comply with all local and state civil rights statutes, rules, regulations and ordinances, and with Title VI of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968, as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974, as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246, as amended by Executive Orders 11375, 11478, 12107, and 12086.

2. **Nondiscrimination**
Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 270.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

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

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

3. **Land Covenants**
This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City and the United States are beneficiaries of and entitled to enforce such covenants. Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. **Section 504**
Subrecipient shall comply with any federal regulations or orders issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the disabled in any federally assisted program. The City shall provide Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. **Affirmative Action**

1. **Approved Plan**
Subrecipient agrees that it shall be committed to carry out, pursuant to the City's specifications, an Affirmative Action Program keeping with the principles provided in the President's Executive Order 11246 of September 24, 1966. The City shall provide Affirmative Action guidelines to Subrecipient to assist in the formulation of such program. Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds. Subrecipient must also submit the proper letter of certification from the Dayton Human Relations Council, which will serve as documentation for their Affirmative Action Plan.

2. Women and Minority-Owned Businesses
Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms “small business” means a business that meets the criteria set forth in Section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and “minority and women's business enterprise” means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, “minority group members” are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records
Subrecipient shall furnish and cause each of its own contractors or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records, and accounts by City, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications
Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract of understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

Subrecipient will include the provisions of this Paragraph’s Section A, Civil Rights, and Section B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subcontractors.

C. Employment Restrictions

1. Prohibited Activity
Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities, sectarian or inherently religious activities, lobbying, political patronage, or nepotism activities.

2. Labor Standards
Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. Subrecipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request.

Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of **TWO THOUSAND DOLLARS AND ZERO CENTS ($2,000.00)** for construction, renovation or repair work financed in whole or in part with assistance provided under this Agreement, shall comply with federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve subrecipient of its obligation, if any, to require payment of the higher wage. Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

3. **“Section 3” Clause**
   a. Compliance
      Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the federal financial assistance provided under this Agreement and binding upon the City, Subrecipient and any of Subrecipient’s subrecipients and subcontractors. Failure to fulfill these requirements shall subject the City, Subrecipient and any of Subrecipient’s subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which federal assistance is provided. Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

Subrecipient agrees to comply with the “Section 3” requirements set forth above, and shall include the following language in all subcontracts executed for the program:

“The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 12
3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this contract agree to comply with HUD’s regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

The contractor agrees to send to each labor organization or representative or workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the contractor’s commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor’s obligations under 24 CFR Part 135.

Noncompliance with HUD’s regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of
contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract are subject to the provisions of Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).”

b. **HUD Section 3 Participation Goals**
   Developer agrees that the aspiration sub-contracting goals for certified HUD Section 3 certified business sub-contracting and hiring goals will be:

   Employment: Thirty percent (30%) of the aggregate number of new hires during a one-year period of the project. (Example: A construction contractor hires 10 new workers. Three of the new workers should be Section 3 eligible persons.)

   Contracting: (a) At least 10 percent (10%) of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, construction, and other public construction with federal funds; and (b) At least three percent (3%) of the total dollar amount of all other, including professional services, covered Section 3 contracts to eligible Section 3 business concerns. HUD Section 3 companies can be found at [http://daytonhrc.org/business-technical-assistance/certification/](http://daytonhrc.org/business-technical-assistance/certification/)

c. **Notifications**
   Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

d. **Subcontracts**
   Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by City. Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135, and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. **Conduct**

1. **Assignability**
   Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of City thereto; provided, however, that claims for money due or to become due to Subrecipient from City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to City.
2. **Subcontracts**
   
a. **Approvals**
   Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the written consent of City prior to the execution of such agreement.

b. **Monitoring**
   Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Evidence of noncompliance shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. **Content**
   Subrecipient shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. **Selection Process**
   Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to City along with documentation concerning the selection process.

3. **Hatch Act**
   Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

4. **Conflict of Interest**
   Subrecipient agrees to abide by the provisions of 24 CFR 84.42, 24 CFR 85.36, and 570.611, which include (but are not limited to) the following:
   
a. Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by federal funds.

b. No employee, officer, or agent of subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.

c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a “covered person” includes any
person who is an employee, agent, consultant, officer, or elected or appointed official of the City, subrecipient, or any designated public agency.

5. **Lobbying**
Subrecipient hereby certifies that:

a. No federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;

b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions; and

c. It will require that the language of Paragraph (d) of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly.

d. **Lobbying Certification**
This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, U.S.C. and 2 CFR 200.450. Any person who fails to file the required certification shall be subject to a civil penalty of not less than **TEN THOUSAND DOLLARS AND ZERO CENTS ($10,000.00)** and not more than **ONE HUNDRED THOUSAND DOLLARS AND ZERO CENTS ($100,000.00)** for each such failure.

6. **Copyright**
If this Agreement results in any copyrightable material or inventions, the City and/or HUD reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. **Religious Activities**
Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.
ARTICLE 10. ENVIRONMENTAL CONDITIONS

A. Air and Water
Subrecipient shall comply with the following requirements insofar as they apply to the performance of this Agreement:

2. Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
3. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR, Part 50, as amended.

B. Environmental Review
Subrecipient shall comply with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, et seq.) as it is applied at 24 CFR Part 58, including any requirements that may be imposed by the City as a result of its responsibility for environmental review, decision-making, and action under NEPA Home. Subrecipient will submit a copy of an Environmental Review & Assessment for each project address to the City as required in 24 CFR Part 58.

Work on a specific project address may not commence until the City of Dayton has given written notice to proceed. Requests for environmental review shall be submitted to the appropriate personnel as described in Exhibit C – Program Monitoring Schedule.

C. Flood Disaster Protection
In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4001), Subrecipient shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the national flood insurance program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

D. Lead-Based Paint
Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR, Part 570.608 and 24 CFR, Part 35. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken.

ARTICLE 11. HISTORIC PRESERVATION
Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement. In general, this requires concurrence from the City and/or State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list. The City and/or State must take into account the effect of a project on any district, site, building, structure, or object listed in or found by the Secretary of the Interior, pursuant to 35 CFR Part 800, to be eligible for
inclusion in the National Register of Historic Places, maintained by the National Park Service of the U. S. Department of the Interior, and must make every effort to eliminate or minimize any adverse effect on a historic property.

**ARTICLE 12. SEVERABILITY**

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

**ARTICLE 13. GOVERNING LAW & VENUE**

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

**ARTICLE 14. SECTION HEADINGS AND SUBHEADINGS**

The section heading and subheading contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

**ARTICLE 15. WAIVER**

The City’s failure to act with respect to a breach by subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the City to exercise or enforce any right or provision shall not constitute a waiver or such right or provision.

**ARTICLE 16. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the City and subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the City and subrecipient with respect to this Agreement.
ARTICLE 17. REFERENCES TO LAW

All references to federal, state or local laws, regulations, or orders contained in this Agreement shall include any and all subsequent amendments, modifications, additions or other changes as may be enacted or codified by the proper governmental authority during the term of this Agreement.

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

CITY OF DAYTON, OHIO

______________________________
City Manager

______________________________
Date

REBUILDING TOGETHER DAYTON, INC.

Amy Radachi
By: [Signature] [Signature] Nov 9, 2021

Title: President/CEO

Date: Nov 29, 2021

APPROVED AS TO FORM AND CORRECTNESS:

11/22/2021

X John Musto for
City Attorney

Signed by: Musto, John

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

______________________________, 2021

Min. / Bk. _____ Pg. _____

______________________________
Clerk of the Commission
EXHIBIT A
SCOPE OF SERVICES
REBUILDING TOGETHER DAYTON
URGENT HOME REPAIR PROGRAM/NEIGHBORCARE

1. PROGRAM DESCRIPTION

Subrecipient will use all funds granted hereunder to operate the “Urgent Home Repair Program/NeighborCare,” through December 31, 2022. The program will provide the repair of up to 24 households within the City of Dayton corporate limits who are at or below eighty percent (80%) of the Area Median Income (AMI).

Rebuilding Together Dayton (RTD) will provide urgent home repairs and accessibility modifications for homeowners in the City of Dayton. The home repair and grants will provide for the repair or replacement of a housing component that poses a threat to the health and safety of the household or structure, and the accessibility grants will provide housing modifications that eliminate barriers for an occupant who demonstrates mobility impairments.

Program Definitions
The services offered through the Urgent Home Repair Modification Program will include home repairs and accessibility modifications. The maximum cost per unit will be calculated by the direct costs associated with each unit, including materials, labor, and work by subcontractors, and the administrative costs added together. Below is a description of such repairs.

**Home repairs** are defined as improvements made to homes necessary to safeguard against danger to human life, health or safety, or to protect property from further structural damage. These repairs will bring the subject items up to local codes and standards. Home repair items include, but are not limited to, such items as: furnace/heating components; air conditioning when medically necessary; damaged or inoperable plumbing; damaged or inoperable hot water heater/tank; severely deteriorated, damaged, or leaking roof; deteriorated drain/waste/vent lines; inoperable or hazardous gas service or distribution lines; damaged or inoperable water service or distribution lines; inoperable or severely damaged windows and doors; hazardous or inoperable electrical systems and components; and damaged or hazardous steps and stairways.

**Accessibility modifications** are defined as improvements made to homes of persons with disabilities to make the home more accessible. Improvements are designed to remove material and architectural barriers that restrict the mobility and accessibility of elderly and/or disabled persons. Accessibility modification items include, but are not limited to, such items as: installing grab bars/handrails; widening doorways, ramps, and showers; modifying commodes and vanities; and hazardous stairs or ramp replacement/repair.

2. COMMUNITY DEVELOPMENT OBJECTIVES

Subrecipient certifies that the activities carried out under this Agreement are allowable expenses under HCDA Section 105 (a) (4) and 24 CFR 570.202, and that the activities are a provision of homeowner rehabilitation, CDBG Matrix Code 14A (Rehab; Single-Unit Residential), benefitting low- and moderate-income (LMI) persons under the National Objective of Low/Mod Housing (LMH) Benefit. The program will maintain the supply and availability of safe, decent, and affordable housing for low- and moderate-income residents, improve the general interior and exterior conditions of the housing stock in the City, provide housing rehabilitation opportunities for low- and moderate-income residents of the City, increase the percentage of neighborhood residents who rate their neighborhood desirable, reduce the number of homeowners forced from their homes due to deterioration and substandard living conditions, and
encourage private neighborhood investment. The provision of homeowner rehabilitation is considered to address the LMH National Objective per 24 CFR 570.208 (a) (3).

3. PROGRAM GUIDELINES

The Subrecipient shall use the City of Dayton CDBG funds for implementation of a Homeowner Rehabilitation Program as articulated below, not to exceed THREE HUNDRED THOUSAND DOLLARS AND ZERO CENTS ($300,000.00). The period will be through execution of this agreement and December 31, 2022, as contemplated in this agreement.

A. Homeowner Rehabilitation Program

1. The program provides the funding, labor, and materials necessary to correct substandard, unsanitary, and deteriorated conditions of low- and moderate-income owner-occupied residences as described in Exhibit A, Section 1.

2. Only owner-occupied single family (one unit) residential structures are eligible to participate in the program.

3. Properties purchased by land contract are ineligible under this program unless the land contract documents are properly recorded by the Montgomery County Recorder’s Office.

4. Properties in foreclosure are not eligible for funding under this program.

5. Property taxes must be current, or if not current, a payment plan must be in place with the Montgomery County Treasurer’s Office.

6. Eligible geographic areas for the program include the entire municipal corporation limits of the City of Dayton only.

7. Eligible beneficiaries of this program are homeowners within the City of Dayton.

8. Eligible beneficiaries of this program are households earning no more than eighty percent (80%) or less of median income for the area as determined annually by HUD with adjustments for family size, as illustrated below. New income limits will replace the limits listed below when issued, and will be made available by the City annually.

<table>
<thead>
<tr>
<th>Household Size</th>
<th>FY 2021 Dayton, OH MSA Income Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Moderate (80%) Income Limits</td>
</tr>
<tr>
<td>1</td>
<td>$42,400</td>
</tr>
<tr>
<td>2</td>
<td>$48,450</td>
</tr>
<tr>
<td>3</td>
<td>$54,500</td>
</tr>
<tr>
<td>4</td>
<td>$60,550</td>
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<tr>
<td>5</td>
<td>$65,400</td>
</tr>
<tr>
<td>6</td>
<td>$70,250</td>
</tr>
<tr>
<td>7</td>
<td>$75,100</td>
</tr>
<tr>
<td>8</td>
<td>$79,950</td>
</tr>
</tbody>
</table>

4. OUTCOME MEASUREMENTS: PERFORMANCE AND OUTCOME MEASURES
In accordance with U.S. Department of Housing and Urban Development (HUD) requirements, the City has implemented a performance measurement system that is based on an outcomes-based approach to funding projects. The City requires recipients of federal funds to assess the productivity and impact of their programs. This Performance and Outcome Measurement System will help to quantify the effectiveness of programs and establish clearly defined outcomes.

The City shall report outcomes-based accomplishments to HUD. The City therefore requires subrecipient to submit timely and consistent performance measurement reports that focus on establishing clearly articulated objectives, performance measures, outputs, and program outcomes (desired end results). The City shall review the reports to track progress, provide feedback, and when necessary, provide technical assistance. Program performance is also considered in the decision-making process for fund allocation. The Subrecipient agrees to submit the reports detailed in Section 10, Reporting Procedures

5. SUBRECIPIENT RESPONSIBILITIES

The Subrecipient will be responsible for determination of household eligibility based on income, identification of target households, marketing the program, application intake and processing, development of rehabilitation/repair work specifications, preconstruction conferences, coordination of services for the completion of the repairs, inspection of rehabilitation work, compliance with all CDBG regulations, final inspection of repairs completed, client satisfaction survey, and preparation of reports to City as detailed in Section 10, Reporting Procedures and as displayed in Exhibit D - Monthly and Cumulative Reports. Subrecipient will respond to all complaints regarding repairs performed by Subrecipient as indicated via a formal complaint or the client satisfaction survey, for one year from date of completion.

Funds will be used to address code violations, health and safety items, and incipient repair items as identified by Subrecipient. All repairs must be performed in accordance with local building code standards.

6. BUDGET

The program budget is attached to this document as Exhibit B – Program Budget.

7. STAFFING

Subrecipient shall assign the following staff as Key Personnel to the “Urgent Home Repair Program/NeighborCare”:

<table>
<thead>
<tr>
<th>Staff Member Title</th>
<th>General Program Duties</th>
<th>Average Time Allocation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amy Radachi, President/CEO</td>
<td>This position oversees and manages all aspects of the Program for RTD.</td>
<td>16 hours/week</td>
</tr>
</tbody>
</table>
| Cathi Spaugh/Joe Dannin Construction Coordinators | This position is responsible for:  
  - Assessing all applicants  
  - Writing bid specifications  
  - Performing inspections  
  - Working with contractors | 15-20 hours/week |
Amanda Harrelson, NeighborCare Director  
This role is responsible for:  
- position submits invoices  
- tracks program costs  
- provides financial management for the Program.  
16 hours/week

Nancy Gerhard, Client Coordinator  
This position is responsible for:  
- client outreach,  
- application intake  
- client qualification and program documentation.  
20 hours/week

Any changes in the Key Personnel assigned, their general responsibilities, or their average time allocation under this project are subject to the prior approval of the City.

8. PAYMENT PROCEDURES

The City will reimburse Subrecipient for expenditures for the Project and in accordance with the line-item budget set forth in Exhibit B – Program Budget. Subrecipient shall submit all invoices and supporting documentation to the City’s Department of Planning, Neighborhoods, and Development. Subrecipient shall comply with the following requirements for the submission of requests for reimbursement:

A. Invoice Information

Subrecipient’s invoice shall contain the following:

1. City Contract Number
2. Invoice Number
3. Period Covered
4. Work Done/Accomplishments Summary, etc.
5. Written documentation verifying that weekly payroll reports were reviewed and comply with approved wage determination.
6. Total Amount Requested
7. List of Enclosed Documents
8. Agreement Funding Balance
9. Other information Subrecipient wishes to communicate to the City
10. Signature of Subrecipient’s Chief Financial Officer
B. Supporting Documentation

Subrecipient shall collect, maintain, and submit the following documentation and information with invoices for payment. For project administration and personnel cost invoicing, the Subrecipient will include the number of hours worked on the program/project funded and a description of work performed by employee during the time for which payment was made. The detailed summary should include a description of each activity/action performed by the personnel as well as a total of the amount of invoiced time spent working on that activity/action. At a minimum, invoicing for personnel charges must include the level of detail and information provided in Exhibit E – CDBG Sample Timesheet and Activity Log. For supplies and materials invoicing, the documentation and information shall include an invoice from vendor or company detailing the item(s)/services purchased and a copy of Contractor’s check showing that Subrecipient paid the vendor for goods/services. Monthly invoicing documentation should include a copy of the required Monthly Report as enumerated in Exhibit D.

Unless disputed or the City determines that there is insufficient documentation to substantiate the invoice, the City will tender payment to Subrecipient in a timely manner.

9. DOCUMENTATION AND RECORD KEEPING

In order to ensure that program participants and activities meet the program eligibility criteria, subrecipient must record the name, address, sex and age of homeowner, the number of people in the household, total household income, racial and ethnic data of household members, a description of work and services to be performed for homeowner, a signed agreement with homeowner, work specifications, and proof of payment to contractor(s).

The following financial records related to the payment of salaries and fringes for operational staff should be included in the project file as applicable:

A. Accounting journals and ledgers
B. Source documentation that costs were eligible and paid (invoices, purchase orders, cancelled checks, etc.)
C. Bank account records
D. Time sheets and activity logs for personnel
E. Income verification or self-certification documents verifying the income level of program participants
F. Payroll records and reports
G. Documentation of other administrative costs charged
H. Financial reports
I. Audit files
J. Financial correspondence
Subrecipient will maintain case files, including the above information for a period of not less than four years after completion of the program and all affordability requirements. Subrecipient will maintain these and other documents and financial records in accordance with the requirements for record retention specified in Article 8 of the Agreement.

10. REPORTING PROCEDURES

The City will require timely and consistent reports to ensure that the program is proceeding according to the work program and in accordance with federal regulations. Reporting shall continue until expiration or termination of this Agreement. All reports shall be submitted to the Project Manager and will be retained for 5 years beyond the terms of the contract. The Sub-recipient agrees to submit the following reports.

A. Monthly Progress Reports

Subrecipient agrees to submit with a monthly invoice or on the fifteenth (15th) day of each month, regardless of invoicing and beginning on or before December 15, 2021, a written progress report covering the agreed upon objectives, activities, and expenditures of the previous or invoiced month. The Monthly Progress Report must detail, at a minimum, the following information per reporting period:

1. The number of repairs/modifications completed;
2. A brief summary of the repairs/modifications completed and the number of individuals served;
3. Total number of housing units improved, including the number improved through emergency repairs, for accessibility, with energy efficiency improvements, and newly constructed units;
4. The addresses of housing units improved;
5. The race/ethnicity and age for each household assisted;
6. The number of female-headed households;
7. The income level for each household assisted;
8. Lead paint status and remediation data.
9. Additional funding sources leveraged.

A copy of the Monthly Report is included in Exhibit D – Monthly and Cumulative Reports.

B. Cumulative Reports

The Subrecipient shall submit an annual Cumulative Report detailing the activities of the Subrecipient to the City no later than December 30, 2021 and December 30, 2022. A copy of the Cumulative Report is included in Exhibit D – Monthly and Cumulative Reports.

Within 60 days after expiration or termination of this Agreement or within 60 days of submitting the final invoice, whichever comes first, Subrecipient shall submit an additional cumulative report to the City. This report shall be in a format approved by the City, and it shall detail all sources and uses of funds and describe Subrecipient’s activities and outcomes of the services provided throughout the course of the Agreement. This exhibit shall survive termination or expiration of this Agreement.
11. COMMUNICATIONS

All notices and correspondence regarding this Agreement and the Project shall be submitted to the parties as specified in Article 7 of the Agreement.
## EXHIBIT B
### PROGRAM BUDGET

<table>
<thead>
<tr>
<th></th>
<th>City CDBG</th>
<th>Private</th>
<th>Federal</th>
<th>State</th>
<th>Local</th>
<th>County</th>
<th>In-Kind</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personnel Costs</td>
<td>$60,000.00</td>
<td>$80,000.00</td>
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<td>-</td>
<td>$50,000.00</td>
<td>-</td>
<td>$190,000.00</td>
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<tr>
<td>Utilities</td>
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<td>$1,400.00</td>
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<td>-</td>
<td>-</td>
<td>-</td>
<td>$1,200.00</td>
<td>$2,600.00</td>
</tr>
<tr>
<td>Supplies/Materials</td>
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<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$4,000.00</td>
</tr>
<tr>
<td>Security System/Personnel</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Lease Payments</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Postage/Mailing</td>
<td>-</td>
<td>$600.00</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$600.00</td>
</tr>
<tr>
<td>Communications</td>
<td>-</td>
<td>$2,400.00</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$2,400.00</td>
</tr>
<tr>
<td>Legal/Auditing Services</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Equipment</td>
<td>-</td>
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<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Real Estate Taxes</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Other Operating Expenses</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>In Kind Support - Labor</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$250,000.00</td>
</tr>
<tr>
<td>In Kind Support - Materials</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$50,000.00</td>
</tr>
<tr>
<td>Hard Costs - Housing Construction/Rehab</td>
<td>$240,000.00</td>
<td>$460,000.00</td>
<td>-</td>
<td>$36,000.00</td>
<td>-</td>
<td>$64,000.00</td>
<td>-</td>
<td>$800,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$300,000.00</td>
<td>$548,400.00</td>
<td>-</td>
<td>$36,000.00</td>
<td>-</td>
<td>$114,000.00</td>
<td>-</td>
<td>$1,299,600.00</td>
</tr>
</tbody>
</table>

Requests for payment of eligible expenses will be associated with the line items as stated above. Expenses for eligible costs incurred after contract execution date may be invoiced and shall be paid upon execution of this agreement.

This budget may only be modified through formal written amendment approved by the City and Subrecipient.
EXHIBIT C
CDBG PROGRAM MONITORING SCHEDULE

**Grantee:** City of Dayton Department of Planning, Neighborhoods, and Development

**Subrecipient:** Rebuilding Together Dayton

**Project/Program:** Urgent Home Repair Program/NeighborCare

<table>
<thead>
<tr>
<th>Monitoring Subject Area</th>
<th>Date of Review</th>
<th>City Representative</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Section I. Required Monitoring for ALL CDBG Subrecipient Agreements</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financial and Program Eligibility</td>
<td>Upon submission of invoice(s)</td>
<td>Sarah Geist or designated staff</td>
</tr>
<tr>
<td>Program Performance and Records Management</td>
<td>Ongoing on a quarterly basis until termination of Agreement</td>
<td>Sarah Geist or designated staff</td>
</tr>
<tr>
<td>Environmental Review</td>
<td>As specific activities warrant</td>
<td>Pete Thornburgh or designated staff</td>
</tr>
<tr>
<td>Historic Properties Protection Review</td>
<td>As specific activities warrant</td>
<td>Designated staff</td>
</tr>
<tr>
<td>On-Site Monitoring Visit</td>
<td>As warranted by Annual Risk Assessment</td>
<td>Sarah Geist or designated staff</td>
</tr>
<tr>
<td><strong>Section II. Specific Monitoring Areas based on Project Type</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Construction Activities (Prevailing Wage Compliance and Record Keeping, Bidding and Procurement Process)</td>
<td>As specific activities warrant</td>
<td>Project Manager or designated staff</td>
</tr>
<tr>
<td>Acquisition and Relocation Compliance</td>
<td>Not Applicable</td>
<td></td>
</tr>
<tr>
<td>Housing Rehabilitation Guidelines</td>
<td>As specific activities warrant</td>
<td>Sarah Geist or designated staff</td>
</tr>
<tr>
<td>Economic Development Guidelines</td>
<td>Not Applicable</td>
<td></td>
</tr>
</tbody>
</table>

EXHIBIT D

29
MONTHLY AND CUMULATIVE REPORTS

Monthly Report

Project Name: Urgent Home Repair Program/NeighborCare
Subrecipient: Rebuilding Together Dayton
Action Plan Year: 2021

1. Provide a description of all activities and accomplishments occurring during this reporting period. Quantify all accomplishments and identify the location of physical improvements with an address or boundary. (Attach additional documentation, if necessary.)

2. Was the project completed during the current reporting period? _____ YES _____ NO

   2a. If YES, indicate completion date. _______________________

   2b. If NO, please provide a brief description of the Subrecipient’s plan to complete the project and an estimated timeframe for completion.

3. Total number of housing units improved: ____________________

4. Total number of housing units improved through emergency repair(s): ______________

5. Total number of housing units modified to be accessible: ______________

6. Total number of newly constructed affordable, accessible housing units: ______________
7. Addresses of housing units improved (including ZIP)  
   *Must match #3*  
   *Add additional rows as necessary*
   
   1. 
   
   2. 
   
   3. 
   
   4. 
   
   5. 

8. Race/Ethnicity  
   *Total must match #3*

<table>
<thead>
<tr>
<th>Race</th>
<th>Total</th>
<th>Hispanic/Latino</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black/African-American</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asian</td>
<td></td>
<td></td>
</tr>
<tr>
<td>American Indian/Alaskan Native</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Native Hawaiian/Other Pacific Islander</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black/African-American &amp; White</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asian &amp; White</td>
<td></td>
<td></td>
</tr>
<tr>
<td>American Indian/Alaskan Native &amp; White</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Native Hawaiian/Other Pacific Islander &amp; White</td>
<td></td>
<td></td>
</tr>
<tr>
<td>American Indian/Alaskan Native &amp; Black/African-American</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other multi-racial</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

9. Female-Headed Households: ______________

10. Income Levels

<table>
<thead>
<tr>
<th>Income Level</th>
<th>Number Households</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extremely Low - 0-30%</td>
<td></td>
</tr>
<tr>
<td>Low - 30-50%</td>
<td></td>
</tr>
<tr>
<td>Moderate - 50-80%</td>
<td></td>
</tr>
<tr>
<td>Non-Low/Moderate</td>
<td></td>
</tr>
</tbody>
</table>

**TOTAL**

<table>
<thead>
<tr>
<th>Percent Low/Mod</th>
<th>%</th>
</tr>
</thead>
</table>
11. Applicable Lead Paint Requirement

<table>
<thead>
<tr>
<th>Housing Constructed before 1978</th>
<th># Housing Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exempt: housing constructed 1978 or later</td>
<td></td>
</tr>
<tr>
<td>Exempt: No paint disturbed</td>
<td></td>
</tr>
<tr>
<td>Otherwise exempt:</td>
<td></td>
</tr>
<tr>
<td>0 bedroom</td>
<td></td>
</tr>
<tr>
<td>Elderly/Disabled with no children under 6</td>
<td></td>
</tr>
<tr>
<td>Lead-based paint free</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
</tr>
</tbody>
</table>

12. Lead Hazard Remediation Actions:

<table>
<thead>
<tr>
<th>Lead Safe Work Practices (24 CFR 35.930(b)) (Hard costs $5k)</th>
<th># Housing Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interim Controls for Standard Practices (24 CFR 35.930(c)) (Hard costs $5k-$25k)</td>
<td></td>
</tr>
<tr>
<td>Abatement (24 CFR 35.930(d)) (Hard costs &gt; $25k)</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
</tr>
</tbody>
</table>

13. Homeowner Rehab Units:

<table>
<thead>
<tr>
<th>Units Occupied by Elderly</th>
<th># Housing Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Units Moved from Substandard to Standard (HQS or Local Code)</td>
<td></td>
</tr>
<tr>
<td>Section 504 Accessible Units</td>
<td></td>
</tr>
<tr>
<td>Units Qualified as Energy Star</td>
<td></td>
</tr>
<tr>
<td>Units Brought into Compliance with Lead Safety Rules (24 CFR Part 35)</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
</tr>
</tbody>
</table>
Annual Cumulative Report & Post Agreement Report

Project Name: Urgent Home Repair Program/NeighborCare
Subrecipient: Rebuilding Together Dayton
Action Plan Year: 2021

1. Does the project generate program income (PI)? YES NO
   PI is defined as the proceeds from the sale of real estate purchased through CDBG, income generated from fees or charges assessed for a CDBG-funded service, or loan repayments from a revolving loan program funded with CDBG dollars

   1a. If YES, how much PI was received during reporting period? $__________

   1b. Program Income balance as of report date: $__________

2. Does the project utilize any funding other than the CDBG allocation? YES NO

2a. If YES, indicate the source, type (Federal, State, Local, or Private), and the amount.

<table>
<thead>
<tr>
<th>Source</th>
<th>Type</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3. Provide a description of all activities and accomplishments occurring during this reporting period. Quantify all accomplishments and identify the location of physical improvements with an address or boundary. (Attach additional documentation, if necessary.)

4. Was the project completed during the current reporting period? YES NO

4a. If YES, indicate completion date. ____________________
4b. If NO, please provide a brief description of the Subrecipient’s plan to complete the project and an estimated timeframe for completion.

5. Total number of housing units improved: ________________

6. Total number of housing units improved through emergency repair(s): ________________

7. Total number of housing units modified to be accessible: ________________

8. Total number of newly constructed affordable, accessible housing units: ________________

9. Addresses of housing units improved (including ZIP)  
   Must match #3  
   Add additional rows as necessary
   1. ___________________________________________
   2. ___________________________________________
   3. ___________________________________________
   4. ___________________________________________
   5. ___________________________________________

10. Race/Ethnicity  
    Total must match #3

<table>
<thead>
<tr>
<th>Race</th>
<th>Total</th>
<th>Hispanic/Latino</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black/African-American</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asian</td>
<td></td>
<td></td>
</tr>
<tr>
<td>American Indian/Alaskan Native</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Native Hawaiian/Other Pacific Islander</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black/African-American &amp; White</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asian &amp; White</td>
<td></td>
<td></td>
</tr>
<tr>
<td>American Indian/Alaskan Native &amp; White</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Native Hawaiian/Other Pacific Islander &amp; White</td>
<td></td>
<td></td>
</tr>
<tr>
<td>American Indian/Alaskan Native &amp; Black/African-American</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other multi-racial</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

11. Female-Headed Households: _________
12. Income Levels

<table>
<thead>
<tr>
<th>Income Level</th>
<th>Number Households</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extremely Low - 0-30%</td>
<td></td>
</tr>
<tr>
<td>Low - 30-50%</td>
<td></td>
</tr>
<tr>
<td>Moderate - 50-80%</td>
<td></td>
</tr>
<tr>
<td>Non-Low/Moderate</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
</tr>
<tr>
<td>Percent Low/Mod</td>
<td>%</td>
</tr>
</tbody>
</table>

13. Applicable Lead Paint Requirement

<table>
<thead>
<tr>
<th>Housing Constructed before 1978</th>
<th># Housing Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exempt: housing constructed 1978 or later</td>
<td></td>
</tr>
<tr>
<td>Exempt: No paint disturbed</td>
<td></td>
</tr>
<tr>
<td>Otherwise exempt:</td>
<td></td>
</tr>
<tr>
<td>0 bedroom</td>
<td></td>
</tr>
<tr>
<td>Elderly/Disabled with no children under 6</td>
<td></td>
</tr>
<tr>
<td>lead-based paint free</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
</tr>
</tbody>
</table>

14. Lead Hazard Remediation Actions:

<table>
<thead>
<tr>
<th>Lead Safe Work Practices (24 CFR 35.930(b)) (Hard costs $5k)</th>
<th># Housing Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interim Controls for Standard Practices (24 CFR 35.930(c)) (Hard costs $5k-$25k)</td>
<td></td>
</tr>
<tr>
<td>Abatement (24 CFR 35.930(d)) (Hard costs &gt; $25k)</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
</tr>
</tbody>
</table>

15. Homeowner Rehab Units:

<table>
<thead>
<tr>
<th>Units Occupied by Elderly</th>
<th># Housing Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Units Moved from Substandard to Standard (HQS or Local Code)</td>
<td></td>
</tr>
<tr>
<td>Section 504 Accessible Units</td>
<td></td>
</tr>
<tr>
<td>Units Qualified as Energy Star</td>
<td></td>
</tr>
<tr>
<td>Units Brought into Compliance with Lead Safety Rules (24 CFR Part 35)</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT E
CDBG SAMPLE TIMESHEET AND ACTIVITY LOG

For Personnel Funded 100% through this agreement, please use this certification:

Certification & Support for Personnel Invoicing
2 CFR 225, APPENDIX B §8(h)(4-5) states that employees paid by Federal and non-Federal sources need to complete time and effort certifications at least monthly, which reflect the individual’s total work time and identify the portion of time spent on federal projects. The certification must be signed by the employee and their supervisor. When multiple funding sources contribute to an employee’s salary, the certification must be supported with documentation of actual effort (i.e. timesheets). Paycor is the official timekeeping record for Rebuilding Together Dayton and serves as documentation of actual effort for grant-funded employees.

Pay Dates Included in this Certification:

<table>
<thead>
<tr>
<th>Name</th>
<th>Total Hours Worked</th>
<th>Pay Rate</th>
<th>Total Wages</th>
<th>Fringe Benefits Percentage (If Applicable)</th>
<th>Total Amount Billed for Personnel</th>
</tr>
</thead>
</table>

Summary of Work Performed:
The above wages and benefits are for ..........insert a paragraph explaining the work accomplished during this period by the personnel identified above.

I, __________________ (print name) certify that 100% of my time reported during this reporting period was spent performing the activities described above. I hereby this report is an after-the-fact determination of the total activity and actual effort expended for the period indicated, and I have full knowledge of 100% of these activities.

Employee Signature ___________________________ Date _____________

Supervisor Signature ___________________________ Date _____________
For personnel charging a percentage of their time LESS THAN 100% to toward this agreement, please use this timesheet and activity log. The activity log MUST provide adequate information detailing activities, events, processes, etc. billed toward the agreement so that the Project Manager can determine cost allocability and cost allowability per 2CFR 200 requirements.

Rebuilding Together Dayton
MONTHLY TIMESHEET

<table>
<thead>
<tr>
<th>Name</th>
<th>John Smith</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date</td>
<td>September 1-30, 2021</td>
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</tbody>
</table>

**FY 2021**

<table>
<thead>
<tr>
<th>Code</th>
<th>Project</th>
<th>Date:</th>
<th>1-Sep</th>
<th>2-Sep</th>
<th>3-Sep</th>
<th>4-Sep</th>
<th>5-Sep</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Sun</td>
<td>Mon</td>
<td>Tue</td>
<td>Wed</td>
<td>Thu</td>
</tr>
<tr>
<td>1</td>
<td>Market cashier</td>
<td></td>
<td></td>
<td></td>
<td>4.00</td>
<td>3.00</td>
<td>3.00</td>
</tr>
<tr>
<td>2</td>
<td>Training Program</td>
<td></td>
<td></td>
<td></td>
<td>3.00</td>
<td>4.00</td>
<td>4.00</td>
</tr>
</tbody>
</table>

| Total Hours Worked | 7.00 | 7.00 | 7.00 |
Rebuilding Together Dayton
MONTHLY ACTIVITY LOG

Rebuilding Together Dayton
Employee Name
Month & Year

Activity Log – June 2021

June 1, 2021
8:00 AM/PM – 5:00 AM/PM
- Mobile Market – cashier – checking out customers, organizing stock, providing accounting of drawer
- Training Program – seminar on workforce etiquette, training on using raised garden beds

June 2, 2021
7:30 AM/PM – 4:30 AM/PM
- Training Program – Carpentry – making raised garden beds;
- Training Program – Proper techniques for harvesting peppers;
- Training Program – Operation of Gettysburg hoop house

June 3, 2021
8:00 AM/PM – 5:00 AM/PM
- Mobile Market – Setup at 2nd Street Market; Stocking and replenishment for market stand; transportation of signage and produce from XYZ Garden to 2nd Street Market
- XYZ Garden – volunteer training;
- XYZ Garden – harvesting tomatoes and preparing fertilizer
"CDBG 2021 RTD - signed by law" History

Document created by Ashley Hatton (ashley.hatton@daytonohio.gov)
2021-11-29 - 6:36:32 PM GMT - IP address: 198.30.33.2

Document emailed to Amy Radachi (amy@rtdayton.org) for signature
2021-11-29 - 6:37:44 PM GMT

Email viewed by Amy Radachi (amy@rtdayton.org)
2021-11-29 - 6:39:18 PM GMT - IP address: 66.102.8.5

Document e-signed by Amy Radachi (amy@rtdayton.org)
Signature Date: 2021-11-29 - 6:42:01 PM GMT - Time Source: server - IP address: 206.55.218.3

Agreement completed.
2021-11-29 - 6:42:01 PM GMT

Adobe Sign
City Manager’s Report

From 3460 - Water/Water Reclamation
Supplier, Vendor, Company, Individual
Synagro Central, LLC
Address 435 Williams Court, Suite 100
Baltimore, MD 21220

Date December 22, 2021
Expense Type Contract Modification
Total Amount $1,650,000.00 (thru 12/31/2022)

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2022 Sanitary Operating Fund</td>
<td>55000-3460-1126-54</td>
<td>$1,650,000.00</td>
</tr>
</tbody>
</table>

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

Description

BIOSOLIDS LAND APPLICATION AND DISPOSAL PROGRAM
SECOND AMENDMENT

The Department of Water requests permission to enter into a Second Amendment with Synagro Central, LLC in the amount of $1,650,000.00 for additional services/work to manage the Biosolids Land Application and Disposal Program for the Water Reclamation Facility.

The original Agreement was approved on December 13, 2018 in the amount of $3,675,000.00. The First Amendment was approved on September 11, 2019 in the amount of $800,000.00 and increased the contract amount to $4,475,000.00. This Second Amendment will increase the contract amount to $6,125,000.00, an increase of $1,650,000.00 and extend the term to December 31, 2022, with an option to renew for one additional year.

This Second Amendment is being funded using 2022 Sanitary Operating Funds.

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

A Certificate of Funds in the amount of $1,650,000.00 and a copy of the Second Amendment is attached.

Signatures/Approval

Approved by City Commission

Clerk
Date

Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>Contract Start Date</th>
<th>1/1/2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expiration Date</td>
<td>12/31/2022</td>
</tr>
<tr>
<td>Original Commission Approval</td>
<td>$4,475,000.00</td>
</tr>
<tr>
<td>Initial Encumbrance</td>
<td>$4,292,206.87</td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$182,793.13</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Original CT/CF</th>
<th>CT19-2163</th>
</tr>
</thead>
<tbody>
<tr>
<td>Increase Encumbrance</td>
<td>$1,650,000.00</td>
</tr>
<tr>
<td>Decrease Encumbrance</td>
<td>$1,650,000.00</td>
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<tr>
<td>Remaining Commission Approval</td>
<td>$182,793.13</td>
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<tr>
<th>Amount:</th>
<th>$1,650,000.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund Code</td>
<td>55000 - 3460 - 1126 - 54</td>
</tr>
<tr>
<td>Org</td>
<td>Acct</td>
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<table>
<thead>
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<th></th>
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<tbody>
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<tr>
<td>Org</td>
<td>Acct</td>
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<tbody>
<tr>
<td>Fund Code</td>
<td></td>
</tr>
<tr>
<td>Org</td>
<td>Acct</td>
</tr>
</tbody>
</table>

Attach additional pages for more FOAPALs

Vendor Name: Synagro Central LLC
Vendor Address: 435 Williams Court, Suite 100 Baltimore MD 21220
Federal ID: 760612568
Commodity Code: 968-73
Purpose: Second Amendment to the Agreement for biosolids land application and disposal program

Contact Person: Lisa Burton-Yates Water/Water Engineering 12/10/2021
Originating Department Director’s Signature: Aaron S. Zonin

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: [Signature] 12/3/21
Date: 12/3/21 CF/CT Number: CT22-2163

[Signature] Finance CF Prepared by 12/3/21
Date: 12/3/21

Finance Department

October 18, 2011
SECOND AMENDMENT TO THE
AGREEMENT FOR PROFESSIONAL SERVICES

This Second Amendment is dated this ______ day of ____________, 2021 between the City of Dayton, Ohio ("City") and Synagro Central, LLC, 435 Williams Court, Suite 100, Baltimore, Maryland 21220 (hereinafter referred to as the "Contractor").

WITNESSETH:

WHEREAS, On December 13, 2018, the Commission of the City of Dayton approved an Agreement for Professional Services, (CT19-2163) ("Agreement") between the City and Consultant, and

WHEREAS, On August 21, 2019, the Commission of the City of Dayton, Ohio, approved the First Amendment to the Agreement CT19-2163, between the City and Consultant; and,

WHEREAS, The City desires additional biosolids land application and disposal services, and the Contractor is willing to perform such services for additional compensation, the parties hereby agree to amend the Agreement as follows:

NOW THEREFORE, in consideration of the foregoing, the parties hereby agree to renew and amend the Agreement as follows:

The City and the Consultant agree to amend the Agreement as follows:

Section 1. Article 1. Term of Contract, shall be deleted in its entirety and replaced with the following language.

ARTICLE 1 – TERM OF CONTRACT

This Agreement shall commence on December 13, 2018 and shall expire upon expenditure of all funds provided herein or on December 31, 2022. The parties have an option to renew the Agreement for an additional one-year period of January 1, 2023 through December 31, 2023, contingent upon satisfaction with the work, availability of funds and mutual agreement of both parties.

Section 2. Article 3. Compensation shall be deleted in its entirety and replaced with the following language.

ARTICLE 3 – COMPENSATION shall be deleted in its entirety and replaced with the following:

The total remuneration in this Agreement shall not exceed SIX MILLION ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS AND ZERO CENTS ($6,125,000.00). For the years 2018 through 2021, the City shall pay in accordance with the cost estimate and fee schedule in Attachment B, which is attached hereto and incorporated by reference. For the years 2022 and if renewed for 2023, the City shall pay Consultant the additional compensation set forth in Attachment B1, which is attached hereto and incorporated herein.
Section 3. Except as amended by this Second Amendment, all other terms, covenants and conditions contained within the Agreement remain in full force and effect.

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

CITY OF DAYTON, OHIO

__________________________________________
City Manager

SYNAGRO CENTRAL, LLC

By: ____________________________
Title: Regional Vice President

APPROVED AS TO FORM AND CORRECTNESS:

12/1/2021

X John Musto for

City Attorney

Signed by: Musto, John

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

____________________________, 2021

Min./Bk. ____________ Pg. ____________

______________________________
Clerk of the Commission
ATTACHMENT B1

TO

AGREEMENT FOR BIOSOLIDS LAND APPLICATION

City: City of Dayton, Ohio
Project: Biosolids Land Application/ and or Disposal Program
Contractor: Synagro Central, LLC

COMPENSATION

Total Biosolids Disposal via Land Application and Landfilling
Land Application – Price per Wet Ton

<table>
<thead>
<tr>
<th>Year</th>
<th>Cost per Wet Ton</th>
</tr>
</thead>
<tbody>
<tr>
<td>2022</td>
<td>$28.07</td>
</tr>
</tbody>
</table>

Maximum % increase for Renewal Option in Year Four: 5% per Wet Ton

Contractor invoices will include the tipping fee rate paid to the landfill for biosolids disposal and will not include any markup by the Contractor

Landfill Charges
Rumpke Landfill - $41.52
Cherokee Runn Landfill - $61.00

Emergency/Other Services

Biosolids Stacking fee
Hourly rate for stacking biosolids in the storage facility: $78.75 /hour

Mobile Dewatering Provision
Daily rate for dewatering operation (12 hour day): $2,413.95/day
Rate per wet ton of biosolids dewatered (greater than or equal to 19% TS): $28.07
Cost for mobile dewatering equipment delivery, set up and removal: $5,250.00
# CERTIFICATE OF FUNDS

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

<table>
<thead>
<tr>
<th>New Contract</th>
<th>Renewal Contract</th>
<th>Change Order</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Start Date</td>
<td>1/1/2016</td>
<td></td>
</tr>
<tr>
<td>Expiration Date</td>
<td>12/31/2021</td>
<td></td>
</tr>
<tr>
<td>Original Commission Approval</td>
<td>$4,475,000.00</td>
<td></td>
</tr>
<tr>
<td>Initial Encumbrance</td>
<td>$3,042,206.87</td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$1,432,793.13</td>
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</tr>
<tr>
<td>Original CT/CF</td>
<td>CT19-2163</td>
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<tr>
<td>Increase Encumbrance</td>
<td>$1,250,000.00</td>
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<td>Decrease Encumbrance</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$182,793.13</td>
<td></td>
</tr>
</tbody>
</table>

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

**Amount:** $1,250,000.00

<table>
<thead>
<tr>
<th>Fund Code</th>
<th>Fund</th>
<th>Org</th>
<th>Acct</th>
<th>Prog</th>
<th>Act</th>
<th>Loc</th>
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<tbody>
<tr>
<td>58000 - 3480 - 1126 - 54 -</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Vendor Name:** Synagro Central LLC
**Vendor Address:** 435 Williams Court, Suite 100 Baltimore MD 21220 Street City State Zipcode + 4
**Federal ID:** 750812568
**Commodity Code:** 986-73

**Purpose:** Encumbering $425,000.00 of remaining 2019 balance that was not spent. 2019 ended with an unspent balance of $607,791.13, which has already been approved by Commission.

**Contact Person:** Lisa Burton-Yates
**Originating Department Director's Signature:**

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

**Finance Director Signature**: [Signature]

**Date:** 1/22/2021
**CF/CT Number:** CD21-21103
**CF Prepared by:** [Signature]

**Date:** 1/19/21

**Finance Department:**
**October 18, 2021**
# Certificate of Funds

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

<table>
<thead>
<tr>
<th>New Contract</th>
<th>Renewal Contract</th>
<th>Change Order</th>
</tr>
</thead>
<tbody>
<tr>
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<td>Original Commission Approval</td>
<td>$4,475,000.00</td>
<td></td>
</tr>
<tr>
<td>Initial Encumbrance</td>
<td>$2,617,206.87</td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$1,857,793.13</td>
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<tr>
<td>Original CT/CIF</td>
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<tr>
<td>Increase Encumbrance</td>
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<td>Decrease Encumbrance</td>
<td>$</td>
<td></td>
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<tr>
<td>Remaining Commission Approval</td>
<td>$1,432,793.13</td>
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**Amount:** $425,000.00

<table>
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<td>Fund:</td>
</tr>
<tr>
<td>Org</td>
<td>Acct</td>
</tr>
</tbody>
</table>

**Vendor Name:** Synagro Central LLC

**Vendor Address:** 435 Williams Court, Suite 100, Baltimore, MD 21220

**Federal ID:** 760612566

**Commodity Code:** 986-73

**Purpose:** Encumbering $425,000.00 of remaining 2019 balance that was not spent. 2019 ended with an unspent balance of $807,791.13, which has already been approved by Commission.

**Contact Person:** Lisa Burton-Yates

**Originating Department:** Water/Water Engineering

**Director's Signature:** Michael Powell

**Date:** 11/17/2020

---

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

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for

**Finance Director's Signature:** [Signature]

**Prepared by:** [Signature]

**Date:** 1/4/2020

**CIF# Number:** CT20-2163

**Date:** 12/1/2020

---

**Finance Department:** 10/18/2011
City Manager's Report

From 3460 - Water/Water Reclamation
Supplier, Vendor, Company, Individual
Synagro Central, LLC
Address 435 Williams Court, Suite 100
Baltimore, MD 21220

Date November 28, 2018
Expense Type Service Agreement
Total Amount $3,575,000.00 (thru 12/31/2021)

Fund Source(s) | Fund Code(s) | Fund Amount(s)
--- | --- | ---
2019 Sanitary Operating Fund | 55000-3460-1128-54 | $1,200,000.00
2020 Sanitary Operating Fund | 55000-3460-1128-54 | $1,225,000.00
2021 Sanitary Operating Fund | 55000-3460-1126-54 | $1,250,000.00

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

BIOSOLIDS LAND APPLICATION AND DISPOSAL PROGRAM

The Department of Water requests permission to enter into an Agreement with Synagro Central, LLC in the amount of $3,575,000.00 for services to manage the Biosolids Land Application and Disposal Program for the Water Reclamation Facility.

Three proposals were received for this program on August 3, 2018. After evaluating the bids, Synagro Central, LLC was chosen in response to the City's Request for Proposal (RFP No. 18019WTWE). Synagro Central, LLC has the best combination of experience, and lowest cost per wet ton to meet the Department of Water's objectives.

This project is being fully funded using 2019, 2020 and 2021 Sanitary Operating Funds.

The Agreement shall commence on January 1, 2019, and it shall expire upon expenditure of all funds provided herein or on December 31, 2021.

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

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

Signature/Approval

Approved by City Commission

Clerk

FORM NO. MS-16

Updated 8/2016
CERTIFICATE OF FUNDS
CT19-2163

SECTION I - to be completed by User Department

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Vendor Name: Synagro Central, LLC
Vendor Address: 435 Williams Court, Suite 100 Baltimore MD 21220 Street City State Zipcode + 4
Federal ID: 76-0812568
Commodity Code: 988-73
Purpose: Award of contract for Biosolids Land Application and Disposal Program. Year 1 of 3.

Contact Person: Lisa Burton-Yates Water/Wastewater Engineering 11/18/2018 Department/Division Date

Originating Department Director’s Signature: [Signature]

SECTION II - to be completed by the Finance Department

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

Finance Director’s Signature: [Signature]
CF Prepared by: [Signature]

Finance Department
October 18, 2011
PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into on this 12th day of December, 2018, between the City of Dayton, Ohio ("City"), a municipal corporation in and of the State of Ohio, and Synagro Central, LLC ("Contractor"), having its principal offices located at 435 Williams Court, Suite 100, Baltimore, MD 21220.

WITNESSETH:

WHEREAS, the City wishes to obtain a highly experienced and professional firm to manage a Biosolids Land Application and/or Disposal program in accordance with Ohio EPA and Federal Biosolids rules and regulations; and,

WHEREAS, The City solicited from firms and Contractor’s response was selected as best; and,

WHEREAS, The City desires and Contractor is qualified and available to provide the professional services needed.

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

ARTICLE 1. TERM OF CONTRACT

This Agreement shall commence upon execution by the City and it shall terminate upon expenditure of all funds provided herein or on December 31, 2021, whichever date is earlier. The Contractor and the City shall enter into a three (3) year contract, with the options to renew the contract for two (2) additional 12-month periods, contingent upon satisfaction with the work, availability of funds and mutual agreement of both parties.

ARTICLE 2. SERVICES TO BE PERFORMED BY CONTRACTOR

Contractor shall provide all professional services necessary to complete Services that are described in Attachment A, Scope of Services, which is attached hereto and incorporated herein by reference.

ARTICLE 3. COMPENSATION

The total remuneration in this Agreement shall not exceed THREE MILLION SIX HUNDRED SEVENTY-FIVE THOUSAND DOLLARS AND ZERO CENTS ($3,675,000.00) for the Services provided over the term. The City shall pay Contractor according to the cost estimate and fee schedule in Attachment B, which is attached hereto and incorporated herein by reference. Contractor shall submit invoices, not more than frequently than monthly, for payment of the Services actually provided. Such invoices shall state the invoice period, total amount requested and Services provided during the invoice period. The City will, unless disputed, remit payment of all undisputed amounts of invoices within thirty (30) days from receipt thereof.

ARTICLE 4. CITY'S RESPONSIBILITIES

The City will furnish to Contractor, at no cost or expense, all reports, records, and data that may be necessary or useful to complete the Services required under this Agreement.
ARTICLE 5. STANDARD OF CARE
Contractor shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily possessed and exercised by a professional under similar circumstances. Contractor shall have no liability for defects in the Services attributable to Contractor’s reliance upon or use of data or other information furnished by the City or third parties retained by the City.

If during the one year period following completion of the Services, it is shown there is an error in the Services caused by Contractor’s failure to meet such standards and the City has notified Contractor in writing of any such error within that period, then the Contractor shall perform, at no additional cost to the City, the Services necessary to remedy such error.

ARTICLE 6. LIABILITY AND INDEMNIFICATION
The parties agree to release each other from any and all liability, which may be caused by or arise by the wrongful and/or negligent conduct of the parties’ respective employees and agents in the performance of the services, duties, and responsibilities in this Agreement. Notwithstanding, neither party waives any available immunities under law.

ARTICLE 7. INSURANCE
During the term of this Agreement, Contractor shall maintain, at its sole cost and expense, no less than the following insurance issued by an insurance company authorized to conduct business in the State of Ohio and having an “A” rating or better by A.M. Best:

(1) General liability insurance, having a combined single limit of $1,000,000 for each occurrence and $1,000,000 in the aggregate.
(2) Automobile liability insurance, having a combined single limit of $1,000,000 for each person and $1,000,000 for each accident.
(3) Employers’ liability insurance, having a limit of $500,000 for each occurrence.
(4) Professional liability insurance, having a limit of $1,000,000 annual aggregate.

Current certificates of insurance for all policies and concurrent policies required to be maintained by Contractor pursuant to this Article shall be furnished to the City. All such insurance policies, excluding Professional Liability Insurance, shall name the City and its elected officials, officers, agents, employees, and volunteers as additional insureds, but only to the extent of Contractor’s legal liability and to the extent of the policy limits stated herein. All policies of insurance required hereunder shall contain a provision requiring a minimum of thirty (30) days advance written notice to the City in the event of cancellation or diminution of coverage. In the event of a claim, Contractor shall make copies of applicable insurance policies available for review by the City. Contractor, however, shall retain its right to restrict disclosure of Contractor’s proprietary information contained in such policies in accordance with Article 8.

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

ARTICLE 8. OWNERSHIP OF DOCUMENTS & INTELLECTUAL PROPERTY
Documents and reports prepared by Contractor as part of the Services shall become the sole and exclusive property of the City upon payment. However, Contractor shall have the unrestricted right to their use.

ARTICLE 9. TERMINATION
In the event of substantial failure by Contractor in the performance of this Agreement, the City may terminate this Agreement by sending a written termination notice to Contractor. Contractor will have
fifteen (15) calendar days from the date of the termination notice to cure or to submit a plan to cure that the City in its sole discretion finds acceptable.

The City may terminate or suspend performance of this Agreement for the City’s convenience upon sending thirty (30) days written notice to Contractor. In the event of termination by the City, the City will pay Contractor only for Services actually provided and performed up to the date of termination.

Any termination, alternation, or modification of this Agreement shall not relieve the Contractor of any liability to the City for damages sustained by any breach by the Contractor. The City will be under no further monetary obligation or commitment to the Contractor. The Cities may, in its sole discretion, terminate this Agreement at any time upon providing thirty (30) days written notice to the Contractor.

ARTICLE 10. RECORDS TO BE MAINTAINED

All costs and expenditures pertaining in whole or part to this Agreement for the work and Service performed under this Agreement shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other accounting documents, which shall be clearly identified and readily accessible to the City. At any time during normal business hours and as often as the City may deem necessary, Contractor shall make available to the City all of its records related to this Agreement. Contractor shall also permit the City to audit, examine, and make excerpts or transcripts from such records and to have audits made of all contracts, invoices, materials, payrolls, personnel records, conditions of employment and other data pertaining in whole or part to matters covered by this Agreement.

ARTICLE 11. RETENTION OF RECORDS

Contractor shall retain all records pertinent to the expenditures incurred under this Agreement for a period of three (3) years after the termination of all work and services funded under this Agreement. Notwithstanding the above, if there any action, including without limitation litigation, claims, audits, or negotiations that involves any of the records pertaining to this Agreement that commences prior to the expiration of the three-year period, then Contractor shall retain such records until completion of the action and resolution of all issues, or the expirations of the three-year period, whichever occurs later.

ARTICLE 12. STANDARD TERMS

A. DELAY IN PERFORMANCE

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

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

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

C. COMMUNICATIONS

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

Contractor: Synagro Central, LLC
435 Williams Court
Suite 100
Baltimore, MD 21220

With a copy to: Synagro WWT, Inc.
c/o General Counsel
1800 Bering, Suite 1000
Houston, TX 77057

City: City of Dayton, Ohio
Department of Water
320 W. Monument Avenue
Dayton Ohio, 45402
Attention: Mr. Michael Powell, Director

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

D. EQUAL EMPLOYMENT OPPORTUNITY

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

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

E. WAIVER

A waiver by the City or Contractor of any breach of this Agreement shall be in writing. Such a waiver shall be effective only in the specific instance and for the specific purpose for which it is given and shall not affect the waiving party’s rights with respect to any other or further breach.
F. SEVERABILITY
The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void, unenforceable, invalid, or illegal provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision, which is of the essence of this Agreement, be determined void.

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

Contractor, its employees, and any persons retained or hired by Contractor to perform the duties and responsibilities under this Agreement are not City employees, and therefore, such persons shall not be entitled to, nor will they make a claim for, any of the emoluments of employment with the City of Dayton. Further, Contractor shall be responsible to withhold and pay, or cause such agents, contractors and sub-contractors to withhold and pay, all applicable local, state and federal taxes.

Contractor acknowledges that its employees and any other persons retained or hired by the Contractor are not the City’s public employees. City shall not be responsible for any payments or other duties required by the Ohio Public Employees Retirement System (“OPERS”) for Contractor’s employees or persons retained or hired by Contractor. Contractor shall be solely responsible for any contributions or obligations concerning OPERS that arise from the performance of this Agreement.

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

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

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

K. POLITICAL CONTRIBUTIONS
Contractor affirms and certifies that it complies with Ohio Revised Code § 3517.13 limiting political contributions.

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

IN WITNESS WHEREOF, the City and Contractor, each by a duly authorized officer, have executed this Agreement as of the date below.

THE CITY OF DAYTON, OHIO

[Signature]
City Manager

 SYNAGRO CENTRAL, LLC

[Signature]  
Title:  
ELIZABETH GRANT  
ASSISTANT SECRETARY

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]
City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO

November 28, 2018

Min./Bk. 145  Pg. 66

[Signature]
Clerk of the Commission
ATTACHMENT A
TO
AGREEMENT FOR BIOSOLIDS LAND APPLICATION

City: City of Dayton, Ohio
Project: Biosolids Land Application/and or Disposal Program
Contractor: Synagro Central, LLC

SCOPE OF SERVICES

Total Biosolids Disposal
The Contractor shall be responsible for the disposal of all Biosolids generated by the City of Dayton at the proposed rates regardless of their ultimate disposal option, Land Application or Landfilling, subject to the terms and conditions herein. The Contractor shall perform all of the services described below.

Payment shall be made based upon the number of wet tons of Biosolids disposed.

Land Application
The Contractor will manage a Land Application program for the City’s Biosolids, ensuring that all applicable regulations have been followed. The City shall make processed Biosolids available to the Contractor at the Biosolids Storage Building located on the Wastewater Treatment Plant site. The Contractor shall load Biosolids into properly designed trucks using his own equipment, or equipment under lease or other long term agreement. The Contractor shall transport the Biosolids only to properly licensed fields and apply the Biosolids according to regulations and with the cooperation of the local farmer. The Contractor shall keep complete records of Biosolids tonnage and dosages using data supplied by the City. The Contractor has the option to use data from another qualified lab if they so choose. The Contractor will be responsible for managing the list of application sites; finding new suitable sites, and ensuring that records are properly kept. The City will communicate to the Contractor regularly on the volume of Biosolids on hand and supply all the latest laboratory data. For providing these services, the Contractor shall be paid a flat rate per wet ton of Biosolids applied. Weights shall be verified using the weigh scale at the plant site.

1. Work Included:
Furnish all labor, materials, equipment and submittals necessary to handle, load, transport, store, apply, and incorporate all sludge in a manner which will not cause odorous or nuisance conditions, as specified in strict accordance with all federal, state and local laws and regulations. Contractor(s) shall secure all necessary permits/approvals from USEPA and Ohio EPA. The Contractor shall in the performance of this work comply with all required OSHA regulations. The Contractor shall be responsible for the cleanup of the Biosolids storing and staging areas during and after every hauling event.

2. Description:
The Contractor shall accept Biosolids from the City of Dayton at the Guthrie Road Wastewater Treatment Plant and shall transport said Biosolids to Ohio EPA-approved sites for land application according to industry practices and applicable regulations.

The Contractor shall be required to accept Biosolids generated whether that amount is more or less than what is presently being generated.

3. References:
   - STATE OF OHIO Sewage Sludge Chapter 3745-40 of the OHIO ADMINISTRATIVE CODE, and with all amendments thereto
   - Federal EPA 40 CFR Part 503
   - Annual Sludge/Residuals Management Report

4. Submittals:
   - The Contractor shall provide to the City of Dayton identification of any additional land application sites and/or disposal facilities, equipment, and labor. The City of Dayton reserves the right to modify the operations plan with consultation of the Contractor.
   - Ohio EPA Site Approval
   - Soil Analysis
   - Records of proposed crops to be grown on all land applications sites, annual basis
   - Site(s) Status Report
   - Identify the Contractor’s project manager who will be available throughout the contract to report and respond to City of Dayton questions and a list of emergency phone/cell numbers.
   - The Contractor shall submit sample documentation which it will use to account for the ultimate disposition/disposal of Biosolids removed from the project site.

Execution

1. General:
The Contractor shall handle, load, transport, store, apply and incorporate Biosolids in a manner that will not cause odorous or nuisance conditions and in strict accordance with the previous references “STATE OF OHIO Sewage Sludge Chapter 3745-40 of the OHIO ADMINISTRATION CODE”, as well as all regulations of the Ohio EPA now issued or to be issued during the course of the contract and the requirements of Federal EPA 40 CFR Part 503.

The Contractor shall not begin the application of Biosolids to the land until he or she has first obtained Ohio EPA site approval for the sites to which he or she will be applying sludge. The City of Dayton recognizes that the Contractor may not have all the land owned, leased, or otherwise under contract which will be necessary for the entire period of the contract at the time performance is commenced. The Contractor has the duty, however, of always having available the necessary site(s) approved land for Biosolids disposal. Based on approved application rates and amounts of Biosolids generated by the City of Dayton, minimum acreage available to the Contractor shall be sufficient for one-
half (1/2) year sludge production. The Contractor shall have the responsibility of acquiring Ohio EPA approval.

Application rates shall not exceed those allowed by Ohio EPA or the 503 regulations. The Contractor shall provide accurate records of the amount of sludge spread upon each acre and provide the Owner with a copy of this record each month.

Land used for sludge application shall conform to the requirements outlined in the “STATE OF OHIO Sewage Sludge Chapter 3745-40 of the OHIO ADMINISTRATION CODE”, as well as all regulations of the Ohio EPA now issued or to be issued during the course of the contract and the requirements of the 503 regulations. The Contractor shall hold the City of Dayton harmless for any damage or liability resulting from runoff, pollution, damage, nuisance or injury while loading, transporting, storing or applying said Biosolids.

In using sludge for agricultural applications, the Contractor understands that the City of Dayton shall not be liable should future regulations that require additional costs for site closure or restrictions on use or resale.

Upon approval of the Contractor’s application sites by Ohio EPA, directives or orders issued as part of such approval by the Director, Ohio EPA, or his or her designated representatives shall become an inherent part of the specifications and contract documents.

The Contractor shall not mix any industrial waste, liquid or solid, with Dayton’s Biosolids.

The Contractor shall ensure that trucks are not so heavily laden with Biosolids that it spills out during transport or exceeds load limits for streets and roads to the application site. The Contractor shall cover his trucks during the entire period of transport from Owner’s loading area to the land application site(s). It shall be the Contractor’s responsibility to clean up any spills of Biosolids that may occur after his truck has left the loading area.

At no time shall the Contractor’s handling, loading, storage, or application operations cause a nuisance to the City of Dayton, surrounding communities, or the public.

The Contractor shall weigh all dewatered Biosolids as transferred from the City of Dayton’s loading area for the purpose of establishing compensation in this contract. The Contractor shall provide sufficient standby Biosolids hauling equipment as to allow continued removal of Biosolids during periods of Contractor equipment maintenance and breakdown.

The Contractor shall notify the City of Dayton of use restrictions or changes in ownership of all lands used for Biosolids applications during the life of the contract.
The Contractor shall promptly notify the City of Dayton of any complaints or enforcement actions taken against his or her operations and provide the City of Dayton with a copy of the written reply for the resolution of such complaints within three (3) working days after receiving said complaint or action.

The Contractor shall abide by any changes in methods, rates, or manner of application which is required by law.

The Contractor(s) will utilize the City’s truck scale for load/volume verification. The City will pay for the regular scale calibration and scheduled maintenance.

The Contractor(s) shall provide the City of Dayton, by the tenth day of each month, the amount of wet tons removed the previous month. The City of Dayton reserves the right to be actively involved in the removal of Biosolids from the site, as determined by the City of Dayton.

Biosolids removal is contingent upon the acceptability of the Biosolids for disposal at a licensed disposal facility or for land application in accordance with U.S. and Ohio EPA requirements. These requirements include, but are not limited to, Biosolids weight, Total and Volatile Solids, adequate stabilization (the presence and amount of pathogens), nutrient content; i.e., pH Ammonia, TKN, Phosphorus and content of heavy metals; i.e., Arsenic, Cadmium, Chromium, Copper, Lead, Nickel, Zinc, Selenium, Mercury, Potassium, and Molybdenum.

The Contractor(s) will pay for all laboratory fees required to determine the appropriate agronomic rate in accordance with the OEPA regulations for land application of biosolids at each approved site.

2. **Sludge Storage:**
The City of Dayton currently has a covered 42,000 square foot storage area. Biosolids are to be removed from the facility at least once a month with the exception of during the Land Application Ban Period.

Ban Period: There is a landfill prohibition period between December 15 and March 1, and every effort should be made to empty the storage facility as much as possible prior to December 15 to maximize winter storage space. At the end of the contract period, the contractor must completely empty the covered storage facility of Biosolids unless the City renews that contractor’s contract for another term.

3. **Schedules:**
Soil analyses shall be provided to the City of Dayton at the Contractor’s expense. Analyses shall include the following parameters: Soil nutrients, lime index, pH, cation exchange capacity, arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium, zinc, and any other requirement contained within the record keeping provisions of CFR 503.17 and the STATE OF OHIO Sewage Sludge Chapter 3745-40 of the OHIO ADMINISTRATION CODE”, with all amendments thereto.
conditions, as specified in strict accordance with all federal, state and local laws and regulations. Contractor(s) shall secure all necessary permits/approvals from USEPA and Ohio EPA. The Contractor(s) shall in the performance of this work comply with all required OSHA regulations. The Contractor(s) shall be responsible for the cleanup of the Biosolids storing and staging areas during and after every hauling event.

2. **Description:**
The Contractor shall accept from the City of Dayton, at the Guthrie Wastewater Treatment Plant, Biosolids processed at that location and shall transport said Biosolids. They will be required to apply the same to Ohio EPA approved landfills.

3. **References:**
   - Annual Sludge/Residuals Management Report

4. **Submittals:**
   - The Contractor shall submit documentation which it will use to account for the ultimate disposition/disposal of Biosolids removed from the project site.

5. **Transport Capacity Requirement:**
   - Load capacities for trucks transporting Biosolids to the landfills are expected to be greater than 20 tons while also considering the safe zone for the specific make and model of the transport vehicle.

Execution

1. **General:**
The Contractor shall handle, load, transport, store, and dispose of Biosolids in a manner that will not cause odorous or nuisance conditions and in strict accordance with the previous references “STATE OF OHIO Sewage Sludge Chapter 3745-40 of the OHIO ADMINISTRATION CODE”, as well as all regulations of the Ohio EPA now issued or to be issued during the course of the contract and the requirements of Federal EPA 40 CFR Part 503.

The Contractor shall save the City of Dayton harmless for any damage or liability resulting from runoff, pollution, damage, nuisance or injury while loading, transporting, storing or disposing of said Biosolids.

The Contractor shall ensure that trucks are not so heavily laden with Biosolids that it spills out during transport or exceeds load limits for streets and roads to the application site. The Contractor shall cover his trucks during the entire period of transport from Owner's loading area to the land application site(s). It shall be the Contractor’s responsibility to clean up any spills of Biosolids that may occur after his truck has left the loading area.
At no time shall Contractor’s handling, loading, storage, or application operations cause a nuisance to the City of Dayton, surrounding communities, or the public.

The Contractor shall weigh all dewatered Biosolids as it is transferred from the City of Dayton’s loading area for the purpose of establishing compensation in this contract. The Contractor shall provide sufficient standby Biosolids hauling equipment as to allow continued removal of Biosolids during periods of Contractor equipment maintenance and breakdown.

The Contractor shall notify the City of Dayton of use restrictions or changes in ownership of all lands used for Biosolids applications during the life of the contract.

The Contractor shall promptly notify the City of Dayton of any complaints or enforcement actions taken against his or her operations and provide the City of Dayton with a copy of the written reply for the resolution of such complaints within three (3) working days after receiving said complaint or action.

The Contractor shall abide by any changes in methods, rates or manner of application which is required by law.

2. Emergency/Other Services
   a. Mobile Dewatering: The Contractor shall be prepared to provide and operate mobile dewatering equipment that can maintain the facility's normal dewatering operation in an emergency situation. The contractor must be able to mobilize and begin dewatering within three days of notification. Compensation will be based on the daily operation rate (12 hour day), the wet tons of Biosolids processed and the cost of the mobilization and de-mobilization of the dewatering equipment.

   b. Onsite Storage Management: The Contractor shall provide an equipment operator at an hourly rate to stack, or 'push up' the Biosolids in the storage building if the City is not able to perform that function due to an emergency situation or staff limitations.
ATTACHMENT B
TO
AGREEMENT FOR BIOSOLIDS LAND APPLICATION

City: City of Dayton, Ohio
Project: Biosolids Land Application and or Disposal Program
Contractor: Synagro Central, LLC

COMPENSATION

Total Biosolids Disposal via Land Application and Landfilling

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Maximum % increase for Renewal Option in Year Four: 5%/Wet Ton
Maximum % increase for Renewal Option in Year Four: 5%/Wet Ton

Contractor invoices will include the tipping fee rate paid to the landfill
for biosolids disposal and will not include any markup by the Contractor

Emergency/Other Services

Biosolids Stacking fee
Hourly rate for stacking biosolids in the storage facility: $75.00/hour

Mobile Dewatering Provision
Daily rate for dewatering operation (12 hour day): $2,299.00/day
Rate per wet ton of biosolids dewatered (greater than or equal to 19% TS): $26.73
Cost for mobile dewatering equipment delivery, set up and removal: $5,000.00
December 6, 2018

TO:       City Commission Office
          City Manager's Office
          Department of Finance

FROM:    Michael Powell, Director
          Department of Water

SUBJECT: Request for Signature – Biosolids Land Application and Disposal Program
          CT19-2163-Synagro Central, LLC

Attached please find four (4) copies of the Contract referenced above with applicable consultant
signatures. Authorization for execution of this Contract was granted by the City Commission on
November 28, 2018 by City Manager’s Report #6. This Contract is ready for City of Dayton
signatures.

Please return to Lisa Burton-Yates (x3729) in the Division of Water Engineering.

Enclosures (4)
The Contractor shall provide records of proposed crops to be grown on all land applications sites and submit them to the City of Dayton on an annual basis. The Contractor shall submit to Ohio EPA, with copies to the owner, all reports as required by the OEPA Land Application of Sludge Manual.

4. Record Keeping:
The Contractor shall, at all times, satisfy all management practices, monitoring, and record keeping requirements of the federal sludge regulations (40 CFR Part 503) and the Ohio EPA. The Contractor shall provide City of Dayton a copy of all reports submitted to USEPA and Ohio EPA. City of Dayton reserves the right to review Contractor’s records and record keeping procedures upon request.

5. Approved Land Application Sites:
The City of Dayton currently has over 20,000 acres approved for land application across Greene, Clinton, and Warren counties.

Landfilling

- The Contractor shall have available trucks and dump bodies suitably designed and configured to haul Biosolids without spillage on the roads either owned, or under lease or long term contract. The primary method of biosolids management shall be land application. Landfill disposal of biosolids shall only be utilized in the event that the biosolids storage facilities are full or unsuitable for land application and Contractor and the City agree that utilization of landfills for disposal is required. The Contractor shall be paid the same cost per wet ton as land application plus the landfill tipping fee. Contractor will pay the tipping fee for the first 7,500 wet tons landfilled each year. Contractor must provide invoices from landfill to city to show no additional costs have been added. Fuel surcharges will not be added to any invoices.
- In the event that the City of Dayton WRF generates biosolids that are not suitable for land applications because of excessive trash content due to digester cleaning or inadequate screening of inert material, the tipping fees for that material will be paid for by the City.

The Contractor shall provide equipment to load the trucks and transport the Biosolids to the Waste Management Stoney Hollow Landfill (2460 S. Gettysburg Road Dayton, OH 45418), the Rumpke Landfill (3800 Struble Road Cincinnati, OH 45251), or the Cherokee Run Landfill (2946 US State RTE 68 N Bellefontaine, OH 43311) or other approved sanitary landfill.

1. Work Included:
Furnish all labor, materials, equipment and submittals necessary to handle, load, transport, and dispose of sludge in a manner which will not cause odorous or nuisance
City Manager’s Report

Date November 28, 2018
Expense Type Service Agreement
Total Amount $3,675,000.00 (thru 12/31/2021)

From 3460 - Water/Water Reclamation
Supplier, Vendor, Company, Individual
Name Synagro Central, LLC
Address 435 Williams Court, Suite 100
Baltimore, MD 21220

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

Description

BIOSOLIDS LAND APPLICATION AND DISPOSAL PROGRAM

The Department of Water requests permission to enter into an Agreement with Synagro Central, LLC in the amount of $3,675,000.00 for services to manage the Biosolids Land Application and Disposal Program for the Water Reclamation Facility.

Three proposals were received for this program on August 3, 2018. After evaluating the bids, Synagro Central, LLC was chosen in response to the City’s Request for Proposal (RFP No. 18019WTWE). Synagro Central, LLC has the best combination of experience, and lowest cost per wet ton to meet the Department of Water’s objectives.

This project is being fully funded using 2019, 2020 and 2021 Sanitary Operating Funds.

The Agreement shall commence on January 1, 2019, and it shall expire upon expenditure of all funds provided herein or on December 31, 2021.

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

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

Signature/Approval

Approved by City Commission

Date

Updated 8/2016
# CERTIFICATE OF FUNDS

CT19-2163

## SECTION I

- **X** New Contract

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- **X** Renewal Contract

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- **X** Change Order

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<tr>
<td>Initial Agreement/Contract</td>
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<td>Copy of City Manager's Report</td>
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### Amount:

| $1,200,000.00 |

### Fund Code

| 55000 - 3460 - 1128 - 54 |

### Amount:

|  |  |  |  |  |

### Fund Code

|  |  |  |  |  |

---

**Vendor Name:** Synagro Central, LLC

**Vendor Address:** 435 Williams Court, Suite 100 Baltimore MD 21220

**Federal ID:** 78-0612568

**Commodity Code:** 988-73

**Purpose:** Award of contract for Biosolids Land Application and Disposal Program. Year 1 of 3.

---

**Contact Person:** Lisa Burton-Yates

**Department/Division:** Water/Water Engineering

**Date:** 11/16/2018

**Originating Department Director’s Signature:** [Signature]

---

**SECTION II**

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

**Finance Director Signature:** [Signature]

**Date:** 11/19/2018

**CF/CT Number:** CT19-2163

---

[Signature]

**Date:** 11/19/2018

**CF Prepared by:** Aaron J. Strassenburg

**Date:** 11-19-2018

---

Finance Department

October 18, 2011
FIRST AMENDMENT TO THE
AGREEMENT FOR PROFESSIONAL SERVICES

This First Amendment is dated this 14th day of September, 2019, between the City of Dayton, Ohio ("City") and Synagro Central, LLC, 435 Williams Court, Suite 100, Baltimore, Maryland 21220 (hereinafter referred to as the "Contractor").

WHEREAS, on December 13, 2018 the Commission of the City of Dayton, Ohio, approved an Agreement for Professional Services, CT19-2163, ("Agreement") between the City and Contractor; and

WHEREAS, the City desiring additional biosolids land application and disposal services, and Contractor willing to perform such services for additional compensation, the parties hereby agree to amend the Agreement as follows:

1. The City and Consultant hereby agree that “ARTICLE 3 – COMPENSATION” shall be replaced with the following:

The total remuneration in this Agreement shall not exceed FOUR MILLION FOUR HUNDRED SEVENTY-FIVE THOUSAND DOLLARS AND ZERO CENTS ($4,475,000.00) for the Services provided over the term. The City shall pay Contractor according to the cost estimate and fee schedule in Attachment B, which is attached hereto and incorporated herein by reference. Contractor shall submit invoices, not more than frequently than monthly, for payment of the Services actually provided. Such invoices shall state the invoice period, total amount requested and Services provided during the invoice period. The City will, unless disputed, remit payment of all undisputed amounts of invoices within thirty (30) days from receipt thereof.

2. Except as amended by this First Amendment, all terms, covenants and conditions contained within the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the City and Contractor have caused this First Amendment to be executed, each by a duly authorized representative, on the date first set forth above.

CITY OF DAYTON, OHIO

[Signature]
City Manager

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]
City Attorney

SYNAGRO CENTRAL, LLC

[Signature]
Title: ASSISTANT SECRETARY

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

[Signature]
Clerk of the Commission

August 21, 2019

Min./Bk. 15 Pg. 01652
# Certificate of Funds

## Section I - to be completed by User Department

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## Amount

| Amount: $250,000.00 |

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| Amount: |

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## Vendor Information

- **Vendor Name:** Synagro Central LLC
- **Vendor Address:** 435 Williams Court, Suite 100 Baltimore MD 21220
- **Federal ID:** 76-0812568
- **Commodity Code:** 966-73
- **Purpose:** Amendment #1 - Biosolids Land Application and Disposal Program

## Contact Person

- **Name:** Lisa Burton-Yates
- **Department/Division:** Water/Water Engineering
- **Date:** 8/2/2019

## Originating Department Director's Signature

- **Signature:** [Signature]

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

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

- **Finance Department Signature:** [Signature]
- **Date:** 8/16/19
- **CF/CF Number:** CT-19-2163
- **Prepared by:** [Signature]
- **Date:** 8/19/19
- **Date:** [Signature]

---

**Finance Department**

**October 18, 2011**
BIOSOLIDS LAND APPLICATION AND DISPOSAL PROGRAM
FIRST AMENDMENT

The Department of Water requests permission to enter into a First Amendment Agreement with Synagro Central, LLC in the amount of $800,000.00 for additional services/work to manage the Biosolids Land Application and Disposal Program for the Water Reclamation Facility. Due to the extensive rainy season, land application of the Biosolids was not possible, causing the Biosolids to be landfilled, increasing the amount of tipping fees to be paid.

The original Agreement was approved on November 28, 2018 in the amount of $3,675,000.00. This First Amendment will increase the contract amount to $4,475,000.00.

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

A Certificate of Funds is attached to encumber $250,000.00. The remaining $550,000.00 will be encumbered later this year.
### CERTIFICATE OF FUNDS

**CT19-2163**

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

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**Required Documentation**
- Initial City Manager’s Report
- Initial Certificate of Funds
- Initial Agreement/Contract
- Copy of City Manager’s Report
- Copy of Original Certificate of Funds

### Amount: $250,000.00

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---

**Vendor Name:** Synagro Central LLC

**Vendor Address:** 435 Williams Court, Suite 100 Baltimore MD 21220 Street City State Zipcode + 4

**Federal ID:** 76-0612568

**Commodity Code:** 958-73

**Purpose:** Amendment #1 - Biosolids Land Application and Disposal Program

**Contact Person:** Lisa Burton-Yates Water/Water Engineering

**Department/Division:** 8/2/2019 Date

**Originating Department Director’s Signature:**

---

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

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

---

**Finance Division Signature:**

**Prepared by:**

**Date:** 8/16/19

---

**Date:** 8/5/19

**CT19-2163**

**Cord #1**

**8/5/19**

---

**October 18, 2011**
City Manager’s Report

From: Recreation/Sports
Supplier, Vendor, Company, Individual
Name: Prior to Tee Time, LLC
Address: 5555 Germantown Pike
Dayton, Ohio 45418

Date: December 22, 2021
Expense Type: Service Agreement
Total Amount: $441,000.00 thru December 31, 2022

Fund Source(s) | Fund Code(s) | Fund Amount(s)
---|---|---
Community Golf & Recreation Fund | 13000-6550-1158-56 | $441,000.00
13000-6550-24111-56 | $351,800.00

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

Description:
SECOND RENEWAL FOR GOLF PROFESSIONAL SERVICES & USE OF SPACE AT COMMUNITY GOLF COURSE

Recreation, Division of Sports is requesting approval to amend and renew the existing agreement with Prior To Tee Time LLC for Golf Professional Services at Community Golf Club. The amendment increases the monthly stipend for golf shop personnel costs by $665 per month to allow for a needed increase in staffing. The total agreement shall not exceed $441,000.00, with services to include:

1. Golf Professional Services and golf shop personnel - $89,200
   The contractor shall be paid $1,200.00 monthly and for golf professional services ($14,400.00 annually), up to $1,000.00 per quarter for meeting Performance Goals (up to $4,000.00 annually) and $5,900.00 monthly for golf shop personnel ($70,800.00 annually) over the term of the contract. Golf professional services and costs for starters and rangers shall not exceed $89,200.00 annually.

2. Revenue from Pro Shop sales, lessons, driving range and cart concessions - $351,800.00
   The contractor deposits all daily gross receipts from both City and contractor-generated revenue. Under this section of the contract, the contractor is reimbursed for 100% of sales and fees related to the pro shop merchandise and lessons, 80% of the driving range and 20% of cart rentals. The contractor submits bi-monthly invoices to the City for the aforementioned sales and fees. The City then issues a check to the contractor for that revenue. The contractor’s revenue estimate per year is $351,800.00.

This is the second of three renewals. The service agreement renewal shall commence on January 1, 2022 and expire on December 31, 2022.

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

Certificates of Revenue and Funds are attached.

E-SIGNED by Kelly Hignite on 2021-12-10 16:39:29 GMT
Division E-SIGNED by Robin Williams on 2021-12-10 17:01:58 GMT
Department City Manager

FORM NO. MS-16

Approved by City Commission

Clerk

Date

Updated 10/2019
Digital Version Updated 04/2020
CERTIFICATE OF FUNDS

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Attach additional pages for more FOAPALs

Vendor Name: Prior to Tee Time
Vendor Address: 5555 Germantown Pike Dayton OH 45418
Federal ID: 262020217
Commodity Code: 96199
Purpose: Golf Professional payments per contract at Community Golf Course for FY2022.

Contact Person: Kelly Pressel by Email

SEASON II - to be completed by the Finance Department

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

Finance Director Signature: [Signature]
Date: [Date]

CF Prepared by: [Signature]
Date: [Date]

Finance Department

October 18, 2021
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name: Prior to Tee Time
Address: 5555 Germantown Pike
City: Dayton, State: OH, Zip+4: 45418
Customer #: 262020217, Address Location #: 
Federal ID #: 262020217

Revenue Information: Fund: 13000, Organization: 6550, Revenue: 24111, Program: 56

Contract Information: Contract Start Date: 1/1/2022, Contract Expiration Date: 12/31/2022

Billing Information: Rate: Will Vary, Arrears: X, Pre-bill: 
Monthly (1st month of billing): January 2022
Quarterly (1st month of quarter): 
Semi-annual (1st month of half): 
Annual (1st month of billing): 
Other (explain): Bi-Monthly Invoices

Rate Change Date: NA, Rate Change Amount: NA

Description of Services (wording on invoice):
Golf Professional will invoice the Division of Golf on a twice-a-month basis for revenue related to sales and miscellaneous receipts per contract (merchandise, cart concession, club rental, golf lessons and range ball receipts). All revenue collected will be paid in through the department’s pay-in-process. Total estimated revenue for the contractual period is $351,800.00.

Departmental Approval: E-SIGNED by Robin Williams on 2021-12-10 17:02:08 GMT

TO BE COMPLETED BY FINANCE

Revenue Contract Number: 6-0217, Auditor: D. Billya, Date: 12/10/2021

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: [Signature], 12/13/21
SECOND RENEWAL AND AMENDMENT OF THE COMMUNITY GOLF COURSE
PROFESSIONAL SERVICES AND USE OF SPACE AGREEMENT

This SECOND RENEWAL AND AMENDMENT OF THE COMMUNITY GOLF COURSE
GOLF PROFESSIONAL SERVICES AND USE OF SPACE AGREEMENT (“Renewal and
Amendment”) is entered into this ______ day of __________________, 202 __, between the City of
Dayton, Ohio, a municipal corporation in and of the State of Ohio, (“City”) and Prior to Tee Time, LLC, an
Ohio limited liability company, created and existing under the laws of the State of Ohio (“Operator”).

WITNESSETH THAT:

WHEREAS, the City and Operator executed the Agreement for Community Golf Course Golf
Professional Services and Use of Space (“Agreement”) on October 26, 2017; and,

WHEREAS, the parties desire to amend the Agreement to provide for an increase in staffing needs at
Community Golf Course; and,

WHEREAS, the City desires to renew the Agreement and the Operator is willing to provide the
services in accordance with the terms of the Agreement.

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

1. Article VII – Financial Matters and Reports, subsection F., of the Agreement shall be deleted in its
entirety and replaced with the following:

   The City will make available to Contractor a stipend of Five Thousand Nine Hundred Dollars and
   Zero Cents ($5,900.00) per month for Golf Shop personnel costs.

2. Pursuant to Article III of the Agreement, both the City and the Operator mutually agree to renew
   the terms of this Agreement for an additional one (1) year term. This renewal period shall begin
   on January 1, 2022, and shall terminate on December 31, 2022, unless terminated pursuant to the
   Agreement.

3. Except as modified by this Renewal and Amendment and all previously executed
   amendments or renewals, the Agreement between the City and Operator remains
   unchanged and in full force and effect.

[REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.]
IN WITNESS WHEREOF, the City and Operator, each by a duly authorized representative, have executed this Amendment and Renewal as of the date set forth above.

CITY OF DAYTON, OHIO

________________________________________
City Manager

PRIOR TO TEE TIME, LLC, an Ohio limited liability company

E-SIGNED by Jana Dalton
By: ____________________________
Signature
on 2021-12-10 09:56:27 EST

Its: ____________________________
Title

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

________________________________________, 2021

Min. / Bk. _______ Pg. _______

________________________________________
Clerk of the Commission

APPROVED AS TO FORM AND CORRECTNESS:

12/8/2021

X John Musto for
City Attorney

Signed by: Musto, John
City Manager's Report

From: 6550 - REC/Sports
Supplier, Vendor, Company, Individual: Prior to Tee Time LLC
Address: 5555 Germantown Pike
Dayton, Ohio 45418

Date: September 22, 2021
Expense Type: Service Agreement
Total Amount: $104,500.00 thru 12/31/2021

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

Description:

Request to Increase Spending Authority

The Department of Recreation, Division of Sports requests to increase the spending authority for the service agreement with Prior to Tee Time LLC for Golf Professional Services and Use of Space at Community Golf Club. The requested amount of $104,500.00 increases spending authority from $315,400.00 to $419,900.00.

The City Commission approved spending authority of $315,400.00 on December 16, 2020. Due to increases in play at Community Golf Course, the percentage-based revenue from proshop sales (100%), lessons (100%), driving range (90%) and cart rentals (20%) is projected to exceed the approved amount. An additional $104,500.00 is needed to cover the amount due to Prior to Tee Time LLC through December 31, 2021.

The Law Department has reviewed this agreement and determined that a contract amendment is not required per the percentage-based terms of the original agreement.

A Certificate of Revenue in the amount of $338,500.00 is attached in order to receive revenue from percentage-based revenue for the term of the contract to include the increase amount of $104,500.00 from $234,000.00.

A Certificate of Funds in the amount of $419,900.00 is attached in order to pay for golf professional services, golf shop personnel and percentage-based revenue to include the increase amount of $104,500.00 from $315,400.00.

Signatures/Approval

Approved by City Commission

Regina Blackburn
Clerk
September 22, 2021
Date

Updated 10/2019
Digital Version Updated 04/2020
## CERTIFICATE OF FUNDS

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

<table>
<thead>
<tr>
<th></th>
<th>New Contract</th>
<th>Renewal Contract</th>
<th>Change Order</th>
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<tbody>
<tr>
<td>Contract Start Date</td>
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<td>01/01/21</td>
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<td>Initial City Manager's Report</td>
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<td>Remaining Commission Approval</td>
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### Required Documentation

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

### Amount: $104,500.00

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<tr>
<th>Fund Code</th>
<th>Fund</th>
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<th>Prog</th>
<th>Act</th>
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<td>Loc</td>
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</tbody>
</table>

### Attach additional pages for more FOAPALs

**Vendor Name:** Prior To Tee Time

**Vendor Address:** 5555 Germantown Pike Dayton OH 45418

**Street**

**City**

**State**

**Zipcode + 4**

**Federal ID:** 262020217

**Commodity Code:** 96199

**Purpose:** Request to increase the second sequence of this encumbrance due to increased demand at Community Golf Club. The contract remains unchanged for 2021.

**Contact Person:** Kelly Pressel x3383

**RYS/Golf**

**Department/Division:** 9/2/2021

**Originating Department/Division's Signature:** E-SIGNED by Robin Williams

**Date:** September 02, 2021

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

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

**Finance Director Signature:**

**Date:** 9/14/2021

**CF Prepared by:**

**COEP #1**

**Date:** 9/14/2021

**Finance Department**

**CF/CT Number:** CT21-1829

**Date:** SA 09/10/2021

**October 18, 2011**
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

<table>
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<th>Customer Information:</th>
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<tr>
<td>Address</td>
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<tr>
<td>City</td>
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<tr>
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<td>Other (explain)</td>
<td>Bi-Monthly Invoices</td>
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| Rate Change Date | NA | Rate Change Amount | NA |

Description of Services (wording on invoice):

Golf Professional will invoice the Division of Golf on a twice-a-month basis for revenue related to sales and miscellaneous receipts per contract (merchandise, cart concession, club rental, golf lessons and range ball receipts). All revenue collected will be paid in through the department's pay-in process. Total estimated revenue for the contractual period is $338,500.00.

Departmental Approval

E-SIGNED by Robin Williams on 2021-09-02 13:30:28 EST

<table>
<thead>
<tr>
<th>TO BE COMPLETED BY FINANCE</th>
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<tr>
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<th>3-0017</th>
<th>Auditor</th>
<th>Sativa Jones</th>
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</table>

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

[Signature]
City Manager's Report

From 6550 - RYS/Golf

Expense Type Service Agreement

Name Prior to Tee Time LLC

Total Amount $315,400.00 thru 12/31/21

Address 5555 Germantown Pike
Dayton, Ohio 45418

Fund Source(s)
Community Golf & Recreation

Fund Code(s)
13000-6550-1158-58
13000-6550-2411-58 (revenue)

Fund Amount(s)
$315,400.00 thru 12/31/21
$234,000.00 (revenue) thru 12/31/21

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

SERVICE AGREEMENT – FIRST RENEWAL
FOR GOLF PROFESSIONAL SERVICES AND USE OF SPACE AT COMMUNITY GOLF CLUB

Recreation and Youth Services is requesting approval to amend and renew the existing agreement with Prior To Tee Time LLC for Golf Professional Services at Community Golf Club. The amendment increases the monthly stipend for golf shop personnel costs by $1,000.00 per month to allow for a needed increase in staffing. The total agreement shall not exceed $315,400.00, with services to include:

1. Golf Professional Services and golf shop personnel - $31,400.00
   The contractor shall be paid $1,200.00 monthly and for golf professional services ($14,400.00 annually), up to $1,000.00 per quarter for meeting Performance Goals (up to $4,000.00 annually) and $5,250.00 monthly for golf shop personnel ($63,000.00 annually) over the term of the contract. Golf professional services and costs for starters and rangers shall not exceed $51,400.00 annually.

2. Revenue from Pro Shop sales, lessons, driving range and cart concessions - $234,000.00
   The contractor deposits all daily gross receipts from both City and contractor-generated revenue. Under this section of the contract, the contractor is reimbursed for 100% of sales and fees related to the pro shop merchandise and lessons, 80% of the driving range and 20% of cart rentals. The contractor submits bi-monthly invoices to the City for the aforementioned sales and fees. The City then issues a check to the contractor for that revenue. The revenue estimate per year is $234,000.00.

This is the first of three renewals. The service agreement renewal shall commence on January 1, 2021 and expire on December 31, 2021.

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

Certificates of Revenue and Funds are attached.

Kathy Russell
Division
Recreation

Department
Affirmative Action Program

Certified by
ROBIN LEIGH WILLIAMS

City Manager
FORM NO. MS-16

Signature/Approval

Approved by City Commission

Date
December 16, 2020

Clerk
December 16, 2020

Updated 10/2019
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

New Contract

Renewal Contract

Change Order

Contract Start Date 01/01/21
Expiration Date 12/31/21
Original Commission Approval $315,400.00
Initial Encumbrance $315,400.00
Remaining Commission Approval

Required Documentation

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

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

Original CT/CF CD201829
Increase Encumbrance
Decrease Encumbrance $-
Remaining Commission Approval

| Amount: $315,400.00 |

| Fund Code | 13000 - 6550 - 1158 - 56 - XXXX - XXXX |
| Fund | Org | Acct | Prog | Act | Loc |

| Amount: |

| Fund Code | XXXX - XXXX - XXXX - XX - XXXX - XXXX |
| Fund | Org | Acct | Prog | Act | Loc |

Attach additional pages for more FOAPALs

Vendor Name: Prior to Tee Time
Vendor Address: 5555 Germantown Pike Dayton OH 45418
Street City State Zipcode + 4
Federal ID: 262020217
Commodity Code: 96199
Purpose: Golf Professional payments per contract at Community Golf Course for FY2021.

Contact Person: Kelly Pressel x3383
RYS/Golf

Department/Division Date

Originating Department Director's Signature: ROBIN LEIGH WILLIAMS 12/3/2020

SECTION II - to be completed by the Finance Department

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

Finance Director's Signature

CF Prepared by

Finance Department

October 18, 2011
FIRST RENEWAL AND AMENDMENT OF THE COMMUNITY GOLF COURSE
FOOD AND BEVERAGE CONCESSION AGREEMENT

This FIRST RENEWAL AND AMENDMENT OF THE COMMUNITY GOLF COURSE GOLF PROFESSIONAL SERVICES AND USE OF SPACE AGREEMENT ("Renewal and Amendment") is entered into this 22nd day of December, 2020, between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio, ("City") and Prior to Tee Time, LLC, an Ohio limited liability company, created and existing under the laws of the State of Ohio ("Operator").

WITNESSETH THAT:

WHEREAS, the City and Operator executed the Agreement for Community Golf Course Golf Professional Services and Use of Space ("Agreement") on October 26, 2017; and,

WHEREAS, the parties desire to amend the Agreement to provide for an increase in staffing needs at Community Golf Course; and,

WHEREAS, the City desires to renew the Agreement and the Operator is willing to provide the services in accordance with the terms of the Agreement.

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

1. Article VII – Financial Matters and Reports, subsection F., of the Agreement shall be deleted in its entirety and replaced with the following:

   The City will make available to Contractor a stipend of Five Thousand Two Hundred Fifty Dollars and Zero Cents ($5,250.00) per month for Golf Shop personnel costs.

2. Pursuant to Article III of the Agreement, both the City and the Operator mutually agree to renew the terms of this Agreement for an additional one (1) year term. This renewal period shall begin on January 1, 2021, and shall terminate on December 31, 2021, unless terminated pursuant to the Agreement.

3. Except as modified by this Renewal and Amendment and all previously executed amendments or renewals, the Agreement between the City and Operator remains unchanged and in full force and effect.

[REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.]
IN WITNESS WHEREOF, the City and Operator, each by a duly authorized representative, have executed this Amendment and Renewal as of the date set forth above.

CITY OF DAYTON, OHIO

[Signature]
City Manager

PRIOR TO TEE TIME, LLC, an Ohio limited liability company

[Signature]
By:
Title: AUTH. REP.

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

December 16, 2020

Min. / Bk. I-14 Pg. 11

[Signature]
Clerk of the Commission

APPROVED AS TO FORM AND CORRECTNESS:

11/6/2020

X John Musto for
City Attorney

Signed by: Musto, John
AGREEMENT FOR GOLF PROFESSIONAL SERVICES
AND
USE OF SPACE AT COMMUNITY GOLF COURSE

This AGREEMENT FOR GOLF PROFESSIONAL SERVICES AT COMMUNITY GOLF COURSE (“Agreement”) is entered into this 26th day of December, 2021, between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio, (hereinafter referred to as the “City”) and Prior to Tee Time, LLC, an Ohio Limited Liability Company (hereinafter referred to as “Contractor”).

WITNESSETH THAT:

WHEREAS, the City owns and operates the improved real property known, referred to and operated as Community Golf Course (“Golf Course”), which is located in the City of Kettering, County of Montgomery and State of Ohio;

WHEREAS, the City seeks an experienced and qualified contractor to provide management and operational services for the daily operations at the Golf Course; and

WHEREAS, Contractor represented to the City that it is engaged in the business of providing golf related management and operation services, and is willing to provide such services to the City at the Golf Course on and subject to the terms and conditions of this Agreement.

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

ARTICLE I – PREMISES

A. Contractor is authorized to occupy and use, for the purposes stated in Article II, approximately 2,000 square feet of retail floor space designated by the City’s Golf Division Manager of the Department of Recreation and Youth Services (the “Golf Division Manager”) at the Golf Course clubhouse facility (hereinafter referred to as the “Premises”).

B. Contractor shall not erect, install, or maintain on the Premises or the Golf Course or the exterior of any improvement at the Golf Course, any billboards or advertising signs, except those which are approved in advance by the Golf Division Manager. Notwithstanding, Contractor is permitted to maintain on the Premises identifying signage, with the size and type of sign(s) subject to the Golf Division Manager’s advance approval. Handwritten communications, advertising signs, and billboards are strictly prohibited.

C. Contractor shall have the right to use all improvements, fixtures and other tangible personal property located and/or situated upon the Premises (hereinafter collectively referred to as the “Personalty”). However, the City makes no representation or warranty as to such Personalty, its fitness for a particular purpose or merchantability or condition. By execution hereof, Contractor represents that it has inspected the Premises and the Personalty, and accepts same on an “as-is” basis.
D. Contractor shall maintain the Premises in a neat, clean, and presentable condition at all times and shall ensure that the Golf Pro Shop windows, inside and outside, are clean at all times.

**ARTICLE II – USE OF PREMISES**

A. Contractor shall have the sole and exclusive right to use and occupy the Premises to operate a “Golf Pro Shop”, and to use said Premises for such other purposes as approved in writing by the Golf Division Manager.

B. Contractor shall not use or permit the Premises or Golf Course to be used for any improper, immoral, unlawful, or illegal business purposes, personal storage or for lodging.

C. Contractor shall actively use the Premises for the uses and purposes permitted hereunder, and shall not, at any time, cease operating the Golf Pro Shop upon the Premises or providing the work and services for the Golf Course required hereunder without the prior written consent of the City.

D. Not later than ten (10) consecutive days from the date of termination or expiration of this Agreement, Contractor shall:

1. remove any items, which are exclusively owned by Contractor, and located upon the Premises; and
2. restore the Premises to its original condition, ordinary wear and tear excepted.

In the event Contractor fails to remove any items exclusively owned by the Contractor within this 10-day period, any items, exclusively owned by the Contractor remaining on the Premises shall become the sole and exclusive property of the City.

E. The Contractor has the right to purchase all equipment and inventory of the Golf Shop and Driving Range currently owned by the City. Contractor must submit payment within fifteen 15 business days of receiving bill of sale for all equipment and inventory purchased. Equipment and inventory may include but is not limited to: driving range markers, bag stands, mats, range balls, signage, ball stackers, pull carts, range ball picker, range ball picker cart, ball washers, grip tools and other items.

**ARTICLE III – TERM**

This Agreement shall begin on January 1, 2018, and it shall expire on December 31, 2020, unless terminated earlier in accordance with Article X. The City shall have the right, but not the obligation, to renew this agreement for up to three (3) consecutive one (1) year periods; provided, however, that any such renewal shall be reduced to writing, making specific reference to this Agreement, and shall be executed by a duly authorized representative for each party, and if required or applicable, approved by the Commission of the City of Dayton. In the event Contractor shall hold over and remain in possession of the Premises herein described after the expiration of this Agreement, such period of holding over shall be considered a month-to-month tenancy, which may be terminated, without notice, at any time by the City.
ARTICLE IV – GENERAL RIGHTS AND OBLIGATIONS OF CONTRACTOR

A. Contractor represents and agrees that Ms. Jana Dalton, its member, is and shall remain during the entire term hereof a Class A member in good standing of the Professional Golfers’ Association of America (“PGA”). In the event Ms. Dalton does not maintain her PGA professional status during the term hereof, the City may immediately terminate this Agreement.

B. Contractor shall, at its sole cost and expense, procure from all authorities having jurisdiction over the operations of the Contractor at and from the Premises, all licenses, certificates, permits or other authorizations, which may be lawfully required for the conduct of its operations and/or the Golf Pro Shop.

C. Contractor shall conduct its business and the Golf Pro Shop operations at the Golf Course in a fair and businesslike manner so that it will be a credit to the City and to the Golf Course. The City will establish hours of operation for the Golf Pro Shop operation.

D. Contractor and its employees, agents, and servants, shall enforce, comply with, and obey such rules and regulations for the operation and use of the Golf Course, as may from time to time be promulgated by City, and shall obey all federal, state, and local laws, including all ordinances of the City of Dayton and the City’s Division of Golf Policy Manual (hereinafter this policy manual shall be referred to as the “Golf Policy Manual”). If the City elects to update or amend the Golf Policy Manual, it will provide an opportunity for the Contractor to comment and/or make recommendations.

E. Contractor shall repair or pay for all damage to City and its property, caused by the intentional, wrongful and/or negligent acts or omissions of Contractor, its agents, servants, employees and contractors, arising out of the use or occupancy of the Premises or in the exercise of any right or obligation granted herein.

F. Contractor shall pay when due all federal, state and local taxes or assessments that may be levied against its personal, real and/or leasehold property situated at the Golf Course; provided, however, that Contractor shall have the right to protest or contest by legal proceeding or in such other manner as it may deem suitable, the validity or amount of any imposition which it is obligated to pay.

G. Contractor shall require Ms. Dalton and, in her absence, a qualified assistant or a responsible adult, to be present in the Golf Pro Shop at all times so that the sales and services, which are herein required, will be available at all times during the scheduled hours of operation and use of the Golf Course and its facilities. During the months of April through October, Ms. Dalton shall not be absent for any two consecutive day period without first notifying and receiving the approval of the City. Vacations may only be taken between November 1st and March 31st of each contract year.

H. Contractor is responsible for stocking and maintaining all inventory for the Golf Pro Shop merchandise. At a minimum, Contractor must stock a reasonable amount of golf balls, clubs, gloves and other golf related merchandise and clothing. Within thirty (30) days from the date of execution of this Agreement, Contractor shall enter all merchandise and equipment Contractor will stock, maintain, and sell at the Golf Pro Shop within the designated point of
sale system. Throughout the duration of this contract, the designated point of sale system will be used to manage all merchandise and equipment. Contractor is solely responsible for payment, to the proper taxing authority, of all sales taxes on merchandise sold at the Golf Pro Shop.

I. Contractor is responsible for complying with all federal, state, and local employment and labor laws, codes, directives, orders, and rules and regulations. Notwithstanding termination or expiration of this Agreement, Contractor shall remain responsible for timely completion and filing of tax documentation and for furnishing all employees, agents and contractors with all tax information and/or documentation (i.e., W-2 or 1099 forms), as required by law. In the event the City is required to pay any unemployment compensation contributions for persons who were employed by Contractor, or any other expenses normally assumed and paid by an employer, but by operation of law are imposed on the City, Contractor shall reimburse the City for any payments so made. Contractor shall reimburse the City within fifteen (15) days after City sends an invoice for payment.

J. Contractor shall maintain accurate books of accounts in accordance with Generally Accepted Accounting Principles (“GAAP”) for all aspects of the operation of the Golf Pro Shop, revenues collected on behalf of the City of Dayton, and all other fees and charges collected at the Golf Course. At any time during normal business hours, and as often as the City may deem necessary, Contractor shall make available to the City all of its records with respect to all matters covered by this Agreement, and will permit the City to audit, examine and make excerpts and transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, revenues collected, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. The City may require Contractor to provide, at Contractor’s own cost and by an independent Certified Public Accounting (“CPA”) firm, a full audit of this Agreement and Contractor’s operations at the Golf Course.

**ARTICLE V – GOLF MANAGEMENT SERVICES**

A. Contractor will perform the following golf management services at the Golf Course:

1. Contractor shall cooperate with all City employees, agents and contractors in the administration and operation of the Golf Course, and assist in assuring proper conduct of all users of the facility, maintaining it in a clean, neat, and sanitary condition. Contractor shall enforce the City’s “No-Smoking” policy in and about the Premises at all times.

2. Contractor shall, each day at the times designated by the City for the operation and use of the Golf Course, open locker rooms, and common area rest rooms for public use, and at the end of the day, Contractor shall be responsible for securing and locking said areas including course access gates.

3. Contractor is subject to and shall comply with all orders and directions issued by the Golf Division Manager in the operation, maintenance and improvement of the Golf Course and facilities thereon.
4. Contractor shall employ a sufficient number of employees, agents and/or contractors to render the golf services specified herein.

   a. Because such persons will be interacting with the public, Contractor shall ensure that all personnel retained shall provide prompt and courteous treatment of the public using the Golf Course and its facilities, including annual fee players and/or guests.
   b. All such employees must adhere to all policies and procedures set forth by the City of Dayton and the Division of Golf.
   c. All such employees, contractors and/or agents shall be friendly, clean, courteous, efficient, and neat in appearances.
   d. Contractor shall not employ any person(s) who use improper language or act in a loud or boisterous, discriminatory, offensive or otherwise improper manner in providing services at the Golf Course or the Golf Pro Shop.
   e. Contractor agrees to terminate the services of any person whose conduct the City believes is detrimental to the best interest of the City or the operation of the Golf Course.
   f. Contractor agrees to furnish the Golf Division Manager, with a list of the names and addresses of all employees a minimum of one (1) day before employment and shall update said list as necessary.
   g. Contractor shall give employees their own unique security alarm code for access to secured facilities prior to their first day of work. It is the responsibility of the Contractor to maintain users and access with the designated alarm company. Upon request, Contractor shall submit to the City a list of approved users that have access to all secured facilities. Sharing access or security codes is strictly forbidden and any breach in security will be the responsibility of the Contractor.
   h. The City will issue unique user information for access to the designated point of sale system. Sharing access or security codes is strictly forbidden and any breach in security will be the responsibility of the Contractor.

5. Contractor, and its employees and agents, shall collect for and on behalf of the City ALL golf-related fees and charges for the Golf Course, which includes, but is not limited to, greens fees, range fees, locker rentals, annual pass fees, league fees, golf cart fees, lesson fees and all other fees and charges for the use of the Golf Course and its facilities and/or equipment prescribed by the City. The City reserves the sole and exclusive right to establish all such fees, charges, and costs for use of the Golf Course and its facilities and equipment. The Contractor reserves the sole and exclusive right to establish all fees associated with merchandise, lessons (with exception to scope of service agreement with other PGA teaching professionals) and driving range.

6. Contractor will act as an ambassador of the City of Dayton, promoting the City of Dayton and use of the Golf Course in all aspects of the Golf Pro Shop business and golf management services. This shall include, but not be limited to, meeting and greeting customers, securing leagues and outings, providing golf and etiquette tips, and generally promoting and representing the Golf Course in a favorable light.
7. Contractor shall have the right to sponsor and promote golf tournaments, special events and other outings held at the Golf Course, provided that such tournaments, events or outings are first approved by the Golf Manager. Upon approval by the Golf Manager, Contractor shall be responsible for the scheduling, management, and collection of all revenues from such tournaments, special events and other outings. Contractor shall provide to the Golf Manager on the first day of each month, a complete schedule of tournaments and outings to be held on the course for the upcoming month and completed agreements from the prior month with number of participants, date of outing, and other information as required by the Golf Manager. Contractor will follow the City’s fee schedule and will get variances from the schedule by approval of the Golf Manager only. All fees related to outings, tournaments, and other events, shall be paid and entered into the City’s cash register system by the day of the event unless communicated and approved by the Golf Division Manager in advance. Any outings, tournaments, and other events that may require an invoice for payment shall be invoiced through the City’s point-of-sale system.

8. Contractor shall employ all the starters and rangers necessary for the Golf Course operations. Preference in hiring shall go to City of Dayton residents. Contractor shall consult with the City or such other City-designated contractor(s) prior to hiring persons for the starter and/or ranger positions. It is further agreed that all starters and rangers hired must meet the requirements set forth in the Golf Policy Manual. All starters and rangers shall receive training before or immediately following their first scheduled date of work, with such training the responsibility of the Contractor. Contractor is responsible for all Work for Play and ProShop staff uniforms.

9. Contractor shall schedule the starters and rangers accordingly to ensure proper coverage of the golf course, and shall furnish a copy of the schedule of work for approval by the Golf Division Manager. In the event Contractor fails to meet the City’s scheduling requirements and needs for starters and rangers, the City shall invoice Contractor for the cost for services not rendered to the City. Such amounts will be calculated and invoiced by the City and paid by Contractor no later than the fifteenth day of the following month.

10. Contractor will insure, through the starters and rangers that all users of the Golf Course are given a register receipt to demonstrate payment of the charges and fees to use the Golf Course, including any persons allowed discounted or free golf under the “Special Play Privilege Policy” contained in the Golf Policy Manual. In the event the starters and rangers or other staff fail to verify charges and golfers play without paying, all fees for that round will be charged to the Contractor and entered into the designated point of sale resulting in a shortage of funds that the Contractor is responsible for reimbursing to the City.

11. By execution of this Agreement, Contractor represents that it received a copy of the Golf Policy Manual and is familiar with its contents and will observe and enforce same.

12. Contractor shall, at its sole expense, provide golf shirts and nametags for all employees, starters, rangers, agents, contractors, and volunteers providing any of the
golf services specified in this Agreement. Contractor will require that all such persons wear the shirts and nametags at all times when they are providing such services at the Golf Course.

13. Contractor will pay the costs for long distance telephone, cable/internet services and alarm service for the Golf Pro Shop and Premises.

B. Contractor shall manage and operate the City's golf cart concession at the Golf Course. The work and services to be provided by Contractor related to the golf cart concession include, but are not necessarily limited to, the following:

1. Contractor is responsible for providing the gasoline, and checking oil routinely for all gas golf carts supplied by the City. If the City procures electric carts for use in the golf cart concession, Contractor shall, on a daily basis, insure that all electric carts are fully charged. Unless the parties make other arrangements at the time the City provides electric carts for use at the Golf Course, the City will be responsible for the replacement of electric cart batteries.

2. Charging and collecting (by using the cash registers and, as applicable, the credit card processing equipment provided by the City) the fees and charges prescribed by the City for the rental of golf carts. In no event shall Contractor charge more or less than the rate, fee or charge prescribed by the City, unless a different fee or charge is approved in advance by the Golf Manager.

3. Fueling the golf carts as necessary to ensure carts will operate as needed. Contractor is responsible for all costs associated with supplying fuel, fuel tank maintenance, repairs and inspections.

4. Washing the entire golf fleet daily, unless weather conditions do not permit. In the event Contractor fails to comply with this requirement, the City may, but is not obligated to provide such washing services, with the cost thereof billed to and paid by Contractor with a 25% surcharge.

5. Conducting daily inspections of the entire golf cart fleet. Any damage or accidents must be reported on an Incident Report Form, which shall be submitted to the City's Division of Golf administrative offices within twenty four (24) hours after the accident occurred or damage noticed.

6. Performance of all routine maintenance on the golf cart fleet. As used herein, "routine maintenance" includes, but is not limited to, adding gas and oil, cleaning and inspecting the engines and the replacement of straps and tires, as may be necessary. Contractor is responsible for providing replacement tires for all golf carts. However, Contractor is not responsible for winter routine maintenance of the golf cart fleet. Contractor agrees that no more than ten percent (10%) of the golf cart fleet may be "out of service" at any one time due to routine maintenance activities to be performed by Contractor. The City shall have the right to inspect the entire golf cart fleet, during normal business hours, to verify compliance with this provision.
7. Insuring that the “Cart Rental Agreement Form” which form will be provided by the City, is fully completed prior to each golf cart transaction, including usage when the golf cart is provided at no cost. The completed form for the day’s transactions shall be given to the City on a daily basis. In the event a golf cart is provided at no cost or charge, Contractor shall provide a detailed explanation on the golf cart rental form; and if the City determines that a fee or charge should have been assessed, Contractor will pay the City an amount equal to 80% of the fee or charge that should have been collected and Contractor shall forego receipt of its Concession Fee (as this term is defined in Article VII, Subsection G).

8. Insuring a sufficient number of golf carts is available for tournaments, special events or other outings. If there is an insufficient number, Contractor shall notify the Golf Manager within five (5) days to arrange rental of additional golf carts that are necessary for such tournament, event, or outing. The revenue collected for the additional golf cart rentals will be distributed per the agreed upon golf cart percentages set forth in this Agreement.

9. Inventorying the cart fleet daily, at minimum during the close of business. Contractor must use the inventory sheet provided by the City.

10. In the event a golf cart becomes missing from the premises, the Contractor must notify the Golf Division Manager immediately. In the event that the cart is damaged or needs replaced due to the negligence of the Contractor or its agents, it is the responsibility of the Contractor to reimburse all cost associated with retrieval, repair or replacement of the cart(s). The City will invoice the Contractor for all associated fees and the Contractor must reimburse the City within fifteen (15) business days.

11. Insuring that all golf cart keys are paired with the appropriate golf cart and have a golf cart key tag associated with each key. Contractor is responsible for all cost associated with the replacement of keys and key tags.

C. Contractor shall manage and operate the City’s driving range at the Golf Course. The work and services to be provided by Contractor related to the driving range include, but are not necessarily limited to, the following:

1. Charging and collecting (by using the cash registers and, as applicable, the credit card processing equipment provided by the City) the fees and charges for range balls and/or annual range passes.

2. Contractor shall determine the fees and charges for range balls and/or annual range passes. All fees and charges must be approved in advance by the Golf Division Manager.

3. Providing sufficient number of range balls, range baskets, signage, yardage markers, bag stands, and other supplies deemed necessary in the operation of the driving range.

4. Providing necessary staff to pick range balls on the range, clean range balls and deliver to the Golf ProShop for rental.
5. The City may enter into an Agreement for use of the driving range for outside PGA teaching professionals. Written approval from the City and the Contractor will be done in advance of the teaching professional starting services.

D. Contractor shall insure that the “STRAIGHT 90 DEGREE” rule and all other rules and regulations for the game of golf (including those set forth in the Golf Policy Manual) are enforced at all times.

E. Contractor shall take an active role in the promotion and management of the City’s Amateur Tournaments, Hall of Fame Induction Ceremony, junior golf programs, and other special events that may be held from time to time at Community Golf Course. Contractor shall provide, at no cost to the City, instruction, range usage and all range balls needed by the participants in the City’s Junior Golf Program.

ARTICLE VI – RIGHTS AND OBLIGATIONS OF CITY

A. City shall have the right to and shall adopt, enforce, and amend reasonable rule(s) and regulation(s) regarding the use and operation of the Golf Course, facilities, and equipment, including the Golf Policy Manual.

B. The City shall establish and approve Golf Pro Shop operation hours.

C. The Golf Division Manager and other City designees and representatives shall have, at any and all times, the full and unrestricted right to enter the Premises for the purposes of inspecting the Premises and of doing any and all things which the City is obligated or authorized to do as set forth herein or which may be deemed necessary for the proper general conduct and operation of the Golf Course in the exercise of the City’s police power.

D. City warrants to Contractor quiet enjoyment of the rights and privileges granted hereunder during the term of this Agreement, upon Contractor’s full and faithful performance of all terms, obligations, promises and covenants contained herein.

E. The City will maintain the Golf Course in a playable condition, insofar as weather and finances of the City permit.

F. The City reserves to itself the sole and exclusive right to manage, control, and operate the Golf Course for the benefit of the public in such manner as the City, in its discretion, shall determine advisable. Nothing contained in the Agreement shall be construed to infringe upon or interfere with this exclusive right of management, control, and operation of the Golf Course by the City in any manner whatsoever. For example, the City may authorize other PGA professionals, which have an agreement with the City, to provide golf lessons or instruction to the public at the Golf Course even though Contractor’s PGA professional will also be performing golf lessons and instruction at the Golf Course.

G. The City will provide and maintain for Contractor’s use all cash registers for all transactions at the Golf Course, including the collection of all fees, charges, and costs specified in this Agreement (i.e., golf cart concession fees, greens fees, locker rentals, merchandise sales, range fees, pass fees). The City will also provide the necessary equipment for acceptance of credit cards (Visa and MasterCard), but Contractor shall reimburse the City for all merchant
credit card transaction fees for credit transactions involving Contractor’s sales of golf merchandise, golf club rentals, golf club repair, golf lessons, and range ball charges (for purposes of this Subsection only, referred to as “Contractor Revenues”). With each invoice permitted under Article VII, Subsection J, Contractor shall deduct the merchant credit card transaction fees from the payment due Contractor and shall include in the Concession Report a detailed statement as to the credit card transactions involving Contractor Revenues. The City agrees to assume full responsibility for payment of the merchant credit card transaction fees for golf cart rentals, notwithstanding Contractor’s entitlement to the Concession Fee.

H. Whenever there are updates or upgrades to the City’s “Point of Sale” system, Contractor will receive training and overviews from the City and shall then be responsible for training and providing overviews to Golf Pro Shop staff. The City will not cover the costs of this training for Golf Pro Shop staff.

I. The City agrees to retain or make available a qualified technician to make repairs, including minor repairs, to the golf cart fleet. However, the City shall only be responsible to pay the costs of repairs to the golf cart fleet, which are not caused by Contractor’s failure to provide routine maintenance on the golf cart fleet as specified in Article V, Subsection B(6).

**ARTICLE VII – FINANCIAL MATTERS AND REPORTS**

A. Contractor and its employees, agents, and contractors shall use the cash registers/point of sale system provided by the City for all transactions at the Golf Course and Golf Pro Shop, including, but not limited to, collection of greens fees, golf club rentals, range ball charges, locker rentals, annual privilege fees, league fees, golf cart fees, golf lessons, golf merchandise sales and all other miscellaneous golf-related charges and fees. All such transactions must be contemporaneously entered on the cash registers and, as applicable, the credit card processing equipment at the time of sale and collection of funds.

B. Contractor shall balance the registers and credit card equipment each night. In the event of an overage (that cannot be reconciled), such funds shall be deposited as provided in Subsection D, and become property of the City. In the event of a shortage (that cannot be reconciled), Contractor shall be responsible for providing, from its own funds, an amount equal to the shortage; but such amount will be returned to Contractor if the Contractor can demonstrate to the satisfaction of the City that an inadvertent or other justifiable error occurred causing such shortage (i.e., funds were not correctly counted before deposit, register error).

C. It is Contractor’s responsibility for assuring that the beginning daily balance for all cash registers is at least One Hundred Dollars ($100).

D. Contractor shall deposit in a City-designated bank account, all daily Gross Receipts from the management and operation of the Golf Course, within a 24-hour period, excluding holidays and weekend days when designated financial institution is closed; and shall be responsible for the safekeeping, storage, and transportation of said Gross Receipts until they are deposited in the City-designated bank account. Contractor shall make deposits of monies and Gross Receipts for holiday and weekends on the next business day when the financial institution is open for business. All daily deposit receipts for Gross Receipts shall be
provided to the City’s Division of Golf Administration office the next business day after deposit and the deposit receipt must be legible and must be bank validated. For purposes of this Agreement, “Gross Receipts” means all revenues derived from the management and operation of the Golf Course, whether by cash, check or credit card, including, but not limited to: greens fees, golf club rentals, locker rentals, annual privilege fees, league fees, Golf Cart Revenues, golf merchandise sales at the Golf Pro Shop, range ball charges, cash register overages, and all other fees and charges for the use of the Golf Course and its facilities and/or equipment, including any sales taxes or other taxes relating to sales or services provided.

E. The City agrees to pay Contractor a “Golf Management Fee” of One Thousand and Two Hundred Dollars ($1,200) per month for the golf management services to be provided pursuant to this agreement. In addition, the City agrees to pay Contractor a “Performance Goal Fee” of One Thousand Dollars ($1,000.00) per quarter. Such payment is subject to the Contractor meeting or exceeding complete quarterly performance objectives set forth as follows. In the event only a % of the goals are completed, such payment will be prorated based on the percentage completed. These Performance Goals may be modified or adjusted annually; however any such modifications must be reduced to writing and mutually agreed upon:

1. By the end of March each year, Contractor must have:

   a. Revise Community Golf Shop Procedure Manual which outlines operational expectation for employees. Manual should include Division of Golf Operations Manual where applicable. Manual should be reviewed and Approved by Golf Manager prior to staff trainings.

   b. Conduct pre-season staff training for all staff (Proshop, Starter, Ranger) to include Procedure Manual and any changes for the upcoming season. Sign-in sheets and meeting agenda from said training must be submitted to the Golf Division Manager by March 31.

   c. Effectively communicated with all prior year league presidents and outing organizers, including appreciation for prior year business, plans for the upcoming year, and any concerns that they may have that will enhance their experience at Community. Proof of said communication must be provided to the Golf manager by March 31 of each year.

   d. Effectively communicated with the Men’s and Women’s Associations of Community Golf Course to ensure that any scheduling needs are met and that any questions and/or concerns for the upcoming year have been heard. Proof of said communication must be provided to the Golf manager by March 31 of each year.

   e. Be innovative and create new programming not limited to traditional golf. Plan at minimum one new program or marketing initiative for the upcoming year. Detailed plan must be submitted and approved by the Golf Division Manager by March 31. Marketing collateral to be used for said activity must be readily available to the public by May 1st of each season.
f. No more than three (3) daily deposit outages. Outages include money overages and/or shortages posted to end of day deposits, which are not able to be corrected by the Division of Golf.

g. Customer reviews submitted through surveys should be 90% positive with regards to ProShop service.

h. No more than One (1) complaint from a customer submitted verbally or in writing with regards to service or communication provide by the ProShop and volunteer staff.

2. **By the end of June each year, Contractor must have:**

   a. Worked with the Dayton Golf Commission and fellow City of Dayton Golf Professionals to ensure that the annual Golf Commission tournaments have been effectively planned and executed or are ready for execution.

   b. Implement at minimum planned new program or marketing initiative per season as approved by the Golf Division Manager. Marketing collateral to be used for said activity must be readily available to the public by May 1st of each season.

   c. No more than three (3) daily deposit outages. Outages include money overages and/or shortages posted to end of day deposits, which are not able to be corrected by the Division of Golf.

   d. Customer reviews submitted through surveys should be 90% positive with regards to ProShop service.

   e. No more than One (1) complaint from a customer submitted verbally or in writing with regards to service or communication provide by the ProShop and volunteer staff.

3. **By the end of September each year, Contractor must have:**

   a. Effectively communicated with all current year league presidents and outing organizers, including appreciation for current year business, plans for the upcoming year, and any concerns that they may have that will enhance their experience at Community. Proof of said communication must be provided to the Golf manager by September 30 of each year.

   b. Executed the new program and marketing efforts or other initiatives specified to the golf manager in the first and second quarter.

   c. Effectively and actively supported the City of Dayton’s Junior Golf program by providing course times to the program, assisting with program lessons, player development, and positively communicating and advertising the program to guests and potential customers.
d. No more than three (3) daily deposit outages. Outages include money overages and/or shortages posted to end of day deposits, which are not able to be fixed by the Division of Golf.

e. Customer reviews submitted through surveys should be 90% positive with regards to ProShop service.

f. No more than One (1) complaint from a customer submitted verbally or in writing with regards to service or communication provide by the ProShop and volunteer staff.

4. **By the end of December each year, Contractor must:**

a. Submit your annual accomplishments as it pertains to the operation, programming and management of Community Golf Course.

b. Submit a detailed plan for any and all aesthetic or capital improvements to the Golf Shop for the upcoming year. Plans must be submitted in writing by December 31 of each year.

c. Effectively communicate with all current year league presidents and outing organizers, including appreciation for current year business, plans for the upcoming year, and any concerns that they may have that will enhance their experience at Community. Proof of communication must be provided to the Golf manager by December 31 of each year.

d. Effectively communicate with the Men’s and Women’s Associations of Community Golf Course to ensure that any scheduling needs have been met and that any questions and/or concerns from the current year have been addressed and any concerns for the upcoming year have been heard. Proof of said communication must be provided to the Golf manager by December 31 of each year.

e. No more than three (3) daily deposit outages. Outages include money overages and/or shortages posted to end of day deposits, which are not able to be fixed by the Division of Golf.

f. Customer reviews submitted through surveys should be 90% positive with regards to ProShop service.

g. No more than One (1) complaint from a customer submitted verbally or in writing with regards to service or communication provide by the ProShop and volunteer staff.

F. The City will make available to Contractor a stipend of Four Thousand Two Hundred and Fifty Dollars ($4,250) per month for Golf Shop personnel costs.

G. The City will pay Contractor a “Concession Fee” of twenty percent (20%) of the Golf Cart Revenues for all work and services provided by Contractor for the golf cart concession. As used herein “Golf Cart Revenues” shall mean all monies collected or charged, whether by cash or credit, for the rental of the golf carts at the Golf Course.
H. The City will retain a “Maintenance Fee” of ten percent (10%) of Driving Range Revenues for all work and services provided by the City for the driving range. As used herein “Driving Range Revenues” shall mean all monies collected or charged, whether by cash or credit for the rental of driving range balls at the Golf Course. In exchange for the Maintenance fee, the City will mow the driving range, seed and ensure the range remains in as good of condition as excessive use, weather and budget permit. Contractor, at its sole cost and expense, shall make and maintain all improvements to the golf course driving range.

I. On the 1st day of each month during the term of this Agreement, Contractor shall submit to the City an invoice for payment of the Golf Management Fee and request for disbursement of the monthly installment amount for Golf Pro Shop personnel costs. Upon request by the City, Contractor shall furnish supporting documentation and records to substantiate the information contained in said report. The City shall use good faith efforts to pay such invoice on or before the 15th day of the month.

J. On the 1st and 16th day of each month (or the next business day that is not a Saturday, Sunday, or City observed holiday) during the term of this Agreement, Contractor shall review an invoice prepared by the City for payment of the Concession Fee and release of the funds related to golf merchandise sales, golf lessons, golf club rentals and range ball charges. Contractor shall sign a sworn or verified “Concession Report”, in a format acceptable to the City, detailing, at a minimum for the immediately preceding period, the total amount of Golf Cart Revenues and golf merchandise sales (which amount shall include payment of all sales taxes and other taxes charged, as payment of such taxes is the responsibility of Contractor), golf club rentals, golf lessons, and range ball charges and the total amount of credit transactions for which Contractor is responsible for the payment of the associated merchant credit card acceptance fee as required in Article VI, Subsection G. Unless disputed or the Concession Report is incomplete, the City will use good faith efforts to pay the invoice within fifteen (15) business days from the City’s receipt of the invoice.

K. Quarterly, Contractor shall submit to the Golf Division Manager a detailed income statement, in compliance with GAAP and in such format acceptable to the City, together with such additional information or documentation as the City may require. If as a result of such statement a discrepancy is noted, Contractor shall take such corrective action as the City may require.

L. The City’s financial obligations under this Agreement are payable only and solely from funds appropriated and available for the purpose of this Agreement. The absence of appropriated or other lawfully available funds shall render the Agreement null and void to the extent funds are not appropriated or available.

M. City has the right to withhold payment to Contractor of the Golf Management Fee; Golf Shop Personnel Costs; Concession Fee; and, Driving Range Revenues, as described in Subsections (E), (F), (G), and (H) of this Article VII, in the event that Contractor is under investigation and/or has been placed on administrative leave during the pendency of any such investigation, for possible misconduct in connection with the duties and responsibilities of Contractor under this Agreement.
ARTICLE VIII – INSURANCE AND INDEMNIFICATION

A. Contractor shall defend, indemnify, and hold harmless the City and its elected officials, officers, agents and employees against any and all claims for injury or damage to persons or property in any way connected with or arising out of Contractor’s occupancy or use of the demised premises, the performance or non-performance of this Agreement and the acts, errors and omission of Contractor or its employees, agents, and/or contractors.

B. During the term hereof, Contractor shall procure and maintain, at Contractor’s sole cost and expense, with an insurance company authorized to conduct business in the State of Ohio and having at least an “A” rating from A.M. Best, Comprehensive General Liability Insurance, with a combined single limit of One Million Dollars ($1,000,000) for each occurrence and One Million Dollars ($1,000,000) in the aggregate, and specifically covering all personal injuries, property damage and all losses and damages occurring on the Premises and/or resulting from Contractor’s activities at the Golf Course. Contractor’s insurance shall also include coverage for damaged doors and glass breakage and any structural damage related thereto.

C. Contractor shall also maintain Workers’ Compensation Insurance for all employees, in such amounts as prescribed by Ohio law.

D. All policies of insurance required herein, but excluding Workers’ Compensation Insurance, shall name the City and its elected officials, officers, agents, employees, and volunteers as additional insured(s) and shall contain the requirement that City shall be notified thirty (30) days in advance of any termination or diminution of coverage. Within thirty (30) days of the execution of this Agreement, Contractor shall furnish the Golf Division Manager with a complete copy of the certificate(s) of insurance demonstrating compliance with the insurance requirements contained herein.

E. Contractor shall furnish a performance and fidelity bond in the amount of Twenty Five Thousand Dollars ($25,000) to indemnify the City against loss of funds collected by Contractor on behalf of City and its agents or employees, in accordance with the terms of this Agreement and to be held by the City as security for the performance of Contractor’s obligations under this Agreement.

ARTICLE IX – NON-DISCRIMINATION

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

B. It is expressly agreed and understood that Section 35.14 of the Revised Code of General Ordinances of the City of Dayton, Ohio, constitutes a material condition of this Agreement as fully and as if specifically rewritten herein and that failure of Contractor to comply therewith shall constitute a breach of this Agreement entitling the City, at its option, to terminate this Agreement.
C. Contractor agrees that it will not discriminate by segregation or otherwise, against any person or persons because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap in furnishing or by refusing to furnish to such person or persons the use of the Golf Course facility, including any and all services, privileges, and activities provided thereat.

D. In the event of a finding of a breach of the above nondiscrimination covenant, the City shall have the right to terminate this Agreement and to re-enter and repossess the Premises and facilities thereon and the City shall be relieved of any obligation to pay for any work or services performed subsequent to the effective date of termination. Notwithstanding the foregoing sentence, it is specifically agreed that nothing herein contained shall prevent Contractor from exhausting all administrative and/or judicial remedies available to Contractor in resisting or defending against any claims or claim of breach or default or noncompliance hereunder.

ARTICLE X – TERMINATION

A. This Agreement may be terminated by the City upon giving written notice of termination to Contractor at least thirty (30) days prior to the effective date of such termination. The City may immediately terminate this Agreement, without notice, in the event of any unethical conduct by Contractor or violation or alleged violation of federal, state, or local law, rule, regulation, or order, but excluding any violation or alleged violation of the Golf Policy Manual.

B. This Agreement may be terminated by the City in the event Contractor defaults in the performance of any duty, obligation or responsibility hereunder, including any violation or alleged violation of the Golf Policy Manual, but only if Contractor fails to cure the default to the satisfaction of the City or fails to submit a mutually acceptable plan to cure said default within fifteen (15) days from the City’s written notice to the Contractor explaining the default.

C. Contractor may terminate this Agreement in the event the City defaults in the performance of its duties, responsibilities or obligations hereunder, but only if the City fails to cure or undertake reasonable actions to cure the default within thirty (30) days from Contractor’s written notice to the City explaining such default.

D. In the event this Agreement is terminated, the City shall be relieved of any obligation to pay for any work or services performed subsequent to the effective date of termination. On the effective date of termination, the City shall take immediate possession of the Premises, without being deemed guilty of trespassing, but will allow the Contractor to access the Premises for the period and specific purpose set forth in Article II, Subsection D.

ARTICLE XI – GENERAL PROVISIONS

A. Where this Agreement speaks of approval and consent by the City or the Golf Division Manager, such approval and consent will not be unreasonably withheld.

B. This Agreement represents the entire and integrated agreement between City and Contractor. This Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreements, or contracts, whether oral or written, relating to the subject
matter of this Agreement. If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

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

D. Contractor shall meet with the City and its designees at such reasonable times designated by the City to review and discuss performance of this Agreement. Contractor shall allow the City to conduct inspections or monitoring, and shall cooperate with the City in all respects concerning the review and monitoring of Contractor's performance pursuant to this Agreement.

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

   **Contractor:**
   Prior to Tee Time, LLC  
c/o Jana Dalton  
5555 Germantown Pike  
Dayton, Ohio 45418

   **City:**
   The City of Dayton, Ohio  
Department of Recreation & Youth Services  
Attn: Golf Division Manager  
3383 Chuck Wagner Lane  
Dayton, OH 45414

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

F. Contractor shall not assign any rights or duties under this Agreement without the prior written consent to the City. Unless otherwise stated in the City's written consent to an assignment, no assignment will release or discharge Contractor from any obligation under this Agreement. Notwithstanding the foregoing, all promises, covenants, stipulations, and agreements set forth in this Agreement shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.

G. Contractor represents that it has carefully reviewed the terms and conditions of this Agreement, is familiar with such terms and conditions and agrees faithfully to comply with the same to the extent to which said terms and conditions apply to its activities as authorized and required by this Agreement.

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

Contractor understands and agrees that any and all persons retained or hired to perform the duties and responsibilities under this Agreement, including starters and rangers, are not City employees and not entitled to any of the emoluments of City employment. Further, Contractor shall be responsible to withhold and pay, or cause such agents, contractors and subcontractors to withhold and pay, all local, state, and federal taxes. Contractor understands and agrees that neither he, nor any of the persons hired to perform the duties and responsibilities under this Agreement are "public employees" for the purpose of membership in the Ohio Public Employees Retirement System ("OPERS").

I. The City may amend this Agreement, provided no such amendment shall be effective unless it is reduced to writing, executed by each party and, if required, approved by the Commission of the City of Dayton, Ohio.

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

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###
IN WITNESS WHEREOF, the City and Contractor, each by a duly authorized representative, have executed this Agreement as of the date first written above.

PRIOR TO TEE TIME, LLC
an Ohio Limited Liability Company

By: [Signature]

Print: JANA DALTON

Its: AUTH REP

THE CITY OF DAYTON, OHIO

[Signature]
City Manager

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]
City Attorney

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

October 18, 2017

Min. Bk. 115 Pg. ___

[Signature]
Clerk of the Commission
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>New Contract</th>
<th>Renewal Contract</th>
<th>Change Order</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Start Date</td>
<td>01/07/18</td>
<td></td>
</tr>
<tr>
<td>Expiration Date</td>
<td>12/31/20</td>
<td></td>
</tr>
<tr>
<td>Original Commission Approval</td>
<td>$808,200.00</td>
<td></td>
</tr>
<tr>
<td>Initial Encumbrance</td>
<td>$269,400.00</td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$538,800.00</td>
<td></td>
</tr>
<tr>
<td>Increase Encumbrance</td>
<td>$ -</td>
<td></td>
</tr>
<tr>
<td>Decrease Encumbrance</td>
<td>$ -</td>
<td></td>
</tr>
<tr>
<td>Original CT/CF</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Required Documentation</td>
<td>Initial City Manager's Report</td>
<td>x</td>
</tr>
<tr>
<td></td>
<td>Initial Certificate of Funds</td>
<td>x</td>
</tr>
<tr>
<td></td>
<td>Initial Agreement/Contract</td>
<td>x</td>
</tr>
<tr>
<td></td>
<td>Copy of City Manager's Report</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Copy of Original Certificate of Funds</td>
<td></td>
</tr>
</tbody>
</table>

Amount: $269,400.00

<table>
<thead>
<tr>
<th>Fund Code</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>50000 - 6550 - 1158 - 58 - XXXX - XXXX</td>
<td>Fund Org Acct Prog Act Loc</td>
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</tbody>
</table>

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

Vendor Name: Prior to Tee Time
Vendor Address: 5555 Germantown Pike, Dayton, OH 45418
Federal ID: 282020217
Commodity Code: 96199
Purpose: Golf Professional payments per contract at Community Golf Course for FY18.
Contact Person: Kelly Pressel
RYS/Golf: 9/25/2017
Department/Division: Finance Department
Director's Signature: Kelly Pressel
Date: 10/4/17

SECTION II - to be completed by the Finance Department

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

Finance Director's Signature: 
Date: 10-9-17
Prepared by: 
Date: 10-9-17
CP/CF Number: CT18-1829

Financial Department
October 18, 201
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name Prior to Tee Time
Address 5555 Germantown Pike
City Dayton State OH Zip+4 45418 -
Customer # 262020217 Address Location #
Federal ID# 262020217

Revenue Information: Fund 59000 Organization 6550 Revenue 24111 Program 56
Contract Information: Contract Start Date 1/1/18 Contract Expiration Date 12/31/20
Billing Information: Rate: Will Vary Arrears X Pre-bill
Monthly (1st month of billing) January 2018
Quarterly (1st month of quarter)
Semi-annual (1st month of half)
Annual (1st month of billing)
Other (explain) Bi-Monthly Invoices
Rate Change Date NA Rate Change Amount NA

Description of Services (wording on invoice):
Golf Professional will invoice the Division of Golf on a twice-a-month basis for revenue related to sales and miscellaneous receipts per contract (merchandise, cart concession, club rental, golf lessons and range ball receipts). All revenue collected will be paid in through the department's pay-in process. Total estimated revenue for the contractual period is $600,000 ($200,000 annually).

Departmental Approval Kelly Pressel for RW 9/25/17

TO BE COMPLETED BY FINANCE

Revenue Contract Number 2-C217-1 Auditor Vera Primm Date 10/21/17

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
City Manager's Report

From 6550 - RYS/Golf

Supplier, Vendor, Company, Individual

Name Prior to Tee Time LLC

Address 5555 Germantown Pike
Dayton, Ohio 45418

Date October 18, 2017

Expense Type Service Agreement

Total Amount $808,200.00 (thru 12/31/20)
Rev $600,000.00

Fund Source(s) Fund Code(s) Fund Amount(s)
Golf Operating 59000-6550-1158-56 $908,200.00
59000-6510-24111-56 $600,000.00

Includes Revenue to the City Yes \(\checkmark\) No \(\bigcirc\) Affirmative Action Program Yes \(\checkmark\) No \(\bigcirc\) N/A

Description

Service Agreement
Golf Professional Services and Use of Space at Community Golf Course

Approval is requested for an agreement to commence on January 1, 2018 through December 31, 2020 for Golf Professional Services and Use of Space at Community Golf Course. The total contract shall not exceed $808,200.00 which is comprised of the following:

1. Golf Professional Services and golf shop personnel - $208,200.00
   The contractor shall be paid $1,200.00 monthly and for golf professional services ($14,400.00 annually), up to $1,000.00 per quarter for meeting Performance Goals (up to $4,000.00 annually) and $4,250.00 monthly for golf shop personnel ($51,000.00 annually) over the term of the contract. Golf professional services and costs for starters and range shall not exceed $69,400.00 annually.

2. Revenue from Pro Shop sales, lessons, driving range and cart concessions - $600,000.00
   The contractor deposits all daily gross receipts from both City and contractor-generated revenue. Under this section of the contract, the contractor is reimbursed for 100% of sales and fees related to the pro shop merchandise and lessons, 80% of the driving range and 20% of cart rentals. The contractor submits bi-monthly invoices to the City for the aforementioned sales and fees. The City then issues a check to the contractor for that revenue. The revenue estimate per year is $200,000.00.

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

A Certificate of Revenue for the contract in the amount of $600,000.00 is attached in order to receive revenue from pro shop sales, lessons, driving range and cart concessions.

A Certificate of Funds in the amount of $269,400.00 in order to pay for golf professional services, golf shop personnel and reimbursed revenue from pro shop sales, lessons, driving range and cart concessions.

Signatures/Approval

[Signatures and Approvals]

Approved by City Commission

[Signature] Rachelle Laurenson

[Date] October 18, 2017

FORM NO. MS-16

Updated 8/2016
October 23, 2017

TO: City Commission Office  
    City Manager's Office  
    Finance Department

FROM: Robin Williams, Director  
      Department of Recreation and Youth Services

SUBJECT: REQUEST FOR SIGNATURE

Please sign the attached Agreement between the City of Dayton and Prior to Tee Time, LLC for Golf Professional Services and use of space at Community Golf Course. This Agreement will commence on January 1, 2018 and expire on December 31, 2020. Authorization for execution of this Agreement was granted by the City Commission on October 18, 2017 by City Manager’s Report, Calendar Item 10.

This Agreement has been reviewed by this office and is ready for your execution.

RW/mlt
File
City Manager’s Report

From: 6210 - Police Director

Date: December 29, 2021

Expense Type: Service Agreement

Total Amount: $324,435.28 (thru 12/31/2022)

Supplier, Vendor, Company, Individual:
Greater Dayton Regional Transit Authority

Address:
4 South Main St.
Dayton, Ohio 45402

Fund Source(s) | Fund Code(s) | Fund Amount(s)
--- | --- | ---
General Fund | 10000-6210-22611-71 | $324,435.28

Includes Revenue to the City: Yes
Affirmative Action Program: No

Description:
Community Based Police Officers
Service Agreement with the Greater Dayton Regional Transit Authority

City Commission approval is requested for the City of Dayton Police Department to continue collaboration with the Greater Dayton Regional Transit Authority (RTA) as outlined in this new Agreement. RTA shall reimburse the City of Dayton for personnel and travel costs associated with the specialized overtime assignments of officers at the Downtown Transit Hub, Wright Stop Plaza, and the adjoining areas as defined in the contract.

This Agreement in the amount of $324,435.28 and the additional $32,000.00 for contingencies is not to exceed total for the twelve (12) month term. This Agreement continues the Community Policing efforts requested by RTA and the collaborative efforts which have been ongoing since March 2005.

The Agreement shall be for the period of January 1, 2022 and end December 31, 2022.

The Law Department has approved the contract as to form and correctness.

The Certificate of Revenue is attached.

E-SIGNED by Paul Saunders on 2021-12-13 14:48:51 GMT

E-SIGNED by Eric Henderson on 2021-12-13 16:23:11 GMT

Approved by City Commission

Clerk

Date

Updated 06/2016
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name  Greater Dayton Regional Transit Authority (RTA)
Address  4 South Main St. (Attn: Director of Procurement)
City  Dayton    State  Ohio    Zip+4  45402
Customer #  237182735    Address Type/Seq.  P-4
Federal ID#  23-7182735

Revenue Information: Fund  10000    Organization  6210    Revenue  22611    Program  71

Contract Information: Contract Start Date  01/01/2022    Contract Expiration Date  12/31/2022

Billing Information: Rate: Off. $69.32    Arrears  X    Pre-bill
Monthly (1st month of billing)  February for January Services
Quarterly (1st month of quarter)  
Semi-annual (1st month of half)  
Annual (1st month of billing)  
Other (explain)  $324,435.28 and contingency portion $32,000.00

Rate Change Date  Rate Change Amount

Description of Services (wording on invoice):  Provide security services at the downtown hub and adjoining areas as defined in contract.

Departmental Approval

E-SIGNED by Eric Henderson on 2021-12-13 16:23:15 GMT

TO BE COMPLETED BY FINANCE

Revenue Contract Number  5 - 2735    Auditor  D Billy    Date  12/13/2021

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  

12/13/21
AGREEMENT

This Agreement, made and entered on this _____ day of ___________, 2021, by and between the City of Dayton, Ohio (hereinafter referred to as the "City"), and the Greater Dayton Regional Transit Authority (hereinafter referred to as the "RTA").

WITNESSETH:

Whereas, the RTA desires City of Dayton Police Officers to provide general police services and to respond to altercations, fare disputes, assaults, and other breaches of the peace; and

Whereas, the presence of patrol officers providing policing services at the RTA Downtown Transit Hub, Wright Stop Plaza and the immediate area, as defined in the attached Exhibit “A”, has proven beneficial to the residents, employees and citizens of Dayton in the past; and

Whereas, the City is capable and willing to provide the requested services; now, therefore,

In consideration of the mutual covenants and conditions contained in this Agreement, the parties agree as follows:

1. RTA, through its duly authorized representative, requests the services of two (2) Dayton City Police Officers to provide police services, at Wright Stop Plaza and the RTA Downtown Transit Hub. The Police Officers assigned hereunder shall work the following hours unless otherwise mutually agreed in writing by both parties. Said hours of work are meant to include any contract-related jail book-in time, but is to exclude related court time.

<table>
<thead>
<tr>
<th>DAY</th>
<th>SHIFT</th>
<th>HOURS</th>
<th>TOTAL HOURS/S</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monday-Friday</td>
<td>a.m. Transit hub/T</td>
<td>30</td>
<td>1560/pd</td>
</tr>
<tr>
<td></td>
<td>p.m. Transit hub/T</td>
<td>40</td>
<td>2080/pd</td>
</tr>
<tr>
<td>Saturday</td>
<td>p.m. Transit hub/T and ride alongs</td>
<td>8</td>
<td>416/pd</td>
</tr>
<tr>
<td>Travel</td>
<td>Estimated</td>
<td>.5/shift</td>
<td>572/pd</td>
</tr>
</tbody>
</table>

The above hours reflect the approximate schedule for the City of Dayton Police Officers. The request to patrol additional trouble spots on bus routes within the City limits, and additional routes as needed with approval of the Central Patrol Operations Commander, shall be incorporated in the schedule above. The commander shall ensure there is approval from any outside agencies the route may enter into.

2. This Agreement shall be effective January 1, 2022 and shall terminate December 31, 2022, except that the RTA shall have the option to renew this Agreement for two (2) additional twelve (12) month terms, in which case the
expiration date will be December 31, 2024 or when funds are expended, whichever comes first.

The RTA may exercise this option to renew by providing the City with written notice of its intent to renew at least sixty (60) days prior to the expiration of the then current term. Any renewal shall be reduced and executed in writing, signed by a duly authorized representative of the City and RTA, and if required or applicable, approved by the Commission of the City of Dayton, Ohio.

3. All Police Officers provided by the City 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 the City’s established procedures, rules and regulations.

4. It is expressly understood and agreed to by the RTA that no further use will be made of the assigned Police Officers without the express authorization of the City’s Chief of Police or his duly authorized designee. The parties agree that the Police Officers assigned pursuant to this Agreement shall not be representatives, agents or employees of RTA.

5. It is expressly understood and agreed by both parties that the Police Officers assigned under this Agreement shall report any and all RTA security activities directly to the appropriate Dayton police supervisor.

6. RTA shall pay for services provided hereunder at the per hour rate, identified by the then active labor agreement as defined below, for each Police Officer assigned, not to exceed a maximum aggregate of $324,435.28 and $32,000.00 contingency from January 1, 2022 to December 31, 2022, a period of twelve (12) months.

If the RTA options to renew each year, as provided for in Section 2, the total shall not exceed a maximum aggregate of $992,901.28 for the entire period of thirty six (36) months and in addition, total contingencies not to exceed $99,290.00 for the total contract period of three (3) years. Option years as follows:

- Option year one: $330,924.00 plus contingency portion
- Option year two: $337,542.00 plus contingency portion

Said rates listed above reflect an amount equal to 1-1/2 times the estimated future regular hourly rate of pay as established by the current agreement between the City and the Fraternal Order of Police, John C. Post Lodge #44 for each rank of police personnel, plus fringe benefits. RTA agrees to pay any increase in the foregoing hourly rates necessitated by negotiation of a new labor agreement or regulation, order or law 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 invoice RTA for payment of the actual services provided. Invoices are to be submitted no less than on a monthly basis showing actual hours worked by each Police Officer and/or the assigned replacement Police Officer to the Director of Security. Payment is due upon receipt of an invoice and RTA will make payment to the City no more than ten (10) days after receipt.
7. RTA will provide telephone services to City police personnel assigned hereunder while performing duties. RTA shall pay all charges and costs for all utilities associated with the duties discharged herein. In addition, RTA if available, may make office space available to the Police Officers assigned hereunder, as a community-based police station, free of any rent, charge or other cost for such occupancy and use.

8. The City agrees that it will restrict Police Officers assigned hereunder from being diverted from the Central Business District to perform other police work, unless said Police Officers are responding to a Priority 1 call. The RTA will not be responsible for payment during the time, if a Police Officer is called to a Priority 1 call.

9. The City or RTA may terminate this Agreement upon giving written notice of termination to the other party at least thirty (30) days prior to the effective date of such termination. In the event this Agreement is terminated, RTA shall be relieved of any obligation to pay for any services performed or expenses incurred subsequent to the effective date of termination, and the City will be relieved of performing services and incurring expenses subsequent to the effective date of termination.

10. The City and RTA may amend or modify this Agreement, at any time, provided that such amendment or modification makes specific reference to this Agreement, is executed in writing, signed by a duly authorized representative of the City and RTA, is approved by the Chief of Police and the City Manager, and, if required or applicable, approved by the Commission of the City of Dayton, Ohio, and/or the Greater Dayton RTA Board.

11. This Agreement represents the entire Agreement between the City and RTA. This Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreements or contracts, whether oral or written, relating to the subject matter of this Agreement.

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

13. The City shall maintain detailed monthly incident reports of all police activities performed by the Police Officers assigned hereunder. Said incident reports shall be provided to RTA monthly in manner acceptable to both parties.

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

WITNESSED BY:

[Signature]
Witness

GREATER DAYTON REGIONAL TRANSIT AUTHORITY

[Signature]
Robert Ruzinsky, CEO

CITY OF DAYTON, OHIO

________________________
City Manager

APPROVED AS TO FORM AND CORRECTNESS:

11/18/2021

X John Musto for
City Attorney

Signed by: Musto, John

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

________________________, 2021

Min./Bk. _________ Pg. __________
City Manager’s Report

From 3430 – Water Supply and Treatment Supplier, Vendor, Company, Individual
Name Lynn Alan Farms Address 6610 Studebaker Road. New Carlisle, OH 45344

Date December 22, 2021 Expense Type Lease Agreement Total Amount $616,704.00 (thru 12/31/2025)

Fund Source(s) Fund Code(s) Fund Amount(s)
2022-2025 Water Operating Fund 53000-3430-29436-54 $616,704.00

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

Description

LAND LEASE OF PARCELS FOR FARMING

The Department of Water requests permission to enter into a Lease Agreement with Lynn Alan Farms for leased land, referred to as Union Road WellField, in Clark County Ohio in the amount of $616,704.00. The Department of Water is the caretaker of this land and acquired it for potential future wellfield development. IFB 210235 was released on April 1, 2021 for the leasing of the Union Road Wellfield land parcels for farming. IFB 210235 closed April 28, 2021 with seven (7) respondents and Lynn Alan Farms responded with the highest total bid.

Lynn Alan Farms will pay $205,568.00 per year for the first three years (3) for approximately 764 acres. The Land lease is effective on January 1, 2022 and will terminate on December 31, 2024. Lynn Alan Farms has the option to renew this lease for three (3) additional one-year terms at the following rates: Year four (4): ($195,932.00). Year five (5): ($186,296.00). Year six (6): ($176,660.00).

The Land Lease has been reviewed by the Law Department as to form and correctness.

A Certificate of Revenue is attached.

Signatures/Approval

Approved by City Commission

Division

Department

City Manager

FORM NO. MS-16

Clerk

Date

Updated 8/2016
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information:
Name: Lynn Alan Farms
Address: 6610 Studebaker Road
City: Dayton State: OH Zip+4: 45355
Customer #: @00015651 Address Location #: W1
Federal ID#: 

Revenue Information:
Fund: 53000 Organization: 3430 Revenue: 29436 Program: 54

Contract Information:
Contract Start Date: Jan 1, 2022 Contract Expiration Date: 12/31/2024

Billing Information:
Rate: $205,568.00 Arrears [ ] Pre-bill [ ]
Monthly (1st month of billing) 
Quarterly (1st month of quarter) 
Semi-annual (1st month of half) $102,784 (June 1 & Nov 1)
Annual (1st month of billing) 
Other (explain) 
Rate Change Date: None until renewal Rate Change Amount: None until renewal

Description of Services (wording on invoice):
Clark County Land Lease Payments in the amount of $616,704.00 for leased property of 763.87 acres located on routes 70 and 675. The rent is due on June 1 and Nov 1 of each year of the initial term.

Departmental Approval [Signature]

TO BE COMPLETED BY FINANCE

Revenue Contract Number: 1-5451 Auditor: [Signature] Date: 12/14/2021

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 [Signature] 12/14/2021
LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into this ___ day of ______, 2021, between the City of Dayton, Ohio ("Lessor"), a municipal corporation in and of the State of Ohio, and , Lynn Alan Farms ("Lessee").

WITNESSETH THAT:

WHEREAS, Lessor owns improved real property, known and referred to as Union Road Well Field ("Premises");

Situated in the County of Clark and State of Ohio and being a tract of land located on Routes 70 and 675, containing Seven Hundred and Sixty-Three (763.87) tillable acres, more or less, as crosshatched on the attached map.

WHEREAS, Lessee desires to lease the Premises for exclusively for the growth of agricultural products; and

WHEREAS, Lessor deems it advantageous to itself and in the best interest of the public to lease the Premises to Lessee.

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

ARTICLE I – REPRESENTATIONS

Lessee desires to lease from Lessor approximately Seven Hundred and Sixty-Three (763.87) tillable acres in the Union Road Well Field ("Premises").

For and during the full term of Three (3) years, next ensuing from the first day of January, 2022 and to be fully completed and ended on the last day of December, 2024, Lessee shall have and hold the premises.

During the entire term of this Lease Agreement, Lessee shall pay rent in the amount of Two-Hundred and Five Thousand, Five-Hundred and Sixty-Eight Dollars ($205,568.00) per year payable in equal installments of One-Hundred and Two-Thousand, Seven-Hundred and Eighty-Four Dollars ($102,784.00) on the first day of June and the first day of November of each year during the term of this Lease Agreement.

By execution hereof, Lessee acknowledges that Lessor has made no representation or warranty as to the Premises, including its fitness or suitability for the intended use(s).

ARTICLE II - USE OF PREMISES

The City of Dayton obtains its raw water supply from groundwater in the Dayton area. To supplement this source and provide a long-term future supply, the City purchased approximately Nine Hundred and Sixty-One (961.31) acres of land in southwest Clark County adjacent to Interstates
I-675 and I-70 for a potential future well field. Approximately Sixty (60) acres is vegetated wetlands that are predominately fed by groundwater. Two plant species found on the wetland site are listed as "potentially threatened", and one plant species, the Eastern Prairie White-Fringed Orchid, is a State of Ohio and federal "threatened" species.

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

It is understood that the premises will be used solely for agricultural products. Lessee is required to be good stewards of the City of Dayton property. Lessee shall protect the groundwater and surface water, use best management practices and perform actions as prescribed by the City of Dayton.

ARTICLE III - RIGHTS AND OBLIGATIONS OF LESSEE

The Premises are to be used exclusively for the growth of agricultural products. Lessee agrees that no other use will be made of the Premises without consent of the Lessor. Lessee agrees that no use will be made of the designated Premises which are inconsistent with Lessor’s proposed or actual use for public water supply purposes.

Lessee shall, at its expense, obtain from all authorities having jurisdiction over the business and operation of Lessee on the Premises, all licenses, certificates, permits or other authorizations which may be lawfully required for the conduct of its business and operation, or necessary to comply with the requirements of this Lease, or in the exercise of any right or obligation granted herein. Lessee, however, shall not be deemed to have waived any right to exhaust administrative and/or judicial remedies which may be available to Lessee regarding any dispute or contest related to any authorization required.

Lessee shall be liable for remuneration for planting preparation by the prior tenant prior to the new lease period. Such remuneration shall be equal to the number of acres affected times the average normal and reasonable compensation for Farm Custom Rates as determined by the Ohio State University Extension, Agriculture and Natural Resources.

The Lessee shall repair or pay for any and all damages to Lessor and its property caused by any wrongful or negligent acts or omissions of Lessee, its agents, employees invitees, contractors, sub-contractors, or suppliers, arising out of Lessee’s use or occupancy of the Premises or in the exercise of any right or obligation granted herein.

Lessee shall indemnify, save and hold harmless lessor from and against any mechanics or other lien or order for payment of money filed against the premises, lessor, or property of the Lessor arising out of act or omission of the Lessee.

Lessee shall not erect, allow, or permit to be maintained on the premises or upon the exterior of any improvement on the Premises any billboards or advertising sign, except those which have the
prior written approval of Lessor. The Lessee is permitted to perform routine maintenance to the property with advance Department of Water approval. If improvements to the property are necessary, the Lessee shall notify the Department of Water.

For the protection of the groundwater and surface water on the property, Lessee shall provide such information as is required in this section to the Lessor’s Director of Water and his/her duly authorized representatives hereinafter referred to as the Director and Lessee shall perform such actions as are required in this section.

a. Lessee shall file a Regulated Substance Activity Inventory Report (RSAIR) with the Director by January 31st of every year and before the application of any regulated substance on the premises. The RSAIR shall include a listing of all regulated substances which are projected for application on the premises during the term of this Lease Agreement. A Safety Data Sheet for each regulated substance shall be attached to the RSAIR.

b. Lessee shall report Fertilizers, Pesticides, and Any Other Application Chemicals Applied on the Parcel the Previous Year with the Director by January 31st of every year.

Lessee shall bear all expenses associated with the production of agricultural products including any and all costs incurred by the Lessee in making the premises suitable for the growth of agricultural products.

Lessee agrees that no livestock or other animals are to be stabled, pastured, or otherwise maintained on the premises.

Lessee agrees that no permanent improvements shall be erected on the premises.

Lessee shall take reasonable precautions to prevent the dumping or disposal of waste, debris, or other materials on the premises. Lessee shall immediately notify the Lessor of any dumping or disposal which is not immediately removed by Lessee.

Lessor’s Director and designees shall have, at any and all times, the full and unrestricted right to enter the premises for the purpose of inspecting such premises and doing any and all things which the Lessor is obligated or authorized to do as set forth herein or which may be deemed necessary for the proper general conduct and operation of the Department of Water and in the exercise of the Lessor’s police power.

Lessor shall not for any reason fail to pay taxes and assessments levied against the entire parcel of which the premises are a part where any such failure to pay would jeopardize the position of the Lessee; provided that the Lessor may, in good faith, contest in such manner as it deems suitable, the validity or amount of any such obligation.

Lessor reserves to itself all gas, oil, mineral and water rights. Lessor reserves the right to use portions of the premises as may be necessary for oil, gas, mineral, or water development, or for rights-of-way thereto.

Upon the Lessee’s performance of the covenants contained herein, the Lessor warrants quiet enjoyment of the rights and privileges granted herein during the term of this Lease Agreement.

The Leasehold Estate and rights granted herein are personal property of Lessee.

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

This Lease shall begin on January 1, 2022 ("Commencement Date") and terminate on December 31, 2024. Lessee shall have Three (3) One (1)-year renewal option at the same conditions, provided the Lessee notifies the Lessor in writing not less than 120 days prior to the expiration of the then current term.

In the event Lessee shall hold over and remain in possession of the premises after expiration of this Lease Agreement without any written renewal thereof, such holding over shall not be deemed to operate as a renewal or extension of this Lease Agreement but shall only create a tenancy from month to month which may be terminated at any time by Lessor.

ARTICLE V - RENT

During the entire term of this Lease Agreement, Lessee shall pay rent in the amount of Two-Hundred and Five Thousand, Five Hundred and Sixty-Eight Dollars ($205,568.00) per year payable in equal installments of One Hundred and Two Thousand, Seven Hundred and Eighty-Four Dollars ($102,784.00) on the first day of June and the first day of November of each year during the term of this Lease Agreement.

Lessee shall have Three (3) One (1)-year renewal option at the following rates:

Year Four (4): One-Hundred and Ninety-Five Thousand, Nine-Hundred and Thirty-Two Thousand Dollars ($195,932.00).
Year Five (5): One-Hundred and Eighty-Six Thousand, Two-Hundred and Ninety-Six Dollars ($186,296.00).
Year Six (6): One-Hundred and Seventy-Six Thousand, Six-Hundred and Sixty Dollars ($176,660.00).

This rental rate does not include any taxes or assessments on the property. The Lessee is responsible for all taxes and assessments for the property during the term of this lease. Rent is due first day of June and the first day of November of each year during the term of this Lease Agreement, and shall be sent to Lessor at the following address:

City of Dayton Department of Finance
101 West 3rd St.
Dayton, Ohio 45402
Attn: Division of Revenue & Taxation

or such other address as Lessor may specify in writing.
ARTICLE VI – ENVIRONMENTAL PROTECTION

A. For the protection of the ground water and surface water on property owned by the City of Dayton (property), Lessee shall comply with provisions (A)(a)-(g). Lessee shall comply with all federal, state and local environmental laws. The Lessee shall provide such information as is required in this sub-section of this Agreement to the City’s Director of Water or authorized representative, hereinafter referred to as the Director, and the Lessee shall perform such actions as are required in this section.

a. **Storage and Handling of Regulated Substances.** No storage of Regulated Substances is allowed on the property.

b. **Previous Growing Season:** Reporting of Fertilizers, Pesticides, and Any Other Application Chemicals Applied on the Parcel the Previous Year. The Lessee shall complete and submit to the City of Dayton Water Director (Director) an application report annually by January 31st. The report shall include:
   - The name of the application products,
   - The amounts applied,
   - Safety Data Sheet and/or Globally Harmonized System of Classification and Labeling of Chemicals for each substance
   - The dates applied,
   - The temporary storage location(s)
   - A site diagram of the location of the applications.
   - Information as is required by the City’s Director of Water and/or his/her duly authorized representatives

c. **Upcoming Growing Season:** Reporting of fertilizers, pesticides, and any other application chemicals to be applied on the Parcel. Lessee shall complete and submit to the City of Dayton Water Director (Director) a Regulated Substance Activity Inventory report (RSAIR) annually by January 31 (See Enclosed RSAIR Form). The report shall include:
   - Form A: Site Information,
   - Form B: All non-application Regulated Substances stored on site,
   - Form C: Application products to be applied for upcoming growing season,
   - A Safety Data Sheet for all application products on Form C
   - Form D: Application Products not applied but stored on site,
   - From E: Calculation of all chemical handling (Regulated Substances and application products) from Forms B, C, D, and in addition,
   - A site diagram of proposed application locations.

If any application product is to be added to list after the RSAIR submittal, Lessee shall contact the Director for approval before the application of any application product such as fertilizer, pesticide, or other agricultural chemical on the property, whether the application is to be done by Lessee, a contractor, or any other person. The Lessee shall provide the name of
the application product, the amount to be applied, and any additional details the Director
requires, including a Safety Data Sheet. Lessee shall describe the location of the proposed
application, and provide a site diagram, if the Director requires. The Director may prohibit
the application of the application product on the property, in which case the Lessee will be
provided with the name of an acceptable alternative. The Director may approve the
application of the new application product being requested, but the approval is limited to the
request under consideration.

d. The application of agricultural chemicals, fertilizers, mineral acids, organic sulfur
compounds, etc. used in routine agricultural operations, including plant nutrients and
crop protection materials is prohibited within 50 feet of any wetland, ditch, creek,
stream, river, or pond.

e. The application of agricultural chemicals, fertilizers, mineral acids, organic sulfur
compounds, etc. used in routine agricultural operations, including plant nutrients and
crop protection materials, applied under Best Management Practices as indicated by
soil tests, the OSU Cooperative Extension Service, the Soil and Water Conservation
District, and label directions approved by the United States Environmental Protection
Agency or the Ohio Department of Agriculture shall not be considered a spill, leak, or
discharge subject to the reporting provisions of this Lease Agreement.

f. Spill Reporting and Liability for Expenses. Lessee, its agents, employees, tenants,
invitees, contractors, sub-contractors, or suppliers shall report a spill, leak or discharge
of any Regulated Substance.

g. Storage containers of fifty-five (55) gallons or four hundred forty (440) pounds or more
containing any amount of Regulated Substances shall have secondary containment
constructed of impervious material of sufficient thickness, density, and composition
that will prevent the discharge to the land, groundwater, or surface water of any
substance which may emanate from said storage container. Each containment system
shall be able to contain one hundred fifty (150) percent of the contents of all storage
containers above or within the containment system.

h. Default. Failure of the Lessee to comply with any provision of this Environmental
Protection sub-section of the New Agreement constitutes a default by the Lessee.

Definitions

Regulated Substances: Substances that pose health hazards. Regulated Substances include,
but are not limited to, the following:

(A) Hazardous substances as defined in § 101 of the Comprehensive Environmental
Response, Compensation, and Liability Act, 42 U.S.C. § 9601, and in any regulations issued under
such Act;

(B) Any source material, special nuclear material, or byproduct material as defined in the
Atomic Energy Act, 42 U.S.C. § 2011 et seq., and in any regulations issued under such Act;
(C) Substances listed by the U.S. Environmental Protection Agency as "extremely hazardous substances," "hazardous chemicals," or "toxic chemicals" pursuant to the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11001 et seq. or pursuant to any regulations issued under such Act;

(D) Chemical substances and mixtures for which the U.S. Environmental Protection Agency has concluded, pursuant to § 5 Toxic Substances Control Act, 15 U.S.C. § 2605 (or regulations issued under said Act), that the manufacture, processing, distribution, use, or disposal thereof presents or will present an unreasonable risk of injury to health or the environment;

(E) Substances that are active ingredients in any pesticide regulated under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq.;

(F) Petroleum (including crude oil or any fraction thereof), natural gas liquids, liquefied natural gas, or synthetic gas useable for fuel;

(G) Substances promulgated under the 1996 Safe Drinking Water Act Amendments Unregulated Contaminant Monitoring Program and/or the Contaminant Candidate list;

(H) Substances for which the manufacturer or importer has prepared a Safety Data Sheet or GHS pursuant to 29 C.F.R. § 1910.1200; and

(I) Mixtures containing any of the foregoing at a concentration greater than one percent (1%) of the mixture, or where the total of all carcinogenic ingredients constitute one tenth of one percent (0.1%) of the mixture.

ARTICLE VII - NON-DISCRIMINATION

Lessee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap with respect to employment, upgrading, demotion, transfer, recruitment advertising, lay-off, termination, rates of pay or other forms of compensation, or selection for training, including apprenticeship. It is expressly agreed and understood that Section 35.14 of the Revised Code of General Ordinances of the City of Dayton constitutes a material condition of this Lease as fully and as if specifically rewritten herein and that failure to comply therewith shall constitute a breach thereof entitling the City to terminate this Lease at its option.

ARTICLE VIII- RELEASE FROM LIABILITY

Lessee shall release and hold harmless Lessor, its elected officials, officers, agents and employees, from and against any and all claims and actions, and all expenses incidental to the investigation and defense thereof, based upon or arising out of any accident or damages suffered by third persons and arising from, or in any way connected with, the use or occupancy of the Premises, and/or any condition of the Premises, fixtures, structures, equipment or other improvements thereon, and/or Lessee's exercise of any right granted herein, and/or Lessee's performance for breach or default in the performance of any obligation to be performed pursuant to this Lease, and/or any intentional, wrongful or negligent act or omission of Lessee, its agents, contractors and/or employees.

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

The obligations of Lessee under this Article VIII shall survive the termination or expiration date of this Lease and shall not be affected in any way by the amount of or the absence in any case of covering insurance, or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any part thereof.

Notwithstanding any other provision of this Lease to the contrary, to the extent permitted by law, Lessee waives any and every claim for recovery from the Lessor for any and all loss or damage to the Premises or to the contents thereof, which loss or damage is covered by valid and collectible physical damage insurance policies maintained by Lessee or which would have been recoverable if the insurance required hereunder had been maintained by Lessee, to the extent that such loss or damage is recoverable, or would have been recoverable, as applicable, under said insurance policies. As this waiver will preclude the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), Lessee agrees to give each insurance company which has issued, or in the future may issue, its policies of physical damage insurance, written notice of the terms of this waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverage by reason of said waiver. Lessee shall require any subtenant to include similar waivers of subrogation in favor of the Lessor.

ARTICLE IX- INSURANCE

Lessee shall, at its expense, maintain with an insurance company authorized to do business in the State of Ohio, comprehensive general liability insurance in a sum of not less than $5,000,000 for personal injury to any person; and in a sum of not less than $1,000,000 for personal injury for each accident; and in a sum of not less than $1,000,000 for property damage for each accident. The Lessor shall be named as an additional insured on each policy. Current certificates of insurance for each policy or concurrent policies required to be maintained by Lessee shall be furnished to Lessor upon execution of this contract. All such policies shall provide notice of cancellation to Lessor equal to that given Lessee.

Original certificates of insurance evidencing the required coverage to be in force on the Commencement Date of this Lease as set forth herein, and all renewal certificates of such insurance shall be provided to Lessor. All such policies shall name the City of Dayton, Ohio, its elected officials, officers, agents, volunteers and employees as additional insureds. At the Lessor’s request, Lessee shall furnish complete copies of all policies of insurance. The receipt of any certificate or policy does not constitute agreement by the Lessor that the insurance requirements in the Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Lease. The failure of the Lessor to obtain certificates or other insurance evidence from Lessee shall not be deemed to be a waiver by the Lessor. Lessee shall advise all insurers of these Lease provisions regarding insurance. Non-conforming insurance shall not relieve of their obligation to provide insurance as specified herein. Non-fulfillment of the insurance conditions may constitute a violation of this Lease, and the Lessor retains the right to terminate this Lease as provided in Article XII unless proper evidence of insurance is provided. All policies of
insurance shall provide for a minimum of thirty (30) days prior written notice to be given to the Lessor in the event coverage is substantially changed, canceled, or non-renewed.

If Lessee fails to obtain or maintain any of the insurance policies under this Lease or to pay any premium in whole or in part when due, Lessor may (without waiving or releasing any obligation or default by Lessee hereunder) obtain and maintain such insurance policies and/or take any action which Lessor deems appropriate. In such instances, reasonable attorney's fees, court costs and expenses shall be reimbursed by the Lessee upon demand by Lessor.

The insurance required hereunder shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law. The Lessor maintains the right to modify, delete, alter or change these requirements.

The insurance required by this Lease, at the option of Lessee or contractors, may be effected by blanket or umbrella policies issued to Lessee or contractors covering the Premises and other properties owned or leased by Lessee or contractors, provided that the policies otherwise comply with the provisions of this Lease and allocate to the Premises the specified coverage, without possibility of reduction or coinsurance by reason of, or damage to, any other premises covered therein.

**ARTICLE X - ASSIGNMENT AND SUBLetting**

Lessee is prohibited from selling, assigning or transferring this Lease without the prior written consent of Lessor, any sale, assignment or transfer in violation hereof shall be void.

Lessee shall not sublease or underlet the Premises without the prior written consent of Lessor.

**ARTICLE XI - CANCELLATION BY LESSEE**

In addition to all other remedies available to the Lessee under this Lease or at law, this Lease shall be subject to cancellation by Lessee should any one or more of the following events occur:

1. The issuance by any court of competent jurisdiction of any permanent injunction in any way preventing the use of the premises or improvements thereon for the purposes herein enumerated;

2. Lessor's default of any material term or condition of this Lease, and the failure of Lessor to cure such default or to take prompt action to cure such default, within a period of thirty (30) days after receipt of written notice to cure the default; or if by reason of the nature of such default it cannot be cured within the thirty (30) days, then Lessee shall have the right to terminate this Lease, if the Lessor fails to commence the remedying of such default within the thirty (30) day period.

**ARTICLE XII - CANCELLATION BY LESSOR**

In addition to all other remedies available to Lessor under this Lease or at law, this Lease shall be subject to cancellation by Lessor should any one or more of the following events occur:
1. If a court shall take jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act;

2. If a receiver for Lessee's assets is appointed by a court of competent jurisdiction;

3. If Lessee shall be divested of its rights, powers and privileges under this Lease by other operation of law.

4. In the event of any assignment or subletting in violation of Article X hereof; or if Lessee shall be declared insolvent or bankrupt; or if a receiver be appointed for Lessee; or if the Lessee's leasehold interest herein shall be levied upon under execution then in any such case the Lessor may, at its option and without notice to the Lessee, terminate this Lease Agreement and immediately retake possession of the premises.

5. If Lessee defaults in the payment of any amounts due to Lessor hereunder and Lessee fails to cure such default within thirty (30) days after Lessor notifies Lessee in writing of the default then Lessor shall have the right, at once and without further notice to Lessee, to declare this Lease terminated and to enter upon and retake full possession of the leased Premises;

6. If Lessee defaults in the performance of any term or condition of this Lease, but excluding the payment of amounts due and owing hereunder, and Lessee fails to cure such default within thirty (30) days from receipt of written notice to cure such default; or if by reason of the nature of such default the same cannot be remedied within said thirty (30) days, then Lessor shall have the right, at once and without further notice to Lessee, to declare this Lease terminated and to enter upon and retake full possession of the leased Premises this Lease if the Lessee fails to commence the remedying of such default within the thirty (30) day period or, after having so commenced, fails thereafter to continue with due diligence the remedying thereof.

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

8. Lessor reserves the right to cancel this Lease Agreement in the event any or all of the premises should be necessary for any municipal purpose, such cancellation to be effective 60 days after notice thereof is served upon Lessee. In the event of cancellation, Lessee shall be reimbursed for any crop loss, such reimbursement to be based upon the following:
An adjustment of crop loss shall be made at a fair market value as published in market reports for above ground crops at the time of loss; and for labor, fertilizer, and seed loss for crops planted but not yet above ground, based on invoices from suppliers.

9. In the event of any violation of Article III or the discovery of any activity on the premises which is deemed by the Lessor's Director or designee to pose a real and present danger of contaminating the groundwater and/or surface water on the premises, the Lessor may, at its option and without notice to the Lessee, terminate this Lease Agreement and immediately retake possession of the premises.

10. In addition to all other remedies available to the Lessee, this Lease Agreement shall be subject to cancellation by the Lessee should any one or more of the following events occur:

ARTICLE XIII - INVALID PROVISIONS

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

ARTICLE XI - WAIVER

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

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

ARTICLE XII – GENERAL PROVISIONS

The term Lessor, as used in this Lease, means the City of Dayton, Ohio, and where this Lease speaks of approval and consent by Lessor, such approval is understood to be manifested by act of Lessor's City Manager, except as otherwise expressly stated in this Lease, and such consent or approval shall not be unreasonably withheld. Where a response is required to be provided by
Lessor, such response shall be provided in writing no later than thirty (30) days after the request for response.

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

City of Dayton Ohio – Department of Water
320 West Monument Ave.
Dayton, OH 45402
Attn: Water Financial Services

or such other address as Lessor shall direct in writing.

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

Lynn Alan Farms
6610 Studebaker Road.
New Carlisle, Ohio 45344
(937) 603-8390
Lynnanlanfarm@gmail.com

or such other address as Lessee shall direct in writing.

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

Lessee and Lessor represent that each has carefully reviewed the terms and conditions of this Lease and are familiar with such terms and conditions and agrees faithfully to comply with the same to the extent to which said terms and conditions apply to its activities as authorized and required by this Lease.

By execution of this Lease, Lessee hereby irrevocably submits to the original jurisdiction of the courts located within the County of Montgomery, State of Ohio, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Lease.

Neither Lessee nor any contractor of Lessee shall be entitled to claim any exemption from sales or use taxes or similar taxes by reason of the Lessor’s ownership of fee title to the Premises.

By entering into this Lease, Lessor shall in no way be deemed a partner or joint venturer with Lessee, nor shall any term or provision hereof be construed in any way to grant, convey or create any rights or interests to any person or entity not a party to this Lease.
The parties may amend or modify this Lease, at any time, provided that no such amendment or modification shall be effective unless it is reduced to a writing, which makes specific reference to this Lease, executed by a duly authorized representative of Lessor and Lessee and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.

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

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

WITNESSED BY: TBD

Christine Pence

By: Bret A. Pence 12/7/21

Its: Lessee

WITNESSED BY: CITY OF DAYTON, OHIO

Clerk of the Commission

APPROVED AS TO FORM AND CORRECTNESS: APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO

City Attorney

20 Min. Book Page

CLERK OF THE COMMISSION
City Manager's Report

From 3210 – Aviation/AP Admin & Finance
Supplier, Vendor, Company, Individual
Name The Connor Group, A Real Estate Investment Firm, LLC
Address 10510 Springboro Pike
          Miamisburg, OH 45342

Date December 22, 2021
Expense Type Lease Agreement
Total Amount $500,940.00 thru 12/31/2061

Fund Source(s) Fund Code(s) Fund Amount(s)
Aviation Operating Fund 51000-3217-23203-43 $500,940.00

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

Description
Ground Lease Agreement at the Dayton-Wright Brothers Airport

The Department of Aviation requests permission to enter into a Ground Lease Agreement with The Connor Group, a Real Estate Investment Firm, LLC at the Dayton-Wright Brothers Airport. The Ground Lease is for approximately 5 acres of land and will support an expansion of the company's current corporate headquarters and allow for future expansion and growth at the airport.

The Term of the Ground Lease Agreement is forty years. The rental rate will be adjusted every ten years to reflect the fair market value of the land, as determined by an appraisal.

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

Signatures/Approval

Approved by City Commission

Division

Department

City Manager

FORM NO. MS-16

Clerk

Date

Updated 8/2016
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

<table>
<thead>
<tr>
<th>Customer Information:</th>
<th>Name: The Connor Group, A Real Estate Investment Firm, LLC</th>
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<tbody>
<tr>
<td></td>
<td>Address: 10510 Springboro Pike</td>
</tr>
<tr>
<td></td>
<td>City: Miamisburg State: OH Zip+: 45342</td>
</tr>
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<td></td>
<td>Customer #: Address Location #:</td>
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<tr>
<td></td>
<td>Federal ID #:</td>
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| Revenue Information: | Fund: 51000 Organization: 3217 Revenue: 23203 Program: 43 |

| Contract Information: | Contract Start Date: 1/1/2022 Contract Expiration Date: 12/31/2061 |

| Billing Information:  | Rate: $4,174.50 Arrears: Pre-bill: X |
|                       | Monthly (1st month of billing): January |
|                       | Quarterly (1st month of quarter): |
|                       | Semi-annual (1st month of half): |
|                       | Annual (1st month of billing): |
|                       | Other (explain): |
|                       | Rate Change Date: 1/1/2031 Rate Change Amount: TBD |

Description of Services (wording on invoice):

Ground Lease of approximately 217,800+ square feet of real property at the Dayton Wright Brothers Airport. First ten years from start of execution $0.23/sq ft per year. Every tenth year thereafter, the rent will be adjusted to the Fair Market Value (FMV).

Departmental Approval

---

TO BE COMPLETED BY FINANCE

<table>
<thead>
<tr>
<th>Revenue Contract Number</th>
<th>Auditor</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-4693</td>
<td>D Billy</td>
<td>12/6/2021</td>
</tr>
</tbody>
</table>

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

[Signature]
GROUND LEASE AGREEMENT
AT THE DAYTON-WRIGHT BROTHERS AIRPORT

THIS GROUND LEASE AGREEMENT AT THE DAYTON-WRIGHT BROTHERS AIRPORT ("Lease"), is made and entered into this ___ day of ____________, 2021, between the City of Dayton, Ohio ("Lessor"), a municipal corporation in and of the State of Ohio and The Connor Group, a Real Estate Investment Firm, LLC, ("Lessee"), an Ohio limited liability company.

WITNESSETH THAT:

WHEREAS, Lessor owns and operates the improved real property, known and referred to as the Dayton-Wright Brothers Airport ("Airport"), situated in the Township of Miami, Counties of Montgomery and Warren, State of Ohio; and

WHEREAS, Lessor owns approximately five acres of unimproved land at the Airport that is not needed for aeronautical purposes; and

WHEREAS, Lessee desires to lease the land from Lessor to expand its offices at the Airport; and

WHEREAS, Lessor deems it advantageous to itself, to the operation of the Airport and in the best interest of the public to lease Lessee the land upon the terms and conditions set forth herein.

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

ARTICLE I - REPRESENTATIONS

Lessor owns the Premises (as this term is defined in Article II) and, to the best of its knowledge and belief, the Premises are free of liens, encumbrances and other matters that would affect title.

ARTICLE II - LEASED REAL PROPERTY

Lessor leases to Lessee approximately (217,800±) square feet of real property located at the Airport, as depicted in the attached and incorporated Exhibit A ("Premises") for the exclusive use by the Lessee. Lessee accepts the Premises "as-is", and Lessor shall have no obligation to remediate, cure or correct any issues or problems with the Premises. By execution hereof, Lessee acknowledges that Lessor has made no representation or warranty as to the Premises, including its fitness or suitability for the Project or intended use(s).
ARTICLE III – CONSTRUCTION ON PREMISES

A. If Lessee elects to construct a building on the Premises, such construction shall be at Lessee’s full expense, including all related facilities and improvements including, but not necessarily limited to: landscaping, walkways, automobile parking, ramp, taxiways, maneuvering and drive areas, all related site work, including but not limited to, drainage and/or storm water detention, appropriate taxiway intersection transition and protection of the existing taxiway, and the provision or extension of underground duct systems and utility lines as required or desired, and all other amenities and facilities necessary or required (“Project”). Upon written request to the Director of Aviation or his designee, Lessor agrees to provide information at its disposal to Lessee regarding the status, condition, structure, infrastructure, routing of utilities, and other such pertinent information pertaining to the Premises as may be needed for development of the Project. All Project construction shall be performed in accordance with all federal, state and local statutes, laws, and zoning, building and fire code requirements. All required permits shall be at Lessee’s full cost and responsibility.

B. Lessee shall submit preliminary Project plans and specifications and a tentative Project construction schedule to Lessor for approval. Within ninety (90) days after Lessor’s approval of the preliminaries, Lessee shall submit detailed working Project plans and specifications to Lessor for approval. It is understood and agreed that Lessor shall have fifteen (15) business days from the date of its receipt of the plans and specifications to review same, and grant or deny approval as required hereunder.

C. Lessee shall commence Project construction activities not later than ninety (90) days after Lessor’s and the applicable governmental entity’s approval of Lessee’s working Project plans and specifications, and shall continue with all reasonable dispatch to complete the Project in accordance with the approved working Project plans and specifications, subject to delays in construction due to causes beyond the control of Lessee. Lessee shall not make any material alterations, additions and/or deletions to the working Project plans and specifications without Lessor’s advance written approval.

D. Lessor shall, during the period of construction, have the right to enter the Premises and inspect any and all construction work, workmanship, materials, and installations involved in, or incidental to, the Project construction in a reasonable manner. Lessor shall submit any concerns emanating from such entries/review to the Lessee for rectification.

E. Upon completion of the Project, Lessee shall provide to Lessor a certified copy of the "as built" Project plans and specifications.

ARTICLE IV - USE OF PREMISES

A. The Premises shall be used only for the purposes specified in this Lease. Lessee shall actively use the Premises for those purposes at all times during the term of this Lease or cause them to be so used.
B. Lessee shall not do or permit anything to be done on or about the Premises that will in any way conflict with any applicable law, ordinance, rule or regulation issued by any competent governmental authority. Further, Lessee shall not use or permit others to use the Premises for any improper, immoral or unlawful purpose.

**ARTICLE V - FEDERAL REQUIREMENTS**

Lessee shall comply with the following provisions:

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

B. During the term of this Lease, Lessor shall maintain and keep in repair the Airport, including but not limited to, all access drives, the landing area of the Airport and all publicly-owned facilities of the Airport.

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

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

E. Lessor reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein leased. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operation on the Airport.

F. Lessee expressly agrees for itself, its successors and assigns that it will not construct, nor permit to stand, on said Premises any building, structure, poles, trees, or other object, whether natural or otherwise, of a height in excess of 14 CFR Part 77 standards and requirements regarding obstructions in navigable airspace.

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

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

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

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

A. Lessee shall, at its expense, provide for the complete and proper maintenance of the Premises. For purposes of this Lease, maintenance activities to be performed and completed by Lessee includes, but is not necessarily limited to, the following:

1. Vehicular parking and entrance drive snow removal, lighting repair, brooming, striping, sealing, replacement and overlay of all paved or asphalt surfaces located on the Premises;
2. Mowing, planting and maintenance of grass areas and landscaping to the Premises lease line;
3. Maintenance of all utility lines serving the hangar facility to lease line or metering point, whichever is larger;
4. Maintenance of storm drainage structures and storm lines on the Premises and solely serving the hangar facility and maintenance of any oil separators in storm and sanitary sewer lines serving the Premises;
5. Maintenance, repair and replacement of any tenant-constructed taxiway;
6. Maintenance, testing and service of any fire suppression system(s) and fire alarm system(s) within the hangar facility in accordance with all applicable codes and requirements; and
7. Complete interior and exterior, including structural, maintenance.

B. Lessee shall, at its expense, obtain from all authorities having jurisdiction over the operations and activities to be conducted upon the Premises, including, but not limited to, the Federal Aviation Administration (“FAA”), Transportation Security Administration (“TSA”), Environmental Protection Agency (“EPA”), Ohio Environmental Protection Agency (“OEPA”), and state and local fire protection agencies, all licenses, certificates, permits, registrations or other authorizations which may be required for the conduct of its operations and activities, and/or necessary to comply with any requirements of this Lease and/or in the exercise of any right or obligation granted in this Lease, including, but not limited to, any licenses, permits, procedures, or sampling required for Lessor to comply with the City’s Stormwater Pollution Prevention Plan (“SWPP”). Lessee, however, shall not be deemed to have waived any right to exhaust administrative and/or judicial remedies that may be available to Lessee regarding any dispute or contest related to any authorization required. Upon request by Lessor, Lessee shall furnish to Lessor any and all permits or certificates required under this Lease.

C. Lessee shall repair or pay for any and all damages to Lessor and its property caused by any wrongful or negligent acts or omissions of Lessee, its agents or employees arising out of Lessee's use or occupancy of the Premises or in the exercise of any right or obligation granted herein.
D. Lessee shall, at its expense, provide and use suitable covered receptacles for the storing of all trash, garbage and all refuse created during Project construction and the conduct of Lessee’s occupation of the Premises, and shall provide for the complete and proper removal and disposal away from the Airport of same. Piling of boxes, cartons, barrels, construction debris and other similar items in an unsightly or unsafe manner on or about the Premises, which may produce substantial attractants for hazardous wildlife as described in FAA Advisory Circular 150/5200-33B (or any amendments or successors thereto), is forbidden.

E. The storage, handling, use and disposal of all Hazardous Materials, as defined by federal, state and local laws, shall be in compliance with all applicable licenses, permits, certificates or other authorizations obtained by Lessee and in compliance with all applicable federal, state and local laws governing the storage, handling, use and disposal of same.

F. Lessee, its agents, employees, patrons, guests, invitees and suppliers of service or furnishers of materials shall have the right of ingress to and egress from the Premises, subject to any current and future security restrictions.

G. In addition to rents and fees, Lessee shall, at its expense, pay all real property taxes and assessments that are now and may be levied or imposed upon the Premises and any real, leasehold and personal properties situated or placed thereon. Lessee shall be permitted to protest or contest, in a manner specified by Lessor, the validity or amount of any such real property tax or assessment. Lessor retains the sole right and obligation to file such protest or contest with the proper taxing authority; however, Lessee shall provide all necessary information and required legal or appraisal services relating to such protest or contest to Lessor at Lessee’s sole cost and expense. Lessor shall bill Lessee and Lessee shall pay the invoiced amount to Lessor within thirty (30) days after receipt of invoice. Lessee’s right to protest or contest taxes and assessments hereunder does not relieve Lessee of the obligation to pay taxes to Lessor unless Lessor receives a waiver from the applicable taxing authority.

H. Lessee shall have all utility accounts for the Premises separately metered and placed in its name. Lessee shall pay when due all utility charges (i.e., water, sanitary sewer, natural gas and electric) directly to the utility companies or municipalities providing such utility service. Lessee shall notify Lessor immediately upon termination of any utility account. Lessor may, at its option, place such terminated account in its name. In the event Lessor, willingly or otherwise, assumes the responsibilities for providing water, sanitary sewer, natural gas or electric services to the Premises during the Lessee’s tenancy, Lessee shall pay to Lessor the higher of: i) the prevailing rates for similar type utility services offered by utility companies and/or municipalities providing utilities to similar utility users located in Dayton, Ohio or, ii) the actual cost incurred by the Lessor in providing the utility service to the Lessee. If Lessor bills Lessee for any involuntary assumption of utilities, Lessor may include a Fifteen Percent (15%) administrative charge.

I. Lessee shall not erect, allow or permit to be maintained on the Premises, or upon the exterior of any improvement on the Premises, any billboards or advertising signs, except those which have the prior written approval of Lessor. Lessee may maintain on the
Premises, or on the exterior of the hangar facility (but not the roof), its name in neatly arranged electric, neon or other type sign or signs.

J. Lessee may make minor alterations and changes to the Premises and hangar facility as Lessee may, at any time during the term hereof, find necessary or convenient for its use of the Premises. Lessee shall not alter the footprint of any of the improvements located on the Premises without the prior written approval of Lessor.

ARTICLE VII - TERM

This Lease shall begin on the Commencement Date. For purposes of this Lease, the “Commencement Date” shall be the date of execution of this Lease by Lessor. This Lease is effective for a period of forty (40) years.

ARTICLE VIII – RENTAL PAYMENTS

A. During the term of this Lease, Lessee shall pay to Lessor the following rental for the Premises:

(a) From the Commencement Date and continuing for ten (10) years through December 31, 2031, the annual sum of Fifty Thousand Ninety-Four Dollars ($50,094.00) per year, which is based on the rate of Twenty-Three Cents (23¢) per square foot per year on the total Premises square footage.

(b) For each subsequent ten-year period of the Term, the fixed rent shall be the FMR (as hereinafter defined) as determined pursuant to the appraisal method set forth in (c) below.

(c) (i) The fair market rental ("FMR") shall be an amount equal to five and three hundred seventy-five thousandths percent (5.375%) per annum of the fair market value ("FMV") of the Premises, exclusive of any improvements on the Premises, as determined below. The FMV of the Premises shall be determined by taking into account comparable properties in the Montgomery County, Ohio area. Such appraisal shall take place no earlier than one hundred twenty (120) days before the commencement of the period for which the appraisal is being made ("Appraisal Initiation Date").

(ii) The FMR shall be as agreed upon between Lessee and Lessor. If Lessee and Lessor fail to agree upon such FMR within thirty (30) days after the Appraisal Initiation Date, then either party may at any time thereafter prior to reaching mutual agreement submit the determination of the FMV to appraisal by one appraiser jointly chosen by the parties, and if the parties have not agreed to an appraiser within forty-five (45) days after the Appraisal Initiation Date, then the appraisers shall be chosen as set forth below. The appraiser so selected shall complete the appraisal within thirty (30) days of being selected.

(iii) If the parties agreed upon an appraiser pursuant to subparagraph (c)(ii) above and such appraiser provided an appraisal, then each party shall have thirty (30) days to dispute the appraised value determined by such appraiser in a written notice given to the other party (the "Dispute Notice"). If a party so disputes the appraised value, and the parties do not otherwise agree on a FMR, or if the parties were unable to agree upon a single
appraiser, FMV shall be determined by three (3) independent appraisers, one (1) appointed by Lessee, one (1) appointed by Lessor, and the third appraiser chosen by the appraisers appointed by Lessee and Lessor, respectively (none of which shall be the appraiser whose valuation gave rise to the Dispute Notice). Each party will choose its appraiser within ten (10) days of the Dispute Notice or, if applicable, ten (10) days after the expiration of the forty-five (45) day period in which the parties were unable to agree upon a single appraiser. If the appointment of all three (3) appraisers is not completed at the end of such ten (10) day period, either party may apply to the American Arbitration Association office in or closest to Dayton, Ohio for the appointment of the appraisers not yet appointed.

(iv) Each appraiser shall be an M.A.I. certified appraiser with at least ten (10) years experience in valuing industrial real estate in Montgomery County, Ohio. The appraisers so selected shall determine the FMV of the Premises, by majority vote, within thirty (30) days after the appointment of the appraisers has been completed. If the parties utilize a single, jointly appointed appraiser, the cost of the appraisal shall be borne equally by Lessee and Lessor. If the FMR is determined through the three (3) appraisal process, each party shall pay for the cost of the appraiser appointed by that party, and the cost of the third appraiser shall be borne equally by Lessee and Lessor.

B. All rent due under this Lease shall be paid in equal monthly installments, due in advance on the first day of the month and without notice, and sent to Lessor at the following address:

    City of Dayton, Ohio
    P.O. Box 632094
    Cincinnati, OH 45202

or such other address as Lessor may specify in writing.

C. Without waiving any other right or action available to Lessor in the event of default in payment of rents, fees, charges or any other financial obligation hereunder, if Lessee is delinquent for a period of thirty (30) days or more in paying to Lessor any amount(s) due and owing to Lessor pursuant to this Lease, Lessee shall pay to Lessor a late charge thereon calculated at the rate of one percent (1%) per month from the date such item was due and owing until full payment including late charges have been paid. Such late charges shall not occur with respect to disputed items being contested in good faith by Lessee.

**ARTICLE IX – RIGHTS AND OBLIGATIONS OF LESSOR**

A. Lessor shall have the right to adopt and enforce reasonable rules and regulations, with respect to the use of the Airport and facilities thereon (excluding the office building
located on the Premises), which Lessee agrees to observe and obey provided such rules and regulations do not interfere with Lessee’s use of the Airport and facilities thereon or prevent Lessee’s use in the manner previously applicable. Lessor shall give Lessee written notice at least thirty (30) days prior to the adoption of any such rules.

B. Lessor’s Director of Aviation and his duly authorized representatives shall have the right to enter the Premises for the purposes of inspecting the Premises and evaluating and inspecting Project construction activities and doing any and all things which the Lessor is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport. Except for emergencies or when required by law, Lessor agrees to provide twenty-four (24) hours’ notice to Lessee of its intent to enter the Premises, except during construction, during which period no notice is required.

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

D. Nothing contained herein shall prohibit Lessor from granting easements, utility or otherwise, as long as said easements would not restrict Lessee’s use of the Premises for the purposes stated herein. All costs associated with granting said easements or executing activities for which said easements are granted shall be borne by Lessor or others; no cost shall be transferred to Lessee.

E. If Lessee fails to provide and maintain trash removal, mowing, snow removal or other required maintenance, Lessor shall have the right, but not the obligation, after notice to Lessee as provided in Article XVII and Lessee’s failure to cure, to provide or perform said services and to bill Lessee for the costs of said services plus a Fifteen Percent (15%) administrative fee, which Lessee agrees to pay.

ARTICLE X - NON-DISCRIMINATION

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

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

C. In the event of breach of any of the above non-discrimination covenants, and Lessee's failure to cure or otherwise remedy such breach within thirty (30) days from receipt of written notice from Lessor to cure such breach, or if by reason of the nature of such breach the same cannot be remedied within said thirty (30) days if, Lessee fails to commence the remedying of such breach within the thirty (30) day period or, after having so commenced, fails thereafter to continue with due diligence the remedying thereof, then Lessor shall have the right to terminate this Lease and to re-enter and repossess the Premises and facilities thereon and hold the same as if said Lease had never been made or issued. Notwithstanding the foregoing, it is specifically agreed that nothing in this Article shall prevent Lessee from exhausting all administrative and/or judicial remedies available to Lessee in resisting or defending against any claims or claim of breach or default or noncompliance hereunder.

ARTICLE XI - INDEMNIFICATION

A. Lessee shall defend, indemnify, save and hold harmless Lessor, its elected officials, officers, agents and employees, from and against any and all claims and actions, and all expenses incidental to the investigation and defense thereof, based upon or arising out of any accident or damages suffered by third persons and arising from, or in any way connected with, Project construction and/or the use or occupancy of the Premises, and/or any condition of the Premises, fixtures, structures, equipment or other improvements thereon, and/or Lessee's exercise of any right granted herein, and/or Lessee's performance for breach or default in the performance of any obligation to be performed pursuant to this Lease, and/or any intentional, wrongful or negligent act or omission of Lessee, its agents, contractors and/or employees.

It is agreed that, to the extent permitted by law, no agreement or covenant by Lessee under this Subsection A shall include liability or damages for injury to persons or damage to property caused by or resulting from the sole negligence of Lessor, its agents or employees.

B. Lessee shall defend, indemnify, save and hold harmless Lessor, its elected officials, officers, agents and employees, from and against any mechanics or other lien or order for the payment of money filed against the Premises, Lessor or any property of Lessor, arising out of any act or omission of Lessee or anyone claiming through or under Lessee. Lessee shall, at Lessee's expense, cause the same to be cancelled or discharged of record and shall save and hold harmless Lessor from and against any and all costs, expense, claims, losses or damages including reasonable attorney's fees resulting therefrom or by reason thereof.

C. Lessor shall not be liable to Lessee or its subtenants, agents, representatives, contractors or employees, for any injury to, or death of, any of them or of any other person or for any
damage to any of Lessee's property or loss of revenue, caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport. Lessor shall not be liable to Lessee for damage to property of Lessee or any loss of revenues to Lessee resulting from Lessor's acts or omissions in the maintenance and operation of the Airport.

D. The obligations of Lessee under this Article XI shall survive the Termination Date of this Lease and shall not be affected in any way by the amount of or the absence in any case of covering insurance, or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any part thereof.

E. The Lessor's elected officials, officers, agents and employees, shall, to the extent permitted by law, have absolutely no personal liability with respect to any provision of this Lease or any obligation or liability arising from this Lease or in connection with this Lease or the Premises in the event of a breach or default by Lessor of any of its obligations.

F. Notwithstanding any other provision of this Lease to the contrary, to the extent permitted by law, Lessee waives any and every claim for recovery from the Lessor for any and all loss or damage to the Premises or to the contents thereof, which loss or damage is covered by valid and collectable physical damage insurance policies maintained by Lessee or which would have been recoverable if the insurance required hereunder had been maintained by Lessee, to the extent that such loss or damage is recoverable, or would have been recoverable, as applicable, under said insurance policies. As this waiver will preclude the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), Lessee agrees to give each insurance company which has issued, or in the future may issue, its policies of physical damage insurance, written notice of the terms of this waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverage by reason of said waiver. Lessee shall require any subtenant to include similar waivers of subrogation in favor of the Lessor.

ARTICLE XII - INSURANCE

A. Lessee, at its sole cost and expense, shall procure and maintain, or cause to be maintained, at all times during the term of this Lease commencing on the Commencement Date unless otherwise specified herein, the following insurance, with insurance companies authorized to do business in the State of Ohio and having at least an “A” rating from A. M. Best, or any successor thereto, and covering all operations under this Lease, whether performed by Lessee or by its contractors:

1. Commercial Liability Insurance (Primary and Umbrella):
Commercial Liability Insurance with limits of not less than Five Million Dollars ($5,000,000) per occurrence combined single limit, for bodily injury and property damage liability. Coverage extensions shall include the following: All Premises and operations, completed operations, explosion, collapse, underground, independent contractors, broad form property damage, separation of insured and contractual liability (with no limitation endorsement). The Lessor shall be named as additional insureds, on a primary, non-contributory basis for any liability arising directly or indirectly from this Lease.

2. **All Risk Property Insurance:**

   i. Lessee shall obtain an “All Risk Property” policy, including improvements and betterments covering damage to buildings, in the amount of full replacement value of the improvements and betterments on the Premises. Lessor is to be named as a loss payee on said policy or policies of insurance.

   ii. Lessee shall be responsible for all loss or damage to personal property (including but not limited to material, equipment, tools and supplies), owned or rented by Lessee. When Lessee undertakes the Project or any improvement, construction or repair project on or to the Premises, an “All Risk Blanket Builders Risk Insurance” shall be provided by Lessee to cover at replacement cost the materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility. Coverage extensions shall include the following: right to partial occupancy, material stored off-site and in transit, earthquake, faulty workmanship or materials, extra expense, and loss of use of property. The Lessor shall be named as loss payee on said policy or policies of insurance.

3. **Automobile liability insurance:**

   If vehicular access is limited to land side, then auto insurance will not be required. In the event Lessee intends in the future to use any motor vehicles (owned, non-owned and hired) in connection with this Lease, Lessee shall provide Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars ($1,000,000) per occurrence combined single limit, for bodily injury and property damage. Lessor is to be named as an additional insured on a primary, non-contributory basis on said policy or policies.

B. Original certificates of insurance evidencing the required coverage to be in force on the Commencement Date of this Lease as set forth herein, and all renewal certificates of such insurance, shall be provided to Lessor. All such policies shall name the City of Dayton, Ohio, its elected officials, officers, agents, volunteers and employees as additional insureds. At the Lessor’s request, Lessee shall furnish complete copies of all policies of insurance. The receipt of any certificate or policy does not constitute agreement by the Lessor that the insurance requirements in the Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Lease. The failure of the Lessor to obtain certificates or other insurance evidence from Lessee or its contractors
shall not be deemed to be a waiver by the Lessor. Lessee or its contractors shall advise all insurers of these Lease provisions regarding insurance. Non-conforming insurance shall not relieve Lessee or its contractors of their obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Lease, and the Lessor retains the right to enforce such condition as provided in Article XVII unless proper evidence of insurance is provided. All policies of insurance, excluding the insurance required of Lessee’s contractors, shall provide for a minimum of thirty (30) days prior written notice to be given to the Lessor in the event coverage is substantially changed, canceled, or non-renewed.

C. If Lessee fails to obtain or maintain any of the insurance policies under this Lease or to pay any premium in whole or in part when due and does not cure such failure after written notice and an opportunity to cure as provided in Article XVII, Lessor may (without waiving or releasing any obligation or default by Lessee hereunder) obtain and maintain such insurance policies and/or take any action which Lessor deems appropriate. In such instances, reasonable attorney’s fees, court costs and expenses, shall be reimbursed by the Lessee upon demand by Lessor.

D. Lessee shall require all contractors to carry the insurance required herein, or Lessee or its contractors may provide the coverage for any or all contractors, and, if so, the evidence of insurance submitted shall so stipulate. Any and all deductibles or self-insured retentions on referenced insurance coverages shall be borne by Lessee or its contractors. Lessee and its contractors agree that insurers shall waive their rights of subrogation against the Lessor, its employees, elected official, agents, or representatives. Lessee and its contractors expressly understand and agree that any coverages and limits furnished by Lessee or its contractors shall in no way limit the Lessee or its contractors’ liabilities and responsibilities specified within this Lease or by law. Lessee and its contractors expressly understand and agree that any insurance or self-insurance programs maintained by the Lessor shall not contribute with insurance provided by the Lessee or its contractors under this Lease. If Lessee or its contractors desire additional coverage, higher limits of liability, or other modifications for its own protection, then Lessee or its contractors shall each be responsible for the acquisition and cost of such additional protection.

E. The insurance required hereunder shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law. The Lessor maintains the right to modify, delete, alter or change these requirements based on then current commercially reasonable standards for similar facilities provided such modifications shall occur no more than every ten (10) years.

F. The insurance required by this Lease, at the option of Lessee or contractors, may be effected by blanket or umbrella policies issued to Lessee or contractors covering the Premises and other properties owned or leased by Lessee or contractors, provided that the policies otherwise comply with the provisions of this Lease and allocate to the Premises the specified coverage, without possibility of reduction or coinsurance by reason of, or damage to, any other premises covered therein.
G. Lessee shall maintain, at all times during the term hereof, Workers’ Compensation for its employees employed or providing service(s) upon the Premises in such amounts as prescribed under Ohio law.

**ARTICLE XIII – DISPOSITION OF ANY CONSTRUCTED FACILITY OR IMPROVEMENTS**

A. Upon termination of this Lease, Lessee at its option may choose to remove any facilities or improvements and remaining improvements and return the Premises to arable land as originally tendered to Lessee. Lessee shall execute this option of removal by providing written notice to the Director of Aviation of its intention to remove any facilities and other improvements no later than six (6) months prior to the Termination Date of this Lease.

B. If Lessee does not timely exercise the removal option, then upon termination of this Lease, title and ownership of any facilities or improvements made on or to the Premises shall revert to the Lessor free and clear of any liens, mortgage(s) or other encumbrances other than the following “Permitted Encumbrances:” (a) taxes and assessments, which are a lien on the Premises and hangar facility and improvements but not yet due and payable; (b) applicable zoning and other government laws, ordinances and regulations of any kind or nature; (c) easements, covenants, conditions and restrictions of record as of the Commencement Date and those created after the Commencement Date, which are approved, in advance, by the Lessor; and (d) liens and other encumbrances created by Lessor. Lessee shall take all actions and execute any and all documents necessary to transfer title and ownership of the facilities and improvements to Lessor, and Lessor shall not be required to pay Lessee for such transfer of the hangar facility and improvement. Notwithstanding anything to the contrary, Lessee shall be entitled to remove any and all trade fixtures, equipment and other personal property of Lessee situated on the Premises. Until the Termination Date of this Lease title to the hangar facility and improvements and all other items installed thereon and any repair, addition, alteration or replacement thereto shall remain Lessee’s property.

**ARTICLE XIV - ASSIGNMENT AND SUBLETTING**

A. Lessee is prohibited from selling, assigning or transferring this Lease without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Any sale, assignment or transfer in violation hereof shall be void.

B. Lessee shall not sublease or underlet the Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

**ARTICLE XV - SUCCESSORS AND Assigns BOUND BY COVENANTS**

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

**ARTICLE XVI - TERMINATION BY LESSEE**
A. In addition to all other remedies available to the Lessee under this Lease or at law, including, but not limited to, the right to bring suit against Lessor to enforce Lessor’s obligations under this Lease, this Lease shall be subject to termination by Lessee in Lessee’s sole discretion should any one or more of the following events occur:

1. The issuance by any court of competent jurisdiction of any injunction, order or decree preventing or restraining the use of the Airport for usual airport purposes in its entirety, or the use of any part thereof used by Lessee and necessary for Lessee’s operations on the Airport, for a period of thirty (30) consecutive days and results in material interference with Lessee’s normal business operations at and from the Premises;

2. Lessor’s default of any material term or condition of this Lease, and the failure of Lessor to cure such default or to take prompt action to cure such default, within a period of thirty (30) days after receipt of written notice to cure the default; or if by reason of the nature of such default it cannot be cured within the thirty (30) days, then Lessee shall have the right to terminate this Lease if the Lessor fails to commence the remediating of such default within the thirty (30) day period.

ARTICLE XVII - TERMINATION BY LESSOR

A. In addition to all other remedies available to Lessor under this Lease or at law, this Lease shall be subject to termination by Lessor should any one or more of the following events occur:

1. If a court shall take jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act and a final order is issued in such proceeding requiring the transfer of Lessee’s interest in this Lease to a third party or a creditor of Lessee; in which event Lessor shall enter into a new lease with Lessee’s sublessee within ninety (90) days after any termination of this Lease, effective as of the date of termination, upon the same terms and provisions contained in this Lease;

2. If a receiver for Lessee's assets is appointed by a court of competent jurisdiction;

3. If Lessee shall be divested of its rights, powers and privileges under this Lease by other operation of law; and

4. If Lessee defaults in the payment of any amounts due to Lessor hereunder and Lessor fails to cure such default within thirty (30) days after Lessor notifies Lessee in writing of the default.

B. In addition:

1. If Lessee defaults in the performance of any term or condition of this Lease, but excluding the payment of amounts due and owning hereunder, and Lessee fails to cure such
default within thirty (30) days from receipt of written notice to cure such default; or if by reason of the nature of such default the same cannot be remedied within said thirty (30) days, then Lessor shall have the right to terminate this Lease if the Lessee fails to commence the remedying of such default within the thirty (30) day period or, after having so commenced, fails thereafter to continue with due diligence the remedying thereof.

2. Violations by Lessee, its agents or employees, of applicable laws, ordinances, codes, rules and regulations issued by any competent governmental authority, or revocations of permits or licenses required in the performance of this Lease, if the same shall not be corrected or action taken to correct, within thirty (30) days after Lessee's receipt of written notice from Lessor to cure such default, which shall state in detail the violation, or if by reason of the nature of such default the same cannot be remedied within said thirty (30) days if Lessee fails to commence the remedying of such default within the thirty (30) day period or, after having so commenced, fails thereafter to continue with due diligence the remedying thereof, then Lessor shall have the right to initiate legal action against Lessee for enforcement of, or collect damages incident to, Lessee's default of such terms and condition.

ARTICLE XVIII - HOLDING OVER

In the event Lessee holds over and remains in possession of the Premises and rights granted herein after termination of this Lease and without any written renewal thereof, such holding over shall not operate as a renewal or extension of this Lease, but shall only create a tenancy from month to month that may be terminated at any time by Lessor or Lessee. During such hold over period Lessee agrees to pay a hangar facility rent, which amount shall be based on a fair market value appraisal of the hangar facility, and a ground rental, which ground rental amount shall be the rent paid hereunder for the period prior to the Termination Date of this Lease increased by a factor of one hundred fifty percent (150%).

ARTICLE XIX - INVALID PROVISIONS

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

ARTICLE XX - WAIVER

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

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

ARTICLE XXI – CONDEMNATION

A. If the entire Premises is condemned and taken for public use, this Lease shall automatically terminate on such date that the title shall vest in the condemnor. Rent and any additional fees and charges under this Lease shall be prorated as of the date of such termination; and upon termination, Lessee shall satisfy and cause to be released any mortgages, liens, or other encumbrances placed or suffered to be placed on the Premises by Lessee.

B. Any award or compensation paid on account of any taking or condemnation described herein shall be equitably divided between Lessor and Lessee, taking into consideration each party’s respective interest in the Premises.

ARTICLE XXII – LEASEHOLD MORTGAGES

A. Lessee shall have the right to mortgage its leasehold interest under this Lease, provided that Lessee invests one hundred percent (100%) of the proceeds from the mortgage financing on improving, renovating and/or equipping the Premises. Prior to executing any such mortgage, Lessee shall deliver to the Lessor written notice thereof, which notice shall include the name and address of each intended mortgagee. Lessor shall not be deemed to have any notice of any such mortgage, until and unless the written notice required by this Article has been delivered to Lessor. At the request of the Lessee or the intended mortgagee, Lessor will join in executing the appropriate documents (i.e. subordination agreement) to the extent reasonably necessary to protect the mortgagee’s interest under the mortgage.

B. Title to improvements made to and upon the Premises, excluding trade fixtures, shall vest in Lessor at such time as this Lease is terminated. Title to the improvements shall be transferred to the Lessor. Upon termination of this Lease, Lessee shall surrender the Premises and the improvements thereon to Lessor in good condition subject to normal wear, tear and depreciation. Lessee’s obligation to deliver the Premises and improvements in good condition shall survive the termination of this Lease.

ARTICLE XXIII – GENERAL PROVISIONS

16
A. The Lessor acknowledges that the improvements to be constructed on the Premises by Lessee will represent a substantial investment which are intended by Lessee to have a useful life in excess of the term, and that the improvements will materially improve the nature of the Premises and the Airport and that, therefore, the loss of the improvements at the end of the term may be a substantial economic hardship to Lessee. Accordingly, if requested by Lessee prior to the end of the term, Lessor will negotiate in good faith with Lessee a new lease of up to 30 years as requested by Lessee, on terms and conditions similar to the relevant terms and conditions here, subject to such changes as are then required pursuant to applicable law and at a rental that is commercially reasonable at the date of any such new lease for the Premises as then constituted but without the improvements.

B. The term Lessor, as used in this Lease, means the City of Dayton, Ohio and where this Lease speaks of approval and consent by Lessor, such approval is understood to be manifested by act of Lessor's Director of Aviation, except as otherwise expressly stated in this Lease, and such consent or approval shall not be unreasonably withheld or delayed. Where a response is required to be provided by Lessor, such response shall be provided in writing no later than thirty (30) days after the request for response unless an earlier time period is expressly stated in this Lease.

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

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

or such other address as Lessor shall direct in writing.

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

The Connor Group, a Real Estate Investment Firm, LLC
10510 Springboro Pike
Miamisburg, Ohio 45342
Attn: Larry Connor and Dustin Werden

or such other address as Lessee shall direct in writing.

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

F. Lessee and Lessor represent that each has carefully reviewed the terms and conditions of this Lease and are familiar with such terms and conditions and agrees faithfully to comply with the same to the extent to which said terms and conditions apply to its activities as authorized and required by this Lease.

G. By execution of this Lease, Lessee hereby irrevocably submits to the original jurisdiction of the courts located within the County of Montgomery, State of Ohio, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Lease.

H. Lessee (and any person claiming by or through Lessee) shall look solely to legally available Airport discretionary funds for enforcement of any liability of the Lessor under this Lease, and not any other funds or assets of the City of Dayton, Ohio whatsoever.

I. Neither Lessee nor any contractor of Lessee shall be entitled to claim any exemption from sales or use taxes or similar taxes by reason of the Lessor’s ownership of fee title to the Premises.

J. By entering into this Lease, Lessor shall in no way be deemed a partner or joint venturer with Lessee, nor shall any term or provision hereof be construed in any way to grant, convey or create any rights or interests to any person or entity not a party to this Lease.

K. The parties may amend or modify this Lease, at any time, provided that no such amendment or modification shall be effective unless it is reduced to a writing, which makes specific reference to this Lease, executed by a duly authorized representative of Lessor and Lessee and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.

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

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

WITNESSED BY:

[Signature]
Emily Lazar

WITNESSED BY:

THE CONNOR GROUP, A REAL ESTATE INVESTMENT FIRM, LLC

By: [Signature]
Lawrence S. Connor, President

CITY OF DAYTON, OHIO

City Manager

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]
City Attorney

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

, 20

Min/Bk. Pg.

Clerk of the Commission
City Manager's Report

From 2370 - Planning, Neighborhoods & Dev. / Development
Supplier, Vendor, Company, Individual
Name Dayton Power and Light Company dba AES Corporation
Address 1065 Woodman Drive
Dayton, Ohio 45432

Date December 22, 2021
Expense Type Legal Settlement
Total Amount $1,600,000.00 thru 12-31-2023

Fund Source(s) | Fund Code(s) | Fund Amount(s)
---|---|---
General Fund | 16300-2370-29515-41 | $800,000.00
Special Revenue Fund | 22517-2370-29515-41 | $600,000.00
Special Revenue Fund | 22520-2105-29515-51 | $200,000.00

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

Description

PUCO Case Settlement

The Department of Planning, Neighborhoods and Development and the Office of Sustainability request approval to update the fund allocation of a Stipulated Agreement with AES Corporation, formerly Dayton Power and Light Company (DP&L). This will update the organization code of the Division of Development, necessitated by the recent merger of the Departments of Planning and Community Development and Economic Development by Ordinance No. 31894-21. Secondly, this will authorize the Office of Sustainability to administrate the Grid Modernization Education proceeds.

Authorization was granted on October 28, 2020 to enter into a Stipulated Agreement settling two cases before the Public Utilities of Commission of Ohio. The terms of the Stipulated Agreement provided many benefits to the customers of AES Corporation. The Stipulated Agreement resulted in a $1,600,000.00 settlement, payments to be equally divided over four years. The proceeds are to be utilized by the City toward development, Property Assessed Clean Energy (PACE) financing, and Grid Modernization Education.

This agreement was approved by the City of Dayton Commission on October 28, 2020 and finalized by the Public Utility Commission of Ohio (PUCO) in June 2021. The current Stipulated Agreement is expected to end when Electric Security Plan 1 terminates, estimated to be December 31, 2023.

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

The funding sources that remain to be paid as of December 2021 are the following: Development Fund ($600,000.00), DP&L Settlement for PACE fund ($450,000.00), and DPL AES Grid Modernization fund ($150,000.00).

Funding was received in the amount of $400,000.00 in 2021; we are requesting to designate in the above fund codes.

A Certificate of Revenue for each fund is attached. A copy of the 2020 stipulated agreement is attached.

Signatures/Approval

[Signature]
Division
[Signature]
Department
City Manager
FORM NO. MS-16

Approved by City Commission

Clerk

Date

Updated 8/2016
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name Dayton Power and Light Company dba AES Corporation

Address 1065 Woodman Drive

City Dayton State Ohio Zip+4 45432 -

Customer # 310258470 Address Location #

Federal ID# 310258470

Revenue Information: Fund 22517 Orgn 2370 Rev 29515 Prog 41 Actv

06/16/21 12/31/2023

Contract Information: Contract Start Date 06/16/21 Contract Expiration Date 12/31/2023

Billing Information: Rate: Arrears Pre-bill

Monthly (1st month of billing)

Quarterly (1st month of quarter)

Semi-annual (1st month of half)

Annual (1st month of billing) 150,000 (September 1)

Other (explain)

Rate Change Date Rate Change Amount

Description of Services (wording on invoice): DP&L settlement proceeds for the purpose of Property Assessed Clean Energy (PACE) financing, to be paid by annually by September 30 of each year. The first payment was received on September 14, 2021. Billing will begin on September 1, 2022 and the last payment will be requested on September 1, 2024.

Departmental Approval

TO BE COMPLETED BY FINANCE

City Reference Number 8-8470 Auditor D Billing Date 6-9-2021

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

(Rev 4/30/2008)
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name  Dayton Power and Light Company dba AES Corporation

Address  1065 Woodman Drive

City  Dayton State  Ohio Zip+4  45432 -

Customer #  310258470 Address Location #

Federal ID#  310258470

Revenue Information: Fund  22520 Orgn  2105 Rev  29515 Prog  51 Actv

Contract Information: Contract Start Date  06/16/21 Contract Expiration Date  12/31/2023

Billing Information: Rate: 
Arrears 
Pre-bill 

Monthly (1st month of billing)
Quarterly (1st month of quarter)
Semi-annual (1st month of half)
Annual (1st month of billing)  50,000 (September 1)

Other (explain)

Rate Change Date 
Rate Change Amount 

Description of Services (wording on invoice): DP&L settlement proceeds for the purpose of Grid Modernization Education, to be paid by annually by September 30 of each year. The first payment was received on September 23, 2021. Billing will begin on September 1, 2022 and the last payment will be requested on September 1, 2024.

Departmental Approval  Mark D. Clarke

TO BE COMPLETED BY FINANCE

City Reference Number  8 8470-1 Auditor D Billy Date  12-9-2021

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

Director of Finance  (Rev 4/30/2008)
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information:
Name: Dayton Power and Light Company dba AES Corporation
Address: 1065 Woodman Drive
City: Dayton State: Ohio Zip+: 45432
Customer #: 310258470 Address Location #: 
Federal ID #: 310258470

Revenue Information:
Fund: 16300 Orgn: 2370 Rev: 29515 Prog: 41 Actv: 
Contract Information:
Contract Start Date: 06/16/21 Contract Expiration Date: 12/31/2023

Billing Information:
Rate: Arrears: Pre-bill:
Monthly (1st month of billing):
Quarterly (1st month of quarter):
Semi-annual (1st month of half):
Annual (1st month of billing): 200,000 (September 1)
Other (explain):
Rate Change Date: Rate Change Amount:

Description of Services (wording on invoice): DP&L settlement proceeds for the purpose of economic development, to be paid by annually by September 30 of each year. The first payment was received on September 14, 2021. Billing will begin on September 1, 2022 and the last payment will be requested on September 1, 2024.

Departmental Approval

TO BE COMPLETED BY FINANCE

City Reference Number: 8-8470 Auditor: DBH Date: 12/9/2021

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

(Rev 4/30/2008)
December 8, 2021

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

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

Mark Charles, Sustainability Manager  
Office of Sustainability

SUBJECT: PUCO Case Settlement

The Department of Planning, Neighborhoods & Development, in partnership with the Office of Sustainability, are requesting Commission approval to update the funds allocated for the 2020 Stipulated Agreement with AES Corporation, formerly Dayton Power and Light Company (DP&L) regarding two cases: Case No. 20-0689-EL-UNC and Case No. 18-1875 EL-GRD.

The two cases include the following settlements terms: allocate funding for economic development and Property Assessed Clean Energy (PACE) programs and educate residents and businesses about grid modernization. Authorization was granted by the Commission on October 28, 2020 to enter into the Stipulated Agreement and receive $1,600,000.00 over a 4-year term ($400,000.00 per year). In June 2021, the Public Utility Commission of Ohio (PUCO) approved the Stipulated Agreement and funding could be dispersed.

In September 2021, the City of Dayton received the first of four payments from the Stipulated Agreement. Two of the funds, PACE and Economic Development were distributed into the proper fund, as described on the previous City Manager Report on October 28, 2020. After further examination of a third payment that was received for Grid Modernization Education, it was determined that a new fund was necessary.

The Sustainability Office will be using the funding for Grid Modernization Education Fund to educate residents and businesses about future changes to our energy grid within the City of Dayton. This includes the addition of electric vehicle chargers, smart meters/thermostats, and renewable energy. This funding will enhance current projects laid out in the Sustainability Strategy and help further enhance the City of Dayton’s sustainability objectives.

TK/MC/mm  
Attachments

C: Chris Lipson, Hilary Browning, Veronica Morris
City Manager’s Report

From 5200 - Law/Civil
Supplier, Vendor, Company, Individual
Dayton Power and Light Company
Address 1065 Woodman Drive
Dayton, Ohio 45432

Date October 28, 2020
Expense Type Legal Settlement
Total Amount $1,600,000.00 thru 12-31-2023

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<tr>
<td>Development Fund</td>
<td>16300-2600-29515-41</td>
<td>$800,000.00</td>
</tr>
<tr>
<td>DP&amp;L Settlement for PACE</td>
<td>22517-2600-29515-41</td>
<td>$600,000.00</td>
</tr>
<tr>
<td>DP&amp;L Settlement for Res. Energy Edu</td>
<td>22516-2600-29515-41</td>
<td>$200,000.00</td>
</tr>
</tbody>
</table>

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

PUCO Case Settlement

Authorization is requested to enter into a Stipulated Agreement settling two cases before the Public Utilities Commission of Ohio. The terms of the Stipulated Agreement provide many benefits for Dayton Power and Light Company’s (DP&L) customers and the City of Dayton. These benefits include:

1. Reducing DP&L’s requested $560,000.00 in grid modernization charges to $267,000.00, saving customers $293,000.00 while modernizing the grid and ensuring funding for programs such as electric vehicle chargers, smart thermostats, advanced utility meters, $50,000.00 per year in customer education about grid modernization, a self-healing grid which will reduce outages; and

2. Providing $150,000.00 in PACE funding and $200,000.00 in economic development funding annually for four years; and avoiding approximately $600,000.00 in redundant services charges annually;

3. Facilitating the exploration of utilizing solar power at the City’s Water Department, and prioritizing the installation of smart grid equipment that will benefit residential customers in the western and northwestern areas of the City.

It is believed to be in the best interest of the City of Dayton and upon recommendation of the City Attorney that this Stipulated Agreement be entered into as final settlement of this matter.

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

Signatures/Approval

Division
Department
City Manager
FORM NO. MS-16

Approved by City Commission
Rawilla Lander
Clerk
Date October 28, 2020

Updated 8/2016
IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

¶ 85 DP&L is an electric distribution utility, an electric light company, and a public utility as defined in R.C. 4928.01(A)(6), R.C. 4905.03(C), and R.C. 4905.02, respectively; as such, the Company is subject to the jurisdiction of this Commission.

¶ 86 On December 21, 2018, in the Smart Grid Case, the Company filed an application for approval of its plan to modernize its distribution grid together with a request for a limited waiver of Ohio Adm.Code 4901:1-18-06(A)(2) and for approval of certain accounting methods necessary to implement its plan.

¶ 87 On May 15, 2019, in the 2018 SEET Case, DP&L filed an application and supporting documents for the administration of the SEET for calendar year 2018.

¶ 88 On April 1, 2020, in the Quadrennial Review Case, DP&L filed an application for a finding that its current ESP passes the administration of the quadrennial review for the forecast period of 2020-2023.

¶ 89 On May 15, 2020, in the 2019 SEET Case, DP&L filed an application and supporting documents for the administration of the SEET for calendar year 2019.

¶ 90 The following parties were granted intervention in the Smart Grid Case, 2018 SEET Case, 2019 SEET Case, and/or the Quadrennial Review Case: Dayton; Honda; IEU-Ohio; IGS; Kroger; OCC; OEC; OHA; OMAEG; UD; Armada; ChargePoint; Direct Energy; ELPC; Mission data; NRDC; OEC; OPAE; Sierra Club; and STC.

¶ 91 On October 23, 2020, DP&L filed the Stipulation executed by the Signatory Parties to resolve all issues raised in the Smart Grid Case, the 2018 SEET Case, the 2019 SEET Case, and the Quadrennial Review Case.

¶ 92 By Entry dated October 27, 2020, the attorney examiner consolidated the Smart Grid Case, the 2018 SEET Case, the 2019 SEET Case, and the Quadrennial Review Case for purposes of considering the Stipulation.
¶ 93 On December 4, 2020, the attorney examiner modified the procedural schedule in the case to permit the parties to submit separate, supplemental testimony regarding how the SEET test should be conducted in recognition of the Supreme Court of Ohio’s decision in In re Ohio Edison Co., 162 Ohio St.3d 651, 166 N.E.3d 1191, 2020-Ohio-5450.

¶ 94 DP&L, Staff, and OCC filed testimony for consideration at hearing.

¶ 95 The evidentiary hearing was conducted over five consecutive days beginning on January 11, 2021, and concluding on January 15, 2021.

¶ 96 In accordance with the briefing schedule established at the conclusion of the hearing, initial briefs were filed by Staff, Mission:Data, OPAE, IGS, OEG, ELPC, OCC, DP&L, Kroger, Armada, IEU-Ohio, OHA, OMAEG, and Sierra Club. Reply briefs were filed by IEU-Ohio, ChargePoint, Staff, IGS, OEG, ELPC, OHA, Sierra Club, Kroger, DP&L, OMAEG, and OCC.

¶ 97 The Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

V. ORDER

¶ 98 It is, therefore,

¶ 99 ORDERED, That the Stipulation filed in this proceeding be approved and adopted. It is further,

¶ 100 ORDERED, That DP&L take all necessary steps to carry out the terms of the Stipulation. It is, further,

¶ 101 ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission on any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,
ORDERED, That a copy of this Opinion and Order be served upon each party of record.

Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

MLW/PAS/hac
BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Plan to Modernize Its Distribution Grid

: Case No. 18-1875-EL-GRD


: Case No. 18-1876-EL-WVR

In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Methods

: Case No. 18-1877-EL-AAM


: Case No. 20-0680-EL-UNC

In the Matter of the Application of The Dayton Power and Light Company for Administration of the Significantly Excessive Earnings Test Under R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 for 2018

: Case No. 19-1121-EL-UNC

In the Matter of the Application of The Dayton Power and Light Company for Administration of the Significantly Excessive Earnings Test Under R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 for 2019

: Case No. 20-1041-EL-UNC

STIPULATION AND RECOMMENDATION

Pursuant to Ohio Adm.Code 4901-1-30, any two or more parties may enter into a stipulation concerning the proposed resolution of some or all of the issues in a proceeding of the
Public Utilities Commission of Ohio ("Commission"). This Stipulation and Recommendation ("Stipulation") sets forth the understanding and agreement of The Dayton Power and Light Company ("DP&L") and parties that have signed below (together, the "Signatory Parties"), who recommend that the Commission approve and adopt this Stipulation without modification to resolve all of the issues in the above-captioned proceedings.

This Stipulation is a product of lengthy, serious, arm's-length bargaining among the Signatory Parties (all of whom are capable, knowledgeable, and represented by counsel) with the participation of the Staff of the Commission ("Staff"). All parties were invited to discuss and negotiate this Stipulation, and it was openly negotiated among those parties that chose to participate; no party was excluded from these negotiations. This Stipulation is supported by adequate data and information, and as a package, benefits customers and the public interest. This Stipulation violates no regulatory principle or practice; indeed, it complies with and promotes the policies and requirements of Title 49 of the Ohio Revised Code. This Stipulation accommodates the diverse interests represented by the Signatory Parties and is entitled to careful consideration by the Commission.

WHEREAS, DP&L is a public utility engaged in the business of supplying electric distribution service to more than 500,000 customers in West Central Ohio;

WHEREAS, DP&L is committed to its vision that its customers will experience personalized, innovative and seamless energy services enabled by transformative technologies, and intends to achieve this vision by using the latest technology to provide customers information, choices and ways to interact with their utility that they have not experienced before;
WHEREAS, the terms of this Stipulation are reasonable to ensure that DP&L can modernize its distribution infrastructure so that customers will continue to receive stable and reliable service and benefit from a platform that will allow them to make choices that will become available in a robust marketplace;

WHEREAS, the ultimate parent of DP&L, The AES Corporation, provided a capital contribution of $150 million to DP&L, on June 26, 2020 to enable DP&L to improve its infrastructure and modernize its grid while maintaining liquidity. In addition, as more fully described in DP&L's June 17, 2020 8-K filing, AES has provided a statement of intent to contribute an additional $150 million to DPL or DP&L in 2021 to enable smart grid investment;

WHEREAS, DP&L is presently providing a standard service offer in the form of an electric security plan, as approved by the Commission in its December 18, 2019 Second Finding and Order in Pub. Util. Comm. Case No. 08-1094-EL-SSO, et al. (the ESP approved in the Commission's December 18, 2019 Second Finding and Order is referred to below as "ESP I");

WHEREAS, the Commission directed DP&L to open a docket for the Commission to conduct both the more-favorable-in-the-aggregate test ("MFA Test") and the prospective significantly excessive earnings test ("SEET") of R.C. 4928.143(E) as to DP&L's ESP I;

WHEREAS, to comply with the Second Finding and Order and R.C. 4928.143(E), DP&L filed the Application and supporting testimony and exhibits in Pub. Util. Comm. Case No. 20-0680-EL-UNC;
WHEREAS, the terms and conditions of this Stipulation satisfy the policies of the State of Ohio as set forth in Section 4928.02, Revised Code;

WHEREAS, the intervening Signatory Parties recognize that the terms and conditions of this Stipulation are designed to provide DP&L an opportunity to begin grid modernization efforts, set forth a transition path forward that provides economic development support during the ongoing pandemic and emergency conditions, and set the framework for both the timing and content of DP&L's next ESP by requiring DP&L to file an application for ESP IV by a date certain and prohibiting DP&L's ESP IV from containing the types of nonbypassable charges that have been subject to significant litigation before the Commission for the past decade.

NOW, THEREFORE, in order to resolve all of the issues raised in these proceedings, the Signatory Parties stipulate, agree, and recommend that the Commission issue an Opinion and Order in these proceedings approving and adopting this Stipulation.

1. **Plan approval**: DP&L's Smart Grid Plan ("SGP") shall be DP&L's Application, testimony and schedules as filed in Pub. Util. Comm. Case No. 18-1875-EL-GRD, et al., except as modified in this Stipulation. DP&L's SGP shall be approved and DP&L shall be authorized to implement that plan.

2. **Phases and Cap**: DP&L's SGP shall be divided into phases. SGP Phase 1 shall be four years from the date of the Commission's Order approving this Stipulation and shall be limited to the projects as set forth in Exhibit 1. The total amount that DP&L may spend on SGP Phase 1 capital investments and operational and maintenance expenses, collectively, shall be capped at $267,600,000. The
Company shall deploy the quantities of each technology as described below. Any return on and of those actual capital expenditures and recovery of O&M expenditures shall be through the Infrastructure Investment Rider ("IIR"), and recovery will commence after the date of the Commission's Order approving this Stipulation. Individual components may cost more or less than estimated but the overall spend shall be capped. DP&L plans to pursue subsequent phases of comprehensive grid modernization and may file an application for a second phase ("SGP Phase 2") on or before three years from the date of the Commission's Order approving the Stipulation. However, nothing in this Stipulation precludes the Signatory Parties from opposing any future DP&L SGP application or future proposals contemplated but not authorized as part of this Stipulation. Nothing in this Stipulation precludes DP&L from seeking a return on and of any capital or O&M expenditures through base distribution rates.

3. **Cost Recovery:**

a. DP&L may seek to recover a return on and of its prudently incurred SGP Phase 1 capital investments and its associated operation and maintenance expenses through the IIR (approved in the December 18, 2019 Second Finding & Order in Pub. Util. Comm. Case No. 08-1094-EL-SSO, et al.).

b. DP&L's recovery of its capital investments and expenses through the IIR shall be offset by the estimated operational benefits that the parties agree DP&L will realize as a result of DP&L's SGP Phase 1 expenditures.
c. If DP&L does not file a distribution rate case by January 1, 2025, then the recovery of the costs associated with this Stipulation shall cease recovery and the IIR shall be set to zero.

d. The earnings-based portion of incentive compensation for the costs associated with the provisions of this Stipulation shall not be recoverable. However, DP&L reserves the right to raise this issue in the upcoming rate case.

e. Meters.

i. Capital costs associated with AMI meters will be recovered over a depreciable life of fifteen (15) years, with all other investments being recovered pursuant to the depreciation rates authorized in Case No. 15-1830-EL-AIR.

ii. The net book value of the retired meters and capacitors will be subtracted from the gross plant additions in each year of SGP Phase 1, so that the value is not double counted in rate recovery. The gross plant offset will occur through the IIR as the meters and capacitor banks are retired.

iii. Costs for AMI meters purchased but not installed within 90 days shall not be recoverable for the period the AMI meters remain uninstalled in excess of 90 days.
f. DP&L may make SGP Phase 1 investments before the Commission has approved this Stipulation and include recovery of those investments in the IIR upon approval, if those costs were incurred after December 21, 2018 or included as part of the Grid Mod R&D Asset deferral, which shall be subject to audit through the IIR and the expenditure cap set forth in Paragraph 2.

4. **Ratemaking:** The revenue requirement for the SGP Phase 1 shall be calculated as shown on Exhibit 2. The cost allocation and rate design of the SGP Phase I shall be as proposed in the Smart Grid Plan, allocated and charged as a percentage of base distribution charges.

5. **Commission Oversight and Information Sharing:**

a. **Audit:** DP&L's SGP Phase 1 investments and expenses and the IIR (or replacement rider) shall be subject to annual audits. The audit shall either be conducted by Staff or by a third party under the direction of Staff with such costs recoverable through the IIR and not subject to the cap. Annual audits will include, but not be limited to, the following:

i. On-site inspections of new capital assets;

ii. Tracking capital expenses from continuing property records, invoices, and other supporting documentation to the used and useful assets. Additionally, tracking used and useful assets to
continuing property records, invoices, and other supporting documentation;

iii. Verification of proper accounting and computation of annual property tax expense;

iv. Verification of proper accounting and computation of state, local, and federal income tax expense, as well as taxes other than income;

v. Verification of proper accounting and computation of annual depreciation expense;

vi. Verification that incremental labor O&M expense included for recovery in the IIR is only associated with employees dedicated to SGP Phase 1 and in roles not already recovered in current base distribution rates. For employees whose compensation is currently recovered in base distribution rates but are in new roles fully dedicated to DP&L's SGP, DP&L will provide verification that their previous positions have been backfilled so as to prevent double recovery of an individual's compensation. Annual audits will require review of timesheets, employee position numbers, position descriptions, and organizational charts;

vii. Verification that non-labor O&M expenses are incremental. Annual audits will require review of any applicable allocations;
justifications for allocation percentages; supporting invoices and other documentation; contracts; Requests for Proposals; listings of applicable transactions in Excel and journal entry reports; and

viii. Verification of proper accounting for IIR revenues.

b. **Non-Financial Metrics:** DP&L will provide annual reporting for the metrics contained in Exhibit 3 as part of the annual audit filing each year.

c. **Grid Mod Implementation Update Group:** DP&L will facilitate a Grid Mod Implementation Update Group ("Update Group") with interested Signatory Parties.

i. The Update Group will meet at least quarterly to:

(1) Update stakeholders on the status of the projects throughout implementation of SGP Phase 1 and to provide for customer input and advice.

(2) Update stakeholders on the progress toward data access for Competitive Retail Electric Service ("CRES") provider product billing purposes.

(3) Gather stakeholder input associated with data access systems and processes.

(4) Share an updated map of where AMI is being deployed with dates of deployment and an AMI tag on the Customer
Information List provided to CRES providers to indicate active meters.

ii. AMI Distributed Intelligence Capabilities

(1) An AMI meter with "Distributed Intelligence Capabilities" is a meter that has an on-board computer with the capability to download and execute software applications written by DP&L or third parties. Distributed Intelligence Capabilities do not refer to firmware that is loaded on an AMI meter for basic operations.

(2) DP&L will notify the Grid Mod Implementation Update Group if it develops any plan to procure and deploy AMI meters with Distributed Intelligence Capabilities during SGP Phase 1.

(3) At least 180 days before utilizing Distributed Intelligence Capabilities of AMI meters during SGP Phase 1, DP&L will file a description of its planned utilization in the docket for this proceeding to allow for public comment on that plan by interested stakeholders. DP&L's filing will, at a minimum, describe: (1) how third parties may be able to utilize the AMI meter's Distributed Intelligence Capabilities with appropriate customer consent, and under what terms and conditions; (2) what customer services or
offerings DP&L may provide through the Distributed Intelligence Capabilities of its AMI meters; and (3) a description of what software applications have been, or are planned to be, installed onto AMI meters.

6. **Additional Provisions:** DP&L will:

a. Reduce AMI investment to be recovered in the IIR during SGP Phase 1 from 100% of meters, as shown in the Application, to 95%, as reflected in Exhibit 1.

b. Reduce the Distribution Automation investment to be recovered in the IIR during SGP Phase 1 from 47% of circuits, as shown in the Application, to approximately 20% (88) of DP&L's circuits, as reflected in Exhibit 1.

c. Reduce the Substation Automation investment to be recovered in the IIR during SGP Phase 1 from 97 substations, as shown in the Application, to approximately 30 substations, as reflected in Exhibit 1.

d. Accelerate VVO/CVR implementation installing the necessary hardware and software on approximately 30% (132) of DP&L's circuits; specifically targeting those circuits that serve hospitals.

e. Propose time-of-use ("TOU") rates and implementation plan through an EL-ATA case on a pilot basis during SGP Phase 1. Any TOU rates that are offered through DP&L's Standard Service Offer ("SSO") shall be offered only on an "opt-in" basis. The generation related costs of any
TOU proposal shall remain fully bypassable, including costs associated with the implementation, administration, or marketing of the Company's TOU offering as set forth in Workpaper 3.3, which shall be deferred for future recovery through SSO rates upon Commission approval. Once DP&L is notified that there are at least three different suppliers offering time-varying products utilizing AMI data, then DP&L, with Commission approval, will request to withdraw its SSO TOU rate offering.

f. Implement an Electric Vehicle ("EV") rebate program, as described in Paragraph 8 below.

g. Implement a Smart Thermostat rebate program, as described in Paragraph 9 below.

h. Implement a new Customer Information System, as described in Paragraph 10 below.

i. Provide for customer, CRES, and third party access to customer data, as described in Paragraph 11 below.

j. Implement additional residential customer benefits, as described in Paragraph 12 below.

k. Implement additional benefits for the City of Dayton, as described in Paragraph 13 below.
1. Implement additional Commercial & Industrial ("C&I") benefits, including several pilot programs, as described in Paragraph 14 below.

7. Regarding the request for limited waiver of Ohio Adm.Code 4901:1-18-06(A)(2), within six months of an Order adopting this Stipulation, DP&L will file a supplemental application for waiver and memorandum of support including but not limited to proposed alternative methods of notification, protections in place to ensure the safety of vulnerable customers, and if approved, the means by which customers will be advised of the change in procedure.

8. **EV Rebate Program**: DP&L will implement an EV program consisting of rebates for Electric Vehicle Supply Equipment ("EVSE") for both Level 2 and Direct Current Fast ("DCF") chargers, education and marketing, as well as a future intelligent charging incentive. The total EV program will be capped at $5.1 million.

a. **EVSE Rebate**: The Signatory Parties agree to the following program, which will include rebates to cover the costs of up to $5.1 million to install Level 2 and DCF chargers, including customer out-of-pocket installation costs:

i. The program will consist of EVSE rebates split 70/30% between Level 2 and DCF chargers and is further described below:

   (1) For the Level 2 chargers, 100% of EVSE and customer out-of-pocket installation costs will be eligible for rebates,
capped at $10,000/station. The Level 2 Chargers that will be eligible for rebates will be as follows:

(a) 30% available to the public, which includes persons who provide transportation to the public such as mass transit, school buses, shuttle buses, taxis, and other public serving transportation;

(b) 50% available to workplaces, which are not required to be publicly available;

(c) 20% available to multi-unit dwellings, which are not required to be publicly available;

(2) For the DCF chargers, 100% of EVSE and customer out-of-pocket installation costs will be eligible for rebates, capped at $75,000/station. The DCF chargers that will be eligible for rebates will be 100% available to the public, which includes customers who provide transportation to the public such as mass transit, school buses, shuttle buses, taxis, and other public-serving transportation. At least 30% of the funds for DCF chargers shall be used for the establishment of "corridor ready" alternative fuel corridors for EVs, as defined by the U.S. Department of Transportation's Federal Highway Administration.
(3) Other Program Terms and Limitations

(a) Rebates will be awarded on first-come, first-served basis

(b) A customer (or its affiliates) shall not receive more than 7% of all the rebates available

(c) All charging infrastructure installed shall be networked charging infrastructure (i.e., able to communicate with a network management system), be demand-response capable, include software and network services capable of capturing data and metrics described in the "Data" sub-paragraph below, and support open charging standards or protocols. An electric vehicle charging station that is part of the rebate program and requires payment of a fee shall allow a person desiring to use the station to pay via credit card or mobile technology, or both. A site host participating in the rebate program that takes service under DP&L's Standard Service Offer will be charged for their usage and service requirements as a DP&L retail customer, including usage delivered to EV charging systems on the site host's premises, based on applicable
tariffs. This provision does not preclude a site host from shopping for their generation supply.

(4) Data

(a) The site host and/or charging station provider will have flexibility to set pricing to EV drivers, subject to any applicable laws or regulations. DP&L will require reporting of prices charged to EV drivers at all charging stations in a manner and form as established by DP&L, including, but not limited to, reporting of intended prices as a precondition on receipt of rebates. As part of the rebate process, DP&L will inform site hosts about its available tariffs and rates, including TOU rates, to better inform site hosts about their options to effectively manage charging load and to provide the opportunity to maximize cost savings.

(b) DP&L will be authorized to access or receive data from charging stations installed though the Rebate Program, including but not limited to: usage, data regarding grid reliability, load growth, the potential for demand response load profiles, prices paid by EV drivers and site host pricing models/strategies,
equipment provider selected, installation costs by
equipment provider, and outage incidents by
equipment provider. DP&L shall report on this
information at the Update Group meetings.

(5) Reporting: The Company shall file two reports associated
with the EVSE Rebate program: one midway through the
program and a final report once the program is fully
subscribed. The report shall include an overview of the
program, including but not limited to: the location of rebate
recipients and the category of site hosts who receive
rebates; EVSE funded through the program; charging
network and service providers included in the program;
cost of the EVSE and installation relative to the EV rebates,
broken out by technology type; usage and load profiles of
EVSE; impacts of site host pricing on charging behavior;
and impacts of the EVSE on the distribution system.

b. No Administrative Fees will be assessed for this program. DP&L will not
own or receive a return on charging stations in this program. All customer
funds recovered through the IIR related to the EV program shall either be
distributed as rebates pursuant to this provision or refunded to customers
through the IIR. Nothing in this Stipulation prevents DP&L from seeking
approval for a utility ownership model or recovery of any additional
charging station investments; the Signatory Parties remain free to
challenge any such request by DP&L. If DP&L elects to file such a request in the future, it shall be filed in a new application and requires Commission approval.

c. DP&L will continue to evaluate category funding and will seek input and advice from the Staff and Signatory Parties regarding reallocation of funds between program categories, Level 2 and DCF chargers, and annual spending. DP&L will provide Staff annual updates on the program. If DP&L plans to reallocate funds, it will provide notice within 90 days to Signatory Parties and to Commission Staff.

d. The costs of the EV Rebate Program will be recovered through the IIR.

9. **Smart Thermostats**: DP&L will provide a total of $450,000 annually, funded by DP&L with shareholder dollars and not recovered through the IIR or other rates, for four years to offer marketing, administration, and rebates/incentives for "smart thermostats," at least 75% of which will be reserved for customer rebates/incentives.

a. Customers will be able to purchase a smart thermostat and receive a rebate directly from DP&L, or an instant rebate through a third party vendor or retail outlet that will be attributed to DP&L. Third party vendors will commit to provide proof of sale to the Company that the eligible thermostat was sold to a DP&L customer.
b. The rebate will be initially set to encourage adoption of smart thermostats and maximize program effectiveness. For the term of SGP Phase 1, DP&L will hold quarterly meetings with interested parties and vendors to develop a program design that minimizes administrative/other non-rebate costs, and optimizes the incentive and marketing that will be offered to encourage customer adoption of smart thermostats, including the possibility of a demand response incentive. In the final 18 months of SGP Phase 1, meetings will be used to develop the Smart Thermostat Rebate Program as set forth in Paragraph 9(e) of the Stipulation. Meetings are to commence within 30 days of filing this Stipulation. DP&L agrees to provide third party vendors at least 30 days advanced notice prior to initially setting or adjusting the rebate incentive amount.

c. DP&L will work with the local gas utility on bundling rebate opportunities for customers. DP&L will further commit to consider and evaluate, for implementation, smart thermostat marketing and educational opportunities presented by collaborative members.

d. Smart thermostats that are eligible for rebates must be certified under United States Environmental Protection Agency EnergyStar Connect Thermostat guidelines.

e. In its next rate case, SGP Phase 2 filing, or in a combination of the two, DP&L will propose in its initial application a budget for a Smart Thermostat Rebate Program that will incentivize deployment of smart thermostats.
thermostats to a total of 20% of DP&L's residential customers, focusing on customers with AMI meters, with a goal of maximizing residential customer benefits from managing peak demand in conjunction with time-varying rates. DP&L will propose recovery of costs exclusively allocated to residential customers for the Smart Thermostat Rebate Program through base rates, and/or the IIR, or if the IIR is no longer in effect, through any rider authorized for recovery of costs for SGP Phase 2. In addition to this commitment, to the extent DP&L has not reached or been approved to implement smart thermostats at the aforementioned deployment percentage, DP&L will include a cost-effective smart thermostat program in any other filing proposing demand response or energy efficiency programs with cost recovery through any applicable rider. Nothing in this Stipulation precludes any Signatory Party from opposing any future requests for a Smart Thermostat Rebate Program set forth in this Paragraph.

10. Customer Information System ("CIS"): DP&L will invest in, no later than 6 months after a Commission Order approving the Stipulation in this case, the development of a new CIS that will perform core functionality, including at least the following:

a. Meter to Cash process and bill presentment shall comply with all applicable requirements of the Ohio Administrative Code and Ohio Revised Code;

c. Customer Relationship Management ("CRM") as a customer service and communication tool;

d. Flexible pricing plans including CRES ability to bill for products that utilize AMI data;

e. The system will allow for CRES Electronic Data Interchange ("EDI") and data access for billing and time-of-use product offers which use AMI within three years after approval of this Stipulation or in the timeline associated with the CIS, whichever occurs first;

f. Customer, CRES and third party data access set forth in Paragraph 11; and

g. DP&L will recover a return on and of its prudently incurred capital investment in the new CIS and its incremental operation and maintenance expenses associated with the new CIS through base distribution rates and not through the IIR. DP&L shall be entitled to defer operation and maintenance expenses, if applicable, associated with implementation of the new CIS and recover that deferral either through base distribution rates or a future rider, subject to demonstration that the functionality detailed
above is available. The amount of the deferral shall not exceed $8.8M.

The Signatory Parties acknowledge that the Company provided its best estimate of the CIS-related costs as set forth in the Company's Application and Workpapers 1.2, 1.3, 1.4, 2.7, 3.2, 3.5, 3.6, 7.1, 7.3, and 7.4. The amount of CIS expenditures for future recovery is subject to a reasonableness and prudence review.

11. Customer, CRES and Third Party Data Access

a. Customer Data Access. In the timeline associated with the CIS, DP&L shall provide the Customer with access to the following:

i. At least 24 months of energy usage data in 5-minute, 15-minute, 30-minute, or 60-minute intervals (whichever interval is collected by the meter) made available on a best efforts basis within 24 hours of performing industry-standard validation, estimation, and editing (VEE) processes and no later than thirty (30) days after the end of each meter cycle.

ii. At least 24 months of detailed billing history data, including breakdown of all billing line item charges.

iii. At least 24 months of summary billing history data, including date of bill, usage, bill amount and due date.
iv. Flexible views (for Customer with multiple accounts) with options to (a) select individual account, (b) group accounts by user-defined criteria, or (c) access full account list.

v. Tariff and rebate program information (if applicable).

vi. The foregoing data shall be able to be downloaded by the customer into either an .xlsx or .csv format.

vii. No additional fees shall be charged, directly or indirectly, to customers associated with accessing or requesting data.

b. **CRES and Third Party Data Access.** As part of and in the timeline associated with the CIS, DP&L commits to the following:

i. The release of any customer's energy-usage data shall be in accordance with the applicable North American Energy Standards Board Energy Services Provider Interface standards and compliant with all Ohio Administrative Code and Ohio Revised Code.

ii. DP&L shall provide Green Button Connect My Data ("GBC") for use by any authorized CRES or third party on a non-discriminatory basis to be completed as part of and in the timeline associated with the CIS. GBC shall be independently tested and certified as compliant with the latest standard as of time of release. DP&L is not prohibited from supplementing or replacing GBC with a new generally accepted industry standard Application Programming
Interface after collaborating with Staff, CRES, customers, and third parties via the Grid Mod Implementation Update Group subject to a prudence review and the spending cap defined in Paragraph 2. The terms and conditions under which customer-authorized CRES providers and third parties access GBC or any other Application Programing Interface will be set forth in a DP&L tariff subject to Commission approval.

iii. At a minimum, DP&L's GBC will provide, with appropriate customer authorization, 24 months of historical usage data, ongoing usage data, account number(s), meter identifier(s), and customer billing determinants. For purposes of this provision, "billing determinants" means customer-specific information used to calculate a bill, including (if applicable to a given customer) kilowatt-hours, kVAR, peak demand, and billing schedule, but excluding non-customer-specific information contained in filed tariffs. If DP&L determines in the future that billing determinants are more expansive than this definition, DP&L will so inform the Grid Mod Implementation Update Group to discuss inclusion in Green Button Connect. As part of the Grid Mod Implementation Update Group, DP&L will work with Staff, CRES and third parties to further develop the types of data that may be shared through GBC as well as the timelines and frequency of transmission.
iv. DP&L shall allow CRES providers to access the most current data available for both prospective and existing customers through GBC, with customer authorization as required. However, data for purposes of billing and scheduling shall be provided via EDI or the current standard form.

v. DP&L shall provide documented processes for registering, troubleshooting and providing access to CRES providers and third parties on a publicly available website. Any data from a customer who objected to sharing data on the pre-enrollment list shall not be provided without authorization.

vi. DP&L will make best efforts to: (i) operate the GBC platform with an uptime of at least 99% during business hours as determined by the Company and calculated on a monthly basis; (ii) respond promptly to questions, issues or bugs raised by third parties and seek to promptly resolve technical issues with the GBC platform; and (iii) ensure that the data provided are accurate and up to date.

vii. Customer Experience. DP&L shall support the following processes:

(1) DP&L will develop a process for CRES and third parties to provide customer consent in accordance with Ohio Adm.Code 4901:1-10-24 or any subsequent rule to access data for prospective and existing customers. This process
will include the ability for customers to authorize the
release of energy usage data to CRES and third parties via
the following methods:

(a) DP&P's web site, which shall be optimized for the
Customer's screen size, or mobile app.

(b) Third party web site or mobile app (DP&P will not
be responsible for costs associated with developing
third party websites or mobile apps.) In this case,
DP&P will, for customers with a cellular telephone
number on file, send a text message one-time
passcode to the customer's cellular telephone to
complete the authorization.

(2) At the time of the request, the customer is prompted to
authenticate and authorize sharing of data and DP&P shall
require no more information of the customer than DP&P
requires for establishing an online account. Web-based
authentication and authorization must adhere to OAuth2.0
or a more recent industry-standard protocol as set forth at
https://oauth.net/2/. CRES and third parties should have
the option to determine the authorization term they require,
i.e. 12 months, 24 months, or indefinite ("valid until
rescinded"). DP&P will send notification to the customer's
preferred communication channel that DP&L has received notification that the customer has authorized a third party access to their customer energy usage data and/or account number and provide instructions on how to contact DP&L to cancel if they did not make such an authorization. Customer will be notified annually of all CRES and third parties that have current access to customer data and how to rescind such access.

(3) Once authorized, DP&L will promptly begin transmission of historical data within timely manner to a CRES or third party. Subsequent to a successful Customer authorization, when data is requested, the system will immediately or nearly immediately process and return the requested data.

(4) DP&L shall support the authorization methods without requiring the creation of an online account.

(5) DP&L shall provide a list of CRES and third parties that have accessed the customer's data within the last six months, which shall be prominently displayed and easily accessible on the customer's on-line account and/or customer portal.
c. Individual Wholesale Market Settlements: DP&L will facilitate wholesale market settlements as part of and in the timeline associated with the CIS, as follows:

i. DP&L will make the necessary upgrades to systems and processes for wholesale market settlements, i.e. calculating and settling individual total hourly energy obligation ("THEO"), peak load contribution ("PLC"), and network service peak load ("NSPL") values for each customer, instead of relying on generic load profiles.

ii. DP&L shall transmit settlement data to PJM, at a minimum, in hourly intervals.

iii. DP&L shall make the THEO, PLC, and NSPL data available to authorized CRES providers, consistent with Ohio Adm.Code 4901:1-10-24 or any other subsequent rule, through the pre-enrollment list and EDI transactions, as applicable. Customers will also have access to this information.

iv. DP&L will begin using AMI data for calculation of individualized PLC when the necessary upgrades to systems have been made to utilize the VEE certified AMI data that has been read for any qualifying peak events. Until those upgrades have been completed and an AMI meter has been installed, the current method of using register reads and profiles will be used.
d. Neutral Platform: The AMI deployment will utilize the necessary and generally accepted standards, e.g., technologies to implement a Home Area Network, so that customers can connect qualified devices (e.g., in-home displays, smart programmable thermostats) to their meter, or otherwise direct the meter to transmit usage data to any CRES or third party selected by the customer. The technical eligibility requirements for Home Area Network devices, if applicable, including those for security, will be developed through the Grid Mod Implementation Update Group. Qualified devices will not be limited to devices supplied only by the EDU or an affiliate.

e. Through the term of SGP Phase 1, DP&L will update its G8 tariff such that no fees shall be charged by DP&L to CRES or third parties associated with accessing or requesting data, including but not limited to those set forth in Tariff Sheet G8 page 29 A.1. (manual historical customer energy usage) and A.2. (electronic interval meter data) ("Waived Fees"). DP&L further agrees to forego recovery of the Waived Fees through the IIR or future rate case. DP&L will track the number of requests for the manual historical customer energy usage data and electronic interval meter data and will estimate any associated labor.

12. Additional Residential Customer Benefits

a. Due to current adverse economic conditions, DP&L shall contribute the following unrecoverable amounts to be paid for by DP&L with
shareholder dollars and not recovered through the IIR or other rates

Within 30 days of an Order adopting this Stipulation, DP&L shall pay $450,000 in 2021 and $450,000 in 2022 directly to Ohio Partners for Affordable Energy ("OPAE") to provide weatherization and associated administrative costs for electric consumers at or below 200% of the federal poverty line.

b. Additionally, for each year of the SGP Phase 1, $50,000 of the Customer Education expenditures will be applied toward marketing and education for residential customers about the Smart Thermostat Rebate Program in conjunction with its deployment of residential AMI meters. Specifically, DP&L will apply these Customer Education expenditures toward: (1) a public launch targeted for 90 days after approval of this Stipulation, to highlight the benefits of smart thermostats and other free media events over the course of the program to gain as much attention as possible; (2) exploration of creative marketing strategies and creative financing strategies; and (3) bill inserts, social media and other low/no cost methods to promote smart thermostats as part of the program.

c. PIPP Water Heater Controller Pilot Program – DP&L will issue a Request for Proposals ("RFP") for a water heater controller Pilot within 60 days of the installation of smart meters on at least 200 PIPP customer accounts within the Dayton city limits. The RFP will be for smart water heater controllers to be installed on Percentage of Income Payment Plan ("PIPP") customers' electric resistive water heaters to reduce their peak load
contribution ("PLC"). The goal of the Pilot will be to determine whether reducing the PIPP customers aggregate PLC will create a better load profile resulting in a better price for the PIPP auction. The water heater controllers will have two-way communication, a revenue grade metering chip and two separate temperature probes to ensure accurate measurement and verification. The RFP will be for an initial 60-day Pilot to prove the concept of 200 water heater controllers with the potential to be expanded to all PIPP customers with an electric resistive water heater, as smart meters are installed. DP&L or its consultant will oversee issuing the RFP but will consult with Staff, the City of Dayton, the Ohio Development Services Agency and OPAE.

i. Those 200 PIPP customers will be in the initial Pilot. The 60-day Pilot will create a control group of 100 PIPP customers with devices that are connected and monitored but are not controlled for peak demand events. The second group of 100 customers will have multiple demand response events throughout the 60-day Pilot. The Pilot will evaluate cold water complaints, actual demand response reduction, general usability of the system and any other metrics deemed relevant. All results of the Pilot will be shared with all Signatory Parties. The costs of the controller, enabling communication, maintenance and administration fees prudently incurred will be capped at $48,400 and will be funded by DP&L.
with shareholder dollars and not recovered through the IIR or other rates.

ii. Specific PIPP customer information shall not be provided to the third-party administrator or any other third party working on this pilot. Only customer usage data and a unique identifier shall be part of this study, unless the customer provides authorization.

d. DP&L commits that it will not implement any form of prepay program as part of the SGP Phase 1.

e. DP&L shall not use its AMI to unlawfully limit the usage of residential customers. This Paragraph does not waive DP&L’s right to disconnect customers in accordance with Ohio Adm.Code 4901:1-10-18.

13. Benefits for City of Dayton

a. The provisions in this Paragraph shall expire when ESP I terminates.

i. While implementing the Smart Grid Plan, DP&L will prioritize installing equipment that will benefit residential customers in the Western and Northwestern areas of the City of Dayton.

ii. DP&L will explore a joint partnership with the City of Dayton and the University of Dayton’s Hanley Sustainability Institute for a program supporting mutual goals for all three of the organizations.
iii. DP&L will participate in the Property Assessed Clean Energy ("PACE") program in partnership with the Montgomery County Port Authority, for qualifying projects in the City of Dayton. DP&L will contribute $100,000 annually to a fund to be used to pay up to 50% of a property owner's escrowed reserve requirement. DP&L will also contribute $50,000 annually to a revolving loan fund to support energy upgrades for small and micro businesses within the City that are not eligible for PACE funding. This $150,000 in annual spending will be funded by DP&L with shareholder dollars.

iv. All City of Dayton accounts that have redundant service at the time of execution of this Stipulation are exempt from paying any redundant service charges that seek to recover the costs of providing standby or backup service.

v. DP&L will contribute $200,000 annually to assist the City of Dayton in providing economic development programs and providing essential city services to residents, including low-income residents. The $200,000 in annual spending shall be funded by DP&L with shareholder dollars.

14. Additional Commercial and Industrial Customer Benefits

a. In the Stipulation & Recommendation in DP&L's last distribution rate case (Case No. 15-1830-EL-AIR, et al), DP&L agreed to waive the
Contract Capacity Charge related to Redundant Service (aka "Alternate Feed Service") (described in DP&L’s current Tariff No. D10) for all Ohio Hospital Association ("OHA") members until a final order is issued in DP&L’s next base distribution rate case. In settlement of DP&L’s grid modernization case (Case No. 18-1875-EL-GRD, et al.), DP&L agrees to continue this Alternate Feed Service waiver for all OHA members: (1) for as long as DP&L continues to recover through the IIR Rider or (2) until a final order is issued in DP&L’s next base distribution rate case, whichever event occurs later. This Alternate Feed Service waiver shall be applied to all OHA members regardless of whether or not these members are currently paying Redundancy/Alternate Feed Service charges or whether these OHA members require Redundancy/Alternate Feed Service in the future.

b. From the date of approval of this Stipulation and continuing during DP&L’s current standard offer as approved by the Commission in its December 18, 2019 Second Finding and Order in Case No. 08-1094-EL-SSO, DP&L will re-open enrollment for the TCRR Opt-Out Pilot Program to Signatory Parties (including their members, affiliate members, customers, or members' customers) to pass through the market price, and peak hour billing, of the transmission system as described in DP&L’s Seventeenth Revised Sheet No. T8, and DP&L will work collaboratively with manufacturing groups to target 50 manufacturers to participate. DP&L shall, at least, propose to continue the TCRR-N Pilot for Signatory
Parties in DP&L's next ESP case. Prior to filing its next ESP, DP&L further agrees to discuss with interested parties potential opportunities to enhance the transmission pilot.

c. DP&L will direct a portion of the Customer Education expenditures identified on Exhibit 1 toward educating and benefiting hospitals, manufacturers, and residential customers about the benefits of SGP Phase 1 components. Each year of SGP Phase 1, $50,000 of the Customer Education funds will be paid to each of IEU, OHA, OMAEG, and the City of Dayton to educate and engage hospitals, manufacturers, and residents regarding the potential benefits of grid modernization, including but not limited to assisting with accessing and analyzing energy usage and rate information that will become available upon the installation of CIS.

d. In addition to the Customer Education expenditures identified in sub-paragraph (c) above, DP&L will pay $150,000 to OHA in 2023 and 2024 as an energy education grant. The costs of this grant will be funded by DP&L with shareholder dollars and not recovered through the IIR or other rates.

15. Economic Development: To assist Ohio businesses and healthcare providers with their expenses so that they are better able to respond to financial consequences of COVID-19 and restart Ohio's economy in DP&L's service area, and to further State policies and to enhance the State's competitiveness in the national and global economies, DP&L will offer several different economic development
incentives and grants to large customers that are Signatory Parties, successor to Signatory Parties, and/or members of Signatory Parties and that qualify for the incentives. The costs of these incentives and grants will be funded by DP&L with shareholder dollars and not recovered through the IIR or other rates. The provisions in this Paragraph shall commence upon approval of this Stipulation, and shall remain in effect while DP&L operates under the terms and conditions of ESP I.

a. Customers may receive only one of the following economic development incentives in this sub-paragraph, and incentives in this sub-paragraph may not be combined. The following economic development incentives will be equal to $0.004 per kWh for all kWh:

i. *Economic Improvement Incentive* available to single site customers with MW demand of 10 MW or greater with an average load factor of at least 80%. The Signatory Parties that qualify for the incentive are: one member of Ohio Energy Group ("OEG") and one member of Industrial Energy Users-Ohio ("IEU").

ii. *Automaker Incentive* available to single site customers with MW demand of 4 MW or greater. The Signatory Parties that qualify for the incentive are: one member of OEG, Honda of America Mfg., Inc. ("Honda"), and one other member of OMAEG.

iii. *Ohio Business Incentive* available to Honda, four other members of OMAEG, The Kroger Co. ("Kroger"), and one member of IEU.
iv. *Ohio Hospital Incentive* available to seven hospitals that are members of OHA with MW demand of 2MW or greater.

b. Additionally, within 30 days of a Commission Order approving the Stipulation, DP&L will pay the economic development grant amounts listed below according to instructions for payment provided by the parties. Thereafter, DP&L will pay the same amounts listed below according to the instructions for payment provided by the parties, on the annual anniversary date on which the first grant was awarded. In no event shall Honda, IEU, Kroger, OMAEG, OHA, the University of Dayton, or any of their benefiting members, be obligated to return all or any portion of any incentive or grant payment made by DP&L:

i. $107,000 to Honda.

ii. $112,000 to IEU, for the benefit of its members.

iii. $26,000 to Kroger.

iv. $260,000 to OMAEG, for the benefit of its members.

v. $35,000 to OHA.

vi. $210,000 to the University of Dayton.

16. Energy Resiliency and Solar Energy Development

a. Energy Resiliency at Wright-Patterson Air Force Base
i. Within 30 days after a Commission Order approving this Stipulation, DP&L will work with NRDC to evaluate and pursue project(s) to be located within the Wright-Patterson Air Force Base ("WPAFB") property line and/or the communities surrounding WPAFB that increase energy resiliency ("Resiliency Project(s)").

ii. DP&L commits to providing a shareholder contribution of $250,000, which shall not be recovered through the IIR or other rates, to provide technical support, marketing and education, or other efforts to aid in the evaluation and pursuit of Resiliency Projects ("Resiliency Project(s) Grant"). The Resiliency Project(s) Grant will be paid within 30 days after DP&L and NRDC identify and agree upon the grant recipients.

iii. DP&L and NRDC will:

(1) Coordinate with other planning efforts, including those designed to leverage federal funding for clean energy that would support the Resiliency Project(s);

(2) Evaluate and pursue federal funding that may be available, now or in the future to support the Resiliency Project(s); and
(3) Evaluate opportunities for Resiliency Project(s) using DP&L's existing General Services Administration area wide agreement; and

(4) Engage other public utilities that serve WPAFB and the surrounding communities to identify potential energy resiliency investment partnerships.

iv. DP&L will file a status update in this docket on the progress of this joint effort no later than nine months after a Commission Order approving this Stipulation.

v. "Resiliency Project(s)" may include any or all of the following:

(1) Renewable energy, including distributed energy resources that are not dependent on the delivery of fuel;

(2) Energy storage;

(3) Advanced control systems; and

(4) Reducing energy consumption, including through lighting and water upgrades, heating, ventilation and air-conditioning and boiler system improvements.

b. City of Dayton Solar Project: After a Commission Order approving this Stipulation, DP&L will begin working with the City of Dayton to evaluate
and pursue two separate solar installation projects within the City of Dayton corporate limits as follows.

i. Provide the necessary non-financial technical support, including without limitation all studies required by OAC 4901:1-22 such as the feasibility study, system impact study, and/or facilities study, related to an interconnection of net metering systems at or contiguous to the City of Dayton Water Supply and Treatment facilities located at 3210 Chuck Wagner Ln, Dayton, OH 45414 ("Water Solar Project") and at or contiguous to the City of Dayton Water Reclamation Facility located at 2800 Guthrie Rd., Dayton, OH 45417 ("Reclamation Solar Project").

ii. DP&L shall waive required fees or costs associated with studies set forth in paragraph (a)(i) for the Water Solar Project or the Reclamation Solar Project, which will not be recovered through the IIR or other rates.

iii. The City of Dayton and DP&L hereby acknowledge that the Water Solar Project and the Reclamation Solar Project each involve sophisticated issues associated with providing net metering to essential government services. Among other things the unique nature of these City of Dayton services may require multiple metering points, meters, and backup service to ensure the public health. In recognition of these unique circumstances for essential
government service, the City of Dayton and DP&L hereby agree that all accounts at 3210 Chuck Wagner Ln, Dayton, OH 45414 shall be net metered against the Water Solar Project. Similarly, all accounts at 2800 Guthrie Rd., Dayton, OH 45417 shall be net metered against the Reclamation Solar Project.

iv. For the purposes of net metering, the City of Dayton and DP&L hereby agree that the energy produced by the Water Solar Project and the Reclamation Solar Project shall be posted to the City accounts referenced in paragraph (iii) above in the order selected annually by the City of Dayton.

v. DP&L and the City of Dayton will work collaboratively to most efficiently interconnect the Water Solar Facility and Reclamation Solar Facility to DP&L’s system for purposes of net metering.

vi. To the extent any waiver of Commission rules are required by this Paragraph 16(b), DP&L and the City of Dayton will jointly seek a waiver from those provisions. The Signatory Parties are not precluded or in any way limited in challenging such a waiver request.

c. Additional Solar Project: In order to encourage the further development of distributed and small generation facilities in accordance with R.C. 4928.02(C), after a Commission Order approving this Stipulation, DP&L and IGS agree to work together to identify, select and then implement
solar project(s) that add up to at least 1.5 MW to be constructed in DP&L's service territory ("the Solar Project(s)"). Within 90 days after IGS Solar, LLC identifies the Solar Project location(s), DP&L will make a one-time contribution in the amount of $1 million, to be funded by shareholder dollars and not recovered through the IIR or other rates to IGS Solar, LLC ("the Solar Project Grant"). IGS Solar, LLC will apply the Solar Project Grant toward design, construction, and deployment of the Solar Project(s), which IGS Solar, LLC shall own and operate. DP&L shall have no ownership interest in the Solar Project, and shall not be involved in its operation. Within 12 months after the Solar Project(s) are operational, DP&L shall file a report in this docket describing any distribution and/or transmission costs saved or avoided as a result of the Solar Project(s).

17. Cost/Benefit Analysis: The Signatory Parties agree that DP&L's SGP Phase 1 produces a positive cost-benefit ratio for its customers on a nominal and net-present-value basis, as shown on Exhibit 4.

a. Approximately 65% of the customer benefits detailed on Exhibit 4 represent system-wide reliability improvements of 15% for SAIFI (system average interruption frequency index) and 14% for SAIDI (system average interruption duration index) when compared to baseline data reported for 2015-2019. No later than 60 months following an Order in this case, DP&L shall file an application for revised standards that incorporate the proposed reliability improvement, unless otherwise ordered by the Commission.
18. **Excused Compliance:** DP&L shall not be in violation of this Stipulation or any Order approving it if complying with the terms set forth in Paragraphs 6(a), (b), (c), (d), (e), (h), and (i), 10 and 11 is made impracticable or impossible due to events beyond DP&L's reasonable control.

19. **SEET/MFA:**

a. In consideration of this Stipulation as a package and only for that purpose, the Signatory Parties agree that this Stipulation satisfies the requirements of R.C. 4928.143(E) and recommend that the Commission find that R.C. 4928.143(E) is satisfied and that DP&L's ESP I as currently implemented passes the more favorable in the aggregate test and the prospective significantly excessive earnings test in R.C. 4928.143(E). Alternatively, if the Commission finds that DP&L's ESP I fails to satisfy either prospective test, then the Commission has the authority to approve "the transition... to the more advantageous plan." This Stipulation provides for an orderly transition to such a plan, as DP&L has committed to filing a new ESP application (ESP IV) by October 1, 2023 that will not contain charges as identified in Paragraph 20(a) of this Stipulation. Moreover, DP&L has committed to partnering with and assisting low income customers, local government, manufacturers, and hospitals during the transition, and DP&L and the Signatory Parties have set forth a SGP that reasonably pairs with this transition. All of these items provide for a reasonable and lawful transition to ESP IV that satisfy the requirements of R.C. 4928.143(E).
b. The Signatory Parties agree and recommend that DP&L's application, the prefiled testimony of Mr. Malinak and the prefiled testimony of Mr. Garavagalia in Case No. 20-680-EL-UNC be admitted into the record without cross-examination by Signatory Parties and that no Signatory Party will introduce additional evidence in opposition to DP&L's filings.

c. Other Litigation

i. During the 2020-2023 forecast period, the Signatory Parties agree not to challenge or otherwise advocate against DP&L's right to operate under its currently implemented ESP I and not to challenge or otherwise advocate against any provision of its current ESP I before the Commission, the Supreme Court of Ohio, or any other regulatory or judicial body.

ii. Each Signatory Party shall withdraw any pending applications for rehearing that it has filed in Pub. Util. Comm. Case Nos. 08-1094-EL-SSO, et al. and 16-395-EL-SSO, et al. and any appeals from such proceedings within seven business days of the Commission issuing a final appealable order in these dockets (i.e. 7 business days after the last entry on rehearing) and without modification to the Stipulation. If the Commission modifies this Stipulation and a Signatory Party does not withdraw from the Stipulation, then the Signatory Party shall withdraw the pending application(s) for rehearing within 7 business days of the final appealable order. The
Signatory Parties request that the Commission hold in abeyance any ruling on these pending applications for rehearing prior to the resolution of this proceeding. The Signatory Parties further agree to file a joint motion to stay in the 08-1094-EL-SSO et al., and 16-395-EL-SSO, et al. dockets until a final appealable order is issued in these dockets.

iii. In consideration of this Stipulation as a package and only for that purpose, the Signatory Parties who have intervened or moved to intervene in Pub. Util. Comm. Case Nos. 19-1121-EL-UNC and 20-1041-EL-UNC recommend that the Commission approve DP&L's applications in those cases conditioned on the Commission's approval of this Stipulation without modification. The Signatory Parties who have not intervened or moved to intervene in those cases shall not intervene or move to intervene in those cases and take no position on DP&L's applications in those cases.

20. ESP IV

a. DP&L shall file an application for an electric security plan ("ESP IV") no later than October 1, 2023 to replace ESP I. DP&L's ESP IV Application shall not seek to implement any nonbypassable charge to customers related to provider of last resort risks, stability, financial integrity, or any other charge that is substantially calculated based on the credit ratings,
debt, or financial performance of any parent or affiliated company of DP&L. By way of example, the Signatory Parties agree that this limitation does not prevent DP&L from proposing in the future riders that recover actual costs that DP&L has incurred or will incur, distribution or transmission related revenue that DP&L has foregone or will forego, or distribution or transmission related investments (including a return on and of the investments) that DP&L has made or will make. The Signatory Parties are not precluded or in any way limited in challenging any potential riders that DP&L may propose as part of any future proceeding.

b. Effect of Stipulation Provisions upon Return to ESP I

i. If DP&L receives Commission approval for a new standard service offer but later returns to ESP I for any reason then the provisions in Paragraphs 13(a)(ii), (iii), (iv), and (v); 14(b); and 15 will resume as of the date that DP&L returns to ESP I, and DP&L will provide $250,000 annually funded by shareholder dollars and not recovered through the IIR or other rates for further support of the Solar Project(s) developed by IGS Solar, LLC. This Paragraph survives and will be invoked during any number of returns to ESP I for any reason. Additionally, Signatory Parties reserve their rights to challenge DP&L’s return to ESP I and any charges implemented therewith. The commitments due under this Paragraph shall continue only for the duration that DP&L operates under ESP I.
ii. Upon DP&L returning to ESP I for any reason, DP&L shall make the funding payments to the Signatory Parties set forth in paragraphs 13(a)(ii), (iii), (iv), and (v); 14(b); and 15, and the $250,000 annually funded by shareholder dollars for further support of the Solar Project(s) developed by IGS Solar, LLC. DP&L shall make such payments provided for in those paragraphs funded directly by DP&L with shareholder dollars and not recovered through the IIR or other rates. These conditional funding commitments are a contractual agreement between DP&L and the applicable Signatory Parties, enforceable by the Franklin County Court of Common Pleas, and shall survive and be enforceable regardless of any potential future modifications to the language contained in this Stipulation. The Signatory Parties agree that there is independent consideration on both sides to create a binding agreement (subject to the specified conditions) at the time the Stipulation is filed, and that this consideration includes the funding commitments from DP&L and the applicable Signatory Parties’ cessation of litigation in the dockets covered by this Stipulation. The commitments due under this Paragraph shall continue only for the duration that DP&L operates under ESP I.

iii. Upon DP&L returning to ESP I as set forth under Paragraph 20(b)(i) or (ii), DP&L shall:
(1) Reinstitution the monthly credits set forth in Paragraphs 13(a)(iv), 14(b), and 15(a) on the next bill cycle.

(2) Within 30 days, provide annual commitments set forth in Paragraphs 13(a)(iii), and (v); 15(b); and the $250,000 payment to JGS Solar, LLC set forth in Paragraph 20(b)(i) or (ii), which date shall serve as the new anniversary date for subsequent annual payments. If the initial payment date is less than 365 days since the prior anniversary upon which these annual payments were made, then the initial payment date and the new anniversary date shall be the same as the prior anniversary date such that DP&L will only be required to make the annual payments once in a 12-month period.

c. If the Commission finds that DP&L passes the SEET/MFA or if the Commission does not materially modify ESP I to DP&L’s detriment in its order approving the Stipulation such that DP&L withdraws from the Stipulation, the commitments made under Paragraphs 13(a)(iii), (iv), and (v); 14(a) and (b); and 15 shall be implemented within 10 business days of the Commission’s approval of this Stipulation. So long as neither the Commission nor the Supreme Court of Ohio make material modifications to ESP I, to DP&L’s detriment such that DP&L withdraws from the Stipulation, future annual payments shall be due on or before the anniversary date of the Commission’s approval of the Stipulation. DP&L
shall not be entitled to any refund of these amounts. The Signatory Parties acknowledge that this paragraph is a contractual commitment and thus may be enforced by the Franklin County Court of Common Pleas. The Signatory Parties further agree that there is independent consideration on both sides to create a binding agreement at the time the Stipulation is filed (subject to the specified conditions), and that this consideration includes the funding commitments from DP&L and the applicable Signatory Parties' cessation of litigation in the dockets covered by this Stipulation. The commitments due under this Paragraph shall continue only for the duration that DP&L operates under ESP I.


a. In arm's-length bargaining, the Signatory Parties have negotiated terms and conditions that are embodied in this Stipulation. This Stipulation involves a variety of difficult, complicated issues that would otherwise be resolved only through expensive, complex, protracted litigation. This Stipulation contains the entire agreement among the Signatory Parties, and embodies a complete settlement of all claims, defenses, issues and objections in these proceedings. The Signatory Parties agree that this Stipulation is in the best interests of the public and urge the Commission to adopt it.

b. DP&L agrees to strike the following language from lines 19 through 23 on page 8 of the Direct Testimony of Jeffrey K. Fuller: "A component of
cybersecurity capital expenditures may be re-appropriated toward operational expenditures due to the proliferation of managed cybersecurity services and security service platforms maturing the market place, providing a lower overall cost to customers. In such a case, DP&L seeks permission from the Commission to treat those operational expenditures as capital."

c. DP&L may offer its testimony and exhibits in Case Nos. 18-1875-EL-GRD, 18-1876-EL-WVR, and 18-1877-EL-AAM for the sole purpose of providing evidentiary support for reasonableness and lawfulness of this Stipulation (the testimony shall not be offered as support or considered as evidence for support of any aspect of its Application(s) that varies from the Stipulation), and will file supplemental testimony in support of this Stipulation. Except as modified by this Stipulation, DP&L's Application in Case Nos. 18-1875-EL-GRD, 18-1876-EL-WVR, and 18-1877-EL-AAM shall be deemed to be approved. Nothing in this sub-paragraph prohibits any Signatory Party from filing testimony or submitting evidence in support of the Stipulation.

d. In addition, as discussed above, DP&L may offer its Application and pre-filed testimony in Case No. 20-680-EL-UNC in support of satisfaction of the requirements of R.C. 4928.143(E).

e. This Stipulation is a consensus among the Signatory Parties of an overall approach to rates in these proceedings. It is submitted for the purposes of
these proceedings alone and should not be understood to reflect the positions that an individual Signatory Party may take as to any individual provision of the Stipulation standing alone, nor the position a Signatory Party may have taken if all of the issues in these proceedings had been litigated. Nothing in this Stipulation shall be used or construed for any purpose to imply, suggest or otherwise indicate that the results produced through the compromise reflected herein represent fully the objectives of any Signatory Party. This Stipulation is submitted for purposes of these proceedings only, and is not deemed binding in any other proceeding, except as expressly provided herein, nor is it to be offered or relied upon in any other proceedings, except as necessary to enforce the terms of this Stipulation. The willingness of Signatory Parties to sponsor this document currently is predicated on the reasonableness of the Stipulation taken as a whole. The Signatory Parties will support the Stipulation if the Stipulation is contested.

f. This Stipulation is conditioned upon adoption of the Stipulation by the Commission in its entirety and without material modification; provided, however, that each Signatory Party has the right, in its sole discretion, to determine whether the Commission's approval of this Stipulation constitutes a "material modification" thereof. If the Commission rejects or materially modifies all or any part of this Stipulation, any Signatory Party shall have the right to apply for rehearing. Prior to filing for rehearing, and prior to withdrawing, a Signatory Party shall confer with the other
Signatory Parties and negotiate in good faith to try to reach a new amicable resolution of the proceeding. Failure to confer and attempt to negotiate a new mutually agreeable outcome shall preclude a party from any right to withdraw from the Stipulation. If the Commission does not adopt the Stipulation without material modification upon rehearing, then within thirty (30) days of the Commission's Entry on Rehearing: any Signatory Party may withdraw from the Stipulation by filing a notice with the Commission ("Notice of Withdrawal"). As noted above, no Signatory Party shall file a Notice of Withdrawal without first negotiating in good faith with the other Signatory Parties to achieve an outcome that substantially satisfies the intent of the Stipulation. If a new agreement achieves such an outcome, the Signatory Parties will file the new agreement for Commission review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful, and a Signatory Party files a Notice of Withdrawal, then the Commission will convene an evidentiary hearing to afford that Signatory Party the opportunity to contest the Stipulation by presenting evidence through witnesses, to cross-examine witnesses, to present rebuttal testimony, and to brief all issues that the Commission shall decide based upon the record and briefs. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are successful, then some or all of the Signatory Parties shall submit the amended Stipulation to the Commission for approval after a hearing if necessary.
IN WITNESS THEREOF, the undersigned Signatory Parties agree to this
Stipulation and Recommendation as of this 23rd day of October, 2020. The undersigned
Signatory Parties request the Commission to issue its Opinion and Order approving and adopting
this Stipulation.

THE DAYTON POWER AND LIGHT
COMPANY

By:  
Jeffrey S. Smerkey

CITY OF DAYTON, OHIO

By:  
N. Trevor Alexander
Subject to City Commission
approval, which is expected by
October 28, 2020

STAFF OF THE PUBLIC UTILITIES
COMMISSION OF OHIO

By:  
Steven L. Beeler

INDUSTRIAL ENERGY USERS-OHIO

By:  
Matthew R. Pritchard

INTERSTATE GAS SUPPLY, INC./IGS
ENERGY

By:  
Joseph Oliker

OHIO ENERGY GROUP

By:  
Michael L. Kurtz signature by
Morgan K. Napier
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* Signature by Christopher C. Hollen
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NATURAL RESOURCES DEFENSE COUNCIL

By: Robert Dove

CHARGEPOINT, INC.

By: Dylan F. Borchers

SIERRA CLUB

By: Joseph Halse

OHIO ENVIRONMENTAL COUNCIL

By: Miranda Leppla

ARMADA POWER, LLC

By: Gretchen Petrucci

* informs by Christopher C. Hellen (6086480) per email authorization
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Stipulation and Recommendation has been served via electronic mail upon the following counsel of record, this 23rd day of October, 2020.

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### Capital Expenditures Summary

**(Nominal dollars, in millions)**

<table>
<thead>
<tr>
<th>Capital Expenditures by Project Function</th>
<th>Yr 1</th>
<th>Yr 2</th>
<th>Yr 3</th>
<th>Yr 4</th>
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|  | $1.9 | $2.4 | $1.1 | - | $5.4 |
|  | $3.5 | $4.2 | $4.3 | - | $12.0 |
|  | $2.5 | $2.7 | $2.7 | $2.8 | $10.7 |

Total Capital Costs: $47.0 | $78.6 | $76.3 | $47.1 | $249.0
# O&M Summary

*(Nominal dollars, in millions)*

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<td>Rate Design</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>Annual Base Distribution Revenue Requirement</td>
<td></td>
<td></td>
<td></td>
<td>$242,807,679</td>
</tr>
<tr>
<td>25</td>
<td>IIR Percentage of Base Distribution Revenue Requirement</td>
<td>$3,100%</td>
<td>$7,5910%</td>
<td>$13,8280%</td>
<td>$20,0440%</td>
</tr>
</tbody>
</table>
EXHIBIT 3
<table>
<thead>
<tr>
<th>Metric</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advanced Metering Infrastructure (AMI) Meters</td>
<td></td>
</tr>
<tr>
<td>AMI meters installed, certified</td>
<td>The number of AMI meters installed, communicating, and available for billing each month.</td>
</tr>
<tr>
<td>AMI meters installed, but not certified</td>
<td>The number of AMI meters installed, but not yet communicating each month.</td>
</tr>
<tr>
<td>AMI meter failures</td>
<td>The number, if any, of AMI meters installed but replaced due to failure.</td>
</tr>
<tr>
<td>Meters Salvaged (#)</td>
<td>The number of legacy meters replaced with an AMI meter and sent to salvage each month.</td>
</tr>
<tr>
<td>Meters Salvaged ($)</td>
<td>The dollar value of legacy meters replaced with an AMI meter and sent to salvage each month.</td>
</tr>
<tr>
<td>Meter Reading</td>
<td></td>
</tr>
<tr>
<td>Manual Meter Reads</td>
<td>The number of non-AMI meter reads, i.e. in-person, used for billing purposes in the service</td>
</tr>
<tr>
<td></td>
<td>territory each month.</td>
</tr>
<tr>
<td>AMI Meter Reads</td>
<td>The number of AMI meter reads used for billing purposes in the service territory each month.</td>
</tr>
<tr>
<td>Meter Readers (Internal)</td>
<td>The number of meter readers (expressed in full-time equivalents) employed by the Company each month.</td>
</tr>
<tr>
<td>Meter Readers (Contract)</td>
<td>The number of meter readers employed through contract services by the Company each month.</td>
</tr>
<tr>
<td>Data Access &amp; Utilization</td>
<td></td>
</tr>
<tr>
<td>Customer Portal &amp; Mobile Application Engagement Activity</td>
<td>Depending on the availability, the following types of information will be provided each month:</td>
</tr>
<tr>
<td></td>
<td>number of unique visitors, average session duration, retention rate, etc.</td>
</tr>
<tr>
<td>Data Access (Customers)</td>
<td>Number of customers accessing or downloading their energy usage data each month, broken out</td>
</tr>
<tr>
<td></td>
<td>by customer class (if possible).</td>
</tr>
<tr>
<td>Data Access (GBC)</td>
<td>Number of CRES providers or third parties accessing or downloading customer's data via GBC each month.</td>
</tr>
<tr>
<td>Data Access (EDI)</td>
<td>Number of CRES providers accessing customer's data via EDI each month.</td>
</tr>
<tr>
<td>Customer Authorization</td>
<td>The number of customers authorizing the release of their customer energy usage data in accordance with 4901:1-10-24 each month.</td>
</tr>
<tr>
<td>Use of AMI Data for Wholesale Settlement</td>
<td>The number of customers with AMI meters that have THEO, PLC, and NSPL values calculated and settled based on actual usage.</td>
</tr>
<tr>
<td>-----------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Use of Load Profiles for Wholesale Settlement</td>
<td>The number of customers with AMI meters that have THEO, PLC, and NSPL values calculated and settled based on load profiles.</td>
</tr>
<tr>
<td><strong>Billing Related</strong></td>
<td><strong>Definition</strong></td>
</tr>
<tr>
<td><strong>Metric</strong></td>
<td><strong>Definition</strong></td>
</tr>
<tr>
<td>Residential Bills</td>
<td>The number of residential bills issued each month or billing period.</td>
</tr>
<tr>
<td>Residential Bills, Estimated Reads</td>
<td>The number of residential bills issued each month or billing period, based on estimated meter reads.</td>
</tr>
<tr>
<td>Customers Eligible for Disconnect (System)</td>
<td>The number of customers eligible for disconnect due to non-payment each month or billing cycle, system wide.</td>
</tr>
<tr>
<td>Customers Eligible for Disconnect (AMI Only)</td>
<td>The number of customers with AMI meters eligible for disconnect due to non-payment for each month of billing cycle.</td>
</tr>
<tr>
<td>Non-Payment Disconnects (System)</td>
<td>The number of customers disconnected due to non-payment each month or billing cycle, system wide.</td>
</tr>
<tr>
<td>Non-Payment Disconnects (AMI Only)</td>
<td>The number of customers with AMI meters disconnected due to non-payment for each month or billing cycle.</td>
</tr>
<tr>
<td>AMI Meter Tampering Cases</td>
<td>The number of AMI meter tampering cases found each month.</td>
</tr>
<tr>
<td>AMI Meter Tampering Case Outcomes</td>
<td>Descriptions of the outcomes of AMI meter tampering case investigations, including any monetary value of theft or avoided theft identified.</td>
</tr>
<tr>
<td><strong>Customer Impact Measures</strong></td>
<td><strong>Definition</strong></td>
</tr>
<tr>
<td><strong>Metric</strong></td>
<td><strong>Definition</strong></td>
</tr>
<tr>
<td>Call Center Calls</td>
<td>The total number of call center calls received each month.</td>
</tr>
<tr>
<td>Call Center Calls (Meter Reading)</td>
<td>Depending on the availability, the total number of call center calls related to meter reading each month.</td>
</tr>
<tr>
<td>Call Center Calls (Bill Complaints)</td>
<td>Depending on the availability, the total number of call center calls related to billing complaints each month, e.g. high bill complaints, etc.</td>
</tr>
<tr>
<td>Call Center Calls (AMI Meters)</td>
<td>Depending on the availability, the total number of call center calls related to AMI meters each month, broken out by category, if possible, e.g. installation questions, radio frequency concerns, etc.</td>
</tr>
<tr>
<td>Distribution Automation (DA)</td>
<td></td>
</tr>
</tbody>
</table>
### Exhibit 3

<table>
<thead>
<tr>
<th>Metric</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Device Counts for DA</td>
<td>The number of devices deployed for each DA scheme, broken out by technology, i.e. recloser, cap bank, voltage regulator, and sensor count.</td>
</tr>
<tr>
<td>Number of Circuits Impacted by DA</td>
<td>The number of circuits impacted by DA schemes.</td>
</tr>
<tr>
<td>Circuit Information</td>
<td>For circuits impacted by DA schemes, breakout of circuit load information by customer class or rate schedule.</td>
</tr>
<tr>
<td>DA Opportunities</td>
<td>The number of opportunities to operate DA each month.</td>
</tr>
<tr>
<td>DA Successes</td>
<td>The number of times where DA operated as intended each month.</td>
</tr>
<tr>
<td>DA Failures</td>
<td>The number of times where DA failed to operate as intended each month.</td>
</tr>
<tr>
<td>Outage-Related Truck Rolls</td>
<td>The number of outage-related truck rolls each month.</td>
</tr>
<tr>
<td>Outage Related Truck Rolls (Avoided)</td>
<td>The estimated number of avoided truck rolls related to the successful operation of DA technologies.</td>
</tr>
<tr>
<td>Customer Minutes Saved (DA)</td>
<td>The estimated customer minutes saved due to the successful operation of DA technologies.</td>
</tr>
<tr>
<td>Customer Interruptions Avoided (DA)</td>
<td>The estimated number of customer interruptions avoided due to the successful operation of DA technologies.</td>
</tr>
<tr>
<td><strong>Volt/VAR Optimization (VVO) &amp; Conservative Voltage Reduction (CVR)</strong></td>
<td></td>
</tr>
<tr>
<td>Metric</td>
<td>Definition</td>
</tr>
<tr>
<td>Average System Voltage</td>
<td>End-use voltage levels for all customers.</td>
</tr>
<tr>
<td>Average System Voltage (VVO/CVR)</td>
<td>End-use voltage levels for customers on circuits impacted by VVO/CVR.</td>
</tr>
<tr>
<td>MW Saved</td>
<td>Total estimated MW saved due to VVO/CVR each month.</td>
</tr>
<tr>
<td>MWh Saved</td>
<td>Total estimated MWh saved due to VVO/CVR each month.</td>
</tr>
</tbody>
</table>
EXHIBIT 4
DP&L SGP Cost Benefit Summary

Figure 1
(in Millions)

<table>
<thead>
<tr>
<th>BENEFITS &amp; COSTS</th>
<th>NOMINAL</th>
<th>NPV</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>BENEFITS (20yr):</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Utility</td>
<td>$813.8</td>
<td>$347.0</td>
</tr>
<tr>
<td>O&amp;M Savings</td>
<td>$207.7</td>
<td>$97.0</td>
</tr>
<tr>
<td>Avoided Capital</td>
<td>$115.6</td>
<td>$52.7</td>
</tr>
<tr>
<td>Billing Process Efficiency</td>
<td>$27.5</td>
<td>$13.2</td>
</tr>
<tr>
<td>$64.6</td>
<td>$31.1</td>
<td></td>
</tr>
<tr>
<td><strong>Customer</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Energy &amp; Demand Savings</td>
<td>$606.1</td>
<td>$250.0</td>
</tr>
<tr>
<td>Improved Reliability</td>
<td>$182.3</td>
<td>$75.7</td>
</tr>
<tr>
<td>Customer EV Savings</td>
<td>$193.0</td>
<td>$90.6</td>
</tr>
<tr>
<td>$229.8</td>
<td>$83.6</td>
<td></td>
</tr>
<tr>
<td><strong>COSTS (20yr):</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital</td>
<td>$387.9</td>
<td>$284.0</td>
</tr>
<tr>
<td>AFUDC</td>
<td>$242.7</td>
<td>$205.1</td>
</tr>
<tr>
<td>$5.3</td>
<td>$4.4</td>
<td></td>
</tr>
<tr>
<td>Cost of Existing Equipment</td>
<td>$18.3</td>
<td>$15.0</td>
</tr>
<tr>
<td>O&amp;M</td>
<td>$120.7</td>
<td>$59.5</td>
</tr>
<tr>
<td><strong>Net Benefit:</strong></td>
<td>$425.9</td>
<td>$63.0</td>
</tr>
<tr>
<td><strong>Benefit/Cost Ratio:</strong></td>
<td>2.1</td>
<td>1.2</td>
</tr>
</tbody>
</table>

Figure 2
(in Millions)

<table>
<thead>
<tr>
<th>BENEFITS &amp; COSTS</th>
<th>NOMINAL</th>
<th>NPV</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>BENEFITS (20yr):</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Utility</td>
<td>$1,255.3</td>
<td>$697.3</td>
</tr>
<tr>
<td>O&amp;M Savings</td>
<td>$207.7</td>
<td>$97.0</td>
</tr>
<tr>
<td>Avoided Capital</td>
<td>$115.6</td>
<td>$52.7</td>
</tr>
<tr>
<td>Billing Process Efficiency</td>
<td>$27.5</td>
<td>$13.2</td>
</tr>
<tr>
<td>$64.6</td>
<td>$31.1</td>
<td></td>
</tr>
<tr>
<td><strong>Customer</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Energy &amp; Demand Savings</td>
<td>$506.1</td>
<td>$250.0</td>
</tr>
<tr>
<td>Improved Reliability</td>
<td>$182.3</td>
<td>$75.7</td>
</tr>
<tr>
<td>Customer EV Savings</td>
<td>$193.0</td>
<td>$90.6</td>
</tr>
<tr>
<td>$229.8</td>
<td>$83.6</td>
<td></td>
</tr>
<tr>
<td><strong>Societal Benefits</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reduced GHG</td>
<td>$441.5</td>
<td>$350.3</td>
</tr>
<tr>
<td>Economic Impact</td>
<td>$400.1</td>
<td>$336.8</td>
</tr>
<tr>
<td><strong>COSTS (20yr):</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital</td>
<td>$387.9</td>
<td>$284.0</td>
</tr>
<tr>
<td>AFUDC</td>
<td>$243.7</td>
<td>$205.1</td>
</tr>
<tr>
<td>Cost of Existing Equipment</td>
<td>$5.3</td>
<td>$4.4</td>
</tr>
<tr>
<td>O&amp;M</td>
<td>$120.7</td>
<td>$59.5</td>
</tr>
<tr>
<td><strong>Net Benefit:</strong></td>
<td>$867.3</td>
<td>$413.3</td>
</tr>
<tr>
<td><strong>Benefit/Cost Ratio:</strong></td>
<td>3.2</td>
<td>2.5</td>
</tr>
</tbody>
</table>
This foregoing document was electronically filed with the Public Utilities Commission of Ohio Docketing Information System on 10/23/2020 9:06:50 AM in Case No(s). 18-1875-EL-GRD, 18-1876-EL-WVR, 18-1877-EL-AAM, 20-0680-EL-UNC, 19-1121-EL-UH

Summary: Stipulation Stipulation and Recommendation electronically filed by Mr. Jeffrey S Sharkey on behalf of The Dayton Power and Light Company
IN WITNESS WHEREOF, the City and Contractor, each by a duly authorized representative, have executed this Agreement on the date first written above.

CITY OF DAYTON, OHIO

Shelley D. O'Neil
City Manager

APPROVED AS TO FORM
AND CORRECTNESS:

X
City Attorney

APPROVED BY THE COMMISSION
OF THE CITY OF DAYTON, OHIO

October 28, 2020

Min./Bk. I-14 Pg. 031
Regina D. Blackshear
Clerk of Commission
City Manager’s Report

From 6210 - Police Director
Supplier, Vendor, Company, Individual
Name Montgomery County Sheriff’s Office
Address 330 West Second Street
Dayton, OH 45422
Date December 22, 2021
Expense Type Other, (See Description Below)
Total Amount $4,169,576.00 thru 12/31/22

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Fund</td>
<td>10000-6210-1158-71</td>
<td>$3,369,843.00</td>
</tr>
<tr>
<td>General Fund</td>
<td>10000-6340-1158-72</td>
<td>$796,669.00</td>
</tr>
<tr>
<td>Airport Operations</td>
<td>51000-3223-1158-43</td>
<td>$3,064.00</td>
</tr>
</tbody>
</table>

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

Description
Regional Dispatch Center 2022 Rates

City Commission approval is requested for the 2022 billing rates for emergency dispatch services as provided through the Consolidated Emergency Communications Center [now known as the Regional Dispatch Center (“RDC”)] and operated by the Montgomery County Sheriff’s Office. The City will reimburse Montgomery County a total of Four Million One Hundred Sixty-Nine Thousand Five Hundred Seventy-Six Dollars ($4,169,576.00), payable on a quarterly basis, for emergency dispatch services in 2022 broken down annually above: Police Department - $3,369,843.00; Fire Department - $796,669.00; and Airport - $3,064.00.

Pursuant to Article III of the original Agreement executed in February 2008, the Emergency Communications Policy Committee (“ECPC”), which consists of a representative (the chief elected official) from each participating jurisdiction, a member from the Board of Commissioners of Montgomery County ("County Commissioners"), the Montgomery County Sheriff, the president of the Montgomery County Police Chiefs’ Association, and the president of the Montgomery County Fire Chiefs’ Association, has voted on and approved the billing rate model for 2022 to be used by the participating jurisdictions. The rates are in accordance with the ECPC’s recommendations.

Through an Amendment adopted in December 2011, the City agreed to pay for the emergency dispatch services using the rates as recommended and approved by the ECPC, subject to the approval by the City Commission of the City of Dayton.

The result is an overall increase of approximately 6.2% to the City, over the 2021 rate.

A Certificate of Funds, copies of Agreement and First Addendum and the ECPC approved 2022 billing rates are attached.

Signatures/Approval

E-SIGNED by Paul Saunders
on 2021-12-13 11:37:41 EST
Division

E-SIGNED by Eric Henderson
on 2021-12-13 11:21:21 EST
Department

Approved by City Commission
Clerk
Date
Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>New Contract</th>
<th>Renewal Contract</th>
<th>Change Order</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Start Date</td>
<td>01/01/22</td>
<td></td>
</tr>
<tr>
<td>Expiration Date</td>
<td>12/31/22</td>
<td></td>
</tr>
<tr>
<td>Original Commission Approval</td>
<td>$ 4,169,576.00</td>
<td>Initial City Manager's Report</td>
</tr>
<tr>
<td>Initial Encumbrance</td>
<td>$ 4,086,125.00</td>
<td>Initial Certificate of Funds</td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$ 84,451.00</td>
<td>Initial Agreement/Contract</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Required Documentation</th>
</tr>
</thead>
<tbody>
<tr>
<td>X Copy of City Manager's Report</td>
</tr>
<tr>
<td>X Copy of Original Certificate of Funds</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Original CT/CF</th>
<th>Increase Encumbrance</th>
<th>Decrease Encumbrance</th>
<th>Remaining Commission Approval</th>
</tr>
</thead>
<tbody>
<tr>
<td>CT105138</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>

<p>| Amount: | $ 3,285,392.00 | Seq. 1 |
| Fund Code: | 10000 - 6210 - 1158 - 71 - XXXX - XXXX |</p>
<table>
<thead>
<tr>
<th>Fund</th>
<th>Org</th>
<th>Acct</th>
<th>Prog</th>
<th>Act</th>
<th>Loc</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<p>| Amount: | $ 796,689.00 | Seq. 2 |
| Fund Code: | 10000 - 6340 - 1158 - 72 - XXXX - XXXX |</p>
<table>
<thead>
<tr>
<th>Fund</th>
<th>Org</th>
<th>Acct</th>
<th>Prog</th>
<th>Act</th>
<th>Loc</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<p>| Amount: | $ 3,064.00 | Seq. 3 |
| Fund Code: | 51000 - 3223 - 1158 - 43 - XXXX - XXXX |</p>
<table>
<thead>
<tr>
<th>Fund</th>
<th>Org</th>
<th>Acct</th>
<th>Prog</th>
<th>Act</th>
<th>Loc</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

Attach additional pages for more FOAPALs

Vendor Name: Montgomery County - Sheriff's Office
Vendor Address: 330 West Second Street Dayton OH 45422
Federal ID: 316000172
Commodity Code: 72518
Purpose: Reservation of 2022 funds to Montgomery County for the provision of Regional Dispatch Services to the City of Dayton, Departments of Police, Fire, and Airport Fire.

Contact Person: Meredith Weber x1099

Police/Director's Office
12/13/2021
Department/Division
Date

Originating Department Director's Signature: E-SIGNED by Eric Henderson on 2021-12-13 11:21:29 EST
Police - seq. 1

Originating Department Director's Signature: E-SIGNED by Jeff Lykins on 2021-12-13 09:52:04 EST
Fire - seq. 2

Originating Department Director's Signature: Gilbert Turner
Aviation - seq. 3
Digitally signed by Gilbert Turner on 2021-12-13 10:40:17 -05'00'

SECTION II - to be completed by the Finance Department

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

Finance Director Signature
12/14/21
Date

CF Prepared By
12/14/21
Date

CF/CF Number
(21)4/21
FIRST AMENDMENT TO THE ADDENDUM TO THE
AGREEMENT TO PROVIDE EMERGENCY DISPATCH SERVICES
IN A CONSOLIDATED EMERGENCY COMMUNICATIONS CENTER

This First Amendment to the Addendum to the Agreement to Provide Emergency Dispatch Services in a Consolidated Emergency Communications Center ("Amendment"), dated this __/7__/2012, is between the Board of County Commissioners of Montgomery County ("Board") and the City of Dayton, Ohio ("City").

WITNESSETH THAT:

WHEREAS, the City of Dayton entered into an Agreement on April 8, 2008 with the Montgomery County Board of Commissioners wherein the Board agreed to provide emergency dispatch services in a consolidated emergency communications center, now referred to as the Regional Dispatch Center ("RDC"), and operated by the Montgomery County Sheriff; and

WHEREAS, Pursuant to Article III of the Agreement, the Emergency Communications Policy Committee ("ECPC") has made a recommendation with regard to the 2012 dispatch fees and payment methods; and

WHEREAS, Pursuant to Article XII of the Agreement, the Agreement may be amended by written agreement signed by both the Board and the City, at any time, upon mutual agreement; and

WHEREAS, The City desires clarify certain payment terms of the Addendum to the Agreement in the best interests of the City.

NOW, THEREFORE, For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Board agree to delete Section 2 of the Addendum to the Agreement in its entirety and replace it with the following:

2. The City will pay for services as outlined in Article III of the Agreement according to rates and charges as recommended by the Emergency Communications Policy Committee, subject to approval by the Commission of the City of Dayton.

Except as modified by this First Amendment to the Addendum to the Agreement, the terms of the Agreement and the Addendum to the Agreement shall continue to apply and remain in full force and effect.

[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]
Signature Page - First Amendment to the Addendum to the Agreement to Provide Emergency Dispatch Services in a Consolidated Emergency Communications Center.

IN WITNESS THEREOF, the parties, each by a duly authorized representative, have executed this First Amendment to the Addendum to the Agreement to Provide Emergency Dispatch Services in a Consolidated Emergency Communications Center as of the date first above written.

Signed and acknowledged in the presence of:

Witness

Witness

Witness

BOARD OF COUNTY COMMISSIONERS OF MONTGOMERY COUNTY, OHIO

By: 

Judy Dodge, Commissioner

By: 

Dan Foley, Commissioner

By: 

Deborah A. Lieberman, Commissioner

OR

Witness

Deborah A. Feldman, County Administrator

CITY OF DAYTON, OHIO

Witness

By: 

Timothy H. Riordan, City Manager

APPROVED AS TO FORM AND CORRECTNESS:

City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO

December 28, 2011

Min./Bk. 117 Pg. 0380

Prosecuting Attorney

Clerk of Commission
RESOLUTION NO. 08-0691
APRIL 8, 2008

RESOLUTION AUTHORIZING AN AGREEMENT WITH MONTGOMERY COUNTY BOARD OF COUNTY COMMISSIONERS AND THE CITY OF DAYTON TO PROVIDE EMERGENCY DISPATCH SERVICES IN A CONSOLIDATED EMERGENCY COMMUNICATIONS CENTER AS OPERATED BY THE MONTGOMERY COUNTY SHERIFF.

WHEREAS, the (Participating Jurisdiction) is desirous of contracting with the Montgomery County Board of County Commissioners to provide emergency dispatch services in a consolidated emergency communications center as operated by the Montgomery County Sheriff; and

WHEREAS, the Montgomery County Board of County Commissioners as authorized by the Ohio Revised Code 307.15 may contract with governmental entities to perform a function on behalf of the governmental entity; and

WHEREAS, a consolidated dispatch center has been identified as an opportunity for operation efficiency, service effectiveness, cost savings, community safety and regional cooperation; and

WHEREAS, the Montgomery County Board of Commissioners designates the County Sheriff to provide all operational responsibility for the Consolidated Emergency Communications Center; and

WHEREAS, a permanent Emergency Communications Policy Committee is established to oversee the Consolidated Emergency Communications Center; and

WHEREAS, after much discussion and deliberation and with input and action by participating communities, the Board of County Commissioners desire to enter into this Agreement.

NOW, THEREFORE, BE IT RESOLVED that the Resolution authorizing an Agreement with Montgomery County Board of County Commissioners to provide emergency dispatch services in a Consolidated Emergency Communications Center as operated by the County Sheriff be and is hereby approved.

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

3/17/2008
Mrs. Lieberman moved the adoption of the foregoing resolution. It was seconded by Mr. Foley, and upon call of the roll the following vote resulted:

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

I hereby certify that the foregoing is a true and correct copy of a resolution duly adopted by the Board of County Commissioners of Montgomery County, Ohio, the 8th day of April, 2008.

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

Carol A. Prewitt, Clerk
Board of County Commissioners
Montgomery County, Ohio
THIS AGREEMENT made and entered into at Dayton, Montgomery County, Ohio, on the dates set forth at the end hereof, between the BOARD OF COUNTY COMMISSIONERS OF MONTGOMERY COUNTY, OHIO, 451 West Third Street, P.O. Box 972, Dayton, Ohio 45422 (the "Board"), and the CITY OF DAYTON, OHIO (the "Participating Community") to provide emergency dispatch services in a Consolidated Emergency Communications Center as operated by the Montgomery County Sheriff.

ARTICLE I
RECATALS

In 2003, a consolidated dispatch center was ranked the highest priority for the use of homeland security funds.

In 2005, City Managers and Township Administrators of the Dayton area identified consolidated dispatch as a priority issue for consideration.

In 2006, Montgomery County contracted for a feasibility study regarding consolidated dispatch. Several committees, the Emergency Communications Policy Committee and Technical Advisory Committee were formed to research, investigate and make decisions regarding a consolidated dispatch function.

This Agreement delegates all operational responsibility of the Emergency Communications Policy Committee to the Montgomery County Sheriff.

This Agreement outlines the roles and responsibilities of the County Commissioners and the participating community.

This Agreement outlines the roles and responsibilities of the Emergency Communications Policy Committee and the Technical Advisory Committee.

ARTICLE II
OPERATIONAL RESPONSIBILITY

The Montgomery County Board of County Commissioners hereby delegates all operational responsibility of the Consolidated Emergency Communications Center to the Montgomery County Sheriff. This includes, but is not limited to:

- Operational responsibility for the consolidated emergency communications center
- Personnel decisions including hiring, discharge, salary administration, collective bargaining, etc.
- Preparation of annual budget

3/13/2008
Recommendation of fees assessed to participating communities
Response to citizen and community complaints
Recommendations to the ECPC and TAC regarding technology upgrades

ARTICLE III
OBLIGATIONS OF RESPONSIBLE PARTIES

Emergency Communications Policy Committee (ECPC)

Membership:
Chief elected official from each participating jurisdiction or their alternate.
The alternate may be either an elected or appointed official, but only
elected officials are entitled to vote.
1 Member of Montgomery County Board of County Commissioners
Montgomery County Sheriff
President of Montgomery County Police Chiefs Association, if from a
participating community. If not, another officer of the Association who is
from a participating community would be the representative.
President of the Montgomery County Fire Chiefs Association, if from a
participating community. If not, another officer of the Association who is
from a participating community would be the representative.

Organization:
The ECPC shall annually elect a chair from among its members.
Each member community, the Montgomery County Board of County
Commissioners and the Montgomery County Sheriff shall have one vote
on the ECPC.
The ECPC shall meet at least quarterly, but special meetings may be
called by the chair or at the request of any 3 members.
Within 90 days of the effective date of this contract, the chair shall appoint
a by-laws committee to develop by-laws for the operation of the ECPC.
The by-laws will require a 2/3 vote of members to be adopted.

Roles and Responsibilities:
Develop and recommend to the County Sheriff policies related to the
operations of the Emergency Communications Center and unless exigent
situations shall exist, the Sheriff shall implement said policies. Policy
issues may include issues such as:

- Fees charged to participating communities
- Capital expenditures necessary to ensure the
  maintenance of a state of the art communications center
  (i.e. radio platform, computer aided dispatch (CAD))
- Review and recommendation of annual operating
  budget
- Definition (list) of charged for dispatches.
- Appoint subcommittees as necessary. Subcommittee
  members do not necessarily need to be a member of the
  Policy Committee.
• Other such duties as are necessary to support the operation of the dispatch center.

Technical Advisory Committee (TAC) will be the subcommittee of the Emergency Communications Policy Committee (ECPC)

Membership:
Chief administrative official from each participating jurisdiction or their alternate

Roles and Responsibilities:
Advises Emergency Communications Policy Committee (ECPC) and the Sheriff including, but not limited to:
• Technology upgrades
• Fees
• Operating budget to ECPC
• Operating policies and procedures (i.e. dispatch protocols)
• Legislative changes that affect emergency communications
• May appoint subcommittees as necessary

Police and Fire Advisory Committees

Membership:
Separate police and fire advisory committees comprised of the police chief and fire chief of each participating community.

Roles and Responsibilities:
Advises the Technical Advisory Committee (TAC), the Sheriff and the Emergency Communications Policy Committee (ECPC) on technical issues related to the dispatch center

Participating Communities

Roles and Responsibilities:
Participate in the ECPC and TAC
Pay share of costs as recommended by ECPC

Montgomery County Board of County Commissioners

Roles and Responsibilities:
Administer and approve contracts with participating jurisdictions
Participate in the ECPC and TAC
Delegate all operational responsibility of the Consolidated Emergency Communications Center to the Montgomery County Sheriff

3/13/2008
ARTICLE IV
OBLIGATIONS OF FUTURE PARTICIPATING COMMUNITIES

Montgomery County jurisdictions that become Participating Communities in the Consolidated Emergency Communications Center after the initial inception of the Center will have full rights and responsibilities to all Articles outlined in this Agreement.

The following schedule outlines the financial obligations for capital contribution costs of future Participating Communities for the backup emergency communications center. Contribution is calculated as a cost per dispatch:

First 1 – 6 years of Consolidated Emergency Communications Center: Participating Communities to pay in full the contribution for the backup emergency communications center.

Years 7 – 10: Participating Communities to pay 75% of the total contribution for the backup emergency communications center.

Years 11 – 15: Participating Communities to pay 50% of the total contribution for the backup emergency communications center.

Years 16 – 20: Participating Communities to pay 25% of the total contribution for the backup emergency communications center.

Payments can be made by lump sum or amortized for up to five (5) years until full payment is realized.

Participating Communities that join the Consolidated Emergency Communications Center during the initial ten (10) years of the Center will be required to pay in full the Capital Equipment Reserve proportion for the jurisdiction. This payment can be made by lump sum or amortized for up to ten (10) years until full payment is realized.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

The County represents and warrants to the Participating Community that the execution and delivery of this Agreement has been duly authorized by all appropriate actions of its governing body and this Agreement constitutes a legal, valid and binding obligation of the County in accordance with its terms.

The Participating Community represents and warrants to the County that the execution and delivery of this Agreement has been duly authorized by all appropriate actions of its governing body and that this Agreement constitutes a legal, valid and binding obligation of the Participating Community in accordance with its terms.

3/13/2008
The County represents and warrants to the Participating Community, and the Participating Community represents to the County, that to the best of each of their knowledge there is no pending or threatened litigation or government proceeding which would adversely affect the performance of their representative obligations under this Agreement.

ARTICLE VI
DURATION

The term of this Agreement shall commence the date the Participating Community and the Board of County Commissioners have executed the Agreement and shall continue until the payment in full of any debt, lease, capital replacement fund and/or backup center financial obligations incurred by Montgomery County and/or Participating Community for the Consolidated Emergency Communications Center. This Agreement shall continue automatically beyond the payment in full of any debt lease, capital replacement fund and/or backup center financial obligations unless either the County or the Participating Community elects to terminate this Agreement after the final payment of any debt lease, capital replacement fund and/or backup center financial obligations upon not less than one year’s prior written notice of such election to the party hereto.

The rights and obligations of the County and Participating Community under this Agreement may be assigned by the County and Participating Community. Notwithstanding any such assignment, the County or Participating Community, respectively, shall remain liable under the terms of this Agreement unless released of all or certain of its obligations hereunder by the other parties.

ARTICLE VII
NON-WAIVER

Any waiver, whether in writing or by failure of the party to timely act, of any requirement within this Agreement or of any breach of any requirement with this Agreement:

a) shall not constitute a waiver of any subsequent Agreement herein or of any subsequent breach of any Agreement herein; and
b) shall not otherwise affect the rights of the party under this Agreement with respect to any said requirement or subsequent breach of said requirement.

ARTICLE VIII
SEVERABILITY

Should any provision or any part of any provision with this Agreement be held unconstitutional or otherwise null or void by a tribunal of competent jurisdiction, said
provision or part thereof shall be severed from this Agreement, and the remainder of this Agreement shall continue to be in full force and effect as agreed by the parties.

ARTICLE IX
ASSIGNMENT

Except as otherwise provided in this Article, the rights and obligations of the County, Sheriff or Participating Community may be assigned by the County or the Participating Community. Notwithstanding any such assignment, the County or the Participating Community respectively, shall remain under the terms of this Agreement unless released by all of its obligations hereunder by the other party.

ARTICLE X
APPLICABLE STATE LAW

The rights, obligations and remedies of the parties ratified under this Agreement shall be interpreted in all respects by laws of the State of Ohio.

ARTICLE XI
COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which collectively shall constitute one and the same instrument.

ARTICLE XII
AMENDMENTS, CHANGES AND MODIFICATIONS

Except as otherwise provided herein, this Agreement shall not be effectively amended, changed or terminated except in writing signed on behalf of the County and the Participating Community.

ARTICLE XIII
MISCELLANEOUS

The Agreement, in all respects is hereby ratified and reaffirmed, and all provisions of the Agreement not so amended shall remain in full force and effect. After the effective date of this Agreement, references to the Agreement shall be deemed to apply to the Agreement as amended.

3/13/2008
Signature Page – Agreement to provide emergency dispatch services in a Consolidated Emergency Communications Center.

IN WITNESS WHEREOF, the parties have hereunto set their hands this 19th day of April, 2008.

Signed and acknowledged in the presence of:

BOARD OF COUNTY COMMISSIONERS OF MONTGOMERY COUNTY, OHIO

Witness

By: Judy Dodge, Commissioner

Witness

By: Dan Foley, Commissioner

Witness

By: Deborah A. Lieberman, Commissioner

OR

Witness

By: Deborah A. Feldman, Administrator

CITY OF DAYTON, OHIO

Witness

By: (Sign) Rashad M. Young

By: (Print) Rashad M. Young

Title: City Manager

Date: 3/14/08

APPROVED AS TO FORM AND CORRECTNESS:

APPROVED AS TO FORM:

MATHIAS H. HECK, JR.
PROSECUTING ATTORNEY
MONTGOMERY COUNTY, OHIO

By: Assistant Prosecuting Attorney

Date: 4/16/08

3/13/2008
ADDENDUM TO
AGREEMENT TO PROVIDE EMERGENCY DISPATCH SERVICES
IN A CONSOLIDATED EMERGENCY COMMUNICATIONS CENTER

This Addendum to the Agreement to Provide Emergency Dispatch Services in a Consolidated Emergency Communications Center between the Board of County Commissioners of Montgomery County and the City of Dayton, Ohio ("Addendum") is dated this 14th day of April, 2008.

WITNESSETH THAT:

WHEREAS, the Board of County Commissioners of Montgomery County (the "Board") and the City of Dayton, Ohio ("Dayton") as a participating community have executed an Agreement to Provide Emergency Dispatch Services in a Consolidated Emergency Communications Center ("Agreement"); and

WHEREAS, Dayton desires to clarify certain terms of the Agreement.

NOW, THEREFORE, the parties hereby agree to the terms and conditions set forth in this Addendum:

1. The Board, through its operation of the Consolidated Emergency Communications Center (hereinafter "the Center") will provide the following services to Dayton:

   • Enhanced 9-1-1 service through the Center and/or a back-up center.
   • Emergency dispatch service through the Center and/or a back-up center. (Emergency Medical Dispatching certified dispatchers will be used for fire dispatching.) Emergency dispatch service means directly dispatching emergency law enforcement, firefighting, ambulance, rescue, or medical service; relaying a message to the appropriate provider; or transferring the call to the appropriate provider.
   • Non-emergency 7-digit phone answering.
   • Call out of essential, non-emergency personnel to respond.
   • Notification of Dayton police or fire command and other Dayton personnel.

2. As payment for the services set forth above, Dayton will reimburse the Board according to the following per dispatch, rate schedule:

<table>
<thead>
<tr>
<th>Year</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rate**</td>
<td>$13.14</td>
<td>$13.89</td>
<td>$14.40</td>
</tr>
</tbody>
</table>

** These figures represent the maximum rate to be charge. The actual rates charged will be based on the final staffing level utilized.

After 2010, the rate charged will be a blended rate, which will be determined by the ECPC. The projected blended rate for 2011 is $12.61, and for 2012 is $12.99

3. Article VI, "Duration," of the Agreement notwithstanding, the Agreement shall commence upon full execution by the parties and it shall expire on December 31, 2028. The Agreement may be renewed upon mutual agreement of the parties, provided that the renewal is set forth in writing and approved by both parties.

4. Dayton may terminate the Agreement any time after December 31, 2018, upon giving written notice of termination to the Board at least one hundred eighty (180) days prior to the effective date of such termination. In the event Dayton terminates its participation in the Agreement prior to December 31, 2028, Dayton agrees to pay annually to the Board an amount equal to Dayton's proportionate share of the annual rent due and owing by the Board until December 31, 2028 for property occupied by the Center pursuant to a 20-year lease approved by the ECPC and entered into by the Board.

5. Letters between Dayton City Manager Rashad Young and County Administrator Deborah Feldman, dated September 13, 2007 and October 23, 2007 respectively, set forth additional terms and conditions related to the funding and operation of the Center. Copies of the letters are attached to this Addendum and are incorporated herein by reference.
6. Dayton's participation in the Center is conditioned upon the proposed Tiburon system effectively interfacing with Dayton's current CAD/MIS system. If the two systems cannot be interfaced, then the Agreement is hereby terminated and Dayton is released from any further obligations pursuant to the Agreement.

7. The parties agree that this Addendum is to be appended to and made a part of the Agreement.

8. In the event of any conflict between this Addendum, the Agreement, and any term or condition found within any other document, the order of precedence shall be: (1) this Addendum; (2) the letters between Dayton City Manager Rashad M. Young and County Administrator Deborah A. Feldman, dated September 13, 2007 and October 23, 2007 respectively; (3) the Agreement.

9. Except as modified or supplemented hereby, all other terms, conditions, and obligations set forth in the Agreement shall remain effective.

IN WITNESS WHEREOF, the City and the Board, each by a duly authorized representative, have executed this Addendum as of the date first set forth above.

Signed and acknowledged in the presence of:

[Signature]
Witness

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]
Attorney

CITY OF DAYTON, OHIO

City Manager

Date: 3/17/03

BOARD OF COUNTY COMMISSIONERS
OF MONTGOMERY COUNTY, OHIO

BY
Deborah A. Lieberman

BY
Judy Dodge

BY
Dan Foley

BY
Deborah A. Feldman, Administrator

Date: 4/8/08

APPROVED:
Dave Vore, Sheriff, Montgomery County, Ohio

By
Sheriff, Montgomery County, Ohio

APPROVED AS TO FORM:
MATHIAS H. HECK, JR, Prosecuting Attorney
Montgomery County, Ohio

By
Assistant Prosecuting Attorney
September 13, 2007

Ms. Deborah Feldman
Montgomery County Administrator
451 W. Third Street
Dayton, OH 45422

Dear Ms. Feldman:

RE: Regional Dispatch Issues

As you know, the City of Dayton has had the privilege of participating in the preliminary assessment process for the development of a regional consolidated dispatch center. To assist the City’s decision in participating in the regional consolidated dispatch’s implementation, the following concerns or questions will need to be addressed. Without this information, it will be difficult to ensure an appropriate decision is reached as to whether our continued participation would be in the best interest of the citizens of Dayton.

A) Cost Structure – We continue to be concerned that rate equalization is not guaranteed upfront but depends on future agreements of the ECPC even though our commitment of participation must be made upfront.

B) Staffing Parameters – Staffing levels, training and use of existing personnel need to be discussed to ensure that the needs of Dayton’s citizens are adequately protected.

C) Phasing – A phasing schedule has been discussed, however, given the changes in membership, how will this impact phasing and start-up?

D) Operational Concerns – Due to the size and complexity of Dayton’s dispatch functions, it is imperative that the following operational concerns be resolved in order to proceed with a participation commitment.

1. CAD-MIS-MDT Functionality – We have communicated to the MCSO and their CAD/RMS vendor, Tiburon, the functionality provided by our CAD and MIS systems and the importance of maintaining these capabilities if the Dayton Police Department (DPD) and Dayton Fire Department (DFD) were to be dispatched from the MCSO’s CAD. This functionality supports public safety forces in the field, record keeping and statistical analysis, and the internal business practices of the DPD and the DFD. After much prodding, Tiburon communicated to the MCSO that the customizations would cost $658,220, would increase maintenance costs $50,800 annually, and would disqualify the MCSO from their Version Management Program, thus significantly increasing the cost to update and upgrade the MCSO system.

How does the MCSO propose to address the requirements of the City of Dayton with respect to the ongoing maintenance and upgrade of CAD and MIS?
2. **Technical Support** – The City of Dayton (COD) Information and Technology Services (ITS) Division staffs a 24/7 help desk. Critical systems at the Communications Center are supported by ITS technicians and contractors whose response is triggered by a users request to the Help Desk.

*What is the technical support plan, and what are the resources for the systems at the MCSO Communications Center?*

3. **Street/Map Database**

*How will the street file and map database used by the MCSO be made current and kept current?*

4. **Two-Stage Dispatching** – Incoming call volume and active radio channels necessitate that City of Dayton operations utilize two-stage dispatching.

*Will call-takers and dispatchers providing service to City of Dayton callers and crews use the two-stage dispatch model? Will dispatchers for DPD be required to answer incoming calls for service? Will call-takers for DPD be required to monitor a radio channel?*

5. **Training** – New employee training and continuing training for call-takers and dispatchers will require the commitment of training resources, particularly during transitional times and during periods of high employee turnover.

*Who will oversee and implement training programs for new call-takers and dispatchers, particularly fire dispatchers needing Emergency Medical Dispatch (EMD) certification? What other duties will these personnel have?*

6. **EMD** – Dayton Fire dispatchers are certified EMT-B. Dispatchers with an EMD certification have received less training and completed a less stringent certification than EMT-B.

*Will EMS call-takers for the City have a minimum of EMD certification?*

7. **9-1-1 Phase 1 & 2 Implementation (Interim and Long-Term)**

*What is the MCSO plan for implementation phase 1 and 2 wireless 9-1-1 prior to and after commencing dispatch operations for the City of Dayton.*

8. **Transition Plan** – A transition plan that includes on-site participation of DPD and DFD personnel is needed. During the transition period, on-site personnel will have the opportunity to assist with the management and response to incidents, and to develop procedures and protocols for unanticipated situations and to identify training needs.
9. **Administrator Functions** – The Dayton Police 9-1-1 Administrator, as keeper of the records, performed the following tasks from 2006 to present:

- 2,329 subpoenas, internal requests, and public records requests for 9-1-1 recordings and other dispatch records.
- 70 hours of courtroom appearances and testimony in Dayton Municipal and Montgomery County Common Pleas Court.

Typically, requests and subpoenas are fulfilled by the end of the next business day.

*Who at the MCSO will handle these tasks? What will the turn-around time be for these requests and subpoenas?*

10. **Fill-In** – A working incident, typically a structure fire or extended event using multiple emergency units, will cause a reduction of units available to respond to other emergencies. This reduction in force is impacted further by the fact that the left over force is concentrated in one area of the city, creating an imbalance in protection. The CAD Lieutenant initiates and maintains proper emergency equipment balance (fill-in) of available units throughout the city.

*Will “fill-in” practices be performed by the MCSO and direct Dayton Fire units to various positions within the city so the proper emergency equipment balance is maintained?*

11. **Recall** – Large emergencies often result in the need to call in off-duty personnel. The CAD Lieutenant currently initiates this action.

*How will the MCSO provide recall duties?*

12. **Notification** – It is essential that affected personnel, chief officers, as well as City staff be notified in a timely fashion as circumstances demand. At present, the CAD Lieutenant initiates notification to DFD and COD personnel through the DFD’s Outlook paging system. The trigger point for notification is based on a wide variety of circumstances: working incidents, fatalities, injuries, weather events, special events, etc.

**Arson Investigators** – Dispatch is the sole contact point for a request for an arson investigator. The CAD Lieutenant coordinates a monthly on-call schedule with Arson staff.

**Vehicle and Facility Maintenance** – Dispatch coordinates the notification of maintenance personnel due to facility and vehicle problems, particularly during non-business hours.
On-Duty Units – Specific circumstances dictate the need to notify other on-duty personnel without direct orders from a chief officer. Example: A working fire or other major incident/event will allow the dispatcher to notify a District Chief, Air Unit, Rehab Unit, etc. without being directed by the Incident Commander.

Other COD/Outside Agency Personnel – Through policy (without waiting on specific orders from an Incident Commander) specific circumstances dictate the need for dispatch to notify COD personnel and/or other outside agencies. Example: Public Works, Water, Environmental Protection Agency, Building Services, etc.

Will the notification practices be included in the services provided by the MCSO?

13. Chief Officer CAD Modifications – The Chief must maintain ability to instantly adapt the department to circumstances not addressed in Standard Operating Procedures. The Director and/or his or her designee must have the ability to instantly modify responses, add/create incident types, change response sequences, etc. Weather emergencies and the temporary closing of bridges and highways may impact normal operations and responses.

How will this modification process be addressed?

14. CAD File Data – Dispatch staff maintains an extensive database of information stored within the CAD files. This information is maintained by the dispatcher and information is easily moved in or out through the orders of chief officers. Various information related to specific locations that include life-safety information, contact and property information, as well as a wide-range of contact information for outside agencies.

Will CAD file data be maintained in data bases that are responsive to data needs of the individual communities?

15. Track Emergency Resources – DFD dispatchers maintain accurate status of all units. Through automation and voice, radio and phone communications COD dispatchers diligently track the availability of emergency units. Although DFD crews would continue to use automated means of tracking resources, the Montgomery County dispatch has no plans to require other agencies to have engine house notification systems and mobile data terminals (MDT). With the current projected staffing levels and plans for a one-stage operation, dispatchers will have a very difficult time tracking the status of resources throughout the county.

Please address how this will be handled.
16. **Maintain Communications Link with Non-Emergency Resources** – DFD dispatch also monitors two talk groups other than main fire dispatch; HELP and Prevention. The HELP talk group is a means for COD support crews to report emergencies directly to dispatch. HELP is also reserved for critical radio traffic in case Fire dispatch is busy. The Prevention talk group allows for coordination of prevention personnel activity.

*Will these (and other) talk groups be maintained?*

17. **DFD Citizen Complaints** – DFD dispatch will handle citizen complaints regarding DFD activity and forward to appropriate party. Often, a citizen complaint can be resolved directly by the CAD Lieutenant as they have the knowledge of policies and procedures to diplomatically explain extenuating circumstances.

*How will citizen complaints be handled?*

18. **Contact Point for Outside Emergency Agencies** –

- Ohio Task Force 1
  - Federal or State activation/notification of Ohio Task Force 1 or USAR
    (emergency management authority), State Emergency Response Plan
    (Columbus Dispatch Center) specifically requesting OH-TF1 or USAR
  - Caller will normally use the USAR line
  - Federal activation could arrive by fax only
- USAR Local or Regional Rescue Response Team
  - Source of call: Request usually made on the USAR line by a local
    jurisdiction requesting a local or regional rescue response.
- Ohio Fire Chief’s Emergency Response Plan or State Emergency
  Response Plan (OFCERP)
  - Source of call: Columbus Dispatch requesting activation of the OFCERP
  - They do not normally use the USAR line
- IMT - Incident Management Team
  - Request for Central IMT
  - Dayton I.C. requests an IMT
- Chempack
  - Requests made from a hospital or scene commander
- CodeRed

*Will the MCSO serve as the contact point for these agencies?*
Ms. Deborah Feldman
Regional Dispatch/Page Six
September 13, 2007

Thank you for your willingness to discuss the issues above. The City of Dayton is very interested in continuing its participation in this regional partnership; however, it is imperative that our citizens are assured a quality emergency dispatch service is maintained for their safety and welfare.

Please feel free to contact me should you have questions. I look forward to meeting with you in response to these issues in the very near future.

Sincerely,

Rashad M. Young
City Manager

RMY/jh
October 23, 2007

Mr. Rashad Young, City Manager
City of Dayton
101 West Third Street
Dayton, Ohio  45402

Dear Rashad:

We have appreciated the participation of the City of Dayton as we all work to create a regional dispatch center in an effort to improve public safety and be cost effective. We are in receipt of your letter dated September 13, 2007 and have attempted to answer your specific questions. We recognize that ongoing discussions are still occurring with our transition teams and that some of the technical problems are waiting outside technical assistance.

A) Cost Structure

On October 22 the ECPC adopted the concept of a single dispatch rate for all participants following the expiration of the County guaranteed rate in 2011.

B) Staffing

It is the intent of the Sheriff to hire existing qualified call takers and fire dispatchers from the City of Dayton in accordance with a transition plan being jointly developed by staff. In the staffing plan, 20 dispatch positions will be reserved for current City of Dayton dispatchers/call takers. The timing of the hiring will also be dependent on budgetary and staffing requirements. The number of dispatchers has been a matter of considerable discussion and the estimate of 80 could vary depending on the actual work load at the center. In developing the 80 dispatcher model, call load distribution and dispatch traffic were thoroughly reviewed, and the staffing level developed to maintain a performance standard of 911 calls being answered in 10 seconds or less.

By way of comparison, the GeoComm study showed a staffing of 79.42 FTE, with 26.6 FTE being call takers. With a staffing of 80, the proposed center would have 25.3 persons assigned as call takers. The report also suggested that some Fire/EMS dispatchers could
handle overflow 911 calls. For additional comparison, the report contained a chart showing the ratio of staff to service population. The numbers ranged from 1 dispatcher per 8,785 people in San Diego to 1 per 2,350 in Atlanta. The average of the 19 cities shown was 1 dispatcher per 4,669 population. The proposed consolidated center has 1 per 5,095 using 80 dispatchers.

Perhaps the best statement about the commitment to quality is the ongoing process to gain CALEA accreditation for the dispatch center. One employee of the Sheriff’s office is assigned full time to coordinate this accreditation effort. The formal application for CALEA accreditation will be filed by November 30, 2007.

C) Phasing

The phasing schedule remains as originally planned with the new center being opened in August of 2008 and with Dayton being phased in by August 2009. Training of your call takers will start prior to that time, with fire dispatchers being trained after the completion of the call takers.

D) Operational Concerns

1. CAD-MIS-MDT FUNCTIONALITY

The cost of the customization of the Tiburon System to interface with Dayton’s current CAD/MIS system would be the responsibility of the City of Dayton. Annual maintenance costs of the Tiburon system at the dispatch center would be a cost of the dispatch center. Those costs of future upgrades to the system that are a direct result of modifications requested by the City of Dayton would be the responsibility of the City. Technical people from Dayton and the County are meeting with Tiburon within the next few weeks to start the process of resolving the technical issues related to the interface.

We would ask that Dayton study a conversion of their system prior to the need to upgrade in the future to see if a conversion to a compatible systems is possible.

2. Technical Support

The Sheriff’s office has 24/7 technical support for the operation of the dispatch center.

3. Street / Map Database

The Sheriff’s office just completed a total upgrade of the map database and is currently undergoing final testing prior to going online. The database is ESRI compliant and there is a contract for continuing maintenance and updating.

4. Two Stage Dispatching

The Sheriff’s office uses a hybrid dispatch model where all employees are classified as dispatchers, but have job assignments of call taker or dispatcher. 911 calls can rollover to dispatchers who are not on a dispatch, but calls do not go to dispatchers who are on the police operational channels, nor those who are supporting an active fire scene.
5. **Training**
Training of fire dispatchers will be jointly done by City of Dayton fire personnel and Sheriff’s office dispatch training personnel. Specific training programs are currently in place in the Sheriff’s office for all dispatchers.

6. **EMD**
All dispatchers will have EMD certification. That training is a scheduled part of dispatch training.

7. **911 Phase 1 & 2 Implementation**
The phase II plan has been approved by the 911 planning committee and it is slated to be sent to the PUCO by the end of October. The plan distributes the money based on population served. When final numbers are known based on who joins the consolidated center, an amendment to the plan will be filed.

8. **Transition Plan**
A transition plan is being developed by the transition teams and will involve on-site participation by DPD and DFD personnel. The concept being developed would be training all of the Dayton call takers in MCSO procedures for call takers, which should take limited time, and then bringing them to the dispatch center where they would work as call takers. After that current Dayton fire dispatchers would be phased in. During this process, Dayton dispatches would be handled by the current Dayton dispatch center. A new temporary interface between the 2 centers would have to be installed to that CAD entries made by the call takers would go directly to Dayton for Dayton calls.

9. **911 Administrator Function**
This function is handled by an administrative sergeant and same day turn around is the norm.

10 & 11. **Fill-In and Recall**
The work will be performed by the dispatch center, but the request will need to be initiated by whomever the City of Dayton designates. Some may be automated in the CAD system, but initiation will still be DFD or DPD personnel.

12. **Notification**
Through a paging solution, which will be operational in the dispatch center in January 2008, any combination of groups or individuals can be automatically notified. The initiation of the request for notification can either be incorporated in the CAD system or by the request of supervisory personnel.
13. Chief Officer CAD Modifications
Instant temporary modifications to meet operational needs can be made to the CAD system. Permanent changes that affect operations of multiple departments would go through the fire or police advisory committees.

14. CAD File Data
Extensive file data is maintained in the CAD system and is available to the dispatchers, particularly as relates to specific hazards in building or on property. Lists are distributed to all dispatch users each 6 months for review. Updates are made as needed.

15. Track Emergency Resources
All jurisdictions but Harrison Township use MDT and Harrison is looking at this as part of their 2008 budget. It has been a non-problem and there is no reason it should become one.

16. Maintain Communications Link with Non-Emergency Resources
The current monitoring of Help and Prevention talk groups will be maintained.

17. DFD Citizen Complaints
Dispatch specific complaints will be handled through the chain of command at the dispatch center, with notification to the community of origination. Performance complaints about emergency personnel or service will be forwarded to whomever the City of Dayton designates. Supporting documentation, tapes of calls, etc. will also be forwarded as needed.

18. Contact Point for Outside Emergency Agencies
The MCSO will serve as the contact point for the various outside agencies listed.

Sincerely yours,

Deborah A. Feldman  Dave Vore
County Administrator  Montgomery County Sheriff

4

<table>
<thead>
<tr>
<th>Equipment</th>
<th>Average Cost</th>
<th>Life Span</th>
<th>Annual Cost</th>
<th>2020</th>
<th>2021</th>
<th>2022</th>
<th>2023</th>
<th>2024</th>
<th>2025</th>
<th>2026</th>
<th>2027</th>
<th>2028</th>
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<tr>
<td>E-911 Backup Position Refresh</td>
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<td>10</td>
<td>32,400</td>
<td>$142,971</td>
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<tr>
<td>Motorola APX Mobiles</td>
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<td>12</td>
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<td>$120,246</td>
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<td>Dell Optiplex 5090</td>
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<td><strong>TOTAL</strong></td>
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**Main Center**

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<tr>
<th>Equipment</th>
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<th>2022</th>
<th>2023</th>
<th>2024</th>
<th>2025</th>
<th>2026</th>
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<td>Administration PCs</td>
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**Disclaimer:** Years 2023 through 2039 are for calculation purposes only and are subject to change.
## 2020 Regional Dispatch Rate Model - 3 Call Year Average

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<tr>
<th>Equipment</th>
<th>Average Cost</th>
<th>Life Span</th>
<th>Annual Cost</th>
<th>2030</th>
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<th>2036</th>
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<td>1. Administration PC's</td>
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<td>2. EDR &amp; Software &amp; PC's</td>
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<td>3. CAD PC’s x18</td>
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<td>6. Dispatch Chairs</td>
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<td>18. Furniture</td>
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<td>19. Generator</td>
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<td>24. Portable Radios</td>
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<td>27. ESO Interface</td>
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</table>

**TOTAL** | **$4,495,700** | **$280,000** | **$18,000** | **$700,000** | **$291,000** | **$449,000** | **$51,000** | **$587,000** | **$1,670,000** | **$120,000** | **$785,000** |

## Equipment

<table>
<thead>
<tr>
<th>Equipment</th>
<th>Average Cost</th>
<th>Life Span</th>
<th>Annual Cost</th>
<th>2030</th>
<th>2031</th>
<th>2032</th>
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<th>2034</th>
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<tr>
<td>29. E-911 Backup Position Refresh</td>
<td>130,229</td>
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<td>30. Networking Equipment</td>
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<tr>
<td>31. Motorola APX Mobiles</td>
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<td>12</td>
<td>3,000</td>
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<tr>
<td>32. UPS</td>
<td>13,000</td>
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<tr>
<td>33. Dell Optiplex 5090</td>
<td>25,000</td>
<td>6</td>
<td>4,000</td>
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</tr>
</tbody>
</table>

**TOTAL** | **$41,100** | **$10,000** | **$10,000** | **$25,000** | **$40,000** | **$10,000** | **$200,000** |

**GRAND TOTAL** | **$5,516,800** | **$280,000** | **$18,000** | **$713,000** | **$291,000** | **$474,000** | **$51,000** | **$627,000** | **$1,670,000** | **$130,000** | **$985,000** |

**Additional Set-Aside for Cash Flow**

- **REVENUE** | **$336,800** | **$336,800** | **$336,800** | **$336,800** | **$336,800** | **$336,800** | **$336,800** | **$336,800** | **$336,800** |

**CAPITAL SET-ASIDE PROJECTED BALANCE**

- **$2,312,545** | **$2,421,345** | **$2,245,145** | **$3,490,945** | **$3,553,745** | **$4,031,545** | **$3,949,145** | **$2,818,145** | **$3,222,945** | **$2,774,745** |

Disclaimer: Years 2023 through 2030 are for calculation purposes only and are subject to change.

10/22/2021
## Montgomery County Consolidated Emergency Communication Center
### 2022 Regional Dispatch Rate Model - 3 Year Call Average
#### Projected Budget

<table>
<thead>
<tr>
<th>Description</th>
<th>Projected 2022 Budget</th>
<th>Projected 2023 Budget</th>
<th>Projected 2024 Budget</th>
<th>Projected 2025 Budget</th>
<th>Projected 2026 Budget</th>
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</thead>
<tbody>
<tr>
<td>911 Access Revenue *</td>
<td>$709,749</td>
<td>$709,749</td>
<td>$709,749</td>
<td>$709,749</td>
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<td>Income Tax Sharing *</td>
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<tr>
<td>Contracts -Police Dispatching</td>
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<td>139,638</td>
<td>146,620</td>
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<td>5,864,974</td>
<td>6,184,189</td>
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<td>1,532,057</td>
<td>1,615,860</td>
<td>1,703,807</td>
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<td>1,889,911</td>
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<td>72,389</td>
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<td>36,142</td>
<td>37,350</td>
<td>38,622</td>
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<td>150,000</td>
<td>150,000</td>
<td>150,000</td>
<td>150,000</td>
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<tr>
<td>Total Revenues</td>
<td>$10,433,685</td>
<td>$10,941,752</td>
<td>$11,473,824</td>
<td>$12,021,516</td>
<td>$12,601,864</td>
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<table>
<thead>
<tr>
<th>Description</th>
<th>Projected 2022 Budget</th>
<th>Projected 2023 Budget</th>
<th>Projected 2024 Budget</th>
<th>Projected 2025 Budget</th>
<th>Projected 2026 Budget</th>
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<tbody>
<tr>
<td>Salaries</td>
<td>$5,373,265</td>
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<td>Overtime</td>
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<td>564,193</td>
<td>592,402</td>
<td>622,023</td>
<td>653,124</td>
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<td>Fringe Benefits</td>
<td>2,130,892</td>
<td>2,293,018</td>
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<td>Operating Expenses</td>
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<td>325,431</td>
<td>332,269</td>
<td>339,742</td>
<td>347,595</td>
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<td>789,113</td>
<td>798,675</td>
<td>808,572</td>
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<td>Telecommunications</td>
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<td>146,610</td>
<td>149,690</td>
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<td>156,594</td>
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<td>671,171</td>
<td>680,719</td>
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<td>701,487</td>
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<td>536,800</td>
<td>536,800</td>
<td>536,800</td>
<td>536,800</td>
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<td>Total Expenditures</td>
<td>$10,433,685</td>
<td>$10,941,752</td>
<td>$11,473,824</td>
<td>$12,021,516</td>
<td>$12,601,864</td>
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* Fixed Revenue

Revenue Needed from Jurisdictions

<table>
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<tr>
<th>Description</th>
<th>Average Time</th>
<th>Level of Effort</th>
<th>% of Total</th>
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<tr>
<td>Total Calls</td>
<td>273,914</td>
<td>0:57:16</td>
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<tr>
<td>Percent of Police Dispatched</td>
<td>261403:59:33</td>
<td>5,560,799</td>
<td>6,184,189</td>
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<tr>
<td>Percent of Fire Dispatched</td>
<td>71947:53:39</td>
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<td>1,794,149</td>
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<tr>
<td>Total</td>
<td>33,3351:53:13</td>
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10/22/2021
## Montgomery County Consolidated Emergency Communication Center
### 2022 Regional Dispatch Rate Model - 3 Year Call Average
#### Police Calls by Priority

<table>
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<tr>
<th>Priority</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4-9</th>
<th>Total</th>
<th>1 (Weighted)</th>
<th>2 (Weighted)</th>
<th>3 (Weighted)</th>
<th>4-9 (Weighted)</th>
<th>Total</th>
<th>Percent of Total</th>
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</thead>
<tbody>
<tr>
<td>Clay Township</td>
<td>51</td>
<td>54</td>
<td>280</td>
<td>1,447</td>
<td>1,832</td>
<td>204</td>
<td>162</td>
<td>560</td>
<td>1,447</td>
<td>2,373</td>
<td>0.6%</td>
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<td>Clayton</td>
<td>164</td>
<td>290</td>
<td>1,041</td>
<td>7,237</td>
<td>8,732</td>
<td>656</td>
<td>870</td>
<td>2,082</td>
<td>7,237</td>
<td>10,845</td>
<td>2.9%</td>
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<tr>
<td>Dayton</td>
<td>6,401</td>
<td>9,931</td>
<td>31,825</td>
<td>103,144</td>
<td>151,301</td>
<td>25,604</td>
<td>29,793</td>
<td>63,650</td>
<td>103,144</td>
<td>222,191</td>
<td>59.1%</td>
</tr>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>11,064</td>
<td>11,064</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>11,064</td>
<td>5,532</td>
<td>1.5%</td>
</tr>
<tr>
<td>German Township</td>
<td>43</td>
<td>64</td>
<td>176</td>
<td>1,740</td>
<td>2,023</td>
<td>172</td>
<td>192</td>
<td>352</td>
<td>1,740</td>
<td>2,456</td>
<td>0.7%</td>
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<tr>
<td>Germantown</td>
<td>63</td>
<td>98</td>
<td>561</td>
<td>3,579</td>
<td>4,301</td>
<td>252</td>
<td>294</td>
<td>1,122</td>
<td>3,579</td>
<td>5,247</td>
<td>1.4%</td>
</tr>
<tr>
<td>Harrison Township</td>
<td>966</td>
<td>1,577</td>
<td>5,550</td>
<td>22,175</td>
<td>30,268</td>
<td>3,864</td>
<td>4,731</td>
<td>11,100</td>
<td>22,175</td>
<td>41,870</td>
<td>11.2%</td>
</tr>
<tr>
<td>Jefferson Township</td>
<td>165</td>
<td>288</td>
<td>1,094</td>
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<td>7,184</td>
<td>660</td>
<td>864</td>
<td>2,188</td>
<td>5,637</td>
<td>9,349</td>
<td>2.5%</td>
</tr>
<tr>
<td>MetroParks</td>
<td>49</td>
<td>34</td>
<td>821</td>
<td>2,723</td>
<td>3,627</td>
<td>196</td>
<td>102</td>
<td>1,642</td>
<td>2,723</td>
<td>4,663</td>
<td>1.2%</td>
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<tr>
<td>Miami Township</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.0%</td>
</tr>
<tr>
<td>Miamisburg</td>
<td>348</td>
<td>618</td>
<td>2,475</td>
<td>12,616</td>
<td>16,057</td>
<td>1,392</td>
<td>1,854</td>
<td>4,950</td>
<td>12,616</td>
<td>20,812</td>
<td>5.5%</td>
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<td>65</td>
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<td>1,733</td>
<td>152</td>
<td>195</td>
<td>432</td>
<td>1,414</td>
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<td>Phillipsburg</td>
<td>5</td>
<td>10</td>
<td>32</td>
<td>166</td>
<td>213</td>
<td>20</td>
<td>30</td>
<td>64</td>
<td>166</td>
<td>280</td>
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<tr>
<td>Trotwood</td>
<td>497</td>
<td>1,122</td>
<td>4,288</td>
<td>16,952</td>
<td>22,859</td>
<td>1,988</td>
<td>3,366</td>
<td>8,576</td>
<td>16,952</td>
<td>30,882</td>
<td>8.2%</td>
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<tr>
<td>Washington Township</td>
<td>320</td>
<td>673</td>
<td>2,018</td>
<td>9,709</td>
<td>12,720</td>
<td>1,280</td>
<td>2,019</td>
<td>4,036</td>
<td>9,709</td>
<td>17,044</td>
<td>4.5%</td>
</tr>
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<td>9,110</td>
<td>14,824</td>
<td>50,377</td>
<td>199,603</td>
<td>273,914</td>
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<td>44,472</td>
<td>100,754</td>
<td>194,071</td>
<td>375,737</td>
<td>100.0%</td>
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</table>

*Dayton - Traffic is Weighted at 0.5
Montgomery County Consolidated Emergency Communication Center
2022 Regional Dispatch Rate Model - 3 Year Call Average
Projected Revenue by Jurisdiction

<table>
<thead>
<tr>
<th>Type</th>
<th>Contract</th>
<th>Weighted Calls Jul-18 to Jun-21 Calls</th>
<th>Percent of Total Weighted Calls</th>
<th>2022 Projected Revenue</th>
<th>2023 Projected Revenue</th>
<th>2024 Projected Revenue</th>
<th>2025 Projected Revenue</th>
<th>2026 Projected Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police</td>
<td>Clay Township</td>
<td>2,373</td>
<td>0.6%</td>
<td>$33,365</td>
<td>$35,190</td>
<td>$37,105</td>
<td>$39,073</td>
<td>$41,158</td>
</tr>
<tr>
<td>Police</td>
<td>Clayton</td>
<td>10,845</td>
<td>2.9%</td>
<td>$161,263</td>
<td>$170,084</td>
<td>$179,341</td>
<td>$188,851</td>
<td>$198,931</td>
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<tr>
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<td>Dayton</td>
<td>222,191</td>
<td>59.1%</td>
<td>$3,286,431</td>
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<tr>
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<td>Dayton - Traffic *</td>
<td>5,532</td>
<td>1.5%</td>
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<td>$87,975</td>
<td>$92,763</td>
<td>$97,681</td>
<td>$102,895</td>
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<tr>
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<td>2,456</td>
<td>0.7%</td>
<td>$38,926</td>
<td>$41,055</td>
<td>$43,289</td>
<td>$45,585</td>
<td>$48,018</td>
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<tr>
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<td>German Township</td>
<td>5,247</td>
<td>1.4%</td>
<td>$77,851</td>
<td>$82,110</td>
<td>$86,579</td>
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<td>$96,035</td>
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<tr>
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<td>11.2%</td>
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<td>$692,629</td>
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<tr>
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<td>Jefferson Township</td>
<td>9,349</td>
<td>2.5%</td>
<td>$139,020</td>
<td>$146,624</td>
<td>$154,605</td>
<td>$162,802</td>
<td>$171,492</td>
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<tr>
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<td>MetroParks</td>
<td>4,663</td>
<td>1.2%</td>
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<td>0.0%</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Police</td>
<td>Miamisburg</td>
<td>20,812</td>
<td>5.5%</td>
<td>$305,844</td>
<td>$322,574</td>
<td>$340,130</td>
<td>$358,165</td>
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<tr>
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<td>Perry Township</td>
<td>2,193</td>
<td>0.6%</td>
<td>$33,365</td>
<td>$35,190</td>
<td>$37,105</td>
<td>$39,073</td>
<td>$41,158</td>
</tr>
<tr>
<td>Police</td>
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<td>280</td>
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<td>$5,865</td>
<td>$6,184</td>
<td>$6,512</td>
<td>$6,860</td>
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<td>Trotwood</td>
<td>30,882</td>
<td>8.2%</td>
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<td>$480,928</td>
<td>$507,103</td>
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<td>$562,494</td>
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<tr>
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<td>Washington Township</td>
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<td>4.5%</td>
<td>$250,236</td>
<td>$263,924</td>
<td>$278,289</td>
<td>$293,044</td>
<td>$308,686</td>
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</table>

Subtotal Police: 375,737 100.0% $5,560,799 $5,864,974 $6,184,189 $6,512,096 $6,859,678

<table>
<thead>
<tr>
<th>Type</th>
<th>Contract</th>
<th>Jul-18 to Jun-21 Calls</th>
<th>Percent of Calls</th>
<th>2022 Projected Revenue</th>
<th>2023 Projected Revenue</th>
<th>2024 Projected Revenue</th>
<th>2025 Projected Revenue</th>
<th>2026 Projected Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fire</td>
<td>Dayton</td>
<td>40,037</td>
<td>52.0%</td>
<td>$796,669</td>
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<td>$982,753</td>
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<td>Dayton Airport</td>
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<td>$3,232</td>
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<td>Germantown</td>
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<td>$22,622</td>
<td>$23,853</td>
<td>$25,118</td>
<td>$26,459</td>
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<td>Harrison Township</td>
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<td>Washington Township**</td>
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<td>$169,665</td>
<td>$178,900</td>
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Subtotal Fire: 76,942 100.0% $1,532,057 $1,615,860 $1,703,807 $1,794,149 $1,889,911

Total: $7,092,856 $7,480,834 $7,887,996 $8,306,245 $8,749,589

*Dayton - Traffic Police is Weighted at 0.5
# Montgomery County Consolidated Emergency Communication Center

## 2022 Regional Dispatch Rate Model - 3 Year Call Average

### Projected Revenue Breakdown Between Operating and Capital

<table>
<thead>
<tr>
<th>Type</th>
<th>Contract</th>
<th>Total Weighted Calls</th>
<th>Percent of Total Weighted Calls</th>
<th>2022 Projected Revenue</th>
<th>2022 Operating Projected Revenue</th>
<th>2022 Capital Projected Revenue</th>
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<tbody>
<tr>
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<td>Clay Township</td>
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<td>0.6%</td>
<td>$33,365</td>
<td>$30,840</td>
<td>$2,525</td>
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<tr>
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<td>Clayton</td>
<td>10,845</td>
<td>2.9%</td>
<td>$161,263</td>
<td>$149,058</td>
<td>$12,205</td>
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<tr>
<td>Police</td>
<td>Dayton</td>
<td>222,191</td>
<td>59.1%</td>
<td>$3,286,431</td>
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<td>5,532</td>
<td>1.5%</td>
<td>$83,412</td>
<td>$77,099</td>
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<td>Police</td>
<td>German Township</td>
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<td>Germantown</td>
<td>5,247</td>
<td>1.4%</td>
<td>$77,851</td>
<td>$71,959</td>
<td>$5,892</td>
</tr>
<tr>
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<td>Harrison Township</td>
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<td>$575,674</td>
<td>$47,135</td>
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<tr>
<td>Police</td>
<td>Jefferson Township</td>
<td>9,349</td>
<td>2.5%</td>
<td>$139,020</td>
<td>$128,499</td>
<td>$10,521</td>
</tr>
<tr>
<td>Police</td>
<td>MetroParks</td>
<td>4,663</td>
<td>1.2%</td>
<td>$66,730</td>
<td>$61,679</td>
<td>$5,051</td>
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<tr>
<td>Police</td>
<td>Miami Township</td>
<td>0</td>
<td>0.0%</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Police</td>
<td>Miamisburg</td>
<td>20,812</td>
<td>5.5%</td>
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<td>$282,697</td>
<td>$23,147</td>
</tr>
<tr>
<td>Police</td>
<td>Perry Township</td>
<td>2,193</td>
<td>0.6%</td>
<td>$33,365</td>
<td>$30,840</td>
<td>$2,525</td>
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<tr>
<td>Police</td>
<td>Phillipsburg</td>
<td>280</td>
<td>0.1%</td>
<td>$5,561</td>
<td>$5,140</td>
<td>$421</td>
</tr>
<tr>
<td>Police</td>
<td>Trotwood</td>
<td>30,882</td>
<td>8.2%</td>
<td>$455,986</td>
<td>$421,476</td>
<td>$34,510</td>
</tr>
<tr>
<td>Police</td>
<td>Washington Township</td>
<td>17,044</td>
<td>4.5%</td>
<td>$250,236</td>
<td>$231,298</td>
<td>$18,938</td>
</tr>
</tbody>
</table>

Subtotal Police: 375,737 100.0% $5,560,799 $5,139,948 $420,851

<table>
<thead>
<tr>
<th>Type</th>
<th>Contract</th>
<th>Jul-18 to Jun-21 Calls</th>
<th>Percent of Calls</th>
<th>2022 Projected Revenue</th>
<th>2022 Operating Projected Revenue</th>
<th>2022 Capital Projected Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fire</td>
<td>Clayton</td>
<td>2,482</td>
<td>3.2%</td>
<td>$49,026</td>
<td>$45,315</td>
<td>$3,711</td>
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<tr>
<td>Fire</td>
<td>Dayton</td>
<td>40,037</td>
<td>52.0%</td>
<td>$796,669</td>
<td>$736,377</td>
<td>$60,292</td>
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<tr>
<td>Fire</td>
<td>Dayton Airport</td>
<td>123</td>
<td>0.2%</td>
<td>$3,064</td>
<td>$2,832</td>
<td>$232</td>
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<tr>
<td>Fire</td>
<td>Germantown</td>
<td>1,041</td>
<td>1.4%</td>
<td>$21,449</td>
<td>$19,826</td>
<td>$1,623</td>
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<tr>
<td>Fire</td>
<td>Harrison Township</td>
<td>7,440</td>
<td>9.7%</td>
<td>$148,610</td>
<td>$137,362</td>
<td>$11,248</td>
</tr>
<tr>
<td>Fire</td>
<td>Jefferson Township</td>
<td>1,475</td>
<td>1.9%</td>
<td>$29,109</td>
<td>$26,906</td>
<td>$2,203</td>
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<td>Fire</td>
<td>Miami Valley Fire District</td>
<td>9,630</td>
<td>12.5%</td>
<td>$191,507</td>
<td>$177,014</td>
<td>$14,493</td>
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<td>Fire</td>
<td>Phillipsburg</td>
<td>274</td>
<td>0.4%</td>
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<td>$5,664</td>
<td>$464</td>
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<td>Fire</td>
<td>Trotwood</td>
<td>6,340</td>
<td>8.2%</td>
<td>$125,629</td>
<td>$116,121</td>
<td>$9,508</td>
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<td>Fire</td>
<td>Washington Township</td>
<td>8,100</td>
<td>10.5%</td>
<td>$160,866</td>
<td>$148,691</td>
<td>$12,175</td>
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</table>

Subtotal Fire: 76,942 100.0% $1,532,057 $1,416,108 $115,949

Total: $7,092,856 $6,556,056 $536,800

*Dayton - Traffic is Weighted at 0.5
Montgomery County Consolidated Emergency Communication Center  
2022 Regional Dispatch Rate Model - 3 Year Call Average  
Projected Budget Comparison by Revenue & Expenditures

<table>
<thead>
<tr>
<th>Description</th>
<th>2021 Budget from 2021 Model</th>
<th>Projected 2022 Budget From 2021 Model</th>
<th>Projected 2022 Budget from 2022 Model</th>
<th>2021 Budget from 2021 Model to Projected 2022 Budget from 2022 Model</th>
<th>Projected 2022 Budget from 2021 Model to Projected 2022 Budget from 2022 Model</th>
</tr>
</thead>
<tbody>
<tr>
<td>911 Access Revenue</td>
<td>$849,762</td>
<td>$849,762</td>
<td>$709,749</td>
<td>$(140,013)</td>
<td>-16.5%</td>
</tr>
<tr>
<td>Income Tax Sharing</td>
<td>133,444</td>
<td>140,116</td>
<td>132,988</td>
<td>(456)</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Contracts - Police Dispatching</td>
<td>5,673,497</td>
<td>5,941,033</td>
<td>5,560,799</td>
<td>(122,698)</td>
<td>-2.0%</td>
</tr>
<tr>
<td>Contracts - Fire Dispatching</td>
<td>1,499,065</td>
<td>1,569,755</td>
<td>1,532,057</td>
<td>32,992</td>
<td>2.2%</td>
</tr>
<tr>
<td>Shared Costs</td>
<td>49,822</td>
<td>51,815</td>
<td>69,795</td>
<td>19,973</td>
<td>40.1%</td>
</tr>
<tr>
<td>Shared PSAP Costs</td>
<td>34,423</td>
<td>35,537</td>
<td>34,997</td>
<td>574</td>
<td>1.7%</td>
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<tr>
<td>General Fund Subsidy</td>
<td>-</td>
<td>-</td>
<td>150,000</td>
<td>150,000</td>
<td>0.0%</td>
</tr>
<tr>
<td>Sheriff's General Fund Share</td>
<td>2,256,900</td>
<td>2,352,200</td>
<td>2,243,300</td>
<td>(13,600)</td>
<td>-0.6%</td>
</tr>
<tr>
<td><strong>Total Revenues</strong></td>
<td><strong>$10,496,913</strong></td>
<td><strong>$10,940,218</strong></td>
<td><strong>$10,433,685</strong></td>
<td><strong>$(63,228)</strong></td>
<td><strong>-0.6%</strong></td>
</tr>
<tr>
<td>Salaries</td>
<td>$5,391,670</td>
<td>$5,661,253</td>
<td>$5,373,265</td>
<td>$(18,405)</td>
<td>-0.3%</td>
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<tr>
<td>Overtime</td>
<td>539,167</td>
<td>566,125</td>
<td>537,327</td>
<td>(1,840)</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Fringe Benefits</td>
<td>2,134,379</td>
<td>2,296,210</td>
<td>2,130,892</td>
<td>(3,487)</td>
<td>-0.2%</td>
</tr>
<tr>
<td>Operating Expenses</td>
<td>305,240</td>
<td>308,292</td>
<td>319,640</td>
<td>14,400</td>
<td>4.7%</td>
</tr>
<tr>
<td>Maintenance Agreements</td>
<td>800,261</td>
<td>771,568</td>
<td>729,931</td>
<td>(70,330)</td>
<td>-8.8%</td>
</tr>
<tr>
<td>Telecommunications</td>
<td>144,000</td>
<td>145,440</td>
<td>144,000</td>
<td>-</td>
<td>0.0%</td>
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<tr>
<td>Rental</td>
<td>652,696</td>
<td>661,830</td>
<td>661,830</td>
<td>9,134</td>
<td>1.4%</td>
</tr>
<tr>
<td>Capital Set-Aside</td>
<td>529,500</td>
<td>529,500</td>
<td>536,800</td>
<td>7,300</td>
<td>1.4%</td>
</tr>
<tr>
<td><strong>Total Expenditures</strong></td>
<td><strong>$10,496,913</strong></td>
<td><strong>$10,940,218</strong></td>
<td><strong>$10,433,685</strong></td>
<td><strong>$(63,228)</strong></td>
<td><strong>-0.6%</strong></td>
</tr>
</tbody>
</table>

10/22/2021  
APPROVED  
Page 8 of 9
### Montgomery County Consolidated Emergency Communication Center
#### 2022 Regional Dispatch Rate Model - 3 Year Call Average

**Projected Revenue Comparison by Jurisdiction**

<table>
<thead>
<tr>
<th>Type</th>
<th>Contract</th>
<th>2021 Budget from 2021 Model</th>
<th>Projected 2022 Budget From 2021 Model</th>
<th>Projected 2022 Budget from 2022 Model</th>
<th>2021 Budget from 2021 Model to Projected 2022 Budget from 2022 Model</th>
<th>Projected 2022 Budget from 2021 Model to Projected 2022 Budget from 2022 Model</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police</td>
<td>Clay Township</td>
<td>$39,714</td>
<td>$41,587</td>
<td>$33,365</td>
<td>$(6,349) -16.0%</td>
<td>$(8,222) -19.8%</td>
</tr>
<tr>
<td></td>
<td>Clayton</td>
<td>158,858</td>
<td>166,349</td>
<td>161,263</td>
<td>4,095 1.5%</td>
<td>(5,086) -3.1%</td>
</tr>
<tr>
<td></td>
<td>Dayton</td>
<td>3,058,018</td>
<td>3,202,218</td>
<td>3,286,431</td>
<td>228,413 7.5%</td>
<td>84,213 2.6%</td>
</tr>
<tr>
<td></td>
<td>Dayton - Traffic *</td>
<td>79,429</td>
<td>83,174</td>
<td>83,412</td>
<td>3,983 5.0%</td>
<td>238 0.3%</td>
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<tr>
<td></td>
<td>German Township</td>
<td>39,714</td>
<td>41,587</td>
<td>38,926</td>
<td>(788) -2.0%</td>
<td>(2,661) -6.4%</td>
</tr>
<tr>
<td></td>
<td>Germantown</td>
<td>85,102</td>
<td>89,115</td>
<td>77,851</td>
<td>(7,251) -8.5%</td>
<td>(11,264) -12.6%</td>
</tr>
<tr>
<td></td>
<td>Harrison Township</td>
<td>573,023</td>
<td>600,044</td>
<td>622,809</td>
<td>49,786 8.7%</td>
<td>22,765 3.8%</td>
</tr>
<tr>
<td></td>
<td>Jefferson Township</td>
<td>141,837</td>
<td>148,526</td>
<td>139,020</td>
<td>(2,817) -2.0%</td>
<td>(9,506) -6.4%</td>
</tr>
<tr>
<td></td>
<td>MetroParks</td>
<td>62,408</td>
<td>65,351</td>
<td>66,730</td>
<td>4,322 6.9%</td>
<td>1,379 2.1%</td>
</tr>
<tr>
<td></td>
<td>Miami Township</td>
<td>391,471</td>
<td>409,931</td>
<td>(391,471)</td>
<td>-100.0%</td>
<td>(409,931) -100.0%</td>
</tr>
<tr>
<td></td>
<td>Miamisburg</td>
<td>306,369</td>
<td>320,816</td>
<td>305,844</td>
<td>(525) -0.2%</td>
<td>(14,972) -4.7%</td>
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<tr>
<td></td>
<td>Perry Township</td>
<td>28,367</td>
<td>29,705</td>
<td>33,365</td>
<td>4,998 17.6%</td>
<td>3,660 12.3%</td>
</tr>
<tr>
<td></td>
<td>Phillipsburg</td>
<td>5,673</td>
<td>5,941</td>
<td>5,561</td>
<td>(112) -2.0%</td>
<td>(380) -6.4%</td>
</tr>
<tr>
<td></td>
<td>Trotwood</td>
<td>442,533</td>
<td>463,401</td>
<td>455,986</td>
<td>13,453 3.0%</td>
<td>(7,415) -1.6%</td>
</tr>
<tr>
<td></td>
<td>Washington Township</td>
<td>260,981</td>
<td>273,288</td>
<td>250,236</td>
<td>(10,745) -4.1%</td>
<td>(23,052) -8.4%</td>
</tr>
</tbody>
</table>

**Subtotal Police:** $5,673,497 $5,941,033 $5,560,799 ($112,698) -2.0% ($380,234) -6.4%

<table>
<thead>
<tr>
<th>Type</th>
<th>Contract</th>
<th>2021 Budget from 2021 Model</th>
<th>Projected 2022 Budget From 2021 Model</th>
<th>Projected 2022 Budget from 2022 Model</th>
<th>2021 Budget from 2021 Model to Projected 2022 Budget from 2022 Model</th>
<th>Projected 2022 Budget from 2021 Model to Projected 2022 Budget from 2022 Model</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fire</td>
<td>Clayton</td>
<td>$41,974</td>
<td>$43,953</td>
<td>$49,026</td>
<td>$7,052 16.8%</td>
<td>$5,073 11.5%</td>
</tr>
<tr>
<td></td>
<td>Dayton</td>
<td>785,511</td>
<td>822,552</td>
<td>796,669</td>
<td>11,158 1.4%</td>
<td>(25,883) -3.1%</td>
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<tr>
<td></td>
<td>Dayton Airport</td>
<td>2,998</td>
<td>3,140</td>
<td>3,064</td>
<td>66 2.2%</td>
<td>(76) -2.4%</td>
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<tr>
<td></td>
<td>Germantown</td>
<td>20,987</td>
<td>21,977</td>
<td>21,449</td>
<td>526 2.2%</td>
<td>(528) -2.4%</td>
</tr>
<tr>
<td></td>
<td>Harrison Township</td>
<td>145,409</td>
<td>152,266</td>
<td>148,610</td>
<td>3,201 2.2%</td>
<td>(3,656) -2.4%</td>
</tr>
<tr>
<td></td>
<td>Jefferson Township</td>
<td>29,981</td>
<td>31,395</td>
<td>29,109</td>
<td>(872) -2.9%</td>
<td>(2,286) -7.3%</td>
</tr>
<tr>
<td></td>
<td>Miami Valley Fire District</td>
<td>182,886</td>
<td>191,510</td>
<td>191,507</td>
<td>8,621 4.7%</td>
<td>(3) 0.0%</td>
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<tr>
<td></td>
<td>Phillipsburg</td>
<td>4,497</td>
<td>4,709</td>
<td>6,124</td>
<td>1,631 36.3%</td>
<td>1,419 30.1%</td>
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<tr>
<td></td>
<td>Trotwood</td>
<td>125,921</td>
<td>131,859</td>
<td>125,629</td>
<td>(292) -0.2%</td>
<td>(6,230) -4.7%</td>
</tr>
<tr>
<td></td>
<td>Washington Township</td>
<td>158,901</td>
<td>166,394</td>
<td>160,866</td>
<td>1,965 1.2%</td>
<td>(5,528) -3.3%</td>
</tr>
</tbody>
</table>

**Subtotal Fire:** $1,499,065 $1,569,755 $1,532,057 $32,992 2.2% ($37,698) -2.4%

**Total:** $7,172,562 $7,510,788 $7,092,856 ($79,706) -1.1% ($417,932) -5.6%

**Total Revenue minus Miami Township:** $6,781,091 $7,100,857 $7,092,856 $311,765 4.6% ($8,001) -0.1%
City Manager's Report

From 5560 - Information Technology

Supplier, Vendor, Company, Individual
Konica Minolta Business Solutions, U.S.A., Inc.

Address 500 Day Hill Road
Windsor, CT 06095

Date December 22, 2021
Expense Type Other, (See Description Below)
Total Amount $243,614.82 (thru 6/30/2022)

Fund Source(s)       Fund Code(s)       Fund Amount(s)
Reproduction          62100-5580-1143-61  $243,614.82

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

Description
First Amendment to Konica Minolta Lease Services Agreement

The Department of Information Technology ("IT") is requesting authorization for a First Amendment to the Lease Services Agreement with Konica Minolta Business Solutions, U.S.A., Inc. ("KMBS") in the amount of $243,614.82. This Amendment is needed to adjust the monthly lease payment amounts due to a swap out of equipment from the initial lease. Based on the language in the original agreement, it was expected that the start of the 36-month lease commenced upon final City Commission approval and execution of the Lease Services Agreement (1/25/2019) when in fact, the 36-month term started 7/1/2019; therefore, the lease schedule must be extended to June 30, 2022.

The original Agreement was for KMBS to provide a fleet of printer/copier/scanner/fax multi-function hardware, software, digital production equipment, maintenance, and support services. The Amendment is needed to right-size the digital production equipment and update the 36-month lease term from January 25, 2019 (the execution date of the Agreement) through December 31, 2021 to July 1, 2019 (the lease start date based on equipment delivery) through June 30, 2022.

The original Agreement was approved by the Dayton City Commission on January 23, 2019, for $974,376.00. This First Amendment will increase the lease amount to $1,217,990.82.

$193,614.82 Total Lease Amount (12/1/2021 through 6/30/2022)
$50,000.00 Total Device Usage (Estimate through 6/30/2022)
$243,614.82 Total Additional Amount of Increase Requested

The First Amendment has been reviewed by the Law Department as to form and correctness. A Certificate of Funds in the amount of $243,614.82, the original Lease Services Agreement and the First Amendment are attached.

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 10/2019
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>New Contract</th>
<th>Renewal Contract</th>
<th>X</th>
<th>Change Orders</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Start Date</td>
<td>01/23/19</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expiration Date</td>
<td>06/30/22</td>
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<td></td>
</tr>
<tr>
<td>Original Commission Approval</td>
<td>$ 1,217,960.82</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Initial Encumbrance</td>
<td>$ 948,022.08</td>
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<tr>
<td>Remaining Commission Approval</td>
<td>$ 269,968.74</td>
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<tr>
<td>Original CT/CF</td>
<td>CT19-2220</td>
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<td></td>
</tr>
<tr>
<td>Increase Encumbrance</td>
<td>$ 243,614.82</td>
<td></td>
<td></td>
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<tr>
<td>Decrease Encumbrance</td>
<td>$ -</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$ 26,353.92</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Amount: | $ 243,614.82 |
| 1. Fund Code | 62100 - 5580 - 1143 61 - XXXX - XXXX |
| Fund | Org | Acct | Prog | Act | Loc |
| Fund | Org | Acct | Prog | Act | Loc |

| Amount: | |
| Fund | Org | Acct | Prog | Act | Loc |

Attach additional pages for more FOAPALs

Vendor Name: Konica Minolta Business Solutions, U.S.A., Inc.
Vendor Address: 500 Day Hill Road, Windsor, CT 06095
Federal ID: 131921089
Commodity Code: 93927
Purpose: First Amendment to the Lease Services Agreement to provide a fleet of printer/copier/scanner/fax multi-function hardware, software digital production equipment, maintenance and support services for all City department operations; CF for December 1, 2021 through June 30, 2022;

Contact Person: Desa Foster (ext. 6349) Information Technology 12/9/2021
Originating Department Director's Signature: E-SIGNED by Jon Rike on 2021-12-10 17:01:40 GMT

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: Date: 12/13/21
CF Prepared by: Date: 12/13/21
CF/CT Number: SA 12/16/2021

October 18, 2011
FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF DAYTON, OHIO AND
KONICA MINOLTA BUSINESS SOLUTIONS U.S.A., INC.

THIS FIRST AMENDMENT is made effective as of this ___ day of ___________, 2021,
between the City of Dayton, Ohio ("Lessee"), a municipal corporation in the State of Ohio, and
Konica Minolta Business Solutions U.S.A., Inc. dba Konica Minolta Premier Finance ("Lessor"),
a corporation authorized to conduct business in the State of Ohio.

WITNESSETH THAT:

WHEREAS, the Lessee and Lessor entered into that certain Master Premier Lease Schedule,
executed by Lessee on February 19, 2019 and Lessor on July 22, 2019 pursuant to that certain Master
Services and Lease Agreement dated January 25, 2019 (together, the “Agreement”); and,

WHEREAS, the Lessee and Lessor mutually agreed to extend the term of the Agreement;

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

1. SECTION 3.0 TERM shall be deleted in its entirety and replaced with the
following:

SECTION 3.0 TERM
The term of this Agreement shall be for a thirty-six (36) month period commencing
on July 1, 2019 and ending on June 30, 2022 or the expiration of the Termination
Value Tables (Revised Schedule H attached hereto, whichever is later.)

2. SECTION 5.0 PRICING shall be deleted in its entirety and replaced with
the following:

SECTION 5.0 PRICING
The product and service monthly pricing shall be provided in Schedule A. The total
remuneration payable under this Agreement shall not exceed One Million Two
Hundred Seventeen Thousand Nine Hundred Ninety Dollars and Eighty-Two Cents
($1,217,990.82). This amount includes the monthly lease payments, including
adjustments due to swap out of Equipment from the initial lease, as well as the total
device usage fees over the course of the entire lease term through June 30, 2022.

Lease Payments 1-5: Covering 7/1/2019 - 11/30/2019 - $136,735.50 (5 payments)
Lease Payments 6-17: Covering 12/1/2019 -11/30/2020 - $331,911.12 (12 payments)
Lease Payments 18-29: Covering 12/1/2020 - 11/30/2021 - $331,911.12 (12 payments)
Lease Payments 30-36: Covering 12/1/2021 thru 6/30/2022 - $193,614.82 (7 payments)

Total additional pricing pursuant to this amendment shall not exceed Two Hundred Forty-
Three Thousand Six Hundred Fourteen Dollars and Eighty-Two Cents ($243,614.82) for the
lease payments and device usage fees for the remaining lease term through 6/30/22. This
amount includes an estimated usage fee of $50,000 through the end of the lease term. The
City of Dayton understands and agrees that if the actual usage fee exceeds $50,000, that it will
amend the Agreement to include an additional amount required to cover the actual usage fees through the end of the lease term ending on 6/30/2022.

3. All other terms and conditions of the Agreement shall remain unchanged and in full force and effect. In the event of any conflict between this Amendment and the Agreement, this Amendment shall control. This Amendment constitutes the entire agreement of the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the Lessee and Lessor, each by a duly authorized representative, have executed this First Amendment as of the date first set forth above.

THE CITY OF DAYTON, OHIO

City Manager

APPROVED AS TO FORM AND CORRECTNESS:

12/9/2021

X John Musto for
City Attorney

Signed by: Musto, John

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

_______________________________, 2021

Min. / Bk. ________ Pg. _______

Clerk of the Commission

Attachments: Revised Schedule H
## Revised Schedule H - Termination Value Tables

<table>
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<tr>
<th>Date</th>
<th>Payment Made</th>
<th>Payment Value</th>
<th>Pre-Tax</th>
<th>Adjusted Pre-Tax</th>
<th>Adjusted Termination Value</th>
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</table>

*Termination values are due in addition to any advance or arrears rent due on the same date.*
This Master Services and Lease Agreement ("Agreement") is made and entered into on this 25th day of January, 2019 ("Agreement Effective Date") between KONICA MINOLTA BUSINESS SOLUTIONS U.S.A., INC., a New York corporation, with its principal place of business located at 100 Williams Drive, Ramsey, New Jersey 07446 (hereinafter referred to as "KMBS" or "Contractor") and the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio, (hereinafter referred to as "Customer" or "City").

WHEREAS, Customer maintains operations in various locations throughout the City of Dayton, Ohio and wishes to lease and/or purchase Products and related Services from KMBS for use in Customer's facilities; and,

WHEREAS, KMBS wishes to sell and/or lease such Products and related Services to Customer; and,

WHEREAS, the parties deem by means of this Agreement to establish general terms and conditions, which will govern the lease and/or purchase of such Products and related Services by Customer; and,

WHEREAS, the City issued Request for Proposal ("RFP" No. 17010IT) for replacement of enterprise multi-function devices (i.e. Printers, Scanners, Copiers); and,

WHEREAS, Contractor submitted a response to the RFP representing that it is an experienced and licensed business, able to provide and perform maintenance on all equipment proposed by Contractor, as provided in the RFP; and,

WHEREAS, Contractor's response to the RFP is accepted by the City and incorporated into this agreement.

NOW THEREFORE, in consideration of the promises and undertakings hereinafter set forth, the parties hereby agree as follows:

ARTICLE I TERMS OF SERVICE

1.0 DEFINITIONS

"Products" is defined as Hardware and Software made available to Customer under this Agreement.

"Hardware" is defined as multifunctional devices, printers and other hardware, peripherals, accessories and options supplied by KMBS.

"Services" is defined as Hardware, Professional Services and Maintenance Services provided by KMBS.

"Software" is defined as KMBS Software programs, procedures, and related documentation associated with a computer system.

"End User License Agreement" also known as EULA, is defined as each software license Agreement under which Customer has been granted the right by the applicable Software development company or other licensor to use the Software.
2.0 **SCOPE**

This Agreement will apply to Products and related Services to be provided in the United States only. Should Customer wish to purchase Products and related Services outside of the United States, the respective Konica Minolta, Inc. entity or distributor in that respective country may offer Individual Contracts for acquisition of such Products and related Services ("Individual Contract(s)"). Each Individual Contract will be interpreted as a single agreement, independent of other Individual Contracts and this Agreement and will include local Products, pricing, terms and conditions.

KMBS shall provide those products and professional services set forth in Schedule "A", titled "Product and Service Pricing," which is attached hereto and incorporated herein by reference.

Additionally, in order to provide the City with the comprehensive solution as outlined by KMBS within their Scope of Services response to the City's RFP, KMBS shall provide the services and necessary products as describe in Schedule "E," titled "Scope of Services," which is attached hereto and incorporated herein by reference.

3.0 **TERM**

The term of this Agreement shall be for a Thirty-Six (36) month period from the execution date of both parties, namely, KMBS and City ("Initial Term"). Any extension of the Initial Term of this Agreement must be mutually agreed upon by both parties in an amendment. KMBS shall grant to the City the option to renew and extend the executed agreement for up to three (3) additional one (1) year periods upon mutual agreement between the City and KMBS.

4.0 **PRODUCT AND SERVICE AVAILABILITY**

Standard Services under this Agreement is provided during KMBS's normal business hours 8:00am-5:00pm, EST, Monday through Friday, exclusive of core national holidays observed by KMBS. Extended coverage Services outside of standard coverage hours may be available on a per-event charge as referenced in Schedule F - KMBS's Response to City's RFP 171011T.

4.1 The Products under this Agreement are subject to availability. If KMBS is unable to fulfill a Customer order in accordance with the terms of this Agreement KMBS may substitute an equal or better model at a mutually agreed upon price. As KMBS introduces new Products these Products may be added to this Agreement, at a mutually agreed upon price.

5.0 **PRICING**

Product and Service pricing shall be provided in Schedule A. Total remuneration payable under this Agreement shall not exceed Nine Hundred Seventy-Four Thousand Three Hundred Seventy-Six Dollars and Zero Cents ($974,376.00).

<table>
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<tr>
<th>Year</th>
<th>Price</th>
<th>Rate</th>
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<td>Year 1 1/1/2019 – 12/31/2019</td>
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<td>($27,066.00/month)</td>
</tr>
<tr>
<td>Year 2 1/1/2020 – 12/31/2020</td>
<td>$324,792.00</td>
<td>($27,066.00/month)</td>
</tr>
<tr>
<td>Year 3 1/1/2021 – 12/31/2021</td>
<td>$324,792.00</td>
<td>($27,066.00/month)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>not to exceed</td>
<td>$974,376.00</td>
</tr>
</tbody>
</table>
5.1 For thirty-six (36) months after the commencement of this Agreement's Initial Term, the Product and Service prices on Schedule A shall be fixed. After the thirty-six (36) month period, prices may be increased annually up to five (5%) percent over the previous year's prices. In the event KMBS introduces new Products to its product line and/or if a product substitution resulting from a discontinued model is necessary, such Products may be added to Schedule A of the Agreement and KMBS will notify Customer of any modification, addition or change to Schedule A in writing. Any modifications or additions must be agreed upon by both parties by successful execution of a City agreement change order or amendment. Any product substitutions due to a service replacement will take place as per the terms of the Customer One Guarantee and shall not affect the City of Dayton pricing during the thirty-six (36) month term.

5.2 Upon installation of the final device during the initial deployment of devices within the 90-day installation window, the service price for that device will be the price as specified in Schedule A. Once all devices are installed, prices will remain fixed for thirty-six (36) months of the Initial Term at the rate in the signed agreement. After the thirty-six (36) month term, Services coverage for that individual device will renew for successive one-year terms at a rate not to exceed five percent (5%) per year.

5.3 KMBS and City agree that at the end of this Agreement's thirty-six (36) month Initial Term, City has the option of purchasing the leased equipment identified in the Lease Schedules executed by KMBS and City pursuant to this Agreement, at the fair market value of the equipment, which shall not exceed twenty-three percent (23%) of the initial equipment cost.

6.0 PAYMENT TERMS

Payment is due within thirty (30) days from the date of the invoice. Customer will provide KMBS with a sales tax exemption certificate or direct payment permit; no taxes shall be assessed on the invoiced amounts. The use of an eProcurement solution, credit card, procurement card or similar payment device may incur additional fees. All invoices shall be accompanied by such supporting documentation and information substantiating the invoiced amount as may be requested by the City and agreed by KMBS. KMBS will promptly bill the customer as specified within Schedule C: Cyclical Invoice Requirements unless disputed, the City shall tender payment within thirty (30) days from date of the KMBS's invoice.

If Customer disputes any charges, Customer will promptly notify KMBS, in writing, the specifics of the disputed claim prior to the payment due date and will pay all undisputed charges per the terms of this Agreement. The parties will seek to resolve any disputed payment within thirty (30) days of notice and any resolved amount will be due in full immediately thereafter. If a dispute remains unresolved more than thirty (30) days, the parties reserve the right to seek any legal remedy available at law.

Konica/Minolta will NOT ACCEPT, OR SOLICIT THE USE OF Pcards, credit cards, or similar payment devices for any products or services that fall within the scope of this agreement without the expressed permission of the City of Dayton Division of Information Technology. This includes consumables and repair purchases related City of Dayton owned devices.

6.1 For an outright Hardware purchase, risk of loss shall transfer upon delivery of the Hardware to Customer's designated location(s) and title shall transfer upon full. Customer agrees to the filing of any liens and/or UCC security agreements (including UCC-1.)

6.2 KMBS and Customer shall use Cyclical Invoice Requirements ("Schedule C") to determine invoicing details prior to implementation. Cyclical invoices shall be completed and mutually agreed upon during implementation.

6.3 Any of the following shall constitute an event of default under this Agreement:
a. Any breach or failure of Customer to make any payment required hereunder or under any Schedule when due, or the failure of Customer to otherwise observe or perform any of its obligations, covenants or undertakings under this Agreement or any Schedule;

b. Any misrepresentation or breach of warranty or covenant by Customer;

c. If Customer, or any guarantor of Customer’s obligations hereunder or under any Schedule, becomes insolvent or makes an assignment for the benefit of creditors or a receiver, conservator or liquidator of Customer, or all or a substantial part of its assets is appointed or a petition is filed by or against Customer under the Bankruptcy Codes or under any other insolvency law;

d. No express or implied waiver by KMBS of any event of default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent event of default. The failure or delay or waiver of any such right in the future and any single or partial exercise of any particular right by KMBS shall not exhaust such rights or constitute a waiver of any other right provided herein.

6.4 In the event of default by Customer, KMBS may, in its sole and absolute discretion:

a. Declare the entire balance of unpaid invoices immediately due and payable, sue and request all the estimated fair market value of the Hardware not surrendered to KMBS;

b. Refuse to continue to Service Hardware under this Agreement or any other Agreement between Customer and KMBS.

7.0 TERMINATION

KMBS allows Customer the right to terminate this Agreement for convenience with sixty (60) days prior written notice as of the effective date thereof and paying entire balance of unpaid invoices immediately due. Termination for convenience will apply to pending or open orders that have yet to be shipped to Customer locations.

7.1 If either Party breaches any of its obligations under this Agreement by an act of commission or omission, the non-breaching party hereto may notify the breaching party of the specific breach and demand that the breach be cured. That notice shall also specify with particularity any and all reasonable actions that must be taken by the breaching party to cure the breach. Unless the breaching party then cures the breach (i.e., by taking at least those reasonable actions specified in the notice) and notifies the non-breaching party of the cure within thirty (30) business days from receipt of the non-breaching party’s notice, the non-breaching party shall then have the right to terminate this Agreement at any time after the thirty calendar day period by giving notice of termination to the breaching party. The termination shall be effective upon receipt of the termination notice by the breaching party, but the termination shall not operate to extinguish or prejudice the other rights and remedies of the non-breaching party with respect to the breach. However, if the breaching party has cured the breach and given notice of the cure to the non-breaching party before it receives the termination notice, the termination notice shall have no effect, and this Agreement shall remain in effect unless and until it is otherwise terminated. Termination of this Agreement due to an uncured breach by a party hereto shall cause all Schedules under this Agreement to likewise terminate as of the termination date.

The City may suspend performance of this Agreement for the City’s convenience upon sixty (60) days prior written notice to KMBS. In the event of termination by the City hereunder, the City will pay KMBS for
Services actually provided up to the date of termination. The amount, if any, owed under such suspension must be mutually agreed upon by the City and KMBS.

Any such termination shall not relieve KMBS of any liability to the City for damages to the extent sustained by virtue of any breach by KMBS. The City will be under no further monetary obligation or commitment to KMBS once all payments owed by the City are made to KMBS.

In the event of termination, the City may, at its option, exercise any remedy available to it, including the Uniform Commercial Code, according to Ohio law and to the extent the Uniform Commercial Code does not conflict with this Agreement.

For avoidance of doubt, termination under this Section 7.0 shall not relieve the City from its obligations under Article II — Terms of Lease.

8.0 LICENSE GRANT

Subject to the terms of any license agreement provided to Customer in conjunction with the Product, KMBS hereby grants to Customer a non-exclusive, nontransferable, limited license to use the Product for its day-to-day operations at Customer’s designated location(s). Neither Customer or anyone under Customer’s control shall make or be permitted to make copies of or reproduce any Software provided by KMBS.

9.0 BUSINESS PURPOSE

Customer warrants and represents that the Products purchased/and or leased under this Agreement will be used for business purposes only. Customer also warrants that Products will be used directly by the Customer and will not be made available for resale without the express written consent of KMBS.

10.0 SELLER’S AGENTS

Customer acknowledges that it has been advised that no agent, employee, or representative of KMBS has any authority to bind KMBS to any affirmation, promise, representation, or warranty concerning any of the Products therefore, unless an affirmation, promise, representation, or warranty is specifically set forth in this Agreement, it does not form a basis of this bargain and shall not be enforceable against KMBS.

11.0 ASSIGNMENT

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

12.0 NOTICE

All notices required to have been given under this Agreement shall be in writing sent by United States first-class mail or other reliable mail courier to the parties as follows:
Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of KMBS and the City.

13.0 RISK OF LOSS: INSURANCE

Upon delivery to Customer’s designated location, Customer shall bear all risk of theft, loss or damage not caused by KMBS to all Products. Customer shall maintain in full force throughout the term of this Agreement such policies of insurance in order to satisfy Customer’s obligations hereunder. KMBS acknowledges and accepts that the City of Dayton maintains a program of self-insurance pursuant to Ohio Revised Code §2744.08 and is self-insured in an amount not less than One Million Dollars.

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

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

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

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

KMBS shall indemnify and defend the City and its elected officials, officers, employees and agents (collectively, "Indemnitees") from and against all third-party claims, losses, damages, and expenses (including reasonable attorneys' fees), to the extent that such claims, losses, damages, or expenses are proximately caused by the negligent acts, omissions, or willful misconduct or fraud of KMBS and its agents, employees, and legal representatives in undertaking and performing the Services collectively, "Indemnitors"); however, no indemnification will be required for any claims, losses, damages or expenses resulting from any negligence or willful misconduct of the City or any of the other Indemnitees or any parties that are not Indemnitors. This Article shall survive for a period of two (2) years from early termination or expiration of this Agreement.

Notwithstanding the terms of any other provisions, (I) the total liability of KMBS and its subsidiaries, officers, employees, and agents for all claims of any kind arising out of KMBS’s services, whether in contract, tort, or otherwise, shall be as stated in Section 16 of this agreement; and (II) neither party shall in any event be liable for any indirect, consequential, or punitive damages, even if it has been advised of the possibility of such damages.

15.0 WARRANTIES

A. HARDWARE WARRANTY

KMBS WARRANTS THAT HARDWARE MANUFACTURED BY KONICA MINOLTA, INC. OR ONE OF ITS AFFILIATES SHALL PERFORM IN ACCORDANCE WITH THE PERFORMANCE SPECIFICATIONS.

B. SERVICE WARRANTY

KMBS WARRANTS THAT THE SERVICES WILL BE PERFORMED IN A PROFESSIONAL MANNER IN ACCORDANCE WITH GENERALLY APPLICABLE INDUSTRY STANDARDS.

C. DISCLAIMER OF WARRANTY

KMBS MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THE HARDWARE PRODUCTS, SERVICE, SOFTWARE OR ITS INSTALLATION, EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, AND EXPRESSLY EXCLUDES ALL IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

D. CUSTOMER ONE GUARANTEE (SCHEDULE G)

For equipment covered by this Guarantee under full continuous maintenance coverage from the date of installation, and for up to a maximum of five (5) years, KMBS shall offer a Customer One Guarantee which states:

a. Should covered equipment be out of service, due to maintenance needs, for more than sixteen (16) consecutive business hours, or if a production print unit is out of service for more than 24 hours, KMBS shall provide a loaner unit of similar capabilities upon your request.
b. Any unit that KMBS determines cannot be properly repaired to manufacturer's specifications will be eligible for a replacement unit of substantially similar or greater capabilities, at no additional charge. Replacement shall be a new MFP device within the first two (2) years of installation and the replacement unit thereafter may be other than new.

c. Customer owned non-KMBS assets, subject to a Managed Print Service contract supplement, are not covered by this Customer One Guarantee.

16.0 REMEDY LIMITATIONS

THE PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR INTERRUPTION OF SERVICES, LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF DATA, OR LOSS OR INCREASED EXPENSE OF USE), WHETHER IN AN ACTION IN CONTRACT, WARRANTY, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), OR STRICT LIABILITY, EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES, FOR ANY PROVEN BREACH OF THIS AGREEMENT. THE AGGREGATE LIABILITY OF EACH PARTY UNDER THIS AGREEMENT OR ANY SCHEDULE SHALL NOT EXCEED ONE MILLION DOLLARS ($1,000,000.00).

17.0 Intentionally Deleted.

18.0 APPLICABLE LAW

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

19.0 FORCE MAJEURE

Neither party shall be responsible for delays or failure in performance of this Agreement (other than failure to make payment) to the extent that such party was hindered in its performance by any circumstances beyond its reasonable control. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; acts of God; labor disputes; or any other occurrence beyond its reasonable control and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either the City or KMBS under this Agreement. If provided, the aforementioned circumstances are not due to the negligence or fault of the asserting party or any of its agents, employees, sub-contractors and/or representatives.

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

Failure by KMBS to enforce any provision of this Agreement or failure to exercise those rights or elections provided for herein, shall in no way be considered a waiver of such provisions, rights or elections, or in any way impact KMBS’s right to later enforce or exercise the same or other provisions, rights or elections, it may have under this Agreement. If any provision of this Agreement shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not impact the validity and enforceability of the remaining provisions of this Agreement.

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

21.0 USE OF PURCHASE ORDERS

Customer agrees that any purchase order or other Customer documentation issued to KMBS covering the Products shall be issued for purpose of authorization and Customer’s internal use only. Any terms and conditions contained in any such Customer documentation shall not modify or add to the terms and conditions of this Agreement.

22.0 ORIGINAL DOCUMENT

Customer agrees that this Agreement or any document created pursuant to this Agreement may be maintained in an electronic document storage and retrieval system, a copy of which shall be considered an original. Neither party shall raise any objection to the authenticity of this Agreement nor any document created hereunder based on the use of a copy retrieved from an electronic storage system.

23.0 LOCATIONS

Customer is solely responsible for payment obligations of their Locations listed in Schedule D of the Agreement.

24.0 CONFIDENTIALITY

"Confidential Information" means any information provided by the disclosing party (the "Disclosing Party") to the receiving party ("Receiving Party") in tangible or intangible form; provided, that such information is conspicuously marked "Confidential". Additionally, all information provided to and/or gathered by KMBS in the course of its performance of Services and clearly marked as confidential shall be deemed "Confidential Information" to the extent that it is classified as "private" under the laws of the State of Ohio or is not independently available to the general public. To the extent permitted by law, KMBS agrees that it shall not disclose such information to any third party without City's written consent.

The Receiving Party may use or disclose the Disclosing Party's Confidential Information only where such use or disclosure is necessary to perform its obligations under this Agreement. KMBS and Customer agree to use reasonable care (the same being not less than that employed to protect its own proprietary information of like importance which it does not desire to have published or disseminated) to safeguard Confidential Information and shall not at any time, or in any manner, either directly or indirectly, divulge, disclose or communicate Confidential Information to any third party.

Confidential Information shall not include any information, however designated, that: (a) is or becomes known publicly through no fault of the Receiving Party; (b) is learned by the Receiving Party
from a third party whom the Receiving Party believes in good faith is entitled to disclose it; (c) is already known to the Receiving Party before receipt from the Disclosing Party as shown by the Receiving Party's written records; or (d) is independently developed by the Receiving Party as shown by the Receiving Party's written records.

Where the Receiving Party is required to disclose Confidential Information pursuant to a lawful order of a court of competent jurisdiction, administrative agency or other governmental authority, the Receiving Party shall promptly notify the Disclosing Party of the proceeding to allow the Disclosing Party an opportunity to obtain a protective order or equivalent. For clarity, nothing in this Section shall prohibit or limit KMBS’s disclosure of confidential information when such disclosure is required by an order of a Court or under state or federal law, or when such disclosure is authorized in writing by City.

All Confidential Information shall remain the exclusive property of the Disclosing Party. The Disclosing Party’s disclosure of Confidential Information shall not constitute an express or implied grant to the Receiving Party of any license or other rights to or under the Disclosing Party’s patents, copyrights, trade secrets, trademarks, or other intellectual property rights.

25.0 PUBLICITY

KMBS shall not make any press release or other announcement with respect to Customer name, trademarks, service marks, logos, or quotes ("Marketing Material") without written approval of Customer. KMBS shall consult with, and receive written Customer content approval before issuing any Marketing Material with respect to this Agreement.

26.0. BACKGROUND CHECK

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

27.0 OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

KMBS shall retain its ownership rights in any and all KMBS owned and/or created, pre-existing and standard scripts, databases, computer software, and other proprietary property. Rights to intellectual property, that are not specifically and expressly designed or created exclusively for the City and written in a Statement of Work executed by an authorized signatory of KMBS, shall also remain the property of KMBS.

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

28.0 EQUAL EMPLOYMENT OPPORTUNITY

KMBS shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap with respect to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, lay-off, termination, rates of pay or other forms of compensation, or selection for training, including apprenticeship.
It is expressly agreed and understood that Section 35.14 of the Revised Code of General Ordinances of the City of Dayton constitutes a material condition of this Agreement as fully and as if specifically rewritten herein and that failure to comply therewith shall constitute a breach thereof entitling the City to terminate this Agreement at its option and may bar KMBS from receiving future City contracts.

29.0 SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the overall Agreement, to the extent feasible, and the void, unenforceable, invalid or illegal provision shall be deemed severed from this Agreement.

30.0 INDEPENDENT CONSULTANT

By executing this Agreement for professional services, KMBS acknowledges and agrees that it will be providing services to the City as an "Independent Consultant". As an Independent Consultant for the City, KMBS shall be prohibited from representing or allowing others to construe the parties' relationship in a manner inconsistent with this Article. Neither party shall have authority to assume or create any obligation on behalf of, or in the name of the other party, without the express prior written approval of a duly authorized representative of such other party.

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

31.0 THIRD PARTY RIGHTS

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

32.0 AMENDMENT

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

33.0 POLITICAL CONTRIBUTIONS

KMBS affirms and certifies that it complies with Ohio Revised Code § 3517.13 limiting political contributions.
34.0 ENTIRE AGREEMENT

This is the entire Agreement between Customer and KMBS. This Agreement supersedes any proposal or prior agreement, oral or written, or any other communications relating to Products purchased under this Agreement. Should it be determined that a pre-existing agreement was entered into between KMBS and Customer and any affiliates or subsidiaries, then the terms of any orders placed under said agreement shall not be affected by this Agreement.

Customer may elect to lease Hardware and enter into a separate stand-alone Lease Agreement.

The Schedule(s) listed below are incorporated herein by this reference:

- Schedule A: Product and Service Pricing
- Schedule B: Standard Maintenance
- Schedule C: Cyclical Invoice Requirements
- Schedule D: Affiliates and Subsidiaries
- Schedule E: Scope of Services
- Schedule F: KMBS’s Response to City’s RFP 171011T
- Schedule G: Customer One Guarantee
- Schedule H: Termination Value Tables for $1 Buyout Total Loss and FMV Total Loss

35.0 ORDER OF PRECEDENCE

This Agreement constitutes the entire and exclusive statement of the agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior representations, understandings or agreements between the Parties with respect to such subject matter. If there is a conflict between or among this Agreement and its attachments, the terms of Article II, “Terms of Equipment Lease”, shall apply and will be the prevailing terms for all leased equipment, and then the following descending order of precedence shall apply:

(a) the Agreement; then
(b) the Schedules; then
(c) the Statement(s) of Work with regard to the specific Statement of Work; then
(d) any Orders issued hereunder.

ARTICLE II – TERMS OF EQUIPMENT LEASE

This Article II of the Agreement sets forth separate terms and conditions applicable to the lease of equipment identified on one or more lease schedules in substantially the form attached hereto as Exhibit II(A). Each such schedule shall be deemed to incorporate the terms and conditions set forth in this Article II and no other terms of this Agreement.
For the purposes of this Article II, the following terms have the ascribed meanings: "Equipment" means the personal property identified on a Schedule, together with any upgrades, replacements, repairs and additions thereto; "Schedule" means a lease schedule in substantially the form attached hereto as Exhibit II(A); "Lease" means a Schedule together with the terms and conditions of this Article II. "Lessor", "us", "we", and "our" mean Konica Minolta Business Solutions U.S.A., Inc.; "Lessee", "you" and "your" mean the City of Dayton, Ohio.

1. LEASE AGREEMENT: You agree to lease from us the Equipment identified in Schedules from time to time signed by you and us for business purposes only. EACH SCHEDULE IS NON-CANCELABLE and is a separate assignable lease. To the extent the Equipment includes intangible property or associated services such as periodic software licenses and prepaid database subscription rights, such property shall be referred to as the "Software". You agree that all of the terms and conditions contained in each Schedule, incorporating by reference the terms and conditions set forth in this Article II, are a complete statement of the parties' agreement regarding the subject matter thereof and supersede all other provisions of this Agreement, all other writings, communications, understandings, agreements, any purchase order and any solicitation documents and related documents. A Lease may be modified only by written agreement and not by course of performance. Each Schedule becomes valid upon execution by both parties. The Equipment is deemed accepted by you under the applicable Schedule unless you notify us within ten (10) business days of installation of the equipment that you do not accept the Equipment and specify the defect or malfunction. In that event, at our sole option, we or our designee will replace the defective item of Equipment or the Schedule will be canceled and we or our designee will repossess the Equipment. You agree that, upon our request, you will sign and deliver to us, a delivery and acceptance certificate confirming your acceptance of the Equipment leased to you. The "Billing Date" of each Schedule will be the twentieth (20th) day or an alternative agreed upon date following installation. You agree to pay a prorated amount of 1/30th of the monthly payment times the number of days between the installation date and the Billing Date. Each Schedule will continue from the Billing Date for the Term shown and will be extended automatically for successive one (1) month terms unless you (a) send us written notice, between ninety (90) days and one hundred fifty (150) days before the end of any term, of your decision to return or purchase the Equipment or renew the Schedule and (b) you purchase or return the Equipment, as specified in your notice, within ten (10) days after the end of the term. Schedules with $1.00 purchase options will not be renewed. The periodic renewal payment has been set by mutual agreement and is not based on the cost of any component of this lease. If any provision of a Lease is declared unenforceable in any jurisdiction, the other provisions herein shall remain in full force and effect in that jurisdiction and all others.

2. RENT: Rent will be payable in installments, each in the amount of the Monthly Payment (or other periodic payment) shown plus any applicable sales, use and property tax. If we pay any tax on your behalf, you agree to reimburse us promptly along with a processing fee. Subsequent installments will be payable on the first day of each rental payment period shown beginning after the first rental payment period or as otherwise agreed. We will have the right to apply all sums received from you to any amounts due and owed to us under the terms of any Schedule. Your obligation to make all Monthly Payments (or other periodic payment) hereunder is absolute and unconditional and you cannot withhold or offset against any Monthly Payments (or other periodic payment) for any reason. You agree that you will remit payments to us in the form of company checks (or personal checks in the case of sole proprietorships), direct debit or wires only. WE BOTH INTEND TO COMPLY WITH ALL APPLICABLE LAWS. IF IT IS DETERMINED THAT YOUR PAYMENTS UNDER A SCHEDULE RESULT IN AN INTEREST PAYMENT HIGHER THAN ALLOWED BY APPLICABLE LAW, THEN ANY EXCESS INTEREST COLLECTED WILL BE APPLIED TO AMOUNTS THAT ARE LAWFULLY DUE AND OWING UNDER SUCH SCHEDULE OR WILL BE REFUNDED TO YOU. IN NO EVENT WILL YOU BE REQUIRED TO PAY ANY AMOUNTS IN EXCESS OF THE LEGAL AMOUNT.

3. OWNERSHIP OF EQUIPMENT: We are the Owner of the Equipment and have sole title (unless you have a $1.00 purchase option) to the Equipment (excluding software). You agree to keep the Equipment free and clear of all liens and claims. You are solely responsible for removing any data that may reside in the Equipment you return, including but not limited to hard drives, disk drives or any other form of memory.
4. WARRANTY DISCLAIMER: WE MAKE NO WARRANTY EXPRESS OR IMPLIED, INCLUDING THAT THE EQUIPMENT IS FIT FOR A PARTICULAR PURPOSE OR THAT THE EQUIPMENT IS MERCHANTABILITY. YOU AGREE THAT YOU HAVE SELECTED EACH ITEM OF EQUIPMENT BASED UPON YOUR OWN JUDGMENT AND DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US. WE ARE LEASING THE EQUIPMENT TO YOU IN NEW AND NOT REMANUFACTURED CONDITION “AS-IS”. You acknowledge that none of Supplier or their representatives are our agents and none of them are authorized to modify the terms of any Lease. No representation or warranty of Supplier with respect to the Equipment will bind us, nor will any breach thereof relieve you of any of your obligations hereunder. You are aware of the name of the manufacturer or supplier of each item of Equipment and Konica Minolta will assist in contacting the manufacturer or supplier for a description of warranty rights. You hereby acknowledge and confirm that you have not received any tax, financial, accounting or legal advice from us, the manufacturer or Supplier of the Equipment. EACH LEASE CONSTITUTES A “FINANCE LEASE” AS DEFINED IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE. You agree that the Customer One Guarantee is a separate and independent obligation of Supplier to you, that no assignee of the Lessor shall have any obligation to you with respect to the Guarantee and that your obligations under each Lease are not subject to setoff, withholding, reduction, counterclaim or defense for any reason whatsoever including, without limitation, any claim you may have against Supplier with respect to the Customer One Guarantee. For the avoidance of doubt nothing in this Section 4 shall be deemed a waiver of or limitation on any of Customer’s rights or KMBS’s obligations under Article I of this Agreement.

5. LOCATION OF EQUIPMENT: You will keep and use the Equipment only at your address shown above and you agree not to move it unless we agree to it. At the end of the Schedule term, if you do not purchase the Equipment, you will return the Equipment to a location we specify at your expense, in retail resalable condition (normal wear and tear acceptable), full working order, and in complete repair.

6. LOSS OR DAMAGE: You are responsible for the risk of loss or for any destruction or damage to the Equipment. No such loss or damage relieves you from the payment obligations under the Lease. You agree to promptly notify us in writing of any loss or damage and you will then pay to us the present value of the total of all unpaid Monthly Payments (or other periodic payments shown) for the full Schedule term plus the estimated fair market value of the Equipment at the end of the originally scheduled term, not to exceed 23% of the initial Equipment cost, all discounted at four percent (4%) per year, per the Schedule H-Termination Value Table. Any proceeds of insurance will be paid to us and credited, at our option, against any loss or damage.

7. COLLATERAL PROTECTION AND INSURANCE: You are responsible for keeping the Equipment in good working order. Except for ordinary wear and tear, you are responsible for protecting the Equipment from damage and loss of any kind. If the Equipment is damaged or lost, you agree to continue to pay the amounts due and to become due hereunder without setoff or defense. During the term of each Schedule, you agree that you will (1) insure the equipment against all loss or damage. KMBS acknowledges and accepts that the City of Dayton maintains a program of self-insurance pursuant to Ohio Revised Code §2744.08 and is self-insured in an amount not less than One Million Dollars.

8. INDEMNITY: We are not responsible for any loss or injuries caused by the use of the Equipment after installation. As between you and our assignee, you are responsible for any claim for losses or injury or death caused by the Equipment except to the extent caused by our gross negligence or willful misconduct.

9. TAXES AND FEES: To the extent that you provide us with a valid tax exemption certificate, we will not invoice you for taxes from which you are exempt.

10. ASSIGNMENT: YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR SCHEDULE. We may sell, assign, or transfer any Schedule and/or the Equipment with written notice. You agree that if we sell, assign, or transfer a Schedule and/or the Equipment, the assignee will have the same rights and benefits that we have now and will not have to perform any of our
obligations. You agree that the rights of the assignee will not be subject to any claims, defenses, or set offs that you may have against us whether or not you are notified of such assignment. The cost of any Equipment, Software, services and other elements of each Schedule has been negotiated between you and us or the applicable supplier. None of such assignees will independently verify any such costs. Our assignees will be providing funding based on such costs. You are responsible for determining your accounting treatment of the appropriate tax, legal, financial and accounting components of each Lease.

11. DEFAULT AND REMEDIES: If (a) you do not pay any lease payment or other sum due to us or other party when due or (b) if you break any of your promises in a Lease or any other agreement with our assignee or (c) if you become insolvent or commence bankruptcy or receivership proceedings or have such proceedings commenced against you, you will be in default. If you are ever in default, we may do any one or all of the following; (a) withhold or instruct any supplier to withhold service, parts and supplies and/or void the Customer One Guarantee; (b) terminate or cancel the Lease and/or any and all Schedules and require that you pay, AS LIQUIDATED DAMAGES FOR LOSS OF BARGAIN AND NOT AS A PENALTY, the sum of: (i) all past due and current Monthly Payments (or other periodic payments) and charges due under each Schedule for the remaining term of the Schedule. (c) require you to return the Equipment to us to a location designated by us (and with respect to any Software, (i) immediately terminate your right to use the Software including the disabling (on-site or by remote communication) of any Software; (ii) demand the immediate return and obtain possession of the Software and re-license the Software at a public or private sale; and/or (iii) cause the Software supplier to terminate the Software license, support and other services under the Software license). We may recover interest on any unpaid balance at the rate of four percent (4%) per annum but in no event more than the lawful maximum rate. We may also use any of the remedies available to us under Article 2A of the Uniform Commercial Code as enacted in the State of Lessor or its Assignee or any other law. If we have to take possession of the Equipment, you agree to pay the cost of repossession. The net proceeds of the sale of any repossessed Equipment will be credited against what you owe us YOU AGREE THAT WE WILL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL INDIRECT OR INCIDENTAL DAMAGES FOR ANY REASON WHATSOEVER. You agree that any delay or failure to enforce our rights under any Lease does not prevent us from enforcing any rights at a later time. All of our rights are cumulative. It is further agreed that your rights and remedies are governed exclusively by the Lease and you waive lessee’s rights under Article 2A (508-522) of the UCC.

12. UCC FILINGS: You grant us a security interest in the Equipment if the Lease is deemed a secured transaction and you authorize us to record a UCC-1 financing statement or similar instrument in order to show our interest in the Equipment.

13. CONSENT TO LAW, JURISDICTION, AND VENUE: Each Lease shall be deemed fully executed and performed in the state of Ohio and shall be governed by and construed in accordance with its laws. If the Lessor or its Assignee shall bring any judicial proceeding in relation to any matter arising under a Lease, the Customer irrevocably agrees that any such matter may be adjudged or determined in any court or courts in the state of Ohio Montgomery County.

14. LESSEE GUARANTEE: You agree, upon our request, to submit the original of any Schedules to us via overnight courier the same day of the facsimile or other electronic transmission of the signed Schedules. Both parties agree that each Schedule signed by you, whether manually or electronically, and submitted to us by facsimile or other electronic transmission shall, upon execution by us (manually or electronically, as applicable), be binding upon the parties. This Agreement and each Schedule may be executed in counterparts and any facsimile, photographic and/or other electronic transmission of a Schedule which has been manually or electronically signed by you when manually or electronically countersigned by us or attached to our original signature counterpart and/or in our possession shall constitute the sole original chattel paper as defined in the UCC for all purposes (including any enforcement action under paragraph 11) and will be admissible as legal evidence thereof. Both parties waive the right to challenge in court the authenticity of a faxed, photographic, or other electronically transmitted or electronically signed copy of this Agreement and any Schedule.
15. COMPUTER SOFTWARE: Notwithstanding any other terms and conditions of this Agreement, you agree that as to Software only: a) We have not had, do not have, nor will have any title to such Software; b) You have executed or will execute a separate software license agreement and we are not a party to and have no responsibilities whatsoever in regards to such license agreement; c) You have selected such Software and WE MAKE NO WARRANTIES OF MERCHANTABILITY, DATA ACCURACY, SYSTEM INTEGRATION OR FITNESS FOR USE AND TAKE ABSOLUTELY NO RESPONSIBILITY FOR THE FUNCTION OR DEFECTIVE NATURE OF SUCH SOFTWARE, SYSTEMS INTEGRATION, OR OTHERWISE IN REGARDS TO SUCH SOFTWARE. CUSTOMER’S LEASE PAYMENTS AND OTHER OBLIGATIONS UNDER THIS LEASE AGREEMENT SHALL IN NO WAY BE DIMINISHED ON ACCOUNT OF OR IN ANY WAY RELATED TO THE ABOVE SAID SOFTWARE LICENSE AGREEMENT OR FAILURE IN ANY WAY OF THE SOFTWARE.

16. ADDITIONAL TERMS:

A. COVENANTS: You covenant and warrant with respect to each Schedule that (1) you have, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current budget year to make the payments scheduled to come due and to meet its other obligations under the Schedule and such funds have not been expended for other purposes; and (2) that there is no action, suit, proceeding or investigation pending, or threatened in any court or other tribunal or competent jurisdiction, state or federal or before any public board or body, which in any way would (a) restrain or enjoin the delivery of the Lease or the ability of you to make its periodic payments as set out in the Lease; (b) contest or affect the authority for the execution or delivery of, or the validity of, the Schedule; or (c) contest the existence and powers of you; nor is there any basis for any such action, suit, proceeding or investigation; and (3) That the Equipment will be operated and controlled by you and will be used for essential government purposes and will to be essential for the term of the Lease. (4) You have not previously terminated a rental for non-appropriation, except as specifically described in a letter appended hereto.

B. SIGNATURES: The signers of each Schedule warrants that he/she is fully conversant with the governing relevant legal and regulatory provisions and has full power and authorization to bind you. The signer for you further warrants that your governing body has taken the necessary steps; including any legal bid requirements, under applicable law to arrange for acquisition of the Equipment; the approval and execution has been in accordance with all applicable open meeting laws; and that a resolution of the governing body of you authorizing execution of the Schedule has been duly adopted and remains in full force and effect.

C. NON-APPROPRIATION: In the event you wish to cancel a Lease because:
1. Funds are not appropriated for a fiscal period subsequent to the one in which the Lease was entered into which are sufficient to satisfy all of your obligations thereunder during said fiscal period;
2. Such non-appropriation did not result from any act or failure to act of you;
3. You have exhausted all funds legally available for all payment due under the Lease; and
4. There is no other legal procedure by which payment can be made to Lessor.

Then, provided that (a) you have given Lessor written notice of the occurrence of paragraph 1 above thirty (30) days prior to such occurrence; (b) Lessor has received a written opinion from your counsel verifying the same within ten (10) days thereafter upon receipt of the Equipment delivered to a location designated by Lessor, at your expense, Lessor's remedies for such default shall be to terminate the Lease at the end of the fiscal period during which notice is given; and/or sell, dispose of, hold, use or rent the Equipment as Lessor in its sole discretion may desire, without any duty to account to you.
IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives as of the date set forth below.

CITY OF DAYTON, OHIO

[Signature]
City Manager

KONICA MINOLTA BUSINESS SOLUTIONS
U.S.A., INC.

By: [Signature]
Print: Brian J. Cupka
EVP & General Counsel

APPROVED AS TO FORM AND CORRECTNESS

[Signature]
City Attorney

APPROVED BY THE COMMISSION OF THE
CITY OF DAYTON, OHIO

[Signature]
January 23, 2019

Min./Bk. Pg.

[Signature]
Clerk of Commission

17
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<td>First Unit for Non-KMPF Lease Returns</td>
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<td>A9HF013</td>
<td>PC-415 Large Capacity Cassette (2,500 sheets/Letter size only)</td>
<td>1,402</td>
<td>$715.55</td>
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<tr>
<td>A9HFWY2</td>
<td>PC-215 2-way Paper Feed Cabinet (2 x 500-sheet universal tray)</td>
<td>1,191</td>
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<tr>
<td>A9HFWY1</td>
<td>PC-115 Paper Feed Cabinet (500-sheet universal tray + storage)</td>
<td>913</td>
<td>$464.25</td>
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<td>7640018680</td>
<td>DK-510 Enhanced Copy Desk (Storage only)</td>
<td>222</td>
<td>$60.48</td>
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<td>LU-302 Large Capacity Unit (3,000 sheets/Letter size only)</td>
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<tr>
<td>A2YWWY2</td>
<td>JS-506 Job Separator</td>
<td>500</td>
<td>$156.65</td>
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<tr>
<td>A2YJWWY2</td>
<td>FS-533 Finisher (50-sheet inner staple finisher)</td>
<td>1,553</td>
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<tr>
<td>A87GWY3</td>
<td>FS-536 Finisher (50 Sheets)</td>
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<td>A87JWY2</td>
<td>RU-513 Relay Unit</td>
<td>210</td>
<td>$73.37</td>
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<td>A87GWYE</td>
<td>FS-536SD Finisher</td>
<td>3,095</td>
<td>$1,470.27</td>
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## CITY OF DAYTON

### Schedule A - Product and Service Pricing

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<thead>
<tr>
<th>Code</th>
<th>Description</th>
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<tbody>
<tr>
<td>A3EUW12</td>
<td>PK-519 Punch Kit (2/3 hole - for FS-533)</td>
<td>$298.69</td>
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<td>A3ETW11</td>
<td>PK-520 2/3 Hole Punch Unit (FS-534 or FS-536)</td>
<td>$182.44</td>
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<td><strong>FAX OPTIONS:</strong></td>
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<tr>
<td>A683012</td>
<td>FK-514 Fax Kit (Supports 1st &amp; 2nd fax line - no mount kit required)</td>
<td>$528.14</td>
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<tr>
<td>A684W11</td>
<td>FK-515 Fax Kit (Supports 3rd &amp; 4th fax line)</td>
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<td>4614506</td>
<td>SP-501 Fax Stamp Unit</td>
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<td>4614511</td>
<td>Spare TX Marker Stamp 2</td>
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<td>A886WY1</td>
<td>MK-742 Fax Mount Kit (Mount kit for FK-515 only)</td>
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<tr>
<td>A0PD116</td>
<td>LK-102 v3 i-Option License Kit (Encrypted PDF, PDF/A, Linearized PDF)</td>
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<td>A0PD117</td>
<td>LK-104 v3 i-Option License Kit (Voice Guidance)</td>
<td>$274.75</td>
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<td>A0PD11T</td>
<td>LK-105 v4 i-Option License Kit (Searchable PDF)</td>
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<td>A0PD119</td>
<td>LK-106 i-Option Bar Code Font</td>
<td>$287.35</td>
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<tr>
<td>A0PD11F</td>
<td>LK-107 i-Option License Kit (Unicode Font)</td>
<td>$241.50</td>
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<td>LK-108 i-Option OCR Font</td>
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<td>A0PD11U</td>
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<td>LK-111 i-Option License Kit (ThinPrint Client Support)</td>
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<td>ESP ENVISIONSENSE PMS 120V/15A</td>
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<td>SC-508 Security Kit (Copy Guard/Password Protect)</td>
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<td>CS-1 Convenience Stapler</td>
<td>$143.06</td>
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*Note: The prices listed are for informational purposes only and do not reflect actual purchase costs.*
# Schedule A - Product and Service Pricing

| Code         | Description                                                        | Quantity | Price  
|--------------|--------------------------------------------------------------------|----------|--------
| A4NMWY1      | MK-735 Mount Kit (IC Card Internal Mount Kit)                     | 60       | $21.00 |
| A4MEWY2      | MK-730 Mount Kit (Banner paper guide)                              | 846      | $296.10|
| A161192000   | Stylus Pen for INFO-Palette Series                                 | 30       | $10.50 |
| A87EWY4      | UK-212 Upgrade Kit (Provides Wireless LAN)                         | 260      | $96.80 |
| A888WY2      | HD-524 Hard Disk Mirroring                                         | 467      | $163.33|
| 4623474      | Key Counter Mount Kit 1 for Hecon Conventional Counter             | 86       | $30.10 |

**PROFESSIONAL SERVICES:**

| Code         | Description            | Quantity | Price  
|--------------|------------------------|----------|--------
<p>| 7640015657   | bizhub SECURE          | 250      | $100.00|
| 7640019024   | bizhub SECURE Healthcare| 400     | $200.00|</p>
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<td>bizhub SECURE Platinum</td>
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<td>KMBS Professional Project Services</td>
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<td>7640018460</td>
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## Schedule A - Product and Service Pricing

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<td>ESP ENVISIONSENSE PMS 120V/15A</td>
<td>440</td>
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<td>CS-1 Convenience Stapler</td>
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<td>7640019485</td>
<td>KMBS Professional Project Services</td>
<td>1</td>
<td>$1.00</td>
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<tr>
<td>7640018460</td>
<td>Network Fee (UPS Store ONLY)</td>
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<tr>
<td>A9HF013</td>
<td>PC-415 Large Capacity Cassette (2,500 sheets/Letter size only)</td>
<td>1,402</td>
<td>$715.55</td>
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<td>A9HFHWY2</td>
<td>PC-215 2-way Paper Feed Cabinet (2 x 500-sheet universal tray)</td>
<td>1,191</td>
<td>$416.42</td>
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<tr>
<td>A9HFHWY1</td>
<td>PC-115 Paper Feed Cabinet (500-sheet universal tray + storage)</td>
<td>913</td>
<td>$464.26</td>
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<tr>
<td>7B400018880</td>
<td>DK-510 Enhanced Copy Desk (Storage only)</td>
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<td>$60.48</td>
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<td>LU-207 Large Capacity Unit (2,500 sheets/Letter, Legal, Ledger and 12&quot;x18&quot;)</td>
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<td>RU-513 Relay Unit</td>
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<td>FS-536 Finisher (50 Sheets)</td>
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<td>$513.58</td>
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<td>RU-513 Relay Unit</td>
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<td>$73.37</td>
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<td>A87GWYE</td>
<td>FS-536SD Finisher</td>
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<td>$1,470.27</td>
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<td>A3ETW11</td>
<td>PK-520 2/3 Hole Punch Unit (FS-534 or FS-536)</td>
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<td>JS-506 Job Separator</td>
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<td>$156.65</td>
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<tr>
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<td>FS-533 Finisher (50-sheet inner staple finisher)</td>
<td>1,553</td>
<td>$542.33</td>
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<tr>
<td>A3EUW12</td>
<td>PK-519 Punch Kit (2/3 hole - for FS-533)</td>
<td>586</td>
<td>$296.69</td>
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<td>A883012</td>
<td>FK-514 Fax Kit (Supports 1st &amp; 2nd fax line - no mount kit required)</td>
<td>1,070</td>
<td>$528.14</td>
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<td>A884W11</td>
<td>FK-515 Fax Kit (Supports 3rd &amp; 4th fax line)</td>
<td>1,068</td>
<td>$545.38</td>
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**Output Options:**

- FS-537 Finisher (100 Sheets)
- RU-513 Relay Unit
- FS-537SD Finisher
- PK-523 Punch Kit For Fs-537
- OT-506 Output Tray
- JS-602 Job Separator Tray
- ZU-609 Z Folding Unit For Fs-537
- PI-507 Post Inserter For Fs-537
- FS-536 Finisher (50 Sheets)
- RU-513 Relay Unit
- FS-536SD Finisher
- PK-520 2/3 Hole Punch Unit (FS-534 or FS-536)
- JS-506 Job Separator
- FS-533 Finisher (50-sheet inner staple finisher)
- PK-519 Punch Kit (2/3 hole - for FS-533)
- FK-514 Fax Kit (Supports 1st & 2nd fax line - no mount kit required)
- FK-515 Fax Kit (Supports 3rd & 4th fax line)
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<th>Code</th>
<th>Description</th>
<th>Price</th>
<th>Cost</th>
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<td>SP-501</td>
<td>Fax Stamp Unit</td>
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<td>SP-501</td>
<td>Spare TX Marker Stamp 2</td>
<td>27</td>
<td>$12.38</td>
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<tr>
<td>MK-742</td>
<td>Fax Mount Kit (Mount kit for FK-515 only)</td>
<td>120</td>
<td>$59.63</td>
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<tr>
<td>LK-102 v3</td>
<td>i-Option License Kit (Encrypted PDF, PDF/A, Linearized PDF)</td>
<td>1,100</td>
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<td>Security Kit (Copy Guard/Password Protect)</td>
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<td>Mount Kit (Banner paper guide)</td>
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### Schedule A - Product and Service Pricing

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**PROFESSIONAL SERVICES:**

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**PAPER SUPPLY OPTIONS:**

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<td>PC-215 2-way Paper Feed Cabinet (2 x 500-sheet universal tray)</td>
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<td>PC-115 Paper Feed Cabinet (500-sheet universal tray + storage)</td>
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<td>LU-207 Large Capacity Unit (2,500 sheets/Letter, Legal, Ledger and 12&quot;x18&quot;)</td>
<td>3,339</td>
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**PAPER SUPPLY OPTIONS:**

Select one
### Schedule A - Product and Service Pricing

| Code     | Description                                      | Price  
|----------|--------------------------------------------------|--------
| A87VW11  | LU-302 Large Capacity Unit (3,000 sheets/Letter size only) | 1,781 $810.67  
| A87HWY1  | FS-537 Finisher (100 Sheets)                    | 3,020 $1,024.19  
| A87JWY2  | RU-513 Relay Unit                                | 210 $73.37  
| A87HWYA  | FS-537SD Finisher                                | 4,500 $2,257.38  
| A99KW11  | PK-523 Punch Kit For Fs-537                     | 850 $374.81  
| A4MDWY1  | OT-506 Output Tray                              | 111 $51.96  
| A10Cwy2  | JS-602 Job Separator Tray                        | 500 $222.33  
| A63Gwy1  | ZU-609 Z Folding Unit For Fs-537                 | 5,010 $2,883.47  
| A8C6WY1  | PI-507 Post Inserter For Fs-537                  | 1,110 $515.36  
| A87GWY3  | FS-536 Finisher (50 Sheets)                     | 1,650 $513.58  
| A87JWY2  | RU-513 Relay Unit                                | 210 $73.37  
| A87GWYE  | FS-536SD Finisher                                | 3,095 $1,470.27  
| A3ETW11  | PK-520 2/3 Hole Punch Unit (FS-534 or FS-536)    | 586 $182.44  
| A2YWVY2  | JS-506 Job Separator                             | 500 $156.65  
| A2YWJY2  | FS-533 Finisher (50-sheet inner staple finisher) | 1,553 $542.33  
| A3EJUW12 | PK-519 Punch Kit (2/3 hole - for FS-533)         | 586 $298.69  

### FAX OPTIONS:

| Code     | Description                                      | Price  
|----------|--------------------------------------------------|--------
| A833012  | FK-514 Fax Kit (Supports 1st & 2nd fax line - no mount kit required) | 1,070 $528.14  
| A884W11  | FK-515 Fax Kit (Supports 3rd & 4th fax line)      | 1,068 $545.38  
| 4614506  | SP-501 Fax Stamp Unit                            | 48 $20.77  
| 4614511  | Spare TX Marker Stamp 2                          | 27 $12.38  
| A886WY1  | MK-742 Fax Mount Kit (Mount kit for FK-515 only)  | 120 $59.63  

### OPTION ACCESSORIES:
## Schedule A - Product and Service Pricing

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<th>Price</th>
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**MISC. OPTIONS:**

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<td>$163.33</td>
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## Schedule A - Product and Service Pricing

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## Schedule A - Product and Service Pricing

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<td>FS-532 100 finisher with PK and SD</td>
<td>8,018</td>
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<td>A4F4WY1</td>
<td>SD-510 Saddle Stitch Kit</td>
<td>1,977</td>
<td>$692.10</td>
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## Schedule A - Product and Service Pricing

<table>
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<tr>
<th>Part Number</th>
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<tr>
<td>A4F5WY1</td>
<td>MK-732 (mount kit for PI-502)</td>
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<td>A4FAW12</td>
<td>PK-522 Punch Kit</td>
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<td>RU-510 Relay Unit</td>
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<td>Plackmatic Trim Waste Conveyor for RCT</td>
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<td>GBC PUNCH G2 (Requires at least one Die Set)</td>
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<td>7714902</td>
<td>DIE, Wire 2:1, Rnd 32H</td>
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<td>7714906</td>
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<td>DIE, Coll, Rnd, 44/47H HD</td>
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<td>7714919</td>
<td>DIE, CombBind, 19/21H HD</td>
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### Schedule A - Product and Service Pricing

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<td>A874WY2</td>
<td>Hard Disk HD-523</td>
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<td>A0W6WY4</td>
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<td>AAAMWY1</td>
<td>Upgrade Kit UK-217 (APPE Option)</td>
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<td>PATLITE STATUS LIGHT KIT FOR BIZHUB PRESS MODELS</td>
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<td>Recycled Power Filter 240V/30A</td>
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<td>ORU Operator Training (1 Day)</td>
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<td>9967005050</td>
<td>PROKOM MEMBERSHIP</td>
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<td>SD-506 Saddle Stitch</td>
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<tr>
<td>SD-513 Saddle Stitch</td>
<td>Required Monthly Maintenance is $70 per month</td>
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<tr>
<td>PB-803 Perfect Binder</td>
<td>Required Monthly Maintenance is $110 per month</td>
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<td>Plockmatic SD-350</td>
<td>Required Monthly Maintenance is $300 per month</td>
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<tr>
<td>Bookletmaker</td>
<td>Required Monthly Maintenance is $245 per month</td>
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| A7PU017                      | bizhub C368 COPIER/PRINTER |     |       |
|------------------------------|-----------------------------| $15,150 | $2,415.60 |

**Total:** $15,150.00
### Schedule A - Product and Service Pricing

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<thead>
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<td>MXA87AWY1KMUS</td>
<td>Upgrade Kit UK-211 Memory Experts</td>
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<td>Delivery Charge - Level 1</td>
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<td>Basic Network Service - BNS04</td>
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<td>7640018269</td>
<td>Additional Units for Non-KMPF Lease Returns</td>
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<td>7640020488</td>
<td>Additional Units for KMPF Lease Returns</td>
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**DOCUMENT HANDLING OPTIONS: Select one**

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<td>A3PMWY1</td>
<td>OC-511 Original Cover</td>
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<td>A87RWWY1</td>
<td>DF-629 Reverse Automatic Document Feeder</td>
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<td>A85GWY2</td>
<td>DF-704 Dual Scan Document Feeder</td>
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**PAPER SUPPLY OPTIONS: Select one**

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<tr>
<td>A2XM019</td>
<td>PC-410 Large Capacity Cassette (2,500 sheets/Letter size only)</td>
<td>1,402</td>
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<td>PC-210 2-way Paper Feed Cabinet (2 x 500-sheet universal tray)</td>
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<td>A2XMWY7</td>
<td>PC-110 Paper Feed Cabinet (500-sheet universal tray + storage)</td>
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<td>7640018680</td>
<td>DK-510 Enhanced Copy Desk (Storage only)</td>
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<td>A87YW11</td>
<td>LU-302 Large Capacity Unit (3,000 sheets/Letter size only)</td>
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**OUTPUT OPTIONS:**

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<td>A2YWY2</td>
<td>JS-506 Job Separator</td>
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<td>FS-533 Finisher (50-sheet inner staple finisher)</td>
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<td>A3EPWY3</td>
<td>FS-534 Finisher (50-sheet floor staple finisher)</td>
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<td>RU-513 Relay Unit</td>
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<td>FS-534 with SD-511 Finisher (Floor finisher + Saddle Stitcher)</td>
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<td>$1,168.94</td>
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<td>Code</td>
<td>Description</td>
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<td>PK-519 Punch Kit (2/3 hole - for FS-533)</td>
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<td>A3ETW11</td>
<td>PK-520 2/3 Hole Punch Unit (FS-534 or FS-536)</td>
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<td>FK-514 Fax Kit (Supports 1st &amp; 2nd fax line - no mount kit required)</td>
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<td>FK-515 Fax Kit (Supports 3rd &amp; 4th fax line)</td>
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<td>4814506</td>
<td>SP-501 Fax Stamp Unit</td>
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<td>Spare TX Marker Stamp 2</td>
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<td>A886WY1</td>
<td>MK-742 Fax Mount Kit (Mount kit for FK-515 only)</td>
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<td>IC-416 Image Controller</td>
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<td>Fiery Color Profiler Suite V 4.0 with ES-2000 Spectrophotometer</td>
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<td>AOPD01K</td>
<td>LK-111 i-Option License Kit (ThinPrint Client Support)</td>
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## Schedule A - Product and Service Pricing

### MISC. OPTIONS:

<table>
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<td>7640006869</td>
<td>External Keyboard</td>
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<td>A4NRWY1</td>
<td>KH-102 Keyboard Holder</td>
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<td>A64TWY3</td>
<td>KP-101 Keypad</td>
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<td>A88AWY2</td>
<td>EK-608 Local Interface Kit</td>
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<td>A87DWH2</td>
<td>EK-609 Local Interface Kit</td>
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<td>A0W4WY3</td>
<td>WT-506 Working Table</td>
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<td>A0X9WY1</td>
<td>AU-102 Biometric Authentication Unit</td>
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<td>AU-205H IC Card Reader</td>
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<td>AU-204H Mag Stripe Card Reader</td>
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<tr>
<td>D5133NTKM</td>
<td>ESP POWER FILTER 120V/15A BASIC</td>
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<td>120V15A</td>
<td>Recycled Power Filter 120V/15A</td>
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<td>EVS12015</td>
<td>ESP ENVISIONSENSE PMS 120V/15A</td>
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<tr>
<td>A4MMWY3</td>
<td>SC-508 Security Kit (Copy Guard/Password Protect)</td>
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<td>7640013463</td>
<td>CS-1 Convenience Stapler</td>
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<td>MK-735 Mount Kit (IC Card Internal Mount Kit)</td>
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<td>MK-730 Mount Kit (Banner paper guide)</td>
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<td>A161192000</td>
<td>Stylus Pen for INFO-Palette Series</td>
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<td>A87EWH4</td>
<td>UK-212 Upgrade Kit (Provides Wireless LAN)</td>
<td>260</td>
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<td>A89BWY2</td>
<td>HD-524 Hard Disk Mirroring</td>
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<tr>
<td>4623474</td>
<td>Key Counter Mount Kit 1 for Kecon Conventional Counter</td>
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### PROFESSIONAL SERVICES:

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<td>7640015657</td>
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## Schedule A - Product and Service Pricing

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**PAPER SUPPLY OPTIONS: Select one**
- A4YWY2  | PF-P13 Paper Feed Unit                           | 340      | $119.00    |
- 9967002766 | DK-P03 Copy Desk                                | 296      | $103.60    |

**OUTPUT OPTIONS:**
- A6VDWY1  | FS-P03 Finisher                                 | 299      | $104.65    |
- 7640013463 | CS-1 Convenience Stapler                        | 317      | $143.06    |

**I-OPTION ACCESSORIES:**
- A0PD116  | LK-102 v3 i-Option License Kit (Encrypted PDF, PDF/A, Linearized PDF) | 1,100    | $385.00    |
- A0PD117  | LK-104 v3 i-Option License Kit (Voice Guidance)  | 785      | $274.75    |
- A0PD111T | LK-105 v4 i-Option License Kit (Searchable PDF)  | 668      | $233.73    |
- A0PD119  | LK-106 i-Option Bar Code Font                   | 821      | $287.35    |
- A0PD111F | LK-107 i-Option License Kit (Unicode Font)      | 690      | $241.50    |
## Schedule A - Product and Service Pricing

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<td>LK-111 i-Option License Kit (ThinPrint Client Support)</td>
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<td>Recycled Power Filter 120V/15A</td>
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## Schedule A - Product and Service Pricing

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<td>A9HF013</td>
<td>PC-415 Large Capacity Cassette (2,500 sheets/Letter size only)</td>
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## Schedule A - Product and Service Pricing

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<td>SP-501 Fax Stamp Unit</td>
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<td>Spare TX Marker Stamp 2</td>
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<td>MK-742 Fax Mount Kit (Mount kit for FK-515 only)</td>
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### PRINT CONTROLLER OPTIONS:

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<td>A8CTWY1</td>
<td>IC-416 Image Controller</td>
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<td>VI-510 Video Interface Card</td>
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### I-OPTION ACCESSORIES:

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<td>A0PD119</td>
<td>LK-106 i-Option Bar Code Font</td>
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<td>A0PD11F</td>
<td>LK-107 i-Option License Kit (Unicode Font)</td>
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<td>A0PD11G</td>
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# CITY OF DAYTON

## Schedule A - Product and Service Pricing

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<th>MISC. OPTIONS:</th>
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<td>AU-102 Biometric Authentication Unit</td>
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<td>MK-735 Mount Kit (IC Card Internal Mount Kit)</td>
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<td>MK-730 Mount Kit (Banner paper guide)</td>
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<td>EK-608 Local Interface Kit</td>
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<td>EK-609 Local Interface Kit</td>
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**PAPER SUPPLY OPTIONS: Select one**

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<td>PC-415 Large Capacity Cassette (2,500 sheets/Letter size only)</td>
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<td>PC-215 2-way Paper Feed Cabinet (2 x 500-sheet universal tray)</td>
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<td>PC-115 Paper Feed Cabinet (500-sheet universal tray + storage)</td>
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<td>DK-510 Enhanced Copy Desk (Storage only)</td>
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<td>LU-207 Large Capacity Unit (2,500 sheets/Letter, Legal, Ledger and 12&quot;x18&quot;)</td>
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<td>LU-302 Large Capacity Unit (3,000 sheets/Letter size only)</td>
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**OUTPUT OPTIONS:**

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<td>FS-533 Finisher (50-sheet inner staple finisher)</td>
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<td>SP-501 Fax Stamp Unit</td>
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<td>Spare TX Marker Stamp 2</td>
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<td>A0PD116</td>
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<td>A0PD11F</td>
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<td>External Keyboard</td>
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<td>KP-101 Keypad</td>
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<td>WT-506 Working Table</td>
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<td>SC-508 Security Kit (Copy Guard/Password Protect)</td>
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<td>UK-212 Upgrade Kit (Provides Wireless LAN)</td>
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<td>ESP POWER FILTER 120V/15A BASIC</td>
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## Schedule A - Product and Service Pricing

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<td>Stylus Pen for INFO-Palette Series</td>
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<td>HD-524 Hard Disk Mirroring</td>
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### PROFESSIONAL SERVICES:

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<td>bizhub SECURE Platinum</td>
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<td>KMBS Professional Project Services</td>
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### OTHER OPTIONS:

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<td>Expert Color Production Training</td>
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<td>Professional Services Project Fee</td>
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### DOCUMENT HANDLING OPTIONS:

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<td>OC-511 Original Cover</td>
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### PAPER SUPPLY OPTIONS:
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<td>LU-202m Paper Feed Tray</td>
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<td>MK-746 Envelope Print Guide for LU-202m and LU-202XL</td>
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<td>HT-515 Dehumidifier Heater (For LU-202XLm connected to PF-707m)</td>
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**OUTPUT OPTIONS:**

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<th>Item Code</th>
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<th>Price 2</th>
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<td>OT-511 Output Tray</td>
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<td>FS-531 50 Sheet Stapling Finisher</td>
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<td>PI-502 Multi-Post Inserter</td>
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<td>A65UWY1</td>
<td>SD-513 Saddle Stitcher</td>
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<td>A729WY1</td>
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<td>A65XWY1</td>
<td>CR-101 Creaser Unit</td>
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<td>A65WVY1</td>
<td>FD-504 Square Folding Unit</td>
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<td>A65WVY1</td>
<td>TU-503 Trimmer Unit</td>
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<td>LS-506 Large Stacker Unit</td>
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<td>LC-501 Additional Cart for LS-505</td>
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<td>A15XW12</td>
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<td>A4FCWY1</td>
<td>RU-510 Relay Unit</td>
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<td>A4FBW12</td>
<td>GP-502 Ring Binder</td>
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<td>Plockmatic SD-350 Bookletmaker</td>
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<td>10200011</td>
<td>Plockmatic 50 Sheet Upgrade Kit</td>
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### Schedule A - Product and Service Pricing

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<td>10307000</td>
<td>Plockmatic Face Trimmer</td>
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<td>Plockmatic RCT (incl Interface Module)</td>
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<td>4704000</td>
<td>Plockmatic High Capacity Belt Stacker</td>
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<td>Plockmatic Trim Waste Conveyor for RCT</td>
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<td>7718800</td>
<td>GBC PUNCH G2 (Requires at least one Die Set)</td>
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<td>7714902</td>
<td>DIE, Wire 2:1, Rnd 32H</td>
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<td>7714903</td>
<td>DIE, Wire 3:1, Rnd 21H</td>
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<td>DIE, 3 Hole, 8mm</td>
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<td>7714905</td>
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<td>7714911</td>
<td>DIE, CombBind 19H</td>
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<td>DIE, Coi1, Oval 43/ 44H</td>
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<td>7714906</td>
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<td>7714917</td>
<td>DIE, Coi1, Rnd, 44/47H HD</td>
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<td>7714918</td>
<td>DIE, 3 Hole, 8mm, HD</td>
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<td>7714919</td>
<td>DIE, CombBind, 19/21H HD</td>
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#### PRINT CONTROLLER OPTIONS:

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<tr>
<td>A9F7WY1</td>
<td>IC-417 EFI Embedded Image Controller</td>
<td>9,000</td>
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<td>A9F5WY1</td>
<td>IC-313 EFI Server Type Image Controller</td>
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<td>EFI Productivity Package S/W License</td>
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<td>Fiery Impose</td>
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<td>Code</td>
<td>Description</td>
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<td>45111136</td>
<td>EFI Fiery Compose S/W License</td>
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<td>45111138</td>
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<td>45112179</td>
<td>Fiery JobMaster (includes 1yr maintenance)</td>
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<td>Fiery JobMaster Annual Support &amp; Maintenance</td>
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<td>EFI Hot Folders &amp; Virtual S/W License</td>
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<td>45111094</td>
<td>EFI Auto Trap S/W License</td>
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<td>45111100</td>
<td>EFI Fiery Gappe(GA2)</td>
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<td>45052707</td>
<td>EFI HDD Security For PRO80</td>
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<td>45151789</td>
<td>FACI/FURNITURE BUNDLE includes Stand, Keyboard, 22&quot; Monitor, and Mouse</td>
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<td>45152665</td>
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<td>A5XWY2</td>
<td>UK-104 Upgrade Kit (Addtl 500GB memory)</td>
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<td>AAMWY1</td>
<td>UK-218 Upgrade Kit (APPE)</td>
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<td>A9G1WY2</td>
<td>Video Interface Kit VI-509 (Required w/ EFI)</td>
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<td>IC-314 Creo Image Controller</td>
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<td>Action Pack Option for Creo IC-309 and IC-309m</td>
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<td>Fast Pack Option for Creo IC-309 and IC-309m</td>
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<td>Match Pack Option for Creo IC-309</td>
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<td>63800862A</td>
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<td>6380021B</td>
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<td>7640013552</td>
<td>IC-307 Universal Stand</td>
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MISCELLANEOUS OPTIONS
# Schedule A - Product and Service Pricing

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<tr>
<td>LES402A</td>
<td>PATLITE STATUS LIGHT KIT FOR BIZHUB PRESS MODELS</td>
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<tr>
<td>R5427000136466</td>
<td>AU-205H IC Card Reader</td>
<td>399</td>
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<td>EV20830L630GNS</td>
<td>ESP POWER FILTER 240V/30A</td>
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<td>240V30A</td>
<td>Recycled Power Filter 240V/30A</td>
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<td>EVS20830L630GNS</td>
<td>ESP ENVISIONSENSE PMS 208V-240V/30A</td>
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<td>XGPCS15DKM</td>
<td>ESP Diagnostic Power Filter 120V/15A</td>
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<td>120V15A</td>
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<td>SMT1500</td>
<td>APC Smart UPS 1500VA – Tower</td>
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<td>7640019042</td>
<td>bizhub PRESS Starter Kit</td>
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<td><strong>ORU:</strong></td>
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<td>7640018666</td>
<td>ORU Operator Training (1 Day)</td>
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<td><strong>Color Management Tools</strong></td>
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<td>Color Care 2 Suite Bundle with bizhub Press</td>
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<td>Color Care Curve Core Optional Tool</td>
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<td>ABAN106</td>
<td>FD-9 Auto Scan Spectrophotometer</td>
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<td>ABAN710</td>
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<td>EO2BAS</td>
<td>iPro 2 SPECTROPHOTOMETER</td>
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<td>GTI PDV3EKM Lightbox</td>
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<td>7640015921</td>
<td>GTI L217 Relamp Kit for PDV Lightboxes</td>
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### Schedule A - Product and Service Pricing

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<td>EFI Color Profiler Suite V4.x Software Only</td>
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<td>SB Kit Fiery CPS Upgrade V3.x To V4.0</td>
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<td>45106942</td>
<td>ES-2000 Spectrophotometer</td>
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<td>3000007370</td>
<td>EFI CPS V4.X ES-2000 THREE YEARS SMSA</td>
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<td>3000007371</td>
<td>EFI CPS V4.X ES-2000 FIVE YEARS SMSA</td>
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<td>FIERY CPS V4.x Software Only w 3 YR SMSA</td>
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<td>3000007373</td>
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<td>G7 NEW QUALIFICATION APPLICATION FEE</td>
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<td>G7 NETWORK MEMBERSHIP FEE (YEARLY DUES)</td>
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<td>G7 RENEWAL FEE</td>
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**PROFESSIONAL SERVICES:**

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<td>SD-506</td>
<td>Required Monthly Maintenance is $70 per month</td>
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<tr>
<td>SD-513</td>
<td>Required Monthly Maintenance is $70 per month</td>
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<tr>
<td>PB-503</td>
<td>Required Monthly Maintenance is $110 per month</td>
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<td>Polkomatic SD-350</td>
<td>Required Monthly Maintenance is $300 per month</td>
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## Schedule A - Product and Service Pricing

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<thead>
<tr>
<th>Product Description</th>
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<th>Unit Price</th>
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<td>Plockmatic RCT (Inc Interface Module)</td>
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<td>JetColor 3.0 Press Performance Bundle</td>
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<td>INSTALL&amp;TRNG - JetColor 3.0</td>
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<td>KIP 720 Scanner Stand Alone</td>
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<td>WebCRD Base License</td>
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<td>Virtual Server Image</td>
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<td>ReadyPrint Module (with QDirect or WebCRD)</td>
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<td>WebCRD Base - Remote Installation</td>
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<td>ReadyPrint Installation Assistance</td>
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<td>Virtual Server Image - Annual 1x5 Premium Support</td>
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<td>DP Convert to PDF (file conversion to PDF Searchable, PDF/A, etc.)</td>
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<td>DP Convert to Microsoft Office</td>
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<td>DP Foundations Software Maintenance (3 yrs.)</td>
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<td>7640004355</td>
<td>Konica Minolta Universal MFP Connector License RightFax. Price per Connector</td>
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## Schedule A - Product and Service Pricing

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<td>Solutions EngineerLocal Solutions Installation and Deployment (per hour)</td>
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## Schedule A - Product and Service Pricing

### Schedule A - Summary

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<th>Lease per Device</th>
<th>Total Monthly Lease Payment</th>
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<td>Duplo 616 Pro + DF 1200</td>
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<td>$1,127.01</td>
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<td><strong>TOTAL MONTHLY HARDWARE LEASE</strong></td>
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<th>SOFTWARE</th>
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<td>RIGHT FAX</td>
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<td><strong>TOTAL MONTHLY SOLUTIONS LEASE</strong></td>
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**TOTAL YEARS 1-3 HARDWARE LEASE & SOLUTIONS** = **$24,427.11**

Lease payments are for illustrative purposes only. Lease rate factors are subject to change due to market fluctuations.
## Schedule A - Product and Service Pricing

### Schedule A - Summary

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<th>PRICE</th>
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<td>61</td>
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<td>Upgrade Kit UK-211 Memory Experts</td>
<td>$132.00</td>
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<td>61</td>
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<td></td>
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<tr>
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<td>61</td>
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<td>KH-102 Keyboard Holder</td>
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<td>EK-608 Local Interface Kit</td>
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**TOTAL LEASE:** $3,218.47
## Schedule A - Summary

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**TOTAL LEASE:** $52,569.99
## Schedule A - Summary

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<td>$132.00</td>
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**DOCUMENT HANDLING OPTIONS:** Select one

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<th>PRICE</th>
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**PAPER SUPPLY OPTIONS:** Select one

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<th>DESCRIPTION</th>
<th>PRICE</th>
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**OUTPUT OPTIONS:**

**MISC. OPTIONS:**

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**PROFESSIONAL SERVICES:**

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**TOTAL LEASE:** $4,065.65
### Schedule A - Summary

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**MISC. OPTIONS:**

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**TOTAL:** $4,500.61
## Schedule A - Summary

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**TOTAL: $4,855.66**
### Schedule A - Summary

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**TOTAL:** $48,306.4

**LEASE:**
### Schedule A - Product and Service Pricing

#### Schedule A - Summary

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<td>7640020508</td>
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## Schedule A - Summary

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**Total:** $12,432
### Schedule A - Product and Service Pricing

#### Schedule A - Summary

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#### Software Licenses

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#### Software Annual Maintenance

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CITY OF DAYTON  
Schedule A - Product and Service Pricing  

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Total Cost: $7,028.84  
LEASE: $2,418.84

Hardware & Appliances

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Total Cost: $245,289.00
LEASE: $2,545.99
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**Total:** $27,462.19

**Lease:** $1,285.29
Schedule B - Standard Maintenance

Hardware Services

1. **Hardware Services:** Provided under this agreement include labor and parts required to maintain covered Hardware in a normal operating condition as set forth in the Hardware Product specifications detailed on kmbs.konicaminolta.us.

2. **Hardware Exchange:** Will be used for Products where on-site support is not available. KMBS will employ a 'hot swap' process and will provide packaging for return of the original unit. Customer is responsible to facilitate the reconnection and return process. **Auto Add of Hardware:** Where the use of 'Fleet Device Monitoring' as part of a managed print program has been agreed to it will be used to detect new devices and may add such devices to this agreement at pre-established price levels. The Customer will be notified via email and may reject the addition of the device(s) by contacting KMBS.

3. **User Training:** KMBS trains Customer to operate all Products. Training consists of an overview of Hardware and Software. KMBS provides on-going training throughout the Agreement, at no additional charge. Production print Hardware, have advanced user functions that may require advance training. Advanced training on Production Print Product will be at an additional charge.

4. **Preventative Maintenance:** Shall be performed as needed to ensure optimal operation of Hardware. This includes component replacement, adjustments and cleaning. End-user maintenance as defined in the Hardware user guide is not covered. Repairs and/or Services that fall outside the scope of this agreement may be billed at prevailing hourly rates with prior authorization. This includes but is not limited to abuse/misuse, alteration or modification, 3rd party interference, use of non-standard supplies, usage beyond recommended operating parameters, theft, neglect, fire, water, casualty or other natural force. Failure to authorize repair and/or Services may result in suspension or termination of this agreement.

5. **Site Environment:** Customer shall be responsible to insure that Hardware and Software are placed in a location that meets manufacturer's requirements (available on the KMBS website) including space, power, network, temperature and humidity. Electrical power must meet voltage, amperage and electrical noise level requirements. KMBS personnel will be granted reasonable and safe access to perform Services when required.

6. **Prerequisite to Service:** For Hardware not previously under a continuous maintenance agreement, Hardware must be in good working condition before the start of this agreement. Remedial Service may be required to bring the Hardware to proper operating standards and the labor and parts associated will be billed at prevailing rates. A quote will be provided for customer approval before work begins.

7. **Initial Installation:** Physical installation, removal of packing material and initial setup of Hardware will be performed by KMBS using default configuration settings at the location specified by customer. Application of custom settings can be requested prior to installation. KMBS reserves the right to charge additional fees for custom settings.

8. **Relocation and Move Preparation:** When requested, relocation Services will be performed and billed at prevailing rates. There will be no cost for movement of equipment within the same location. Coverage at the new location is subject to Service availability and acceptance by KMBS.

9. **Service Replacement:** KMBS may replace Hardware, at no additional cost to customer, with a unit that has at least the same, or more advanced, functionality than the original when repair of the original Hardware is not practical or economically feasible.

10. **Color Calibration and Management:** Routine and periodic color calibration and management of color print profiles is not covered by this agreement.
11. **Additional Customer Requested Services:** Customer may request additional Services be performed such Services will be quoted and performed at mutually agreed upon rates.

**Supplies and Consumables**

12. **Consumable Supplies:** KMBS will provide toner for covered Hardware on an as needed basis. Wide format Hardware may have other coverage options and/or exclusions. The consumable supplies provided are the property of KMBS until they are consumed and are intended to be used exclusively in the covered Hardware. Customer bears the risk of loss of unused supplies in the event of theft, employee misconduct, fire or other mishap.

13. **Supply Source:** KMBS supplies will be used under this agreement for KMBS Hardware. For non-KMBS Products KMBS will provide fully compatible toner and print cartridges for use in covered Hardware.

14. **Supply shipping and handling:** With the exception of supplies for equipment or devices provided by KMBS, KMBS may charge a supply shipping and handling fee on each periodic invoice regardless of whether supplies are shipped in any particular period. The current calculations for such fees can be found at [http://kmbs.konicaminolta.us/faqs](http://kmbs.konicaminolta.us/faqs). KMBS reserves the right to charge for expedited supply orders (i.e. overnight delivery) where requested by customer.

15. **Auto Supply Delivery:** If part of a managed Services Agreement, requires a designated customer contact(s) to confirm supply shipments via email and maintain delivery address information via MyKMBS.com or other agreed upon methodology.

16. **Intentionally omitted. Expected Yield**

**Software and Solutions**

17. **Licenses:** KMBS hereby grants the customer the non-exclusive, non-transferable right to install, and use the Software, updates, upgrades and patches provided this Agreement is effective.

18. **License Reactivation:** Customer is responsible to safeguard Software license keys. KMBS may charge a reactivation fee in the event license keys need to be regenerated.

19. **Data Backups and restoration:** Customer is responsible to manage server data backups. KMBS recommends adherence to industry best practices for backup procedures. In the event of a catastrophic data loss, the customer is expected to restore the environment and data to prior state.

20. **Access:** Customer shall provide KMBS personnel with access to the servers and/or Hardware where the Software is installed. Customer shall arrange and insure that one of its employee's or designated agents is present at all times when KMBS is performing maintenance and support Services.

21. **Solutions warranty:** Any Software sold as part of this Agreement is sold "as is" and without any warranties as to performance or merchantability or any other warranties whether express or implied. To the extent permitted by law, KMBS disclaims all other warranties, express or implied, including but not limited to implied warranties of merchantability and fitness for a particular purpose, with respect to the Software and the accompanying written materials. In no event shall KMBS be liable for any damages whatsoever (including but not limited to damages for loss of business profits, business interruption, loss of business information, or any other pecuniary loss) which results from an inability to use this Software, even if KMBS has been advised of the possibility of such damages.

22. **Solution Integration:** With print output devices covered under this or other agreement may be affected by existing customer Software, configuration changes or other network environment
issues. KMBS reserves the right to assess additional charges to resolve complex integration issues, including situations where the solution was initially provided by KMBS. Complex integration issues must be identified along with a quote for corresponding charges and agreed upon by both parties prior to any work being performed and billed.

Software Maintenance (Level 0) and Helpdesk (Level 1)

23. **Maintenance Support levels:** Coverage for both level 0 (Software maintenance) and level 1 (Helpdesk support) begin at time of installation of Software at customers location. Level 1 support is only available when level 0 support is in effect.

24. **Start of Software Service:** Rules may vary by OEM, Software activation is expected within 30 days of purchase or install whichever comes first.

25. **Current version:** Customer is required to keep Software and OS at the latest recommended version levels. Failure to perform recommended updates may result in suspension and/or termination of Services under this agreement.

26. **Software Maintenance Level 0:** Customer support offered if chosen;
   a. **Patches and Updates:** Customer is eligible to receive periodic maintenance patches, hot-fixes and updates for licensed Software covered under maintenance. Excluded are full version upgrades (i.e. v1.2 to v2.0) and the installation Services required to install patches, hot-fixes and updates.
   b. **Access to patches and updates:** Customer will be provided access to a website operated by KMBS or 3rd party supplier where patches and updates are accessible for download.

27. **Solutions Helpdesk Support Level 1:** KMBS’s expert helpdesk support is available to the Customer to assist with covered Software solutions including, PageScope Enterprise, Print Groove, Dispatcher Pro and select third (3rd) party solutions. Included are helpdesk Services related to end-user support, baseline workflows, features and administrative functions involved in the operation of the Software and workflows. Customer participation is required for remote and/or on-site support.

Professional Services, Solutions and Network

28. **Initial Assessment:** Customer agrees to provide or assist in gathering network configuration details needed by KMBS to perform contracted Services.

29. **Basic Network Services (BNS):** Where offered, covers common network integration with typical network schema and print/scanning requirements. KMBS reserves the right to assess additional fees depending on the extent of the network integration requirements needed.

30. **Basic Production Services (BPS):** Complex Products are offered with comprehensive end-user training (BPS). The training is crucial to proper Hardware operation and to ensure the customer achieves satisfactory output. Service related to operator deficiency will be quoted, and approved by Dayton, prior to service being performed and billed. Additional end user training when requested can be provided and will be billed at prevailing rates.

31. **Technical Pilot:** When required Customer agrees to participate in a technical pilot where Software installation, configuration, use cases and integration requirements are determined. Customer also agrees to participate in testing of the system(s).

32. **Solution Baseline:** is defined as the operating level and configurations agreed to by customer and KMBS upon completion of the technical pilot and testing.
33. **Enhancements:** For professional Services beyond the baseline capabilities of the solution are available at an additional charge.

34. **Digital Connected Support:** KMBS's expert helpdesk support is available at a fee to the Customer to assist with issues associated with device connectivity to network, printing from desktop applications, graphics application, scanning and support on many other digital machine functions. Configuration updates that are the result of changes to the customer network environment are not included.

35. **Customer Data:** KMBS shall not be liable for any claims, damages and cost relating to loss of data or disclosure of data due to acts or omissions of Customer or its employees, end-user errors or release of administrator password.

36. **Hard Drive Security:** If 'bizhub SECURE' or a comparable option has been ordered, KMBS will provide advanced security Services at a fee. These Services include real-time hard-drive encryption (level 2 encryption – equivalent to current Department of Defense standards and US Air Force standards) and document data security through disk over-write as well as user mailbox data deletion, HDD encryption, HDD lock and administrative password (according to customer policy). At the Customers request, for an additional fee KMBS shall return the hard drive to the Customer for disposal. A replacement hard drive will be installed and re-initialized with the generic device control programs. Additional Services are subject to hourly fees plus the cost to replace the Hard Drive (availability of options depends on model and configuration).

37. **Professional Services Projects:** When requested by the Customer, KMBS can provide professional Services associated with the enhancement of the Customer’s printing, network connectivity, end of life hard drive disposal, fleet management, user experience, production management, job tracking and document environment. Such projects will be quoted and upon approval, performed and billed at prevailing hourly or per-instance rates.

**METER AND RELATED**

38. **Meter Readings:** Customer agrees to provide KMBS with a timely meter reading prior to the end of the billing period for all non-networked and specified City Production devices to be used to generate maintenance invoices. Should the Customer fail to provide KMBS with timely meter reads KMBS reserves the right to estimate meter readings. Repetitive failure for customer to provide timely and accurate meter readings may result in the conversion of associated Hardware to flat monthly fee billing.

39. **Electronic Meter Collection:** KMBS offers vCare and other network based machine data collection methods for Customer convenience, billing accuracy and to enhance Service effectiveness. Unless specifically directed otherwise, KMBS will enable vCare or network monitoring on capable Hardware.

40. **Fleet Device Monitoring:** Shall the Customer agree, KMBS will install and maintain server based Software to monitor the printing devices on the Customer's network for an additional fee. If the monitoring Software cannot reliably operate in the Customer's environment for any reason, KMBS reserves the right to suspend or terminate Services under this agreement.

41. **Definition of a Print:** Each 8.5”x11” image generated by the covered Hardware is considered a 'print'. Larger paper sizes result in images that are a multiple of a single print based on length (17”=2 prints, 27”=3 prints, 36”=4 prints and over 36”=5 prints). For 'wide format' Hardware, one square foot of output equals one print. Duplex images count as twice the rate of simplex prints.
Customer Name: City of Dayton  
Group Name: Information Technology  
Tax Exempt (Include Certificate) ☒  
P.O. (Include Copy) N/A

<table>
<thead>
<tr>
<th>Payer: City of Dayton</th>
<th>Mail To: City of Dayton, Incorporated</th>
<th>My KMBS: (Optional) ☒ Check for Fleet Manager Role*</th>
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<tbody>
<tr>
<td>City of Dayton, Incorporated</td>
<td>Information Technology</td>
<td>John Stoddard</td>
</tr>
<tr>
<td>Attn: John Stoddard, Reproduction Supervisor</td>
<td></td>
<td>(Phone) 937 333 2020</td>
</tr>
<tr>
<td>101 W. Third Street PO Box 22</td>
<td></td>
<td>(Email) <a href="mailto:john.stoddard@daytonohio.gov">john.stoddard@daytonohio.gov</a></td>
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<tr>
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<td>Dayton OH 45401</td>
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*Fleet Managers have the ability to manage users, and run reports

**Aggregate Information**

Pool/Aggregate Allowances: No
If Aggregate, choose type: Dynamic - Copy Allowance will increase as machines are added

**Invoicing**

Base/Allowance (In Advance): Monthly  
Overage (In Arrears): Monthly
How to Bill the Group: All Machines together  
If Billing Machines together, Bill Day: Last on the listed day  
Day of the Month

Invoice Formats: (Select all that apply):
☒ Individual Invoices  
☒ Summary: Choose Sort  
☒ Excel Spreadsheet: 3-Customer Code 1
Number of Copies: 1  
Email Address: john.stoddard@daytonohio.gov

If Submitting Invoice via Electronic Portal
Portal Name: N/A  
Portal Contact: N/A  
Portal ID: N/A  
Portal Contact Phone or Email: N/A

**Customer Codes/Accounting Codes** – Cost centers, activity groups

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Comments: We need to see ample based on these Customer Codes/Accounting Codes.
## Schedule D – Locations

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<td>Care House</td>
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<td>Company 17</td>
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<tr>
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<table>
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<table>
<thead>
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<tbody>
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## Schedule D - Locations

<table>
<thead>
<tr>
<th>Location 1</th>
<th>Location 2</th>
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</thead>
<tbody>
<tr>
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<tr>
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Schedule E – Scope of Services

Implementation Planning / Project Management

- Document and understand the business needs (requirements)
- Identify any operational considerations and define appropriate processes
  needed to install the equipment to all locations during the rollout of the
  solution.
- Establish the project plan and tracking system to meet requirements and
  achieve agreed to deadlines

The Konica Minolta Project Team will meet with your team for regularly scheduled
account review meetings to ensure the success of the program and address any
change requests in your document imaging/project needs. These meetings will be
monthly during active deployment and then move to quarterly throughout the term of
the contract.

Upon receipt of signed agreement, our Project Team will develop a detailed work
plan with your representatives. This plan will outline the proposed activities and
technical components, including diagrams of the proposed workflow, and schedules
for completion.

Technical Pilot

- Functionally test the devices/solutions to be deployed in the controlled
  client environment.
- Document site install procedures and requirements as well as technical
device settings in the KMBS Deployment Guide
- Obtain client acceptance of the Deployment Guide.
- Test Deployment to validate process and documentation (# of
  sites/locations for test deployment TBD)
- City of Dayton's IT Staff will need to be available during testing

Full Deployment

- Coordinate deployment/installation for all client sites
- Execute Deployment
- Conduct on-site training
- Coordinate the pick-up of old assets and return (if required)
- Post deployment follow-up.

All equipment is configured at the warehouse prior to delivery so it is “plug-and-play”
upon arrival. We also setup all the devices for Equirac/Right Fax at this time to
provide a smooth installation of software as well. All of the following will be completed
prior to delivery:

- Unboxing, device-tray construction, etc.
- Configuring network settings, updating firmware, programming device,
  encryption
- Recording device credentials & attaching support sticker. Support sticker
  placed at time of install.
Schedule E – Scope of Services

Deliverables

- Creation of a comprehensive detailed project plan with milestones and necessary resource will be created and submitted to the City within fifteen (15) business days of contract execution.

- Installation and configuration for operating of hardware and related software for replacement of all Multi-Function Devices (MFDs) and Digital Production Equipment (DPEs) within ninety (90) days of execution of this lease.

- All installed devices will be configured with the following:
  - OpenText RightFax to enable all employees to fax from their desktop, MFPs, and directly from applications they use the most. Additionally, RightFax will route text searchable PDF’s (SEDS) directly to users, or to downstream systems and will fully integrate with OnBase for delivery of SEDS into its databases (additional licensing is required from Hyland for this functionality). Additional discovery is required to fully understand available options for Bentley eB and Mapsys Document Imaging Foundations.
  - Konica Minolta Dispatcher Phoenix will be fully implemented on sixty (60) MFPs in lieu of "onboard OCR" capabilities that are available on the device. With Dispatcher Phoenix City employees will be able to scan and route SEDS to various destinations, and also they will have the ability to scan directly to PDF, text searchable PDF and MS Word. Machines not equipped with Dispatcher Phoenix will have the ability to scan to image-only PDF. Also, this software enables browsing and scanning directly to OnBase databases from the MFP, with access to document type drop-downs and metadata fields that have been defined in OnBase. As with our RightFax offering, Dispatcher Phoenix can also provide output that can be ingested into systems such as Bentley eB and Mapsys Document Imaging Foundations. Additional discovery is required to fully understand available options for Bentley eB and Mapsys Document Imaging Foundations. One "Integration for Konica Minolta Dispatcher Phoenix" license will be required to scanning to OnBase.
  - Equitrac Express will provide for card-swipe login to MFPs, and for secure release and tracking of print jobs and faxes, along with tracking of copies and scans done at the MFP. Additionally, Equitrac Express will provide a pop-up for job cost re-assignment or allocation of costs. This pop-up can also be used for re-routing of jobs to more cost effective output devices, and even message the user that the job is too large and should be directed to Document Management Services for printing.

- Provide the necessary training for users to effectively use all installed equipment and related software within the aforementioned ninety (90) day installation period of the MFDs and DPEs. All other training including specialty training to support the entire installed solution must be completed within one hundred twenty (120) days of execution of this lease.

Training will be provided in two parts. First, the local Konica Minolta technician will provide a simple overview of the new hardware, once it is installed, for your designated Key Operator. This is done to ensure that your Key Operator knows the basic functions of the new hardware right away, so access is up and running almost immediately. The Project Manager will be responsible for coordinating the second, more in-depth training, with your Key Operator and other department users. This training session will include, but is not limited to:
• A general overview of the configuration and features of the machine
• A review of available document process such as finishing, scanning, printing,
  E-3
  and other options
• Step-by-step instructions on how to use each feature
• Instructions on how to maintain the unit, such as clearing simple challenges
to the path and adding toner
• Training on how to place service calls.

• The installed solution and corresponding equipment will be interfaced into our document
management systems including but not limited to: Active Directory (AD) and proximity card
integration for authentication and complaint PDF routing to the City’s document management
systems.

• Installation, configuration and training of City staff of the KMBS cost/billing solution to fully
provide the following:
  • Ability for the City to customize and bill click charges for each user account and
    automatic bill/charge calculation without user intervention
  • Generate monthly email statements for individual user accounts that will detail and
    summarize monthly costs based on consumption (click) charges for review prior to
    exporting from Equitrac.
  • Monthly statements may be generated on demand, or scheduled, and then emailed
directly from Equitrac. Statements can be summary for departments and users, or
detailed reports with all jobs that have been printed by a specific department or
user. Have the ability to generate electronic invoices for each for individual user
account.

• Establishment of a centralized walk-up service center to be located within City Hall near
central printing services.

• Provide service, consumables, and automatic toner shipment on all networked single function
desktop printers through a cost-per-copy rate of .01 B/W and .09 Color. Konica Minolta’s
Managed Print Services program will manage and monitor all networked MFD’s and single
function printers allowing fully transparency of the City of Dayton’s print technology devices
and fleet.

• Provide installation, configuration and training of all software needed to fully manage the
devices and corresponding solutions including but not limited to the following:

  **Device Maintenance**
  Bizhub vCare, a Konica Minolta developed device relationship management
application, enables secure, uptime management of network multifunction printers
and copiers. bizhub vCare works in the background and never interferes with the
operation of the MFP. bizhub vCare reduces downtime by automatically dispatching
technicians. No human intervention is required as alerts are sent and processed in
real-time through Konica Minolta’s Intelligent Data Qualification Manager (IDQM) to
ensure maximum first call resolution.

  **Supply Management**
  Konica Minolta offers a powerful suite of customizable management tools, allowing for
optimal control of output devices, resulting in greatly improved productivity and cost
efficiency. Using highly sophisticated technology combined with expert consulting,
Managed Print Services provides an end- to-end solution, which begins with a
comprehensive usage and cost assessment.
Installation of Konica Minolta’s iConsult with bizhub vCare provides pro-active MFP Service Monitoring that will:

**Schedule E – Scope of Services**

- Captures detailed information regarding device status, supply usage
- Algorithms determine ‘in time’ toner replenish shipment using device average monthly volume toner yield
- Provides Automated Meter Collection
- Provides Automated Supplies Management

Bizhub vCare, also, provides pro-active MFP Service Monitoring. We can remotely:
- Determine when a unit is in need of preventative maintenance
- When a unit is excessively jamming
- View the MFP’s entire Service History
- View Toner Supply level
- Monitor a Customer’s “Green” Initiatives

**Hard Drive Erasure**

Konica Minolta offers enhanced confidence and compliance with bizhub SECURE, the industry’s most comprehensive suite of privacy and security solutions. Bizhub SECURE provides all the tools you need to protect customer information with secure printing, scanning, copying and faxing functions. Our MFP’s features the lock-down protection of bizhub SECURE to help you ensure customer confidentiality and enhance your organization’s compliance strategy. With bizhub SECURE, the hard drive is constantly encrypted and secure eliminating the cost to remove or erase hard drives at the end of the lease term.

Konica Minolta’s bizhub SECURE has a robust set of features:

- A 20-digit secure alphanumeric password to lock down your bizhub hard disk drive
- Encrypt the entire contents of your bizhub HOD for exceptional data security
- Eliminate any trace of data even after it’s been deleted with Temporary Data Overwrite (Temporary Data Overwrite conforms to DoD methods)2
- Time your bizhub MFP to auto-delete any material located in personal or public User
- Boxes, System User Boxes, Documents and Folders
- Disable insecure Services, Protocols and Ports at the MFP
- Enable SSL on the MFP (Self Sign Certificate)

**PageScope and NetCare Administration/Monitoring Tools**

PageScope NetCare, a free-of-charge, powerful enterprise solution, streamlines the complete management of all output devices allowing administrators to manage their entire fleet from a single point. Ideal for any business with multiple networked copiers, PageScope NetCare can:

- Enhance efficiency with device- and department-specific total output and user counts.
- Reduce multiple device maintenance costs with Web browser-based device status confirmation.
- Address problems quickly with email alerts

[MyKMBS.com](http://www.mykmbs.com)
MyKMBS.com makes managing City of Dayton's fleet quick and easy. MyKMBS is a web-based management-reporting tool, which allows our clients to quickly and easily manage the hardware in their fleet. MyKMBS offers the ability to place service calls and order supplies online, as well as run ad hoc fleet management reports, which include usage, uptime and other valuable data relevant to your fleet. Additionally, the site provides 24 hour a day, 7 days a week real-time access to all of your hardware information need, and offering only available through Konica Minolta.

MyKMBS allows the client to view pertinent, consolidated information that would normally be provided on a manual case-by-case basis. All information provided is real time and accurate information which is linked directly to the Konica Minolta SAP operating system for seamless information flow. All reports include data on a rolling 90-day period, allowing our customers to view the most up-to-date information possible. In addition, all reports can easily be downloaded directly into Microsoft Excel, providing a simple method to sort and retain data.
KONICA MINOLTA

CITY OF DAYTON

Schedule F – KMBS's Response to RFP 17101IT

"Under Separate Cover"
Introducing the **ONE** GUARANTEE That Puts the CustomerFirst.

**CUSTOMER ONE GUARANTEE**

We believe the best customer experience comes from not only how our products perform and how easy they are to use, but also from giving our customers the peace of mind to know that our MFPs (Multifunction Products) are backed by one of the best guarantees in the industry. So when your new Konica Minolta branded MFP arrives, you'll know you are getting the latest technology, superior service and support, and a guarantee **direct from the manufacturer**.

"It Works or It Walks"

We are so confident in the quality of our products that we guarantee your Konica Minolta branded MFP will (1) meet factory specifications and (2) be
compatible with your network, or we’ll replace it with an equivalent model:
- First two years: replacement will be a brand new MFP
- After two years: replacement may be new or refurbished
- Plus, Konica Minolta will also provide a $1,000 rebate towards your next Konica Minolta branded MFP leased through Konica Minolta Premier Finance (KMPF) as a way to say “we’re sorry for the inconvenience.”

We’ve Got You Covered

The best customer experience is one that avoids problems altogether, which is why we’ve established remote monitoring and a rapid response process in conjunction with your local sales representative.
- Our Solutions & Support team will proactively monitor our installed MFP’s performance, looking to identify potential issues before they become problems for our customers.
- Should a problem arise, our technical support, local service manager and advanced diagnostics team members are all empowered to authorize a replacement, allowing for a fast and easy resolution.

To learn more about the Konica Minolta Customer One Guarantee, contact your local sales representative.
Terms & Conditions

- Equipment must be under continuous maintenance coverage from the date of installation.
  - Genuine Konica Minolta parts and consumables must be used and
    maintenance procedures must be performed according to published
    schedules.
  - Improper use, electrical power, customer abuse and/or negligence and
    acts of God are not covered under this program.

- Equipment Replacement Guarantee
  - If Konica Minolta or its authorized dealer is unable to service a Konica
    Minolta product in the customer’s office, a loaner will be provided at no
    charge while in-shop repairs are performed.
  - If within the first two years after installation the equipment
    cannot be repaired to meet factory specifications, we will
    replace it with a brand new equivalent model.
  - After the first two years, if the equipment cannot be brought to
    original specification, we will replace it with an equivalent
    model that may be new or refurbished.
  - If the equipment is replaced, the customer will receive a $1,000
    rebate* towards the lease of a new Konica Minolta branded MFP,
    provided the new equipment is leased through KMPF.

- Published Specifications include those listed on official Konica Minolta product literature for
  that model.

- Except as provided herein, Konica Minolta makes no other warranties whatsoever, expressed or implied, with regard to the products purchased, leased or rented by customer, the service, the software included with the product or its installation and maintenance and expressly excludes all other warranties including the implied warranties of merchantability and fitness for a particular purpose.

- Customer’s exclusive remedy shall be replacement or repair of the product or non-conforming parts at the option of Konica Minolta as provided in this Customer One Guarantee. Neither Konica Minolta or its dealer shall be liable for any damages, including but not limited to damages due to loss of data or information of any kind, loss of or damages to revenue, profits or goodwill, damages due to any interruption of business, damage to customer’s computers or networks, even if advised of the possibility of such damages. Customer expressly waives its rights to special, consequential, exemplary, incidental or punitive damages or monetary damages of any kind.
CITY OF DAYTON

- Products purchased or installed over 5-years from Konica Minolta invoice date are not eligible for Customer One claims.
- Konica Minolta reserves the right to accept or deny Customer One claims based on product life attained and / or total copies on product(s).
- Customer One Guarantee only applies to the lease or purchase of new Konica Minolta branded equipment.
- Customer One Guarantee excludes desktop printers which has a standard warranty.

Network Environment

- The guarantee specifies that the network environment, including PC's and other access devices, remains the same as it was when the MFP was installed. Konica Minolta cannot guarantee the functionality of the MFP after customer network upgrades, software version & peripheral changes or the addition of non-approved 3rd party software. In this case, Konica Minolta will make every effort to work with you to ensure your MFP can function in the new environment up to and including requesting and implementing approved specification changes to the Konica Minolta firmware in order to function after the changes are completed.

*Rebate must be used within 36 months from date of equipment replacement.
# Konica Minolta

## Exhibit II(A) – Form of Schedule

### Lease Schedule

<table>
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<tr>
<th>APPLICATION #</th>
<th>MASTER AGREEMENT #</th>
<th>SCHEDULE #</th>
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### For office use only (check one):

- [ ] Branch
- [ ] Windsor

### KONICA MINOLTA

### CITY OF DAYTON

### EXHIBIT II(A) – FORM OF SCHEDULE

### Lease Schedule

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### Leasing Address (Lessor):

- Address Line 1
- Address Line 2
- City
- State
- Zip
- Billing Contact Name

### Renting Party (Lessee):

- Address Line 1
- Address Line 2
- City
- State
- Zip
- Billing Contact Name

### Lease Schedule Details:

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### End of Lease Options:

- [ ] Renewal Option
- [ ] Purchase Option
- [ ] Sale

### This schedule incorporates all of the terms and conditions of the agreement identified above.

### Konica Minolta

### Customer Acceptance:

- Authorized Signature
- Date

### Authorized签字:

- Authorized Signer
- Date

### KRP#4526 - 08/18/015
## Schedule H – Termination Value Tables

### Termination Value

#### CITY OF DAYTON FMV TOTAL LOSS TABLE

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</tr>
</tbody>
</table>

Termination values are due in addition to any advance or arrears rent due on the same date.
January 23, 2019

TO: City Commission  
    City Manager’s Office  
    Finance Department

FROM: Kenneth R. Couch, Acting Director  
      Department of Central Services  

SUBJECT: Request for Signature

Please sign the attached lease services agreement with Konica Minolta Business Solutions, U.S.A., Inc. for providing a fleet of printer/copier/scanner/fax multi-function hardware, software, digital production equipment, maintenance and support services for all City department operations. Authorization for execution of this agreement was granted by the City Commission on January 23, 2019 by City Manager’s Report, Calendar Item Number 5.

This agreement has been reviewed by this office and is ready for your execution.

After all the signatures are on the agreement, please return the original signed agreements to Desa Foster, I.T. Manager, in Information Technology.

KRC/cdg

Attachments

________________________ signed copies released to the Finance Department.
City Manager's Report

From 5560 - CS/Information Technology
Supplier, Vendor, Company, Individual
Name Konica Minolta Business Solutions, U.S.A., Inc.
Address 500 Day Hill Road
Windsor, CT 06095

Fund Source(s) Fund Code(s) Fund Amount(s)
Reproduction 62100-5580-1143-61 $974,376.00

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

Description

LEASE SERVICES AGREEMENT

The Department of Central Services, Division of Information Technology (IT) is requesting authorization to enter into a Lease Services Agreement with Konica Minolta Business Solutions, U.S.A., Inc. to provide a fleet of printer/copier/scanner/fax multi-function hardware, software, digital production equipment, maintenance and support services for all City department operations.

The existing multi-function hardware has been in use since 2009. Due to the age of the fleet, the organization is experiencing more frequent production issues and outages. The downtime negatively impacts department operations. The fleet has exceeded its lifecycle and thus requires replacement. IT issued an RFP for vendors that offer multi-function devices, digital print production equipment and support services for lease and purchase. After review and vetting 7 proposals, Konica Minolta Business Solutions, U.S.A., Inc. was selected as the best vendor to meet the organization's need.

The City will lease the equipment and services at a fixed rate for a total of 36-months:

- Year 1 Upon execution through 12/31/2019 $324,792.00
- Year 2 1/1/2020 – 12/31/2020 $324,792.00
- Year 3 1/1/2021 – 12/31/2021 $324,792.00
- Total $974,376.00

The Agreement shall commence upon final execution through December 31, 2021, however the deployment of hardware is estimated to take 60 to 90 days to complete, so the initial encumbrance for 2019 will be $270,660.00.

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

A Certificate of Funds for $270,660.00 is attached.

Signatures/Approval

Approved by City Commission

[Signatures]

FORM NO. MS-16

Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

X New Contract

Renewal Contract

Change Orders

Contract Start Date

Upon Execution

Expiration Date

12/31/19

Original Commission Approval

$ 974,376.00

Initial Encumbrance

$ 270,660.00

Remaining Commission Approval

$ 703,716.00

Original CT/CF

Increase Encumbrance

$ -

Decrease Encumbrance

$ -

Remaining Commission Approval

$ -

Required Documentation

x Initial City Manager's Report

x Initial Certificate of Funds

x Initial Agreement/Contract

Copy of City Manager's Report

Copy of Original Certificate of Funds

Amount: $ 270,660.00

1. Fund Code

62100 - 5580 - 1143

Fund Org Acct Prog Act

61 - XXXX - XXXX

Fund Code

XXX - XXX - XXX

Fund Org Acct Prog Act

XX - XXX - XXX

Loc

Loc

Amount: $ -

Fund Code

XXX - XXX - XXX

Fund Org Acct Prog Act

XX - XXX - XXX

Loc

Loc

Attach additional pages for more FOAPALS

Vendor Name: Kenica Minolta Business Solutions, U.S.A., Inc.

Vendor Address: 500 Day Hill Road

Windsor, CT 06095

Street City

State Zipcode + 4

Federal ID: 131921089

Commodity Code: 93927

Purpose: Lease Services Agreement to provide a fleet of printer/copier/scanner/fax multi-function hardware, software digital production equipment, maintenance and support services for all City department operations.

Contact Person: Desa Foster (ext. 6349)

Section Services IT

1/10/2019

Originating Department/Division

Date

SECTION II - to be completed by the Finance Department

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

Finance Director Signature

Date

CF Prepared by

Date

CF/CT Number

October 18, 2011
City Manager's Report

From 5610 - Human Resources

Supplier, Vendor, Company, Individual
ReliaStar Life Insurance Company, a part of Voya Financial
3702 Paysphere Circle
Chicago, IL 60674

Date December 22, 2021
Expense Type Other, (See Description Below)
Total Amount $2,716,000.00 till 12/31/2022

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Healthcare Insurance Fund</td>
<td>63000-5610-1184-62</td>
<td>$2,716,000.00</td>
</tr>
</tbody>
</table>

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

Description

DAYTON STOP-LOSS INSURANCE POLICY

The Department of Human Resources (HR) requests permission to enter a one-year stop-loss insurance policy with ReliaStar Life insurance company, a part of Voya Financial. This insurance policy is required to insure the City of Dayton (City) against liability risks related to significant health insurance claims with Anthem that exceed $200,000.00 per claim. The stop-loss insurance policy was previously incorporated as part of the Anthem contract. However, due to Anthem's proposed significant stop-loss premium increase in 2022, the City solicited information from four (4) potential stop-loss insurance providers. HR recommends accepting the ReliaStar Life Insurance Company stop-loss insurance quote as the lowest and best response. The total projected cost for this agreement is $2,716,000.00.

The insurance policy will be in effect from January 1, 2022 through December 31, 2022.

The insurance policy is not a contract, so the Department of Law has not reviewed and approved the agreement regarding form and correctness.

A Certificate of Funds for 2022 is attached.

The Healthcare Insurance Fund funds this project.

Signatures/Approval

Division

Ken Couch
Digitally signed by Ken Couch
Date: 2021.12.06 10:48:03 -05'00'

Department

City Manager

FORM NO. MS-16

Approved by City Commission

Clerk

Date

Updated 10/2021
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

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

**Contract Start Date**: Upon Execution
**Expiration Date**: 12/31/22
**Original Commission Approval**: $2,716,000.00
**Initial Encumbrance**: $2,716,000.00

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

**Required Documentation**
- X Initial City Manager’s Report
- X Initial Certificate of Funds
- X Initial Agreement/Contract

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

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**Amount**: $2,716,000.00 FOR 2022

<table>
<thead>
<tr>
<th>Fund Code</th>
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<tbody>
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**Fund**: Fund
**Org**: Org
**Acct**: Acct
**Prog**: Prog
**Act**: Act
**Loc**: Loc

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**Amount**: FOR 2022

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**Fund Code**: XXXX - XXXX - XXXX - XX - XXXX - XXXX
**Fund**: Fund
**Org**: Org
**Acct**: Acct
**Prog**: Prog
**Act**: Act
**Loc**: Loc

---

**Attach additional pages for more FOAPALs**

**Vendor Name**: ReliaStar Life Insurance Company
**Vendor Address**: 3702 Paysphere Circle Chicago IL 60674
**Street**: 3702 Paysphere Circle
**City**: Chicago
**State**: IL
**Zipcode + 4**: 60674

**Federal ID**: 41-0451140
**Commodity Code**: 95300
**Purpose**: Providing a one-year stop loss insurance policy for the City of Dayton

**Alternate mailing address**: 20 Washington Ave. South Minneapolis, MN 55401

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**Contact Person**: Danielle Mattson x4063
**Human Resources**: Human Resources
**Department/Division**: Department/Division
**Date**: 12/1/2021

**Originating Department Director’s Signature**: Ken Couch

---

SECTION II - to be completed by the Finance Department

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

**Finance Director Signature**: [Signature]
**Date**: 12/15/21

**CF Prepared by**: [Signature]
**Date**: 12/15/21

**CF/CT Number**: CT22-3210
FW: ReliaStar(VOYA) Policy (not contract)

Mattson, Danielle <Danielle.Mattson@daytonohio.gov>
Wed 12/15/2021 10:41 AM
To: Asumani, Saleh <Saleh.Asumani@daytonohio.gov>
Cc: Williams, Tonika <Tonika.Williams@daytonohio.gov>

Hi Saleh,

I meant to cc you in the email below. Please see the correspondence.

Thank you,

Danielle

From: McKenzie, Brent <Brent.McKenzie@daytonohio.gov>
Sent: Wednesday, December 15, 2021 10:35 AM
To: Mattson, Danielle <Danielle.Mattson@daytonohio.gov>
Cc: Brown, Kena <Kena.Brown@daytonohio.gov>; Stivers, Robbi <Robbi.Stivers@daytonohio.gov>; Rohm, Esther <Esther.Rohm@daytonohio.gov>
Subject: Re: ReliaStar(VOYA) Policy (not contract)

Robbi/Kena
Law did not approve this as a contract since it is not a contract. It is a policy of insurance. The city pays a premium and they insure us for health claims above 200k. There is no contract to review and approve.
If you need anything else, please advise.

Brenn

Sent from my iPhone

On Dec 15, 2021, at 10:25 AM, Mattson, Danielle <Danielle.Mattson@daytonohio.gov> wrote:

Hi Brent,

I spoke with Saleh regarding Law making a statement regarding this not officially being a contract since it is a policy of insurance. He mentioned that we may not need it if you can relay this information to Kena and/or Robbi. I am cc’ing them in this email to help ensure there is no unnecessary delay in getting this through commission on time since we need it asap for January 2022. If there is anything else I can do please let me know.

Regards,

Danielle Mattson
Office Manager
Human Resources | City of Dayton
101 West Third Street | Dayton, Ohio 45402

https://outlook.office365.com/mail/deeplink?popoutv2=1&version=20211206021.04
Welcome to Voya Financial®

Contract Materials Enclosed

Please read your contract materials carefully.
RELIASTAR LIFE INSURANCE COMPANY
Home Office: Minneapolis, Minnesota 55440

POLICY NUMBER: 725625-EXRSK
EFFECTIVE DATE: January 1, 2022
ANNIVERSARY DATE: January 1
PLAN SPONSOR: City of Dayton

Subject to the terms, conditions and limitations of this Policy, ReliaStar Life Insurance Company ("We", "Our" or "Us") agrees to pay the benefits stated in this Policy when We receive Proof of Loss.

This Policy is issued to the Plan Sponsor ("You" or "Your") shown above in consideration of Your Excess Risk Application, the signed Disclosure Agreement and payment of premiums when due. A copy of Your Excess Risk Application and the Disclosure Agreement are attached to and form a part of this Policy. You own this Policy and have certain rights and obligations as stated in this Policy.

This Policy is effective on the Effective Date shown above. All periods of insurance will begin and end at 12:01 a.m. Central Time.

The first premium is due and payable in full on the Effective Date. Each subsequent premium is due and payable in full on its respective Premium Due Date(s) as shown on the Excess Risk Schedule.

Our obligations under this Policy are limited to the terms, conditions and limitations of this Policy. We are not a party to, responsible for, or a guarantor of, the benefits provided under the Employee Benefit Plan. We are not a Plan Administrator or Fiduciary with respect to the Employee Benefit Plan as those terms are used in the Employee Retirement Income Security Act of 1974, as amended.

This Policy is delivered in the state of Ohio and is governed by its laws.

Executed at Minneapolis, Minnesota on November 24, 2021.

President
Registrar
Secretary

This Policy Reimburses the Plan Sponsor Only
Individual Excess Risk Insurance

Noncontributory Nonparticipating

RL-SL-POL-2013
RELIASTAR LIFE INSURANCE COMPANY
Home Office, Minneapolis, Minnesota 55440

EXCESS RISK SCHEDULE

Your Name: City of Dayton
Associated Accounts: N/A
Your Group No: 72562-5
Contract Period: From January 1, 2022 Through December 31, 2022
Claim Administrator Name: Anthem Blue Cross and Blue Shield (OH)

In the event of a conflict between the terms, conditions and limitations of this Excess Risk Schedule and the Excess Risk Policy, this Excess Risk Schedule will control.

INDIVIDUAL EXCESS RISK ☑ YES ☐ NO

BENEFITS TO BE COVERED:
☐ Medical ☑ Other (please specify) ____________________________
 prescription Drugs

COVERAGE PERIOD:
☐ Incurred and Paid in 12 months ☐ Incurred in 12 months and Paid in 15 months
☐ Incurred in 15 months and Paid in 12 months ☑ Incurred in __________ months and Paid in _______ months
☐ Paid in 12 months ☐ Other ____________________________

Individual Excess Risk Deductible: $_________200,000_________ per Individual

Individuals subject to the Individual Adjusted Deductible as identified in the disclosure process: N/A

Claims for individuals subject to the Individual Adjusted Deductible as identified in the disclosure process: N/A

Benefit Percentage: 100%

MAXIMUM INDIVIDUAL BENEFIT:
Individual Excess Risk Lifetime Maximum: $_________Unlimited_________
Individual Excess Risk Annual Maximum: $_________Unlimited_________

Other: N/A

COVERAGE DESCRIPTION:

1. ☑ Composite (Total Number of Covered Persons) Number 1,616 Monthly Premium Rate $_________138.65_________
2. ☐ Single (Covered Persons, no Dependents) Family (Covered Persons, with Dependents)
3. ☐ Other:

OPTIONAL ENDORSEMENTS:
☐ Individual Terminal Liability ☐ 3 months ☐ 6 months
☐ Individual Advanced Funding
☐ Aggregating Individual Deductible $_________N/A_________ (Individual Excess Risk must be elected)
☐ Individual Gapless Renewal (Only available for 12/15 or 12/18)
☐ Plan Mirroring Coordination
☑ Renewal Rate Cap

RL-SL-SCH-2013 1
RELIASTAR LIFE INSURANCE COMPANY
Home Office, Minneapolis, Minnesota 55440

EXCESS RISK SCHEDULE

Are retirees covered? □ Yes ☑ No
Are retirees age 65 and over covered? □ Yes ☑ No

Minimum Enrollment Required for Renewal of Coverage: 100 enrolled Covered Persons Covered for Medical.
Covered Persons are defined in the Employee Benefit Plan with the exception of: N/A
Exclusions and Limitations defined in this policy will apply with the exception of: N/A
Other: N/A
Actively at Work Requirement: N/A
Premium Due Date: The first day of each policy month.

Approved for Us: Date: November 24, 2021 By: [Signature]

Group Name: City of Dayton
Group Number: 72562-5

RL-SL-SCH-2013 2
Frequently asked questions
The following are some frequently asked questions and answers. If you have additional questions or need assistance, please contact your Voya Employee Benefits account representative.

What is the difference between ACH and wire transfers?
The Automated Clearing House (ACH) system involves electronic transfers which take several business days to complete. The process is usually free, but some banks charge a nominal fee.

Wire transfers go directly through the Federal Reserve instead of an ACH third party, and they can post within 24 hours. (Wire transfers are usually preferred for clients who want to transfer significant amounts of funds very quickly and can't wait the 2-4 business days for an ACH/standard Electronic Funds Transfer.) But the price is usually quite substantial – most U.S. banks charge between $20 and $50 for domestic accounts and international fees will be higher.

What is an Electronic Funds Transfer (EFT)?
EFT is an electronic withdrawal system that allows your premium payments to be transferred directly from your bank account to the insurer's bank account. Your bank account is debited 1-2 business days after submitting the invoice.

If you wish to participate in EFT payment, notify your account representative and complete the EFT authorization form provided by Voya. An authorized company representative must sign the form in ink and the original must be sent directly to the address listed at the top of the form.

Note: A new EFT authorization form must be completed and submitted if you change your EFT banking information.

ReliaStar Life Insurance Company is a member of the Voya® family of companies.
Below you will find the information you need in order to set up and remit your payments. If you have questions or need assistance, please contact your Voya Employee Benefits account representative.

ReliaStar Life Insurance Company
Tax ID: 41-0451140

Check remittance address
ReliaStar Life Insurance Company
3702 Paysphere Circle
Chicago, IL 60674

Payment using overnight delivery services
Bank of America
540 W. Madison 4th Floor
Attn: Lockbox Dept. 3702
Chicago, IL 60661

Provide the following information to the bank requesting a wire transfer to ensure the payment is sent to the correct Voya bank account:
- Business unit: RLIOO
- Bank account name: Bank of America
- Bank account number: 5800965427
- Transit number (routing number): 026009593
- Name on account: ReliaStar Life Insurance Company
- Bank mailing address: 100 West 33rd St., New York, NY 10001
- Bank phone number: 800-729-8473
- Voya contact email: EB.Cash@voyacm.com

Wire set-up

Provide the following information to the bank when requesting an ACH transfer to ensure the payment is sent to the correct Voya bank account:
- Business Unit: RLIOO
- Bank account name: Bank of America
- Bank account number: 5800965427
- Transit number (routing number): 071000039
- Name on account: ReliaStar Life Insurance Company
- Bank mailing address: 100 West 33rd St., New York, NY 10001
- Bank phone number: 800-424-2172
- Voya contact email: EB.Cash@voyacm.com

Automated Clearing House (ACH) set-up

Note: Clients must send all billing back-up and documentation (total lives, volumes, premium due by product/rate) to the Voya billing administrator at the following email address: EBPA1@Voya.com. Please send only de-identified data.

The email subject line needs to note the Group Policy Number, Financial ID number and Group Name. The email should not be sent with any type of encryption requiring a user name or password. If the back-up documentation is not received timely, the payment cannot be applied timely.

Contact your assigned billing administrator or Voya Account Representative direct with any questions.
IMPORTANT INFORMATION ABOUT YOUR EMPLOYEE BENEFITS INSURANCE

ReliaStar Life Insurance Company, Minneapolis, MN
A member of the Voya® family of companies

This is a general discussion of possible compensation. Some, all or none of these payment arrangements may apply to your specific case.

Thank you for choosing ReliaStar Life Insurance Company (the "Company") for your employee benefits insurance needs. We offer various employee benefits insurance products that have different features, benefits and costs. We are confident that, working with your professional insurance producer, broker, or consultant you have found that one or more of our products is right for you. Your producer, broker, or consultant may work with many employee benefits insurance companies, and we are pleased that they have presented one or more of our products to you. When presenting one of our products the producer is acting on our behalf. We would like you to understand how we may pay the selling producer, broker, or consultant.

There are generally three types of payments that may be made to producers, brokers and consultants:

1. Commissions: Producers, brokers, or consultants may earn a commission for each Company policy sold. The commission is generally a percentage of the policy premiums paid. The percentage may be higher for producers, brokers, or consultants that sell a larger number of Company policies. The actual percentage and amount of commission paid will vary based on the specific circumstances of the product(s) purchased.

2. Bonuses: Producers, brokers, or consultants may receive additional compensation based on a percentage of policy premiums paid for each year a policy remains in force and as rewards for things like achieving certain sales volume levels, sales contest objectives, or other measures. We also may pay for producer, broker, or consultant education, training or attendance at conventions, and may pay bonuses, provide advance commissions and/or loans with an expectation that the advancement and/or loans be repaid as new policies are issued, reimburse expenses or provide other payments or benefits.

3. Administrative/Service Fees: Producers, brokers, or consultants may provide administrative services and marketing support for a flat fee, a percentage of policy premiums paid, or, a fee based on the amount of commissions earned from the initial sale. The producers, brokers, or consultants may be associated with other brokers or consultants that may provide administrative services and marketing support for similar fees.

This is a general discussion of the compensation we pay for the sale of our policies. We pay commissions and other sales expenses from our general assets and revenues, including amounts we earn from fees and charges under our policies. The price of an insurance policy is set by the Company, and reflects the compensation we pay for the sale of our policies. It also covers other costs to design, manufacture and service our policies, fees associated with the cost of any applicable guarantees, the investment management needed to build cash values and pay benefits, and our profits. You may obtain additional information about the compensation expected to be received for the sale of our product and for any alternative quotes presented by your producer by requesting such information from your producer.

We are committed to providing top-quality insurance products to our customers and are pleased that your professional insurance producer, broker, or consultant trusts us to deliver on your long term insurance needs.
DIRECT DEPOSIT AUTHORIZATION FOR STOP LOSS CLAIM PAYMENTS

ReliaStar Life Insurance Company, Minneapolis, MN
ReliaStar Life Insurance Company of New York, Woodbury, NY
Members of the Voya® family of companies (the “Company”)
Stop Loss Claims: 20 Washington Avenue South, Route 5310, Minneapolis, MN 55401
Email: stoploss@voyaa.com

Use this form for enrollment in direct deposit, cancellation of direct deposit or a change (e.g., the financial institution changed or the account number changed). Send a copy of this form to your Voya Client Representative and retain a copy for your records.

Select one: ☑ Enrollment ☐ Cancellation ☐ Change

Plan Sponsor Name (Legal Entity) City of Dayton Tax Identification Number (TIN) 31-6000175
Address 101 W Third St
City Dayton State OH Zip 45402
Contact Name (Provide the name of the person who should be contacted if this form is incomplete or requires additional information.) Jamila Aldridge Phone (937) 333-4052
Email address where Explanation of Reimbursement (EOR) should be sent jamila.aldridge@daytonohio.gov

BANK ACCOUNT INFORMATION

A voided check for the account should accompany this form. A deposit ticket is not acceptable. If you cannot provide a voided check, enter the bank’s routing number and the full account number in the appropriate fields. Your application cannot be processed without this information.

Routing Number (9 digits) 042202196 Account Number 99935323
Account Name (Plan Sponsor, group or business name as listed on the account.) City of Dayton Concentration Account
Bank Name Fifth Third Bank Account Type: ☑ Checking ☐ Savings
Bank Address 1 South Main Street
City Dayton State OH Zip 45402
Bank Phone (937) 227-6032

AUTHORIZED

The Plan Sponsor grants authorization to the Company to initiate credit entries to the checking or savings account at the financial institution named above. This authority is to remain in full effect until the Company has received written notification of a change or cancellation of this authorization.

Plan Sponsor Representative Name (Please print.) Breit L. McKenzie
Signature [Signature] Date 11/15/21

Sample Check

Routing Number (9 digits) 987654321
Financial Institution
MEMO 1234567890123
Not Negotiable
Account Number 5678
GENERAL ADMINISTRATION – ALL PRODUCTS:

Record Keeping. You agree to maintain accurate books and records documenting the administration of the Policies, including employee demographics, eligibility records, dependent data, coverage amounts, enrollment history, payroll deductions, benefit elections and beneficiary designations (as applicable). Such records must be maintained for a period of seven (7) years following termination of the Policies to which they relate. Upon reasonable notice, we shall have the right to review, inspect and audit, at our expense, the books, records, data files or other information maintained by you or your vendor related to the Policies.

Transmission of Data. You are responsible for the accuracy and security of data transmitted to us, including data transmitted by any third party service provider you engage to assist in administration of your benefit plans. Each party will establish and maintain (1) administrative, technical and physical safeguards against the destruction, loss or alteration of data, and (2) appropriate security measures to protect data, which measures are consistent with all state and federal regulations relating to personal information security, including, without limitation, the Gramm-Leach-Bliley Act.

Premium payment. If you engage a third party to submit premium to us, we will not consider the premium paid until it is received in our Home Office.

General terms. This Agreement will remain in effect during the duration of the Policy and will terminate automatically upon termination of all Policies. This Agreement may be amended only in writing signed by both parties. In the event of any conflict or inconsistency between the terms of this Agreement and the terms of any Policy, the terms of the Policy shall control.

Governing law. This Agreement shall be governed in all respects, including validity, interpretation and effect, without regard to principles of conflict of laws, by the law of the state where the Policy is issued.

Accepted and Agreed to:

Policyholder Name (Please print) City of Dayton, Ohio
Policyholder Authorized Signature Date 11/15/21
Bret L. McKenzie, Deputy Director of Human Resources
Print signer’s name and title

RELIASTAR LIFE INSURANCE COMPANY
RELIASTAR LIFE INSURANCE COMPANY OF NEW YORK

Company Authorized Signature Date 10/25/2021
Mona Zielke, Vice President
Print signer’s name and title
ADMINISTRATION AGREEMENT

ReliaStar Life Insurance Company, Minneapolis, MN
ReliaStar Life Insurance Company of New York, Woodbury, NY
Members of the Voya® family of companies
(the “Company”)

Policyholder Name (the “Policyholder”) City of Dayton

Policy Effective Date 01/01/2022

Insurance Contracts. The Company issues insurance policies and certificates based on your application and our state approved products (the “Policies”). Our obligations are determined solely by the terms of the policies we issue.

EXCESS RISK COVERAGE

Claim Administration. Upon determination of a potential claim under the Policy, you will confirm employees’ eligibility for coverage and provide required eligibility and claim documentation to the Company, either directly or through your health claim administrator. The Company shall be responsible for all claim reviews, determinations and payments under the Policy.

Confidentiality. We will keep confidential all information provided to us by you or your health claims administrator in connection with the Policy, in compliance with applicable law. You authorize your health claims administrator, if any, to release to the Company information and data regarding claims paid to be used in connection with the Policy.

GROUP ANNUAL TERM LIFE, PERSONAL ACCIDENT INSURANCE, DISABILITY, CRITICAL ILLNESS, ACCIDENT AND/OR HOSPITAL CONFINEMENT INDEMNITY COVERAGE

Policy Administration. Your group policy will be “Self-Administered”. This means that you or a third party that you engage will be responsible to maintain all enrollment, beneficiary, and billing records for the Policies (as applicable). The records you keep must provide the ability for you and/or your employees to:

- appropriately apply Policy limits and rules
- know how much coverage the employee has at all times
- provide the employee with the appropriate “Conversion” and/or “Portability” documentation (as applicable)
- set up any payroll deductions correctly
- pay premium to the insurance company with supporting documentation
- file a claim

The parties agree that the Policies will be self-administered by Policyholder and that the insurance charges reflect that arrangement.

Communications. All forms and other materials we provide to you must be presented to employees without alteration. Any benefit and eligibility descriptions you or your third party service provider communicates to employees must be consistent with the materials and guidelines we provide to you. We will work carefully with you to make corrections in the case of any inadvertent error in communications. However, you are responsible for any costs incurred in correcting errors caused by incorrect data you provide to employees or to Company, including incorrect benefit descriptions and eligibility determinations.

Evidence of Insurability. If evidence of insurability is required in connection with an application for coverage under the terms of a Policy, you will apply the evidence of insurability rules appropriately, obtain the necessary forms from any applicant for such coverage and provide those forms to the Company.

Claim Administration. Upon receipt of notice of a potential claim under a Policy, you will confirm employees’ eligibility for coverage and provide required claim documentation at the Company’s request. The Company shall be responsible for all claim reviews, determinations and payments.

Certificates of Insurance and Summary Plan Description. If you request that we provide Summary Plan Description(s) ("SPD") for distribution to ERISA plan participants, we will provide the SPD using our standard language and format unless otherwise directed by you. If we agree to electronically post certificates of insurance and/or SPDs for access by your employees, you are responsible for assuring that each covered employee is informed how the documents can be accessed and that each employee has access or otherwise receives a copy(ies) of these documents. Any legal advice as to the style, format, content or distribution of the SPD or distribution of the certificate of insurance must be provided by your legal counsel. We are unable to provide legal advice to your plan and assume no responsibility for meeting ERISA’s disclosure requirements.
<table>
<thead>
<tr>
<th>ICD-10 Codes for Disclosure Notification</th>
</tr>
</thead>
<tbody>
<tr>
<td>The following ICD-10 Codes for Disclosure Notification provide conditions or diagnosis which must be disclosed. Please list all Plan Participants who have been diagnosed with or treated for any of the Codes listed under the following categories during the current Benefit Period. Where a range of Codes is shown, any and all conditions or diagnosis within that range must be disclosed.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>A00-B99</th>
<th>Infectious Diseases</th>
</tr>
</thead>
<tbody>
<tr>
<td>B17.1-B17.11</td>
<td>Hepatitis C</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>C00-D49</th>
<th>Neoplasms</th>
</tr>
</thead>
<tbody>
<tr>
<td>C00-C14</td>
<td>Malignancies of oral cavity and pharynx</td>
</tr>
<tr>
<td>C15-C26</td>
<td>Malignant neoplasm of digestive organs</td>
</tr>
<tr>
<td>C30-C39</td>
<td>Malignant neoplasm of respiratory</td>
</tr>
<tr>
<td>C43-C44</td>
<td>Melanoma</td>
</tr>
<tr>
<td>C50-C50</td>
<td>Breast Malignancies</td>
</tr>
<tr>
<td>C51-C68</td>
<td>Genitourinary Malignancies</td>
</tr>
<tr>
<td>C89-C72</td>
<td>Malignancies of Nervous System</td>
</tr>
<tr>
<td>C81-C96</td>
<td>Leukemias, Lymphomas and Myelomas</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>D50-D89</th>
<th>Hematologic Disorders</th>
</tr>
</thead>
<tbody>
<tr>
<td>D57.1</td>
<td>Sickle Cell Anemia</td>
</tr>
<tr>
<td>D61.01</td>
<td>Aplastic Anemia</td>
</tr>
<tr>
<td>D66</td>
<td>Hemophilia/Hereditary Factor VIII Deficiency</td>
</tr>
<tr>
<td>D81.0</td>
<td>Severe Combined Immune Deficiency (SCID)</td>
</tr>
<tr>
<td>D82.1</td>
<td>DiGeorge Syndrome</td>
</tr>
<tr>
<td>D83.1</td>
<td>Immune Deficiency T Cells (AIDS)</td>
</tr>
<tr>
<td>D84.1</td>
<td>Alpha 1-Antitrypsin</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>E70-E88</th>
<th>Metabolic Disorders</th>
</tr>
</thead>
<tbody>
<tr>
<td>E75.22</td>
<td>Gaucher’s Disease</td>
</tr>
<tr>
<td>E84.0</td>
<td>Cystic Fibrosis</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>G00-G99</th>
<th>Disease of the Nervous System</th>
</tr>
</thead>
<tbody>
<tr>
<td>G12.21</td>
<td>Lou Gehrig’s disease (ALS)</td>
</tr>
<tr>
<td>G61.0</td>
<td>Guillain-Barre Syndrome</td>
</tr>
<tr>
<td>G82.50</td>
<td>Quadriplegia</td>
</tr>
<tr>
<td>G91.1</td>
<td>Obstructive Hydrocephalus</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>I00-I99</th>
<th>Disease of Circulatory System</th>
</tr>
</thead>
<tbody>
<tr>
<td>I27.0</td>
<td>Primary Pulmonary Hypertension</td>
</tr>
<tr>
<td>I42.0-I42.9</td>
<td>Cardiomyopathy</td>
</tr>
<tr>
<td>I46.9</td>
<td>Cardiac Arrest</td>
</tr>
<tr>
<td>I50.9</td>
<td>Subarachnoid Hemorrhage</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>J00-J99</th>
<th>Disease of Respiratory System</th>
</tr>
</thead>
<tbody>
<tr>
<td>J95.00-J96.92</td>
<td>Respiratory Failure</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>K00-K95</th>
<th>Disease of Digestive System</th>
</tr>
</thead>
<tbody>
<tr>
<td>K00.00-K07.99</td>
<td>Chronic Liver Disease</td>
</tr>
<tr>
<td>K72.00-K72.91</td>
<td>Liver Failure</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>M86</th>
<th>Diseases of Musculoskeletal System and Connective Tissue</th>
</tr>
</thead>
<tbody>
<tr>
<td>M86</td>
<td>Osteomyelitis</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>N00-N99</th>
<th>Disease of Genitourinary System</th>
</tr>
</thead>
<tbody>
<tr>
<td>N18.1-N18.9</td>
<td>Chronic Renal Failure</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>O00-O9A</th>
<th>Pregnancy, Childbirth &amp; Puerperium</th>
</tr>
</thead>
<tbody>
<tr>
<td>O30.10-O30.109</td>
<td>Triplet Pregnancy</td>
</tr>
<tr>
<td>O30.20-O30.209</td>
<td>Quadruplet Pregnancy</td>
</tr>
<tr>
<td>O60.00-O60.14</td>
<td>Preterm Labor</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>P00-P99</th>
<th>Perinatal Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>P07.00-P07.36</td>
<td>Preterm Infant</td>
</tr>
<tr>
<td>P22.0</td>
<td>Respiratory Distress Syndrome of Newborn</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q00-Q99</th>
<th>Congenital Malformations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q20-Q28</td>
<td>Congenital Heart Diseases</td>
</tr>
<tr>
<td>Q39.0-Q39.4</td>
<td>Tracheoesophageal Fistula</td>
</tr>
<tr>
<td>Q89.7</td>
<td>Multiple Anomalies</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>S00-T88</th>
<th>Injury, Poisoning and Trauma</th>
</tr>
</thead>
<tbody>
<tr>
<td>S06.0-S06.9</td>
<td>Brain Injuries</td>
</tr>
<tr>
<td>S12-S14</td>
<td>Spinal Cord Injuries</td>
</tr>
<tr>
<td>S88</td>
<td>Amputations</td>
</tr>
<tr>
<td>T07</td>
<td>Multiple Trauma Injuries</td>
</tr>
<tr>
<td>T20-T32</td>
<td>Burns</td>
</tr>
<tr>
<td>T79</td>
<td>Early Complications of Trauma</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>T86-Z94</th>
<th>Complications Peculiar to Certain Specified Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>T86.00-T86.02</td>
<td>Graft vs. Host Disease</td>
</tr>
<tr>
<td>T86.00-T86.09</td>
<td>Graft vs. Host Disease</td>
</tr>
<tr>
<td>T86.90-T86.92</td>
<td>Complications of Transplants</td>
</tr>
<tr>
<td>T86.90-T86.99</td>
<td>Complications of Transplants</td>
</tr>
<tr>
<td>Z94</td>
<td>Transplants</td>
</tr>
</tbody>
</table>
DISCLOSURE AGREEMENT
ReliaStar Life Insurance Company, Minneapolis, MN
A member of the Voya® family of companies
(the "Company")

Policy Effective Date January 01, 2022
Plan Sponsor Name City of Dayton

INSTRUCTIONS FOR COMPLETION
Please provide the information described in the Disclosure Reports Section below and then have an authorized representative of the Plan Sponsor submit the Disclosure Agreement. Prior to submitting this Disclosure Agreement and Disclosure Reports to the Company, please consult with your current Claim Administrator(s), Utilization Review Firm(s), Case Management, and Pharmacy Benefits Manager(s) (collectively, "Claim Vendors"), and Plan Sponsor's Broker or other Insurance advisor. The Disclosure Reports must be provided to the Company no earlier than 90 calendar days prior to the Policy's Effective Date or renewal date, as applicable. Please note the required monthly claim reporting provided on behalf of the Plan Sponsor to Company will suffice for renewal purposes. Should the Company require any additional information, it will notify the Plan Sponsor and/or its designated representative in writing no later than 20 calendar days following receipt of the Disclosure Reports. Any firm quote is void unless accepted by the Plan Sponsor in writing within 30 days from the date quoted by the Company.

DISCLOSURE REPORTS Plan Sponsor has provided the following reports or data (which include claimant name and primary ICD-10 diagnosis) on the following date(s):

- Any individual with paid claims that has exceeded 50% of the stop loss deductible during the applicable current policy year (minimum 9 months);
- Any individual with denied and/or pended claims that has exceeded $25,000 during the applicable current policy year (minimum of 9 months);
- Any individual evaluated and/or listed for an organ, stem cell or bone marrow transplant;
- Any individual, including claim amounts for that individual, who is or was in case management or whose condition or diagnosis would be referred to case management during the applicable current policy year (minimum 9 months) by your claims Administrator based upon the ICD-10 codes used by your Claims Administrator for referral to case management;
- Any individual, including claim amounts for that individual, whose condition or diagnosis during the applicable current policy year (minimum 9 months) is represented by any of the ICD-10 codes contained in the attached list.

DISCLOSURE AGREEMENT
The Plan Sponsor represents to the Company, to the best of its knowledge and belief, and after making a diligent and good faith inquiry, that it has fully read and understands this Disclosure Agreement; and as of the date of submitting this Disclosure Agreement there are no known potential catastrophic claims other than those disclosed on the submitted Disclosure Reports.

The Plan Sponsor understands and agrees that the Company will rely on this Disclosure Agreement and the attached Disclosure Reports to:

(i) underwrite this risk,
(ii) determine whether or not to issue (or renew) a Policy, and
(iii) If the Company agrees to issue or renew a Policy, determine the terms, conditions, limitations and rates of or for such Policy.

The Plan Sponsor further understands and agrees that if there are any undisclosed claimants known to the plan sponsor that are material to the risk to be insured by the Company, any Policy issued or renewed by the Company may be rescinded, any benefits that might otherwise be payable thereunder may be denied, and/or the premium rates, deductibles, terms, conditions and limitations of the Policy may be revised by the Company; and, the requirement to submit any required Disclosure Report may not be waived by the Company without a written representation by the Plan Sponsor that there are no reports or data with respect to any individual required to be included on any of the Disclosure Reports above.

To be eligible for a claim of reimbursement under the Policy, the Plan Sponsor or the Claims Administrator must request payment and provide complete and accurate Proof of Loss, in the form and content acceptable to the Company, to support a claim within 180 days after the end of the Coverage Period of the Policy.
ACKNOWLEDGEMENT & SIGNATURES

By signing this Application below, the Plan Sponsor Applicant represents that all statements, answers and information made above in this application and in the Disclosure Agreement are complete and true to the best of its knowledge and belief. Plan Sponsor Applicant further acknowledges and agrees (i) that such statements, answers and information in this Application and in the Disclosure Agreement, together with a copy of the Employee Benefit Plan and other information attached to this application or furnished to ReliaStar Life, are submitted by the Plan Sponsor Applicant as an inducement to, and will be relied upon by, ReliaStar Life, in underwriting this risk and determining whether to accept this application and issue the Excess Risk Policy being applied for; (ii) if such statements, answers and information is/are incomplete or untrue, and such incompleteness or falsity is material to the risk to be insured by ReliaStar Life, any policy issued by ReliaStar Life may be rescinded and/or any benefits that might otherwise be payable thereunder may be denied; and (iii) the Plan Sponsor Applicant has fully read and understands this completed Application and the Disclosure Agreement.

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act which is a crime, and may subject such person to criminal and civil penalties, and denial of insurance benefits.

Plan Sponsor Applicant  City of Dayton

Name of Signer (Please print)  Date Signed  11/15/21

By  Title  Deputy Director Human Resources
INDIVIDUAL EXCESS RISK (Continued)

Maximum Individual Benefit:

Individual Excess Risk Lifetime Maximum: $ Unlimited
Individual Excess Risk Annual Maximum: $ Unlimited
Other $ Unlimited

Optional Endorsements:

☐ Individual Terminal Liability ☐ 3 months ☐ 6 months
☐ Individual Advanced Funding
☐ Individual Gapless Renewal (Only available for 12/15 or 12/18)
☐ Aggregating individual Deductible: $ ____________ (Individual Excess Risk must be elected)
☒ Plan Mirroring Coordination
☒ Renewal Rate Cap
☐ Other: ____________________________

AGGREGATE EXCESS RISK

Aggregate Excess Risk: ☐ Yes ☑ No
Benefits To Be Covered: ☐ Medical ☐ Vision ☐ Prescription Drugs ☐ Dental ☐ Other (Specify) ____________________________

Initial Coverage Period:

☐ Incurred and Paid in 12 months ☐ Incurred in 12 months and Paid in 15 months
☐ Incurred in 15 months and Paid in 12 months ☐ Incurred in ____________ months and Paid in ____________ months
☐ Paid in 12 months
☐ Other: ____________________________

Aggregate Adjustment Corridor: ____________ %

Minimum Annual Aggregate Deductible: See Excess Risk Schedule

ReliaStar Life’s Limit of Liability: $ ____________ per Coverage Period

Optional Endorsements:

☐ Plan Mirroring Coordination
☐ Aggregate Terminal Liability ☐ 3 months ☐ 6 months (Individual Terminal Liability must also be elected)

Note: If Terminal Liability is not elected with any Coverage Period OTHER THAN one providing “Run-out” reimbursement (such as “Incurred in 12 months and Paid in 15 months”), both the Plan Sponsor and broker, if any, must sign and date the attached disclosure statement before this insurance will become effective.

☐ Other: ____________________________

Are retirees covered? ☐ Yes ☑ No Are retirees age 65 and over covered? ☐ Yes ☑ No

Attached to and incorporated in this Application is a copy of the Employee Benefit Plan that relates to the Excess Risk Policy being applied for.

The Producer/Agent of Record (provided he/she is duly licensed as required by law) is:

McGoohan Brabender

This insurance is to be effective on January 1, 2022 at 12:01 a.m. Standard Time at the Plan Sponsor’s place of business, provided that the first premium is paid in full and that the Disclosure Agreement and this Application are accepted by ReliaStar Life.

An advance deposit of $ _____ N/A _____ is attached. (The deposit is to equal the first premium.) The deposit will be applied toward payment of the premiums on the insurance requested if the application is accepted by ReliaStar Life. If not accepted, the deposit will be refunded to the Plan Sponsor Applicant.
EXCESS RISK SINGLE EMPLOYER APPLICATION (OH)
ReliaStar Life Insurance Company
("ReliaStar Life")
Home Office: Minneapolis, Minnesota 55440
Plan Sponsor hereby applies for the Excess Risk Policy.

PLAN INFORMATION
Name of Plan Sponsor (exact legal name) City of Dayton
Address (number and street) 101 West Third Street
City Dayton State OH Zip 45402
☐ Corporation ☐ Partnership ☐ Sole Proprietorship ☑ Other. Specify: Public Entity
Nature of Plan Sponsor's Business Executive Offices SIC Code 9111
Are subsidiaries, affiliates or other associated entities to be included? ☐ Yes ☑ No
If "Yes," give Names.
Relationship to Plan Sponsor

Please provide the number of individuals covered as noted below:
Eligible Individuals Covered Persons Only Covered Persons with Dependents
Enrolled Individuals 1,616 Covered Persons Only 1,616 Covered Persons with Dependents
Individuals Covered Elsewhere Covered Persons Only Covered Persons with Dependents
The initial Contract Period is from January 1, 2022 through December 31, 2022

CLAIM ADMINISTRATOR INFORMATION (Claim Administrator for coverages checked below for the Employee Benefit Plan)
Name of Claim Administrator (exact legal name of entity) Anthem Blue Cross and Blue Shield (OH)
Address (number and street) N/A
City N/A State N/A Zip N/A

* Claim Administrator must be approved by ReliaStar Life prior to acceptance of this Application

INDIVIDUAL EXCESS RISK
Individual Excess Risk: ☑ Yes ☐ No
Benefits To Be Covered: ☑ Medical ☑ Other (Please specify) Prescription Drugs

Initial Coverage Period:
☐ Incurred and Paid in 12 months ☑ Incurred in 12 months and Paid in 15 months
☐ Incurred in 15 months and Paid in 12 months ☑ Incurred in 24 months and Paid in 12 months
☐ Paid in 12 months
☐ Other

Individual Excess Risk Deductible $200,000 per Individual

Individuals subject to the Individual Adjusted Deductible as identified in the disclosure process n/a

Claims for Individuals subject to the Individual Adjusted Deductible that exceed the Individual Excess Risk Deductible amount are excluded under any Aggregate Excess Risk Insurance.
Benefit percentage 100%
### Privacy Notice

#### Who we are

**Who is providing this notice?**
This notice is provided by certain companies owned by Voya Financial, Inc. A list of these companies is provided at the end of this notice.

#### What do we do

**How does Voya protect my personal information?**
To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.

**How does Voya collect my personal information?**
We collect your personal information, for example, when you
- open an account or give us your contact information
- apply for insurance or seek advice about your investments
- tell us about your investment or retirement portfolio

We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.

**Why can’t I limit all sharing?**
Federal law gives you the right to limit only
- sharing for affiliates’ everyday business purposes – information about your creditworthiness
- affiliates from using your information to market to you
- sharing for nonaffiliates to market to you

State laws and individual companies may give you additional rights to limit sharing. See below for more on your rights under state law.

**What happens when I limit sharing for an account I hold jointly with someone else?**
Your choices will apply to everyone on your account.

#### Definitions

**Affiliates**
Companies related by common ownership or control. They can be financial and nonfinancial companies.
- Our affiliates include companies with the Voya name; financial companies such as Voya Retirement Insurance and Annuity Company; and nonfinancial companies such as Voya Services Company.

**Nonaffiliates**
Companies not related by common ownership or control. They can be financial and nonfinancial companies.
- Voya does not share with nonaffiliates so they can market to you.

**Joint marketing**
A formal agreement between nonaffiliated financial companies that together market financial products or services to you.
- Voya does not jointly market.

#### Other important information

If you live in California or Vermont, we will obtain your affirmative consent to share your personal information with nonaffiliates who do not currently assist us in servicing your account or conducting our business. If you are a participant in a retirement plan sponsored by your current or former employer, our contract with your plan sponsor may contain additional restrictions on the use or sharing of your personal information.

**Voya affiliates**
This notice is provided by: Directed Services LLC; Midwestern United Life Insurance Company; ReliaStar Life Insurance Company; ReliaStar Life Insurance Company of New York; Security Life Assignment Corp.; Security Life of Denver Insurance Company; Voya America Equities, Inc.; Voya Capital Corporation, LLC; Voya Financial, Inc.; Voya Financial Partners, LLC; Voya funds; Voya Funds Services, LLC; Voya Institutional Plan Services, LLC; Voya Institutional Trust Company; Voya Insurance and Annuity Company; Voya Investments, LLC; Voya Investments Distributor, LLC; Voya Retirement Advisors, LLC; Voya Retirement Insurance and Annuity Company
Privacy Notice

FACTS

WHAT DOES VOYA FINANCIAL DO WITH YOUR PERSONAL INFORMATION?

Why?
Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.

What?
The types of personal information we collect and share depend on the product or service you have with us. This information can include:
- Social Security number and account balance
- Assets and transactions or loss history
- Investment experience and employment information

How?
All financial companies need to share customers’ personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers’ personal information; the reasons Voya chooses to share; and whether you can limit this sharing.

<table>
<thead>
<tr>
<th>Reasons we can share your personal information</th>
<th>Does Voya share?</th>
<th>Can you limit this sharing?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>For our everyday business purposes</strong> - such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, detect and prevent fraud, or report to credit bureaus</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td><strong>For our marketing purposes</strong> - to offer our products and services to you</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td><strong>For joint marketing with other financial companies</strong></td>
<td>No</td>
<td>We don’t share</td>
</tr>
<tr>
<td><strong>For our affiliates’ everyday business purposes - information about your transactions and experiences</strong></td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td><strong>For our affiliates’ everyday business purposes - information about your creditworthiness</strong></td>
<td>No</td>
<td>We don’t share</td>
</tr>
<tr>
<td><strong>For our affiliates to market to you</strong></td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>For nonaffiliates to market to you</strong></td>
<td>No</td>
<td>We don’t share</td>
</tr>
</tbody>
</table>

To limit our sharing:
- Call our toll-free number (855) 685-9519 – our menu will prompt you through your choice

Please note:
If you are a new customer, we can begin sharing your information 30 days from the date we sent this notice. When you are no longer our customer, we continue to share your information as described in this notice.

However, you can contact us at any time to limit our sharing.

Questions?
Call the telephone number listed on your statements and other correspondence or go to http://voyacom/contact-us
RELIASTAR LIFE INSURANCE COMPANY
Home Office, Minneapolis, Minnesota, 55440

RENEWAL RATE CAP ENDORSEMENT

If the Excess Risk Policy is renewed, We guarantee that Your Individual Excess Risk premium rate will not be increased more than 50% over the Monthly Premium Rate shown on the Excess Risk Schedule, provided that:

A. The Employee Benefit Plan contains no changes that materially alter the risk under Your current Excess Risk Policy issued by Us;

B. The renewal Excess Risk Policy contains no Material Changes from the current Policy, including, but not limited to, changes to: (i) the length of the Contract Period, (ii) Eligible Excess Risk Expenses, (iii) coverage for retirees, (iv) the Individual Excess Risk Deductible, (v) the Coverage Period, (vi) the Benefit Percentage, (vii) the commission payable, (viii) the Plan Sponsor's Claim Administrator, or (ix) Managed Care Networks, or (x) the Individual Excess Risk Annual Maximum;

C. There are no Material Changes between the demographic distribution of the group covered under the Your current Excess Risk Policy and the group covered under the renewal Excess Risk Policy;

D. No new unit, division, subsidiary, affiliated company or class of Covered Persons or Covered Dependents is added to this Excess Risk Policy; and

E. There is no change in any assessment or tax levied against Us by the state in which this Excess Risk Policy was delivered.

We reserve the right to determine whether any of the changes described in clauses (A) through (E) above constitute a Material Change. If We determine that any change is material, the Renewal Rate cap will be adjusted by Us accordingly.

After the initial two Contract Periods, We reserve the right to revise the deductibles and any other terms, conditions and limitations of this Policy.

Upon renewal, We will not apply any new Individual Adjusted Deductible unless requested to do so in writing by You.

All other terms, conditions and limitations of the Excess Risk Policy apply to this Endorsement.

In the event of a conflict between the terms, conditions and limitations of this Endorsement and the Excess Risk Policy, this Endorsement will control.

This Endorsement is made part of the Policy to which it is attached.

[Signature]
Secretary

RL-SL-RRC-2013 1
Upon receipt of Proof of Loss acceptable to Us, We will reimburse You for payments of Eligible Excess Risk Expenses under Your Employee Benefit Plan that are:

A. Paid according to the terms of Your Employee Benefit Plan; and
B. Incurred and Paid during the Coverage Period shown on Your current Excess Risk Schedule.

The expenses Paid by You shall be considered Eligible Excess Risk Expenses, but will be subject to the exclusions A, C, D, E and G of the Exclusions and Limitations section of the Excess Risk Policy.

All other terms, conditions, and limitations of the Excess Risk Policy apply to this Endorsement.

In the event of a conflict between the terms, conditions and limitations of this Endorsement and the Excess Risk Policy, this Endorsement will control.

This Endorsement is made part of the Policy to which it is attached.

[Signature]
Secretary

RL-SL-PM-2013 1
MISCELLANEOUS PROVISIONS

If Aggregate Excess Risk Insurance is included, Claim Administrator’s Responsibilities also include, but are not limited to, submitting a monthly report to Us in a format acceptable to Us showing the total amount of claims Paid and enrollment numbers.

You are solely responsible for the actions of the Employee Benefit Plan administrator, the Claim Administrator, and any other agent of Yours. The Claim Administrator acts on Your behalf, and not on Our behalf. The Claim Administrator is not Our agent. We are not responsible for any compensation owed to, or claims by, the Administrator or other agents for services provided to, or on behalf of, You or the Employee Benefit Plan. This Policy does not make Us a party to any agreement between You and the Claim Administrator, nor does it make the Claim Administrator a party to this Policy.

CLAIM AUDIT: We may periodically examine any of Your or the Claim Administrator’s records relating to the benefits under this Policy and any claims filed under the Employee Benefit Plan. We have the right to audit all claims with respect to Eligible Excess Risk Expenses Paid under the Employee Benefit Plan, in the event a claim for benefits is made under this Policy.
MISCELLANEOUS PROVISIONS

REIMBURSEMENT OF CERTAIN FEES: Eligible Excess Risk Expenses will also include the following fees Incurred and Paid by the Plan Sponsor, if approved in advance of claim by Us:

A. Hospital bill audits;
B. Access to non-directed provider networks;
C. Negotiation of out-of-network bills; and
D. Cost Containment Vendors.

Such fees shall be considered Eligible Excess Risk Expenses only if You can demonstrate to Us that the services that generated the fees resulted in a cost savings to the Employee Benefit Plan and Us. If You can demonstrate such a cost savings, We will consider such fee an Eligible Excess Risk Expense, up to 25% of such cost savings per Covered Person or Covered Dependent.

STATE ASSESSMENT LOADS: State and Federal laws may assess excess risk insurance carriers based on the number of that state’s residents who are covered under excess risk policies. We shall have the right to increase premium rates to cover expected state assessment costs, based on the most current applicable assessment rates.

STATE HEALTH CARE SURCHARGES: If You pay a state health care surcharge in connection with the payment of Eligible Excess Risk Expenses, the health care surcharge shall be considered an Eligible Excess Risk Expense provided that the charges were submitted and duly noted as such. Penalties or fines associated with the health care surcharge or the underlying expenses will not be considered Eligible Excess Risk Expenses.

INDEPENDENT REVIEW ORGANIZATION EXTENDED BENEFIT: In the event Eligible Excess Risk Expenses are Paid for a Covered Person or Covered Dependent due to a reversal by an Independent Review Organization of a previous denial of such expenses, and such covered expenses are then Paid after the Coverage Period, the Coverage Period to pay such expenses will be extended for a period not to exceed 12 months. We will consider the date the claim was denied as the "Paid" date under this Policy, provided:

A. Such expenses are not eligible under any other coverage; and
B. Such expenses are otherwise payable under the terms of this Policy.

When Eligible Excess Risk Expenses are Paid pursuant to the terms, conditions and limitations of this Independent Review Organization Extended Benefit, such expenses will relate back to the Coverage Period in which they were Incurred and will be excluded from any other Coverage Period.

If You terminate this Policy for any reason prior to 12 months following the Effective Date shown on the Excess Risk Schedule, this provision will not apply.

CLAIM ADMINISTRATOR RESPONSIBILITIES: The Claim Administrator acts on Your behalf of and as Your agent. If claims are Paid by a Claim Administrator, We may require that You provide Us with any information possessed by the Claim Administrator that will assist Us in administering this Policy.

For Individual Excess Risk Insurance this includes but is not limited to:

A. When expenses, Paid and/or pending, for a Covered Person or Covered Dependent exceed 50% of the Individual Excess Risk Deductible;
B. Notification, regardless of the deductible amount, of any potential or planned organ transplant;
C. Claim or claim report for any Covered Person or Covered Dependent who exceeds the Individual Excess Risk Deductible applicable to such Covered Person or Covered Dependent;
D. Transplant contracts, case management notes, and any other documentation that may be needed in order for Us to properly determine how the Claim Administrator adjudicated the claim. If such items are considered proprietary by the Claim Administrator a written statement from the Claim Administrator providing the substance of the requested items may be accepted.

Similar reporting shall be required for any Eligible Excess Risk Expenses Paid for a Covered Person or Covered Dependent subject to a deductible separate from the Individual Excess Risk Deductible as an Individual Adjusted Deductible as shown on the Excess Risk Schedule.
GENERAL PROVISIONS

We will make such payments only if You have paid all required premiums and have Paid all eligible expenses under the Employee Benefit Plan, and have complied with all Your obligations under this Policy. Nothing in this section shall increase Our liability beyond that which would have existed had You not become insolvent or bankrupt.

INDEMNIFICATION: You agree to indemnify, defend and hold Us harmless from any liability, damages of any kind, interest, penalties, or expenses (including without limitation, attorney’s fees) arising from, relating to or concerning in any way whatsoever, any dispute or legal action by or involving a Covered Person, Covered Dependent, or a provider of services to a Covered Person or a Covered Dependent.

CONFORMITY WITH STATE STATUTES: Any provision of this Policy which, on the Effective Date of this Policy, conflicts with any law of the state where this Policy is delivered, shall be deemed to be automatically amended to conform to the minimum requirements of such law.

REIMBURSEMENT: Your rights under the Employee Benefit Plan to recover sums Paid during the Coverage Period on behalf of a Covered Person or Covered Dependent, are assigned by You to Us to the extent of any benefits paid under this Policy. You agree to promptly recover such sums, at Your cost, by initiating legal action or other effective means. Within 10 days of initiating any action or other means for recovery, You shall notify Us, and We shall have the right to intervene in any suit or other proceeding to protect Our reimbursement rights. Any recovery, whether by settlement, judgment, or otherwise, shall be treated as a reduction of Eligible Excess Risk Expenses by You for the Coverage Period during which it was reported and We shall be entitled to receive full reimbursement to the extent of benefits paid under this Policy.

REINSTATMENT: If this Policy is terminated for non-payment of premium, We reserve the right to reinstate it as of the date it terminated upon payment of all outstanding premium. You must furnish all information requested by Us before We will consider reinstating this Policy. Reinstatement may be subject to terms, conditions and limitations.

NO THIRD PARTY BENEFICIARY: The Policy is issued by Us to You, and to no one else. The provisions of this Policy are not intended to confer any benefits upon any person or entity other than You, and no person or entity is an intended third party beneficiary of this Policy.

PREPARATION OF POLICY: Because You and We are both sophisticated entities, in the event of an ambiguity in or dispute regarding the interpretation of this Policy, interpretation of this Policy shall not be resolved by any rule providing for interpretation against the party who causes the uncertainty or against the drafter, and both You and We expressly agree that in the event of an ambiguity or dispute regarding the interpretation of this Policy, the Policy will be interpreted as if both You and Us had fully participated in the negotiation and preparation of this Policy.
GENERAL PROVISIONS

NON-PARTICIPATING: This Policy does not pay a dividend and shall not be entitled to share in Our surplus earnings.

ENTIRE CONTRACT: The entire contract between You and Us consists of:

A. The Policy;
B. Your Excess Risk Application (a copy of which is attached to this Policy when issued);
C. The Excess Risk Schedule;
D. The signed Disclosure Agreement (a copy of which is attached to this Policy when issued); and
E. Any Endorsements included with and made part of this Policy.

All statements made by You shall be deemed representations and not warranties. No such statement shall be used in defense to a claim under this Policy unless it is contained in the written Excess Risk Application or Disclosure Agreement and is signed by You or is attached to this Policy.

MISREPRESENTATION: If:

A. You make any material misstatement, omission or misrepresentation, whether intentional or unintentional, in the information or documentation that You, the Claim Administrator or any other party acting on Your behalf provide to Us, and which We rely upon during the underwriting of this Policy; or
B. After this Policy is issued, We learn of any expense or claim that was Incurred or Paid, but not reported to Us during the underwriting of this Policy, then, in such event:

We reserve the right to deny any such claim, rescind this Policy or to revise the premium rates, deductibles, and terms, conditions and limitations of this Policy in accordance with Our underwriting practices in effect at the time the Policy was underwritten. Any such revisions may be made retroactive to the Policy Effective Date.

LEGAL ACTION: Legal action may not be taken to receive benefits until 60 days after the date Proof of Loss is received in accordance with the terms of this Policy. Legal action must be taken within 3 years after the date Proof of Loss is submitted.

This Policy is deemed made in the state in which it was delivered, as shown on the face page of this Policy. Any lawsuits brought by either party against the other related to this Policy must be brought in that state and settled according to its laws.

ASSIGNMENT: You may not assign, pledge or transfer, in whole or in part, this Policy or any interest therein or any benefits payable hereunder without Our prior written consent. Any such action will be void and of no effect.

CLERICAL ERROR: No clerical error, whether made by You, the Claim Administrator, or Us, that relates to recordkeeping, reporting, payment of benefits or premiums, will invalidate coverage otherwise validly in force or continue coverage otherwise validly terminated. However, upon discovery of such error or delay an equitable adjustment of premiums or benefits will be made. In the event that claims data and/or enrollment information furnished to Us is missing or incorrect, We have the right to recalculate the Monthly Aggregate Factor(s) and Individual Excess Risk Monthly Premium Rate as shown on the Excess Risk Schedule using the corrected information.

A clerical error is a mistake in performing a clerical function, such as typing, but does not include Your acts or Your failure to comply with the provisions of the Employee Benefit Plan or this Policy. This paragraph shall not be construed in any way to impair Our rights under the Misrepresentation provision of this Policy.

POLICY AMENDMENTS/CHANGES: We may amend this Policy on any renewal date. No change in this Policy is valid unless it is approved and signed by one of Our designated corporate officers or an Assistant Secretary. Agents or brokers do not have the right to change this Policy, waive any of its provisions, or bind Us in any way.

YOUR BANKRUPTCY OR INSOLVENCY: Eligible Excess Risk Expenses will not be affected by Your bankruptcy or insolvency. In the event of Your bankruptcy or insolvency, subject to the terms, conditions and limitations of this Policy, We may pay to Your receiver, trustee, liquidator or legal successor amounts otherwise payable under this Policy.
TERMINATION AND RENEWAL PROVISIONS

POLICY TERMINATION: This Policy will terminate on the earliest of the following circumstances:

A. If You fail to pay the required premium by the end of the Grace Period, this Policy will terminate in accordance with the Premiums provision of this Policy.

B. If the Employee Benefit Plan terminates, this Policy will terminate on the date the Employee Benefit Plan terminates.

C. If You fail to maintain a minimum of 100 Covered Persons covered under the Employee Benefit Plan at any time during the Contract Period, We may elect to terminate this Policy at the end of the first month during which there are less than 100 enrolled Covered Persons.

D. This Policy will terminate at the end of the Contract Period unless You and We agree in writing to renew this Policy.

E. If You or the Claim Administrator fail to satisfy any of its obligations under this Policy, We reserve the right to terminate this Policy by giving You 60 days advance written notice.

F. We may terminate this Policy at the end of the Contract Period by providing You 45 days advance written notice.

We will not refund any portion of the premium paid by You if this Policy terminates during a Contract Period.

If this Policy terminates prior to the end of the Contract Period, the Contract Period will be revised to end on the date of the effective date of the termination of the Policy and any specified number of months of the Coverage Period as shown on the Excess Risk Schedule will be reduced by the number of months by which the original Contract Period was shortened.

REQUIREMENTS TO RENEW COVERAGE: If this Policy terminates, You may request that it be renewed. This Policy may not be renewed unless We approve Your request for renewal and all of the following conditions are satisfied:

A. The number of Covered Persons enrolled in the Employee Benefit Plan must equal or exceed the minimum enrollment shown on the Excess Risk Schedule;

B. You must furnish Us with information showing monthly Paid claims and enrollment data, organized by covered benefit;

C. You must furnish Us with large claim information, including amount and diagnosis for any Covered Person or Covered Dependent, pursuant to the terms of the Disclosure Agreement;

D. You must furnish Us with a census of all Covered Persons and Covered Dependents;

E. You must furnish Us with a summary of the number of Covered Persons by residence zip code; and

F. You must furnish Us with a summary report of Your Managed Care Networks(s), setting forth the average hospital discounts per day.

Our approval to renew the Policy may be subject to terms, conditions and limitations. If we renew this Policy, We will furnish You with a revised Excess Risk Schedule.
PREMIUM AND CLAIM PROVISIONS

PAYMENT OF PREMIUMS: You must pay the premium for this Policy to Us on or before the Premium Due Date specified in the Excess Risk Schedule.

GRACE PERIOD: A Grace Period of 45 calendar days will be allowed for the payment of each premium due after the first premium has been paid. This Policy will continue in force during the Grace Period. If a premium is not paid by the end of the Grace Period, this Policy will terminate as of the last date for which premium was paid. We may deduct the amount of any premium due for a Grace Period from any benefit We may owe You under this Policy.

PREMIUM RATES: The initial premium rates are stated in the Excess Risk Schedule. We may change the premium rates:
   A. Whenever You amend or materially change the Employee Benefit Plan; or
   B. When this Policy is amended; or
   C. On any Premium Due Date after the first Contract Period.

PREMIUM DATA: You must provide a report to Us with each premium payment, in a form satisfactory to Us, that lists:
   A. The number(s) of participants in the Employee Benefit Plan on the first day of the Benefit Month, as categorized under Coverage Description on the Excess Risk Schedule; and
   B. The amount of premium paid.

You acknowledge and understand that We use such premium data reports solely to process premium. Such premium data reports do not replace any report required, or which may be required, under the Reporting Requirements provision of this Policy.

PROOF OF LOSS: You or the Claim Administrator must request payment and provide complete and accurate Proof of Loss, in form and content acceptable to Us, to support a claim within 180 calendar days after the end of the Coverage Period. We may deny any claim(s) received after the end of the 180 calendar day period. However, any claim that is either submitted, or that remains incomplete, more than 180 days after the termination of this Policy will be denied.

PAYMENT OF CLAIMS: All benefits payable under this Policy will be paid to You and to no one else.

REPORTING REQUIREMENTS: You are required to provide periodic reports to Us as described below.

For Individual Excess Risk benefit reporting, You or the Claim Administrator must give notice to Us when the total amount of Eligible Individual Excess Risk Expenses Paid by You for a Covered Person or Covered Dependent equals or exceeds 50% of the Individual Excess Risk Deductible, or has the potential to exceed 50% of the Individual Excess Risk Deductible. Your failure to provide prompt notice may result in an adjustment of any Individual Excess Risk benefits payable to You, if any, to reflect any savings We could have obtained had prompt notice been given. Similar reporting shall be required for any Eligible Excess Risk Expenses Paid for a Covered Person or Covered Dependent subject to a deductible separate from the Individual Excess Risk Deductible as an Individual Adjusted Deductible as shown on the Excess Risk Schedule.

You or the Claim Administrator are required to provide Us with notice of any potential Individual Eligible Excess Risk claim within 31 days of the date:
   A. Covered Person’s or Covered Dependent’s Eligible Incurred Expenses exceed 50% of the Individual Excess Risk Deductible; or
   B. You or the Claim Administrator or Your medical management, utilization review, Prescription Drug Plan, precertification vendors, or any other party acting on Your behalf, are notified that a Covered Person or Covered Dependent has been diagnosed with, or treated for, a catastrophic condition which, if Paid, would result in an Eligible Expense under this Policy that would equal or exceed 50% of the Individual Excess Risk Deductible.
MATERIAL CHANGE PROVISIONS

MATERIAL CHANGE: You must give Us written notice within 31 days of any Material Change to the Employee Benefit Plan which in Our reasonable judgment may have a material adverse financial, economic or other effect on Our liability under this Policy. Failure to provide such notice could result in termination of this Policy or denial of benefits payable on behalf of a Covered Person or Covered Dependent. Notice must be provided to:

Reliastar Life Insurance Company
20 Washington Avenue South
Route 5499
Underwriting Department
Minneapolis, MN 55401

A Material Change includes, but is not limited to, a change to, or of, any of the following:

A. The information disclosed by You upon which Our assessment of risk was based;
B. The Employee Benefit Plan;
C. The Claim Administrator or Managed Care Network;
D. An increase or decrease in the number of Covered Persons and Covered Dependents that exceeds 15% of the current number covered under the Employee Benefit Plan;
E. The insolvency or inability to pay obligations of You or the Employee Benefit Plan; or
F. A merger, acquisition or similar transaction involving You or any of Your affiliates or subsidiaries.

If You amend the Employee Benefit Plan or change Your business so as to result in a material adverse financial, economic or other effect on Our liability or risk under this Policy, We will have the right to (i) recalculate Monthly Aggregate Factor(s) and Individual Excess Risk Monthly Premium Rates as shown on the Excess Risk Schedule and continue this Policy, or (ii) terminate this Policy in accordance with the Policy Termination provision of this Policy. If We elect to continue this Policy, the new Monthly Aggregate Factor(s) and Individual Excess Risk Monthly Premium Rate will be effective on the date specified by Us.

EMPLOYEE BENEFIT PLAN AMENDMENTS: You must give Us written notice of any amendment to the Employee Benefit Plan at least 31 days prior to the effective date of the amendment. If the amendment changes the benefits under the Employee Benefit Plan, Your Monthly Aggregate Factor(s) and Individual Excess Risk Monthly Premium Rate as shown on the Excess Risk Schedule will be recalculated. Any revision to Your Monthly Aggregate Factor(s) or Individual Excess Risk Monthly Premium Rate due to an amendment will become effective on the effective date of the amendment. If We do not receive notice from You prior to the effective date of the Plan amendment, We will determine if benefits are payable based on Your Monthly Aggregate Factor(s) and Individual Excess Risk Monthly Premium Rate calculated (1) without the amendment or (2) with the amendment, whichever is greater.
EXCLUSIONS AND LIMITATIONS

Eligible Excess Risk Expenses shall not include the following, whether or not such expenses are covered under the Employee Benefit Plan, unless otherwise specifically included in the Excess Risk Schedule:

A. Any portion of an expense which You are not obligated to pay under the Employee Benefit Plan, or which is reimbursable to You pursuant to or because:
   1. Another group health benefit program; or
   2. The Covered Person or Covered Dependent is covered under, or eligible for, Medicare, the Railroad Retirement Program, Worker’s Compensation, or any similar federal, state or local program or statute; or
   3. Any coordination of benefits or non-duplication of benefits provision of the Employee Benefit Plan;

B. Benefits Paid under the Employee Benefit Plan which are in excess of Usual and Customary charges;

C. Expenses associated with the administration of the Employee Benefit Plan including, but not limited to, claim payment fees, PPO access fees, premium functions, medical review and consultant fees unless otherwise payable under the Reimbursement of Certain Fees provision;

D. Expenses Paid by You or the Claim Administrator relating to any litigation concerning the Employee Benefit Plan, including, but not limited to, attorneys’ fees, legal or investigative expenses, expert fees, extra-contractual damages, compensatory damages and punitive damages;

E. Benefits Paid for expenses Incurred outside of the U.S. except in emergency situations. Emergency situations are defined as instances of a serious injury, the onset of a serious condition which requires immediate medical intervention to prevent death, or a serious impairment of health. Emergencies do not include elective care or care of minor illness or injury;

F. Expenses which are Experimental or Investigational; and

G. Benefits Paid under the Employee Benefit Plan for individuals who should have been, but were not, included in the most recent Disclosure Agreement.
INDIVIDUAL EXCESS RISK INSURANCE

ELIGIBLE INDIVIDUAL EXCESS RISK EXPENSES

Eligible Individual Excess Risk Expenses are those claims Incurred and Paid within the Coverage Period shown on the Excess Risk Schedule. All such expenses must be eligible expenses under the terms of the Employee Benefit Plan, Medically Necessary, and covered under the terms of this Policy. The Coverage Period and rates for Excess Risk Insurance are shown on the Excess Risk Schedule. A separate Excess Risk Schedule applies to each Coverage Period. Eligible Individual Excess Risk Expenses are the benefits which Our audit has determined to be properly payble by You. Such benefits must be Paid during the Coverage Period to or on behalf of a Covered Person or Covered Dependent according to the terms of the Employee Benefit Plan. However, such expenses are subject to both the Exclusions section of this Policy and the Excess Risk Schedule. Our Claim Audit procedures are contained in the Miscellaneous Provisions of this Policy. Expenses Incurred under a Prescription Drug Plan will be included as Eligible Individual Excess Risk Expenses only if Prescription Drugs are shown on the Excess Risk Schedule.

WHEN BENEFITS WILL BE PAID

Individual Excess Risk benefits will be paid when a Covered Person or Covered Dependent has exceeded the Individual Excess Risk Deductible during the Coverage Period shown on the Excess Risk Schedule, subject to all of the terms, conditions and limitations of this Policy. Upon Our acceptance and approval of Proof of Loss, We will pay benefits to You for Eligible Individual Excess Risk Expenses that exceed the Individual Excess Risk Deductible shown on the Excess Risk Schedule for claims Paid that are:

A. Incurred while the Employee Benefit Plan is in effect;
B. Paid according to the terms of the Employee Benefit Plan; and
C. Incurred and Paid during the Coverage Period shown on the Excess Risk Schedule.

AMOUNT OF BENEFIT PAYABLE

The Individual Excess Risk benefit payable is subject to the Maximum Individual Benefit, if any, shown on the Excess Risk Schedule and shall be equal to the product of:

A. The Benefit Percentage, multiplied by
B. The amount of eligible benefits Paid to or on behalf of a Covered Person or a Covered Dependent under the Employee Benefit Plan during the Coverage Period which exceeds the Individual Excess Risk Deductible.

The Benefit Percentage, Individual Excess Risk Deductible and Coverage Period are shown on the Excess Risk Schedule.

TO WHOM BENEFITS WILL BE PAID

Individual Excess Risk benefits will be paid to You. We will not make payment directly to any Covered Person, Covered Dependent, benefit provider or anyone else. You shall not represent Us as the insurer of benefits provided by the Employee Benefit Plan.
DEFINITIONS

MONTHLY AGGREGATE CORRIDOR means the Monthly Aggregate Factor multiplied by the Aggregate Adjustment Corridor, as shown on the Excess Risk Schedule.

MONTHLY AGGREGATE FACTOR means the amount of Expected Claims per month per Covered Person. The initial Monthly Aggregate Factor(s) is/are as shown on the Excess Risk Schedule. We will re-determine the Monthly Aggregate Factor on each anniversary of the Effective Date of Your coverage under this Policy and on the effective date of each Material Change to the Employee Benefit Plan.

PAID means the latest of the following dates:
   A. The covered expense is approved by You according to the terms of the Employee Benefit Plan; and
   B. The draft or check is mailed, or the date the wire or other legal electronic transfer of funds has been issued by the Plan Sponsor to the Covered Person or his or her assignee;
   C. Sufficient funds are on deposit on the date the check, draft or electronic transfer is issued to permit the check, draft or electronic transfer to be honored.

PLAN SPONSOR means You, the organization, shown on the face page of this Policy, who is described in the Excess Risk Application and who is approved for coverage by Us under this Policy.

PRESCRIPTION DRUG PLAN means either a benefit provision of the Employee Benefit Plan or a separate employee benefit plan maintained by You, under which prescription drug expenses are Paid independently of other medical expenses.

PROOF OF LOSS means Proof of Loss as defined in the Premium and Claims Provisions section of this Policy.

USUAL AND CUSTOMARY means the usual and customary charge for the locality where the expenses are Incurred.

WORKERS’ COMPENSATION means benefit payments to any eligible Covered Person or Covered Dependents as required by state law for accidents or occupational disease arising out of, or in connection with, the Covered Person’s or Covered Dependent’s employment.
DEFINITIONS

EXPERIMENTAL OR INVESTIGATIONAL means, for the purpose of determining Eligible Excess Risk Expenses under this Policy, a treatment, device, or drug other than covered off-label drug use that:

A. Is governed by the United States Food and Drug Administration ("FDA") and the FDA has not approved the treatment, device or drug for the particular condition at the time the treatment, device or drug is provided; or

B. Is provided as part of an ongoing Phase I or II clinical trial as defined by the National Institutes of Health, National Cancer Institute or the FDA. In the event that an FDA approved drug or device is used for a particular condition during an ongoing Phase I or II clinical trial, and one or more other drugs or devices not FDA approved for such trial are also used, then all FDA approved and FDA non-approved drugs or devices shall be considered experimental or investigational; or

C. Is documented in published U.S. peer-reviewed medical literature stating that further research, studies, or clinical trials are necessary to determine the safety, toxicity or efficacy of the treatment, device or drug; or

D. Is any treatment, device, drug or hospital confinement that arises from, relates to, or is provided in connection with the Experimental or Investigational treatment or drug whether or not the treatment, drug or hospital confinement, on their own, are considered standard of care or Medically Necessary.

MEDICALLY NECESSARY means any services or supplies provided for the diagnosis and treatment of a specific illness or injury which are:

A. Ordered or recommended by a licensed doctor, dentist, or other medical practitioner who is practicing within the scope of his or her license; and

B. Required for the treatment or management of a medical condition or symptom; and

C. the most appropriate supply or level of service to provide safe and adequate care under the Employee Benefit Plan; and

D. Provided in accordance with approved and generally accepted medical or surgical practice; and

E. Not for the convenience of You, a Covered Person or a Covered Dependent covered under the Employee Benefit Plan, or a Covered Person’s or Covered Dependent’s doctor or other provider.

Services and supplies will not automatically be considered Medically Necessary solely because a doctor ordered them.

INCURRED means the date on which services relating to an Eligible Excess Risk Expense were provided to a Covered Person or a Covered Dependent under the Employee Benefit Plan.

INDEPENDENT REVIEW ORGANIZATION means the organization for external review as required under the Patient Protection and Affordable Care Act and as utilized by the Employee Benefit Plan.

INDIVIDUAL ADJUSTED DEDUCTIBLE means either a Covered Person or Covered Dependent whose expenses are excluded under the Policy or an amount applied to Covered Persons or Covered Dependents identified on the Excess Risk Schedule for the Coverage Period who have a deductible separate from the Individual Excess Risk Deductible under the Policy.

MANAGED CARE NETWORK means a Preferred Provider Organization (PPO), Exclusive Provider Organization (EPO), Point of Service Plan (POS), self-funded Health Maintenance Organization (HMO), or any Managed Care Network offered by You.
DEFINITIONS

AGGREGATE ADJUSTMENT CORRIDOR means the Aggregate Adjustment Corridor as shown on the Excess Risk Schedule.

BENEFIT MONTH means any calendar month during which this Policy is in force.

CLAIM ADMINISTRATOR means a firm or person which has entered into a written agreement with You to pay claims for the Employee Benefit Plan and who has been approved by Us. The Claim Administrator acts on Your behalf and as Your agent and not as Our agent. The duties of the Claim Administrator under this Policy are described in the Claim Administrator Responsibilities section of this Policy.

CONTRACT PERIOD means the time period as shown on the Excess Risk Schedule that is used in determining a Plan Sponsor’s eligibility for benefits under this Policy. The initial Contract Period is shown in Your Excess Risk Application. Subsequent Contract Periods are shown on a separate, subsequent Excess Risk Schedule(s).

COVERAGE PERIOD means the time period as shown on the Excess Risk Schedule.

COVERED DEPENDENT(S) means, subject to the terms, conditions and limitations of this Policy, a Covered Person’s dependent who is covered by the terms of the Employee Benefit Plan. If a person becomes a dependent of a Covered Person and such dependent is covered under the terms of the Employee Benefit Plan, coverage will be provided under this Policy for expenses incurred by You on behalf of such dependent.

COVERED PERSON means a person enrolled in the Employee Benefit plan who is entitled to receive benefits under that Plan while this Policy is in force. A Covered Person includes:

A. Legally employed covered employees of Yours;
B. Participating COBRA beneficiaries.

COST CONTAINMENT VENDOR means a third party contracted to reduce or control the cost of services or supplies provided to Covered Persons and Covered Dependents under the Employee Benefit Plan.

ELIGIBLE AGGREGATE EXCESS RISK EXPENSES means Eligible Aggregate Excess Risk Expenses as defined in the Aggregate Excess Risk Expenses section of the Policy if this coverage is elected by the Plan Sponsor.

ELIGIBLE EXCESS RISK EXPENSES means either Eligible Aggregate Excess Risk Expenses or Eligible Individual Excess Risk Expenses.

ELIGIBLE INDIVIDUAL EXCESS RISK EXPENSES means Eligible Individual Excess Risk Expenses as defined in the Individual Excess Risk Expenses section of the Policy.

EMPLOYEE BENEFIT PLAN means a self-funded plan of benefits which the Plan Sponsor provides for eligible Covered Persons and their eligible Covered Dependents. The benefits are described in a written Plan document. A copy of the written Plan document in effect on the Effective Date of this Policy is attached to the Excess Risk Application. Amendments to the Employee Benefit Plan will be covered by this Policy when they become effective under such plan only to the extent provided in the Material Change Provisions section of this Policy.

EXPECTED CLAIMS means the amount of claims that, in the absence of an excess risk policy or other insurance or evidence of coverage, are projected by Us to be Incurred under an employer-sponsored plan covering health care expenses.
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GENERAL PROVISIONS ............................................................................................... 11
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AN ORDINANCE

Amending the City’s Appropriations for the Year 2021, and Declaring an Emergency.

WHEREAS, On September 29, 2021, this Commission passed an appropriation ordinance for the year 2021, being Ordinance Number 31919-21, which provided for the appropriation of $766,074,000 to the various funds of the City of Dayton; and

WHEREAS, The City Manager and Department Directors arranged a work program for 2021 for which there are now modifications in several funds that require amendment to the 2021 appropriations made in Ordinance Number 31919-21; and

WHEREAS, The City’s Charter and State law mandate that no expenditures be made except pursuant to appropriations authorized by the Commission; and

WHEREAS, To provide for the usual daily operations of the various departments of the City until the end of the current calendar year, it is necessary that this Ordinance take effect at the earliest possible date; now, therefore,

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

Section 1. That appropriations for the year 2021 made by this Commission pursuant to Ordinance No. 31919-21 of monies available to the City, or in the process of collection by the City, and not otherwise encumbered, are amended as shown within the following funds:

<table>
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<tr>
<th>GOVERNMENTAL FUND TYPE</th>
<th>2021 Appropriations (Third Revised)</th>
<th>2021 Appropriations (Fourth Revised)</th>
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<tr>
<td>1300</td>
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**Issue 9 - General Fund - 10001**

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**Community Golf & Recreation Fund - 13000**

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**16999** Special Projects

<table>
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**75000** Income Tax Fund

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**Total General Fund**

- **2021 Appropriations (Third Revised)**: 208,559,200
- **2021 Appropriations (Fourth Revised)**: 252,062,000

**2 Special Revenue**

**Roadway Maintenance Fund - 21000 - 21999**

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<td>Highway Maintenance Fund - 21100</td>
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<td>HUD Programs Non-Operating</td>
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<td>Department of Water - 3400 and 9970</td>
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<td>Department of Water - 3400 and 9970</td>
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<tr>
<td>Total</td>
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<tr>
<td>Total Golf Operating Fund</td>
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<tr>
<td><strong>Golf Capital - 59001</strong></td>
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</tr>
<tr>
<td>Various Capital Projects</td>
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<td><strong>Total Enterprise Funds</strong></td>
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(7) Internal Service Funds

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<tr>
<th>Fund / Services</th>
<th>Department / Service</th>
<th>2021 Appropriations (Third Revised)</th>
<th>2021 Appropriations (Fourth Revised)</th>
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<td>Fleet Management Fund - 61000</td>
<td>Department of Public Works</td>
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<td>Total Internal Service Funds</td>
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<td>810,720,000</td>
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Section 2. That the City Manager is authorized to make a short term loan in an amount up to Three Hundred Fifty Thousand Dollars and Zero Cents ($350,000.00) from the General Fund to HUD Operating Programs for purposes of covering expenditures during 2021, in which revenues are not expected to be received until 2022.

Section 3. That the City Manager is authorized to make a short term loan in an amount up to Two Hundred Forty Five Thousand Dollars and Zero Cents ($245,000.00) from the General Fund to HUD Non-Operating Programs for purposes of covering expenditures during 2021, in which revenues are not expected to be received until 2022.

Section 4. That the City Manager is authorized to make a short term loan in an amount up to Two Hundred Thirty Eight Thousand Dollars and Zero Cents ($238,000.00) from the General Fund to the Emergency Shelter Grant Program for purposes of covering expenditures during 2021, in which revenues are not expected to be received until 2022.
**Section 5.** That the City Manager is authorized to transfer funds in the amounts set forth in Section 1 and as described below:

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<tr>
<th>GOVERNMENTAL FUND TYPE</th>
<th>2021 Third Revised Transfers Out</th>
<th>2021 Final Revised Transfers Out</th>
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<td><strong>(1) General Fund - 10</strong></td>
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<tr>
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<td>10000-1300</td>
<td>Civil Service 40000-1300</td>
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<td>10000-5300</td>
<td>Finance 40000-5300</td>
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<td>10000-5560</td>
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<td>10000-6300</td>
<td>Fire 28999-6300</td>
<td>Miscellaneous Grants 21,700</td>
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<td>10000-6500</td>
<td>Recreation 16999-6500</td>
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</tr>
<tr>
<td>10000-9980</td>
<td>Non-Departmental 16999-2300</td>
<td>Special Projects 40,000</td>
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<td>29000-9980</td>
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<td>Recreation - Golf Operating 40000-6550</td>
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<td>16999-2600</td>
<td>Special Projects 40000-2600</td>
<td>Capital 102,700</td>
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<td>From</td>
<td>To</td>
<td>2021 Third Revised Transfers Out</td>
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<td>31100-5300</td>
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<td><strong>(4) Capital Projects</strong></td>
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<td>51006-52999-3200</td>
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<td>51000-51000-3200</td>
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<td>53000-9970</td>
<td>Water Operating Fund</td>
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<td>55000-9970</td>
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### Table:

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<th>2021 Transfers Out</th>
<th>2021 Final Revised Transfers Out</th>
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### Section 6.

That all books of accounts, warrants, orders, vouchers, or other official reference to any appropriation shall indicate the appropriated funds involved or to be drawn upon by the code number as set forth in the detailed budget.

### Section 7.

That Ordinance Number 31919-21, passed by this Commission on September 29, 2021 is repealed.

### Section 8.

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

---

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

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

Mayor of the City of Dayton, Ohio

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ATTEST:

Clerk of the Commission

APPROVED AS TO FORM:

City Attorney
December 16, 2021

TO: Shelley Dickstein, City Manager

FROM: Diane T. Shannon, Director

Department of Procurement, Management & Budget

SUBJECT: 2021 Final Revised Appropriation Ordinance

Please find attached the ordinance adopting the final revised appropriation for 2021. The revised appropriation includes a net change of $44.6 million across all funds to ensure there is adequate budget authority to cover all expenditures and outstanding encumbrances at year-end. These adjustments are funded from robust income tax and other revenue growth, budget reallocations, and the use of cash balances.

Additionally, the final revised appropriation includes adjustments related to CARES Act and American Rescue Plan Act (ARPA) funding. Specifically, $6.4 million in CARES payroll reimbursements to the General Fund were made in December. This allows us to transfer these proceeds out to General Capital as a source of funds for an Enterprise Resource Planning (ERP) system. Moreover, as explained during our recent Dayton Recovery Plan work session, the U.S. Treasury Department’s Interim Final Rule (i.e., Treasury guidance) provides a formula for calculating revenue loss. In 2021, we declared $25.2 million in 2020 revenue loss, which according to Treasury guidance, can be used for any governmental purpose. Therefore, we are transferring the $25.2 million into the General Fund and then directly transferring it to a newly established fund for purposes of funding the Dayton Recovery Plan.

Of the $44.6 million in final revised appropriation adjustments, $25.2 million is related to the funding of the Dayton Recovery Plan, $15.4 million is for various year-end transfers, a net of $2.5 million in personnel cost increases are related to recent collective bargaining contracts, and $1.5 million reflects budget increases to cover various new expenses.

The significant changes are summarized below (with greater detail on the attached listing of all adjustments).

1. A net increase of $43.5 million to the General Fund reflects a series of adjustments including:
   - A $75,000 increase to the City Manager’s Office budget for purposes of extending the Diversity, Equity, and Inclusion professional services contract.
   - An increase of $12,500 to the Public Affairs budget for the continuation of interpreting services at City Commission meetings. Public Affairs was awarded a 2022 capital projects request for closed-caption technology.
Public Affairs also has a $70,000 increase for their fourth quarter payment to DATV. The fourth quarter payment in 2020 was inadvertently paid from their 2021 encumbrance.

A $63,400 increase to Public Works’ budget related to landscaping services at the Levitt Pavilion and Don Crawford Plaza.

Public Works also has a $105,000 adjustment for higher fleet and fuel charges in 2021.

Recreation is transferring $130,000 to their Special Projects Fund for the development of a strategic plan in early 2022.

The final appropriation contains a series of transfers out to Capital from General Fund budgets for the following Departments: Information Technology, Fire, and Finance. Delays in projects or supply chain disruptions underly these adjustments.

The $25.2 million transfer for the 2020 Revenue Loss – Dayton Recovery Plan provides flexible funding that may be used for any governmental purpose. This is simply a budgetary transaction reflecting both a transfer in and a transfer out; therefore, the net adjustment has no financial impact.

A net adjustment of $2.5 million for personnel cost increases associated with the recent collective bargaining agreements.

Given the significant growth in income tax revenues, an increase in investments is reflected in the revised appropriation. With income tax revenues expected to decline in 2022 due to pandemic-related work-from-home options, funding investments now will eliminate some of the financial strain in future years. The following itemizes the transfers:

- $400,000 to the Judgments Fund for liability claims against the City
- $2.0 million for technology improvements, including a new ERP solution and $500,000 for an IT strategic plan
- $1.0 million contribution toward a new Courts case management system
- $1.5 million for the City’s annual contribution to Phoenix Next ($15 million over 10 years)
- $2.7 million for replacement of Fire’s self-contained breathing apparatus
- $1.0 million each for future capital equipment and capital improvements
- $2.5 million to secure public health and safety by making necessary improvements to the Centre City building
General Fund transfers (cont.):

- $2.5 million for Catalytic Investments that provide job opportunities to city residents and increase the tax base. Investing in job creation to boost income tax collections in the face of work-from-home options will be an important tool to address the 2025 fiscal cliff

- $170,000 for land acquisition of the former Parkside Homes site from GDPM

- $200,000 covers cash matches for various grants

2. The Special Revenue fund series increases by $50,000 reflecting a portion of the proceeds from a DP&L settlement. The funding will be used to educate the public on the benefits of energy efficiency.

3. PND has an increase of $109,400 in their Capital Funds for the annual tax-sharing payment made to Dayton Public Schools.

4. The General Fund transfers from PND, Fire, and Finance budgeted in the Capital series are resulting in a $952,200 increase to General Capital. Project delays and supply chain disruptions necessitated the movement of this funding.

5. Several capital projects were completed during 2021. The budget remaining from those projects totaled $270,400 and will be eliminated.

6. The final revised appropriation includes an increase of $129,000 and $117,000 to Water and Sanitary Sewer Operating Funds, respectively for property and casualty insurance. The budget increases are necessary due to two years of payments being recorded in 2021 and none in 2020.

7. Fleet Management has a budget increase of $50,000 due to higher fuel prices and Document Management has a $6,000 increase to personnel expenses from recent collective bargaining agreements.

Please let me know if you have any questions or require additional information.

DTS/dts

Attachment

cc:  Mr. Parlette
      Ms. Lofton
      Ms. Wilson
      M&B Staff
### Final Revised Appropriation Budget Adjustments

<table>
<thead>
<tr>
<th>Fund</th>
<th>Dept.</th>
<th>Description</th>
<th>Purpose</th>
<th>Amount</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>10000 CMO</td>
<td></td>
<td>C&amp;M Budget Increase</td>
<td>Diversity, Equity and Inclusion contract</td>
<td>75,000</td>
<td>Contract extension for remaining of 2021 and 2022</td>
</tr>
<tr>
<td>10000 PA</td>
<td></td>
<td>C&amp;M Budget Increase</td>
<td>Interpreting Services</td>
<td>12,500</td>
<td>Contract extension for City Commission meetings 4th quarter payment for 2020 was made from 2021 budget</td>
</tr>
<tr>
<td>10000 PA</td>
<td></td>
<td>C&amp;M Budget Increase</td>
<td>Payment to DATV</td>
<td>70,000</td>
<td>Additional budget for landscaping green space</td>
</tr>
<tr>
<td>10000 PW</td>
<td></td>
<td>C&amp;M Budget Increase</td>
<td>Levitt/Don Crawford Plaza Landscaping</td>
<td>63,400</td>
<td>Higher than expected fuel/fleet charges</td>
</tr>
<tr>
<td>10000 PW</td>
<td></td>
<td>C&amp;M Budget Increase</td>
<td>Fleet Charges</td>
<td>105,000</td>
<td>To fund Recreation Strategic Plan</td>
</tr>
<tr>
<td>10000 R</td>
<td></td>
<td>C&amp;M Budget Decrease</td>
<td>To increase transfers out</td>
<td>(130,000)</td>
<td>To fund Recreation Strategic Plan</td>
</tr>
<tr>
<td>10000 N</td>
<td></td>
<td>Transfers Out Increase</td>
<td>Transfer funds for 2022 Strategic Plan</td>
<td>130,000</td>
<td>Year-end transfer to the Judgment Fund Transfer to technology fund (40018) for projects to be completed in 2022</td>
</tr>
<tr>
<td>10000 IT</td>
<td></td>
<td>C&amp;M Budget Decrease</td>
<td>To increase transfers out</td>
<td>(424,400)</td>
<td>Transfer to Capital funds due to supply chain delays</td>
</tr>
<tr>
<td>10000 IT</td>
<td></td>
<td>Transfers Out Increase</td>
<td>Transfer to Technology Fund</td>
<td>424,400</td>
<td></td>
</tr>
<tr>
<td>10000 F</td>
<td></td>
<td>C&amp;M Budget Decrease</td>
<td>To increase transfers out</td>
<td>(321,000)</td>
<td></td>
</tr>
<tr>
<td>10000 F</td>
<td></td>
<td>Transfers Out Increase</td>
<td>Transfer funds to Capital Fund</td>
<td>321,000</td>
<td>Transfer $211,000 to 41629 and $110,000 to 40014 Transfer funds to 40014. $25,000 for AR system, $5,000 for computers and $7,000 for online payment option in the Tax system.</td>
</tr>
<tr>
<td>10000 F</td>
<td></td>
<td>C&amp;M Budget Decrease</td>
<td>To increase transfers out</td>
<td>(37,000 )</td>
<td></td>
</tr>
<tr>
<td>10000 F</td>
<td></td>
<td>Transfers Out Increase</td>
<td>Transfer to Technology Fund</td>
<td>37,000</td>
<td></td>
</tr>
<tr>
<td>75000 IT</td>
<td></td>
<td>Transfers Out Increase</td>
<td>Future ERP System</td>
<td>2,000,000</td>
<td>2021 contribution towards future ERP purchase.</td>
</tr>
<tr>
<td>75000 IT</td>
<td></td>
<td>Transfers Out Increase</td>
<td>IT Strategic Plan</td>
<td>500,000</td>
<td>Funding for comprehensive IT Strategic Plan</td>
</tr>
<tr>
<td>75000 MC</td>
<td></td>
<td>Transfers Out Increase</td>
<td>Courts Case Management System</td>
<td>1,000,000</td>
<td>Funding for replacement of Courts Case Mgmt System</td>
</tr>
<tr>
<td>75000 P</td>
<td></td>
<td>Transfers Out Increase</td>
<td>Phoenix Next</td>
<td>1,500,000</td>
<td>Annual pledge to Phoenix Next</td>
</tr>
<tr>
<td>75000 F</td>
<td></td>
<td>Transfers Out Increase</td>
<td>Self-Contained Breathing Apparatus (SCBA) replacement</td>
<td>2,680,000</td>
<td>2022 Capital Equipment</td>
</tr>
<tr>
<td>75000 V</td>
<td></td>
<td>Transfers Out Increase</td>
<td>Capital Equipment</td>
<td>1,000,000</td>
<td>Additional funding for Capital Equipment</td>
</tr>
<tr>
<td>75000 V</td>
<td></td>
<td>Transfers Out Increase</td>
<td>2022 Capital Improvements</td>
<td>1,000,000</td>
<td>Additional funding for Capital Projects</td>
</tr>
<tr>
<td>75000 P</td>
<td></td>
<td>Transfers Out Increase</td>
<td>Centre City Safety Improvements</td>
<td>2,500,000</td>
<td>Health and safety improvements for building</td>
</tr>
<tr>
<td>75000 P</td>
<td></td>
<td>Transfers Out Increase</td>
<td>Catalytic Investments</td>
<td>2,500,000</td>
<td>Investment for job creation and increasing tax base</td>
</tr>
<tr>
<td>10000 N</td>
<td></td>
<td>C&amp;M Budget Increase</td>
<td>Enterprise Zone school payment</td>
<td>81,700</td>
<td>Annual EZ payments to school districts</td>
</tr>
<tr>
<td>10000 N</td>
<td></td>
<td>Transfers Out Increase</td>
<td>Parkside Land Sale</td>
<td>170,000</td>
<td>Land acquisition, total price is $345,000. PND has funds to cover the remaining amount</td>
</tr>
<tr>
<td>10000 N</td>
<td></td>
<td>Transfers Out Increase</td>
<td>Cash matches for future grants</td>
<td>200,000</td>
<td>City cash matches</td>
</tr>
<tr>
<td>10000 N</td>
<td></td>
<td>Transfers Out Increase</td>
<td>CARES</td>
<td>6,354,100</td>
<td>$3.0 million for Technology and $3.0 million for CM projects</td>
</tr>
</tbody>
</table>
## Final Revised Appropriation Budget Adjustments

<table>
<thead>
<tr>
<th>Fund</th>
<th>Dept.</th>
<th>Description</th>
<th>Purpose</th>
<th>Amount</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>10000</td>
<td>Non-Departmental</td>
<td>Transfers Out Increase</td>
<td>2020 Revenue loss to fund Dayton Recovery Plan (ARPA)</td>
<td>25,165,700</td>
<td>Transfer 2020 Revenue Loss from General Fund to a new Dayton Recovery Plan fund</td>
</tr>
<tr>
<td>10000</td>
<td>Various</td>
<td>Personnel Costs Increase</td>
<td>2021 Year-End Personnel Adjustments</td>
<td>4,803,000</td>
<td>largely Police and Fire related to contract terms</td>
</tr>
<tr>
<td>10000</td>
<td>Various</td>
<td>Personnel Costs Decrease</td>
<td>2021 Year-End Personnel Adjustments</td>
<td>(2,323,500)</td>
<td>Staff turnover and difficulty filling positions</td>
</tr>
<tr>
<td>10000</td>
<td>Various</td>
<td>Personnel Costs Decrease</td>
<td>Personnel Cost Reimbursement from CARES</td>
<td>(6,354,100)</td>
<td>Payroll reimbursement as an allowable expense from CARES Act</td>
</tr>
<tr>
<td></td>
<td>DPL AES Grid</td>
<td>C&amp;M Budget Increase</td>
<td>Grid Modernization Education Program</td>
<td>50,000</td>
<td>Public education and awareness on the benefits of energy efficiency</td>
</tr>
<tr>
<td></td>
<td>Modernization</td>
<td>C&amp;M Budget Increase</td>
<td>Grid Modernization Education Program</td>
<td>50,000</td>
<td>Reduce expenditure budget and transfer 2020 Revenue Loss to General Fund</td>
</tr>
<tr>
<td>29001</td>
<td>Local Fiscal Recovery Fund (ARPA)</td>
<td>C&amp;M Budget Decrease</td>
<td>2020 Revenue loss and Dayton Recovery Plan</td>
<td>(25,165,700)</td>
<td></td>
</tr>
<tr>
<td>29001</td>
<td>Local Fiscal Recovery Fund (ARPA)</td>
<td>Transfers Out Increase</td>
<td>Transfer to General Fund</td>
<td></td>
<td></td>
</tr>
<tr>
<td>41802</td>
<td>Tax Increment</td>
<td>C&amp;M Budget Increase</td>
<td>Annual tax-sharing payments to Dayton Board of Education</td>
<td>109,400</td>
<td>Annual tax-sharing with Dayton Public Schools $170,000 for Parkside, $424,200 for IT, $321,000 for Fire, and $37,000 for Finance</td>
</tr>
<tr>
<td>40001</td>
<td>General Capital</td>
<td>C&amp;M Budget Increase</td>
<td>Various transfers from GF</td>
<td>952,200</td>
<td></td>
</tr>
<tr>
<td>40000</td>
<td>Various</td>
<td>C&amp;M Budget Decrease</td>
<td>Completed Projects Fund Close out</td>
<td>(270,400)</td>
<td></td>
</tr>
<tr>
<td>53000</td>
<td>Water</td>
<td>C&amp;M Budget Increase</td>
<td>Property Insurance</td>
<td>791,200</td>
<td>In 2021 paid two years of premiums</td>
</tr>
<tr>
<td>55000</td>
<td>Sewer</td>
<td>C&amp;M Budget Increase</td>
<td>Property Insurance</td>
<td>129,000</td>
<td>In 2021 paid two years of premiums</td>
</tr>
<tr>
<td>61000</td>
<td>PW - Fleet Management</td>
<td>C&amp;M Budget Increase</td>
<td>Fuel Purchase</td>
<td>117,000</td>
<td>In 2021 paid two years of premiums</td>
</tr>
<tr>
<td>62100</td>
<td>Document Mgmt</td>
<td>Personnel Costs Increase</td>
<td>2021 Year-End Personnel Adjustments</td>
<td>50,000</td>
<td>Higher fuel prices</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>6,000</td>
<td>Collective bargaining agreements</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Grand Total All Funds</td>
<td>44,646,000</td>
<td></td>
</tr>
</tbody>
</table>
AN ORDINANCE

Appropriating Property Designated as Parcel 68A WD & T in Connection with the Salem Avenue Reconstruction Phase 2, and Declaring an Emergency.

WHEREAS, This Commission, by Resolution No. 6605-21, adopted on September 8, 2021, declared its intention to appropriate the real property interests hereinafter described ("Property") in connection with the Salem Avenue Reconstruction Phase 2 Project ("Project"); and

WHEREAS, The property being appropriated is for the Project to reconstruct Salem Avenue from West Riverview Avenue to North Avenue that is open to the public without charge; and

WHEREAS, The owners of the parcels comprising the Property are unable to come to an agreement with City or are unable to deliver clear title to the City; and

WHEREAS, The total appraised value of the parcels comprising the Property is $13,377.00; and

WHEREAS, The estimated filing fees and other costs in connection with assessing the compensation to be paid for the Property are in the amount of $500.00; and

WHEREAS, The City must acquire the Property for the Project at the earliest date possible, it is necessary for the immediate preservation of the public peace, property, health and safety, that this ordinance take effect immediately upon passage to avoid delay in completing the Project; now, therefore,

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

Section 1. That the Commission hereby appropriates, for the purposes stated in the preamble hereof, a warranty deed and temporary construction easements in, under, over, and through the real property described in Exhibits marked "A" attached hereto (collectively, the "Property"), the owners of record and the appraised value for the real property being as follows:

<table>
<thead>
<tr>
<th>Parcel 68A WD &amp; T</th>
<th>Dayton Metropolitan Housing Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deed Holders:</td>
<td></td>
</tr>
<tr>
<td>Appraised Value:</td>
<td>$13,377.00</td>
</tr>
<tr>
<td>BPI:</td>
<td>R72-07405-0092</td>
</tr>
</tbody>
</table>

Section 2. That the City Attorney is hereby authorized and directed to apply to the Court of Common Pleas, Montgomery County, Ohio, for the purpose of assessing the compensation to be paid for each parcel of the Property.

Section 3. That the costs and expense for the appropriation described herein shall be paid out of the following account:
A RESOLUTION

By: MR. JOSEPH .............................................. No. ................. 6605-21

Declaring the Intention to Appropriate Real Property
Interests in Parcels 11WD & T, 12SH & T, 60WD, 61WD & T,
62WD & T, 63WD & T, 65WD & T, 66WD & T, 67WD & T, 68WD & T,
69WD & T, 70WD & T, 71WD & T, 72WD & T, 74WD & T,
76T, 77WD & T, 78 T, 79WD & T, 81WD & T, 82T, 83T, 84T, 85T,
86WD & T, and 68AWD & T in Connection with the Salem Avenue
Reconstruction Phase 2 Project, and Declaring an Emergency

WHEREAS, The acquisition of interests in certain real estate is required for the
Salem Avenue Reconstruction Phase 2 Project; and

WHEREAS, The City has been unable to reach an agreement with the legal
owner/owners of the property that may have an interest; and

WHEREAS, It is necessary for the immediate preservation of the public peace,
property, health and safety that this resolution take effect at an early date, for the reason that
the earliest possible acquisition of the interest in certain real property hereinafter described is
essential to begin the construction, which may otherwise be jeopardized by any undue delay;
now, therefore,

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

Section 1. That the Commission hereby declares its intention to appropriate a fee simple
interest in Parcels 11WD & T, 12SH & T, 60WD, 61WD & T, 62WD & T, 63WD & T, 65WD & T,
66WD & T, 67WD & T, 68WD & T, 69WD & T, 70WD & T, 71WD & T, 72WD & T, 74WD & T,
76T, 77WD & T, 78 T, 79WD & T, 81WD & T, 82T, 83T, 84T, 85T, 86WD & T, and 68AWD & T in
for the purpose of clearing the title in connection with the Salem Avenue Reconstruction Phase 2
Project, said real estate being more fully described in exhibits “A” through “Z” attached hereto and
made a part hereof.

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

Adopted by the Commission........................... September 8 2021

Signed by the Mayor............................. September 8 2021

Mayor of the City of Dayton, Ohio

Attest:

Chair of the Commission

Approved as to form:

City Attorney
December 10, 2021

TO: Shelley Dickstein  
   City Manager

FROM: Joseph Weinel, Chief Engineer  
      Division of Civil Engineering

SUBJECT: Ordinance for Appropriation

Attached is the Ordinance to appropriate one parcel in connection with the Salem Avenue Reconstruction Phase 2 project. Please present this Ordinance to the City Commission as an emergency at the December 22, 2021 meeting.

The parcel is being appropriated because the City has been unable to locate the legal owners or the property owner has been unable to deliver clear title. Resolution No. 6602-21, adopted on September 8, 2021 declared the Commission’s intention to appropriate.

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

Attachments

Copy: Mr. Stovall
AN ORDINANCE

Authorizing the City Manager to Execute a Ground Lease and Related Documents, and Declaring an Emergency.

WHEREAS, The City owns and operates the Dayton International Airport ("Airport"); and

WHEREAS, SD Hangar Partners, LLC desires to lease property at the Airport for the construction of a hangar and office building; and

WHEREAS, It is necessary that this Ordinance take effect immediately upon its passage to provide for immediate preservation of the public peace, property, health and safety of the City; now, therefore,

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

Section 1. That the City Manager, or her designee, is authorized to execute a Ground Lease in substantial form and substance to the attached Exhibit A.

Section 2. That the City Manager, or her designee, is authorized and directed to execute any other documents necessary to effectuate the Ground Lease or to facilitate construction of improvements on the leased area.

Section 3. That for the reasons stated in the preamble hereof, this ordinance is declared to be an emergency measure and 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
December 8, 2021

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

FROM: Gil Turner, Director
    Department of Aviation

SUBJECT: An Ordinance Authorizing the City Manager to
         Execute a Ground Lease and Related Documents, and
         Declaring an Emergency.

The Department of Aviation requests the attached Ordinance be placed on the December 22, 2021 City Commission calendar for approval.

A company desires to lease approximately 16 acres of land owned by the City of Dayton and located at the Dayton International Airport for future construction of an aircraft hangar and office building. The improvements will be subleased to a tenant to be named in the future and the property will be used for aviation purposes. This project is beneficial to the City and will repurpose land left vacant since the departure of Emery Worldwide Freight Services from the site.

The Ordinance will authorize execution of a ground lease and any other documents necessary to the transaction.

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

cc: Mr. Parlette
    Ms. Lofton
GROUND LEASE
AT THE DAYTON INTERNATIONAL AIRPORT

THIS GROUND LEASE ("Lease"), is made and entered into this __ day of December, 2021, between the City of Dayton, Ohio ("Lessor"), a municipal corporation in and of the State of Ohio, and SD Hangar Partners, LLC, an Ohio limited liability company ("Lessee").

WITNESSETH THAT:

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

WHEREAS, Lessee desires to lease certain space at the Airport for the construction of a hangar and office facilities for aviation purposes, which Lessee will sublease to an entity to be determined (such entity, "Future Sublessee"); and

WHEREAS, Lessor deems it advantageous to itself, to the operation of the Airport and in the best interest of the public to lease unto Lessee certain unimproved land upon the terms and conditions set forth herein.

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

ARTICLE 1 - REPRESENTATIONS

A. Lessor owns the Premises (as this term is subsequently defined) and, to the best of its knowledge and belief, the Premises are free of liens, encumbrances and other matters that would affect title.

B. Lessee acknowledges that the entire cost for development and construction of the Facility (as this term is defined in Article II) shall be borne by Lessee. To this end, Lessee represents to Lessor and Future Sublessee that it has or will secure all the financing in an amount sufficient to undertake and complete the project.

C. Lessor leases to Lessee approximately 694,433.52 square feet of unimproved real property located at the Airport, as depicted in the attached and incorporated Exhibit A-1 and Exhibit A-2 (collectively, "Premises") for the exclusive use by the Lessee or its subtenant. Lessee accepts the Premises "as-is", and Lessor shall have no obligation to remediate, cure or correct any issues or problems with the Premises, except as necessary to cause Section D below to be accurate.

D. Lessor represents and warrants to Lessee and Future Sublessee that: (1) Lessor owns fee simple title to the Premises; (2) there are no mortgages, deeds of trust or other liens encumbering the Premises; and (3) this Lease and the lease of the Premises hereunder do not violate Lessor’s Charter or Code.
ARTICLE II – LEASE AND USE OF PREMISES

A. Lessee shall have the exclusive use of the Premises for the construction and operation of an office and hangar facility ("the Facility") for Lessee’s or Lessee’s subtenant’s sole use for its aeronautical business activities, including the parking, storage, maintenance, construction, and repair of aircraft.

B. Lessee is prohibited from using the Premises to conduct any other commercial aviation business activity, including that of a fixed based operator. The Premises shall be used only for the aeronautical purposes specified in this Lease. Except as provided in this Lease, no other use of the Premises is permitted without the consent of Lessor.

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

D. If required, Lessee shall, at its sole expense, relocate, replace and maintain the Airport Operations Area ("AOA") perimeter fence on the Premises. Lessee shall work with Lessor and Future Sublessee to create an approved security plan prior to relocation of the AOA fence.

E. Lessor grants to Lessee and its subtenants the right to grant to public entities or public service corporations, for the purpose of serving only the Premises, rights of way or easements on or over the Premises for poles or conduits or both for telephone, electricity, water, sanitary or storm sewers or both, and for other utilities and municipal or special district services, provided that they are (1) directly related to the construction, operation, maintenance and/or repair of the Facility, and (2) subject to Lessor’s prior written consent, which may be withheld in Lessor’s reasonable discretion to the extent any such rights of way or easements would extend beyond the Term or violate or cause to be violated any FAA grant assurance or federal, state, or local law or regulation.

F. Lessor grants Lessee and its subtenants the right of access, ingress, egress, and regress to and from the Premises by Lessee and its subtenants and their respective employees, contractors, suppliers, service providers, guests, patrons, and invitees. Such right of access, ingress, egress, and regress shall be exercised in conformance with the terms and conditions of this Lease. Any other grants of such rights or easements by Lessor that burden or affect the Premises must be approved by Lessee and Future Sublessee.

G. Lessee, its subtenants, and their respective employees, agents, customers, invitees, and licensees shall have exclusive use of all vehicle parking lots located on the Premises.

H. Lessor agrees that Lessee and its subtenants shall have the right (but not the obligation) to receive services from ancillary facilities located on or serving the Premises such as (without limitation) fire suppression systems (foam or otherwise) and retention pond(s). Such
ancillary facilities shall not, in any manner, impair or restrict Lessee’s or its subtenants access to the Premises or the Facility.

ARTICLE III – FEDERAL REQUIREMENTS

Lessee shall comply with the following provisions:

A. Lessor reserves the right to further develop or improve the landing area of the Airport as it sees fit, without interference or hindrance, provided that such further development or improvement do not unreasonably interfere with the construction or operation of the Facility.

B. Lessor reserves the right, but shall not be obligated to the Lessee, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of the Lessee in this regard, provided that such direction and control does not unreasonably interfere with the construction or operation of the Facility.

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

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

E. Lessor reserves unto itself, its successors and assigns and subtenants, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises herein leased. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operation on the Airport.

F. Lessee expressly agrees for itself, its successors and assigns that it will not construct, nor permit to stand, on said Premises any building, structure, poles, trees, or other object, whether natural or otherwise, of a height in excess of 14 CFR Part 77 standards and requirements regarding obstructions in navigable airspace.

G. Lessor reserves unto itself, its successors and assigns and subtenants, for the use and benefit of the public, a right of entry onto the real property herein conveyed to cut, remove, or lower any building, structure, poles, trees, or other object, whether natural or otherwise, of a height in excess of 14 CFR Part 77 standards and requirements regarding obstructions in navigable airspace. This public right shall include the right to mark or light as obstructions to air navigation, any and all buildings, structures, poles, trees, or other object that may at any time project or extend above said surfaces.
H. Lessee expressly agrees for itself, its successors and assigns, to not hereafter use, nor permit, nor suffer use of the Premises in such a manner as to create electrical interference with radio communication between the installation upon the Airport and aircraft or as to make it difficult for fliers to distinguish between airport lights and others, or as to impair visibility in the vicinity of the Airport, or as otherwise to endanger the landing, taking off, or maneuvering of aircraft.

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

ARTICLE IV - RIGHTS AND OBLIGATIONS OF LESSEE

A. Lessee shall, at its expense, provide for the complete and proper maintenance of the Premises. For purposes of this Lease, maintenance activities to be performed and completed by Lessee includes, but is not necessarily limited to, the following:

1. Vehicular parking and entrance drive snow removal, lighting repair, brooming, striping, sealing, replacement and overlay of all paved or asphalt surfaces located on the Premises;

2. Aircraft ramp snow removal, Lighting repair, brooming, striping, and replacement;

3. Mowing, planting and maintenance of grass areas and landscaping to the Premises lease line;

4. Maintenance of all utility lines serving the Facility to lease line or metering point, whichever is larger;

5. Maintenance of storm drainage structures and storm lines on the Premises and solely serving the Facility and maintenance of any oil separators in storm and sanitary sewer lines serving the Premises;

6. Maintenance, testing and service of any fire suppression system(s) and fire alarm system(s) within the Facility in accordance with all applicable codes and requirements;

7. Complete interior and exterior, including structural, maintenance; and

8. Maintenance of the AOA security fence surrounding the Premises.

B. Lessee shall, at its expense, arrange for and ensure that its employees, agents and contractors operating under this Lease are properly identified with an identification badge issued by the Airport, and that said badge is displayed at all times while such persons are in the Security Identification Display Area, as defined by the Airport’s approved security
program and Federal Aviation Regulations, Part 107, and any amendments or revisions thereto.

C. Lessee and its employees, agents and contractors shall at all times comply with the Airport Rules and Regulations in effect on the Commencement Date and any future amendments or revisions thereto. The Airport Rules and Regulations may be accessed at http://www.flydayton.com/wp-content/uploads/2018/02/DAY-Rules-and-Regulations-October-4-2017.pdf or may be obtained from Airport administration upon request.

D. Lessee shall, at its expense, obtain from all authorities having jurisdiction over the operations and activities to be conducted upon the Premises, including, but not limited to, the Federal Aviation Administration (“FAA”), Transportation Security Administration (“TSA”), Environmental Protection Agency (“EPA”), Ohio Environmental Protection Agency (“OEPA”), and state and local fire protection agencies, all licenses, certificates, permits, registrations or other authorizations which may be required for the conduct of its operations and activities (including, without limitation, construction of the Facility), and/or necessary to comply with any requirements of this Lease and/or in the exercise of any right or obligation granted in this Lease, including, but not limited to, any licenses, permits, procedures, or sampling required for Lessor to comply with the Dayton International Airport and the City’s Stormwater Pollution Prevention Plan (“SWPP”). Lessee, however, shall not be deemed to have waived any right to exhaust administrative and/or judicial remedies that may be available to Lessee regarding any dispute or contest related to any authorization required. Upon request by Lessor, Lessee shall furnish to Lessor any and all permits or certificates required under this Lease.

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

F. Lessee shall, at its expense, provide and use suitable covered receptacles for the storing of all trash, garbage and all refuse created during the conduct of Lessee’s occupation of the Premises, and shall provide for the complete and proper removal and disposal away from the Airport of same. Piling of boxes, cartons, barrels, construction debris and other similar items in an unsightly or unsafe manner on or about the Premises, which may produce substantial attractants for hazardous wildlife as described in FAA Advisory Circular 150/5200-33B (or any amendments or successors thereto), is forbidden.

G. The storage, handling, use and disposal of all Hazardous Materials, as defined by federal, state and local laws, shall be in compliance with all applicable licenses, permits, certificates or other authorizations obtained by Lessee and in compliance with all applicable federal, state and local laws governing the storage, handling, use and disposal of same.

H. Lessee, its subtenants, and their respective agents, employees, patrons, guests, invitees and suppliers of service or furnishers of materials shall have the right of ingress to and egress
from the Premises, subject to any current and future security restrictions or requirements (including those of Future Sublessee).

I. In addition to rents and fees, Lessee shall, at its expense, pay all real property taxes and assessments that are now and may be levied or imposed upon the Premises and any real, leasehold and personal properties situated or placed thereon. Lessee shall be permitted to protest or contest, in a manner specified by Lessor, the validity or amount of any such real property tax or assessment. Lessor retains the sole right and obligation to file such protest or contest with the proper taxing authority; however, Lessee shall provide all necessary information and required legal or appraisal services relating to such protest or contest to Lessor at Lessee’s sole cost and expense. Lessor shall bill Lessee and Lessee shall pay the invoiced amount to Lessor within thirty (30) days after receipt of invoice. Lessee’s right to protest or contest taxes and assessments hereunder does not relieve Lessee of the obligation to pay taxes to Lessor unless Lessor receives a waiver from the applicable taxing authority.

J. Lessee shall have all utility accounts for the Premises separately metered and placed in its name. Lessee shall pay when due all utility charges (i.e., water, sanitary sewer, natural gas and electric) directly to the utility companies or municipalities providing such utility service. Lessee shall notify Lessor immediately upon termination of any utility account. Lessor may, at its option, place such terminated account in its name. In the event Lessor, willingly or otherwise, assumes the responsibilities for providing water, sanitary sewer, natural gas or electric services to the Premises during the Lessee’s tenancy, Lessee shall pay to Lessor the higher of: i) the prevailing rates for similar type utility services offered by utility companies and/or municipalities providing utilities to similar utility users located in Dayton, Ohio or, ii) the actual cost incurred by the Lessor in providing the utility service to the Lessee. If Lessor bills Lessee for any involuntary assumption of utilities, Lessor may include a Fifteen Percent (15%) administrative charge.

K. Lessee and its subtenants shall not erect, allow or permit to be maintained on the Premises, or upon the exterior of any improvement on the Premises, any billboards or advertising signs, except those which have the prior written approval of Lessor. Lessee and Future Sublessee may maintain on the Premises, or on the exterior of the Facility (but not the roof), its name in neatly arranged electric, neon or other type sign or signs; with the size and type of sign or signs subject to Lessor’s prior approval.

L. Lessee and Future Sublessee may make minor alterations and changes to the Premises and Facility as Lessee or Future Sublessee may, at any time during the term hereof, find necessary or convenient for its use of the Premises or Facility. Any additions, alterations, demolition or changes to the Premises or Facility and improvements of a material, substantial or structural nature, shall be permitted under this Lease, with the prior written approval of Lessor.

ARTICLE V - TERM

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The Commencement Date shall be the date of execution of this Lease by the Lessor. This Lease shall begin on the Commencement Date and shall be effective for a period of forty-nine (49) years ("Term"), unless terminated earlier in accordance with the provisions of this Lease.

ARTICLE VI – GROUND RENT AND LANDING FEES

A. During the term of this Lease, Lessee shall pay to Lessor the following rental for the Premises:

1. From the Commencement Date of the Lease, and continuing for a period of five years, Lessee shall pay to Lessor rent in the amount of Nine Cents ($0.09) per square foot per year on the total 694,433.52 square foot Premises. For Years 1 through 5 the annual rent shall be Sixty-Two Thousand Four Hundred Ninety-Nine Dollars and Two Cents ($62,499.02).

2. Beginning on the fifth anniversary of the Commencement Date, and every fifth year thereafter, the rent to be paid for the succeeding five (5) year period shall be increased by Two Cents ($0.02) per square foot.

B. The rental rates stated in Section A above are based on the intended use of the property as aeronautical use. In the event all or part of the Premises cease to be used for aeronautical purposes during any period of the Term of this Lease, the rental rates shall be revised to reflect the then-fair market value of the Premises based on an appraisal in accordance with FAA requirements.

C. All rents/fees due under this Lease shall be paid in equal monthly installments, due in advance on the first day of the month and without notice, and sent to Lessor at the following address:

City of Dayton, Ohio
P.O. Box 632094
Cincinnati, OH 45202

or such other address as Lessor may specify in writing.

D. Without waiving any other right or action available to Lessor in the event of default in payment of rents, fees, charges or any other financial obligation hereunder, if Lessee is delinquent for a period of thirty (30) days or more in paying to Lessor any amount(s) due and owing to Lessor pursuant to this Lease, Lessee shall pay to Lessor a late charge thereon calculated at the rate of one percent (1%) per month from the date such item was due and owing until full payment including late charges have been paid. Such late charges shall not occur with respect to disputed items being contested in good faith by Lessee.

E. Landing Fees. Lessee shall pay monthly to Lessor fees for Revenue Landings for the preceding month. The landing fee shall be determined in accordance with the rates and charges annually adopted by resolution of the Commission of the City of Dayton. Lessee’s landing fees shall be the product of the landing fee rate established by the City resolution
and Lessee’s total landed weight for the month. Lessee’s landed weight for the month shall be determined as the sum of the products obtained by multiplying the Maximum Gross Landed Weight of each type of landed aircraft by the number of Revenue Landings of each said aircraft during such month. “Revenue Landing” means any aircraft landing at the Airport for which Lessee or its subtenant makes a charge or for which revenue is derived by Lessee or its subtenant for the transportation by air of persons, property or mail or maintenance, repair and overhaul of the aircraft.

ARTICLE VII – RIGHTS AND OBLIGATIONS OF LESSOR

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

B. Lessor’s Director of Aviation and his duly authorized representatives shall have the right to enter the Premises for the purposes of inspecting the Premises and doing any and all things which the Lessor is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport. Except for emergencies or when required by law, Lessor agrees to provide twenty-four (24) hours’ notice to Lessee of its intent to enter the Premises, except during construction, during which period no notice is required.

Lessor and Lessee recognize that Future Sublessee’s government contracts impose specific restrictions and requirements regarding Lessor’s and Lessee’s right to entry into certain areas of the Premises, and Lessor and Lessee hereby agree to abide by such restrictions and Future Sublessee’s security requirements as set forth in the sublease between Lessee and Future Sublessee (“Sublease”). One such restriction is that in no instance shall non-United States citizens be allowed to access the Premises without the prior consent of Future Sublessee; a Future Sublessee escort may be required for access to government specified high security areas. The parties specifically agree that, notwithstanding any provision of this Lease to the contrary, the aforementioned restrictions and Future Sublessee’s security requirements shall govern all instances respecting Lessor’s, Lessee’s or any of their agents’ or employees’ right of entry (or re-entry) to the Premises wherever contained in this Lease or in any agreement, document or instrument contemplated by or related to this Lease. For purposes of this Lease, a United States citizen is a person that provides proof of American citizenship evidenced by a valid birth certificate or passport and a government issued identification card. Lessor and Lessee agree that in the event of a conflict between this Lease and Future Sublessee’s security requirements, Future Sublessee’s security requirements shall control.

C. Lessor warrants quiet enjoyment of the rights and privileges granted herein, during the term hereof, upon the performance of Lessee’s covenants contained herein and subject to Section B of this Article VII. Lessor agrees that all rules, regulations and other provisions governing the use of the Premises shall not be applied discriminately against Lessee or its subtenants and shall apply to all tenants at the Airport.
D. Nothing contained herein shall prohibit Lessor from granting easements, utility or otherwise, as long as said easements would not restrict Lessee’s use of the Premises for the purposes stated herein. All costs associated with granting said easements or executing activities for which said easements are granted shall be borne by Lessor or others; no cost shall be transferred to Lessee.

E. If Lessee fails to provide and maintain trash removal, mowing, snow removal or other required maintenance, Lessor shall have the right, but not the obligation, to provide or perform said services and to bill Lessee for the costs of said services plus a Fifteen Percent (15%) administrative fee, which Lessee agrees to pay.

ARTICLE VIII - NON-DISCRIMINATION

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

B. Lessee, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities, (2) in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21 and as said regulations as may be amended, superseded or modified.

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

ARTICLE IX - INDEMNIFICATION

A. Lessee shall defend, indemnify, save and hold harmless Lessor, its elected officials, officers, agents and employees, and Future Sublessee from and against any and all claims and actions, and all expenses incidental to the investigation and defense thereof, based
upon or arising out of any accident or damages suffered by third persons and arising from, or in any way connected with the use or occupancy of the Premises, and/or any condition of the Premises, fixtures, structures, equipment or other improvements thereon, and/or Lessee’s exercise of any right granted herein, and/or Lessee’s performance for breach or default in the performance of any obligation to be performed pursuant to this Lease, and/or any intentional, wrongful or negligent act or omission of Lessee, its agents, contractors and/or employees.

It is agreed that, to the extent permitted by law, no agreement or covenant by Lessee under this Subsection A shall include liability or damages for injury to persons or damage to property caused by or resulting from the sole negligence of Lessor, its agents or employees.

B. Lessee shall defend, indemnify, save and hold harmless Lessor and Future Sublessee, their respective elected officials, officers, directors, agents and employees, from and against any mechanics or other lien or order for the payment of money filed against the Premises, Lessor or any property of Lessor, arising out of any act or omission of Lessee or anyone claiming through or under Lessee. Lessee shall, at Lessee’s expense, cause the same to be cancelled or discharged of record and shall save and hold harmless Lessor and Future Sublessee from and against any and all costs, expense, claims, losses or damages including reasonable attorney’s fees resulting therefrom or by reason thereof.

C. Lessor shall not be liable to Lessee or its subtenants, agents, representatives, contractors or employees, for any injury to, or death of, any of them or of any other person or for any damage to any of Lessee’s property or loss of revenue, caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport. Lessor shall not be liable to Lessee for damage to property of Lessee or any loss of revenues to Lessee resulting from Lessor’s acts or omissions in the maintenance and operation of the Airport or failure to operate the Airport.

D. The obligations of Lessee under this Article IX shall survive the termination of this Lease and shall not be affected in any way by the amount of or the absence in any case of covering insurance, or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any part thereof.

E. The Lessor’s elected officials, officers, agents and employees, shall have absolutely no personal liability with respect to any provision of this Lease or any obligation or liability arising from this Lease or in connection with this Lease or the Premises in the event of a breach or default by Lessor of any of its obligations.

F. Notwithstanding any other provision of this Lease to the contrary, to the extent permitted by law, Lessee waives any and every claim for recovery from the Lessor for any and all loss or damage to the Premises or to the contents thereof, which loss or damage is covered by valid and collectable physical damage insurance policies maintained by Lessee or which would have been recoverable if the insurance required hereunder had been maintained by Lessee, to the extent that such loss or damage is recoverable, or would have been
recoverable, as applicable, under said insurance policies. As this waiver will preclude the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), Lessee agrees to give each insurance company which has issued, or in the future may issue, its policies of physical damage insurance, written notice of the terms of this waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverage by reason of said waiver. Lessee shall require any subtenant to include similar waivers of subrogation in favor of the Lessor.

**ARTICLE X - INSURANCE**

A. Lessee, at its sole cost and expense, shall procure and maintain, or cause to be procured and maintained, at all times during the term of this Lease commencing on the Commencement Date unless otherwise specified herein, the following insurance, with insurance companies authorized to do business in the State of Ohio and having at least an “A” rating from A. M. Best, or any successor thereto, and covering all operations under this Lease, whether performed by Lessee or by its contractors:

1. **Commercial Liability Insurance (Primary and Umbrella):**

   Commercial Liability Insurance with limits of not less than Ten Million Dollars ($10,000,000) per occurrence combined single limit, for bodily injury and property damage liability. Coverage extensions shall include the following: All Premises and operations, completed operations, explosion, collapse, underground, independent contractors, broad form property damage, separation of insured and contractual liability (with no limitation endorsement). The Lessor shall be named as additional insured, on a primary, non-contributory basis for any liability arising directly or indirectly from this Lease.

2. **All Risk Property Insurance:**

   i. Lessee shall obtain an “All Risk Property” policy, including improvements and betterments covering damage to buildings, in the amount of full replacement value of the improvements and betterments on the Premises. Lessor is to be named as a loss payee on said policy or policies of insurance.

   ii. Lessee shall be responsible for all loss or damage to personal property (including but not limited to material, equipment, tools and supplies), owned or rented by Lessee. When Lessee undertakes any improvement, construction or repair project on or to the Premises, an “All Risk Blanket Builders Risk Insurance” shall be provided by Lessee to cover at replacement cost the materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility. Coverage extensions shall include the following: right to partial occupancy, material stored off-site and in transit, earthquake, faulty workmanship or materials, extra expense, and loss of use of property. The Lessor shall be named as loss payee on said policy or policies of insurance.
3. **Automobile liability insurance:**

If vehicular access is limited to land side, then auto insurance will not be required. In the event Lessee intends in the future to use any motor vehicles (owned, non-owned and hired) in connection with this Lease, Lessee shall provide Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars ($1,000,000) per occurrence combined single limit, for bodily injury and property damage. Lessor is to be named as an additional insured on a primary, non-contributory basis on said policy or policies.

B. Original certificates of insurance evidencing the required coverage to be in force on the Commencement Date of this Lease as set forth herein, and all renewal certificates of such insurance, shall be provided to Lessor. All such policies shall name the City of Dayton, Ohio, its elected officials, officers, agents, volunteers and employees as additional insureds. At the Lessor’s request, Lessee shall furnish complete copies of all policies of insurance. The receipt of any certificate or policy does not constitute agreement by the Lessor that the insurance requirements in the Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Lease. The failure of the Lessor to obtain certificates or other insurance evidence from Lessee or its contractors shall not be deemed to be a waiver by the Lessor. Lessee or its contractors shall advise all insurers of these Lease provisions regarding insurance. Non-conforming insurance shall not relieve Lessee or its contractors of their obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Lease, and the Lessor retains the right to terminate this Lease as provided in Article XV unless proper evidence of insurance is provided. All policies of insurance, excluding the insurance required of Lessee’s contractors, shall provide for a minimum of thirty (30) days prior written notice to be given to the Lessor in the event coverage is substantially changed, canceled, or non-renewed.

C. If Lessee fails to obtain or maintain any of the insurance policies under this Lease or to pay any premium in whole or in part when due, Lessor may (without waiving or releasing any obligation or default by Lessee hereunder) obtain and maintain such insurance policies and/or take any action which Lessor deems appropriate. In such instances, reasonable attorney’s fees, court costs and expenses, shall be reimbursed by the Lessee upon demand by Lessor.

D. Lessee shall require all contractors to carry the insurance required herein, or Lessee or its contractors may provide the coverage for any or all contractors, and, if so, the evidence of insurance submitted shall so stipulate. Any and all deductibles or self-insured retentions on referenced insurance coverages shall be borne by Lessee or its contractors. Lessee and its contractors agree that insurers shall waive their rights of subrogation against the Lessor, its employees, elected official, agents, or representatives. Lessee and its contractors expressly understand and agree that any coverages and limits furnished by Lessee, or its contractors shall in no way limit the Lessee or its contractors’ liabilities and responsibilities specified within this Lease or by law. Lessee and its contractors expressly understand and agree that
any insurance or self-insurance programs maintained by the Lessor shall not contribute with insurance provided by the Lessee or its contractors under this Lease. If Lessee or its contractors desire additional coverage, higher limits of liability, or other modifications for its own protection, then Lessee or its contractors shall each be responsible for the acquisition and cost of such additional protection.

E. The insurance required hereunder shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law. The Lessor maintains the right to modify, delete, alter or change these requirements.

F. The insurance required by this Lease, at the option of Lessee or contractors, may be affected by blanket or umbrella policies issued to Lessee or contractors covering the Premises and other properties owned or leased by Lessee or contractors, provided that the policies otherwise comply with the provisions of this Lease and allocate to the Premises the specified coverage, without possibility of reduction or coinsurance by reason of, or damage to, any other premises covered therein.

G. Lessee shall maintain, at all times during the term hereof, Workers’ Compensation for its employees employed or providing service(s) upon the Premises in such amounts as prescribed under Ohio law.

**ARTICLE XI – DAMAGE OR DESTRUCTION AND DISPOSITION OF THE FACILITY**

A. If the Facility or any other improvements located on the Premises are damaged, in whole or in part, by fire or other casualty, Lessee shall, at Lessee’s expense and as soon as reasonably possible, repair the damage. Lessee may use insurance proceeds from insurance it carried, or caused to be carried, to pay for the work as it progresses, and the Lessor shall permit any such proceeds to be made available.

B. If any improvements to the Premises are not diligently repaired by Lessee where required, or if any space is deleted from the Premises, then the Lessor shall be entitled to all insurance proceeds payable on account of improvements in such space. Where the Lessee is obligated to repair or restore improvements, Lessee must do so notwithstanding that insurance proceeds may be insufficient.

C. Upon termination of this Lease, Lessee at its option may, with Future Sublessee’s consent while Future Sublessee is a tenant of the Facility, choose to remove the hangar and office facility and remaining improvements and return the Premises to arable land as originally tendered to Lessee. Lessee may execute this option of removal by providing written notice to the Director of Aviation (and to Future Sublessee while Future Sublessee is a tenant of the Facility) of its intention to remove the Facility and other improvements no later than six (6) months prior to the scheduled termination of this Lease.
Notwithstanding the foregoing or any other provision of this Lease, Lessee agrees, at all times while Future Sublessee is a tenant of the Facility, not to choose to remove the Facility or any portion thereof from the Premises. Additionally, notwithstanding the foregoing or any other provision of this Lease, Lessor and Lessee acknowledge and agree that all personal property and trade fixtures of Future Sublessee (including, without limitation, any rooftop communications equipment) is and shall remain the sole property of Future Sublessee.

If Lessee does not timely exercise the removal option, then upon termination of this Lease (with Future Sublessee’s consent while Future Sublessee is a tenant of the Facility and is not in default under its sublease), title and ownership of the Facility and any other improvements made on or to the Premises (but not any personal property or trade fixtures of Future Sublessee) shall revert to the Lessor free and clear of any liens, mortgage(s) or other encumbrances other than the following “Permitted Encumbrances:” (a) taxes and assessments, which are a lien on the Premises and Facility and improvements but not yet due and payable; (b) applicable zoning and other government laws, ordinances and regulations of any kind or nature; (c) easements, covenants, conditions and restrictions of record as of the Commencement Date and those created after the Commencement Date, which are approved, in advance, by the Lessor; and (d) liens and other encumbrances created by Lessor. Lessee shall take all actions and execute any and all documents necessary to transfer title and ownership of the Facility and improvements (but not any personal property or trade fixtures of Future Sublessee) to Lessor, and Lessor shall not be required to pay Lessee for such transfer of the Facility and improvements. Notwithstanding anything to the contrary, Lessee shall be entitled to remove any and all trade fixtures, equipment and other personal property of Lessee (but not any personal property or trade fixtures of Future Sublessee) situated on the Premises. Until termination of this Lease title to the Facility and improvements and all other items installed thereon and any repair, addition, alteration or replacement thereto (but not any personal property or trade fixtures of Future Sublessee) shall remain Lessee’s property.

ARTICLE XII - ASSIGNMENT AND SUBLETTING

A. Except as provided directly below in Section B., Lessee is prohibited from selling, assigning or transferring this Lease without the prior written consent of Lessor, which consent shall not be unreasonably withheld, delayed or conditioned. Any sale, assignment or transfer in violation hereof shall be void.

B. Lessee may sublet the Premises to the Dayton-Montgomery County Port Authority, who will lease the same to Lessee. Lessee may sublet the Premises and any improvements thereon to Future Sublessee or any future tenant of the Facility. Additionally, Lessee may assign this Lease to a Leasehold Mortgagee (as defined below). Neither Lessee nor any of the sublessees described above may further sublease or let the Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld, delayed or conditioned; provided, however, that Future Sublessee may sublease or assign the Premises as permitted by its sublease without first obtaining the prior written consent of Lessor.
ARTICLE XIII - SUCCESSORS AND ASSIGNS BOUND BY COVENANTS

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

ARTICLE XIV - TERMINATION BY LESSEE

A. In addition to all other remedies available to the Lessee under this Lease or at law, this Lease shall be subject to termination by Lessee should any one or more of the following events occur:

1. The issuance by any court of competent jurisdiction of any injunction, order or decree preventing or restraining the use of the Airport for usual airport purposes in its entirety, or the use of any part thereof used by Lessee and necessary for Lessee’s operations on the Airport, for a period of thirty (30) consecutive days and results in material interference with Lessee’s normal business operations at and from the Premises.

2. Lessor’s default of any material term or condition of this Lease, and the failure of Lessor to cure such default or to take prompt action to cure such default, within a period of thirty (30) days after receipt of written notice to cure the default; or if by reason of the nature of such default it cannot be cured within the thirty (30) days, then Lessee shall have the right to terminate this Lease if the Lessor fails to commence the remedying of such default within the thirty (30) day period.

Notwithstanding the foregoing, in the event that Lessee shall elect to terminate this Lease under this Section A, Lessee shall provide at least sixty (60) day advance written notice of termination to Lessor and Future Sublessee.

ARTICLE XV - TERMINATION BY LESSOR

A. In addition to all other remedies available to Lessor under this Lease or at law, this Lease shall be subject to termination by Lessor should any one or more of the following events occur:

1. If a court shall take jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act.

2. If a receiver for Lessee’s assets is appointed by a court of competent jurisdiction.

3. If Lessee shall be divested of its rights, powers and privileges under this Lease by other operation of law.

4. If Lessee defaults in the payment of any amounts due to Lessor hereunder and Lessee or its subtenant fails to cure such default within thirty (30) days after Lessor notifies Lessee and its subtenant in writing of the default.
5. If Lessee defaults in the performance of any term or condition of this Lease, but excluding the payment of amounts due and owning hereunder, and Lessee or its subtenant fails to cure such default within thirty (30) days from receipt of written notice (which must also be provided to Lessee’s subtenant) to cure such default; or if by reason of the nature of such default the same cannot be remedied within said thirty (30) days, then Lessor shall have the right to terminate this Lease if the Lessee or its subtenant fails to commence the remedying of such default within the thirty (30) day period or, after having so commenced, fails thereafter to continue with due diligence the remedying thereof.

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

Notwithstanding the foregoing, neither Lessor nor Lessee will terminate this Lease without the prior written consent of any leasehold mortgagee and Future Sublessee.

ARTICLE XVI - HOLDING OVER

In the event Lessee holds over and remains in possession of the Premises and rights granted herein after termination of this Lease and without any written renewal thereof, such holding over shall not operate as a renewal or extension of this Lease but shall only create a tenancy from month to month that may be terminated at any time by Lessor or Lessee. Lessor will provide Lessee with sixty (60) days advance written notice of any increase in the rental amount due during such holdover tenancy period in excess of 1/12th the rental amount for the immediately preceding 12-month period.

ARTICLE XVII - INVALID PROVISIONS

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

ARTICLE XVIII - WAIVER

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

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

ARTICLE XIX – CONDEMNATION

A. If the entire Premises is condemned and taken for public use, this Lease shall automatically
terminate on such date that the title shall vest in the condemnor. Rent and any additional
fees and charges under this Lease shall be prorated as of the date of such termination; and
upon termination, Lessee shall satisfy and cause to be released any mortgages, liens, or
other encumbrances placed or suffered to be placed on the Premises by Lessee.

B. Any award or compensation paid on account of any taking or condemnation described
herein shall be equitably divided between Lessor and Lessee, taking into consideration
each party’s respective interest in the Premises.

ARTICLE XX – LEASEHOLD MORTGAGES;
TITLE TO IMPROVEMENTS UPON TERMINATION

A. Lessee may, without Lessor’s consent, mortgage its interest in this Lease as collateral
security, pursuant to a leasehold mortgage (“Leasehold Mortgage”). If Lessee shall
mortgage this leasehold, Lessee shall send to Lessor the pertinent information/recording
data with respect thereto as soon as the same is available. In any event, from and after the
date Lessor receives from Lessee or the holder of such Leasehold Mortgage a true copy
thereof, together with written notice specifying the name and address of the leasehold
mortgagor under the Leasehold Mortgage (“Leasehold Mortgagee”), Lessor agrees that so
long as any such Leasehold Mortgage shall remain unsatisfied of record or until written
notice of satisfaction is given by the holder to Lessor, the following provisions shall apply:

1. There shall be no voluntary cancellation, surrender or material modification of this
Lease by joint action of Lessor and Lessee without the prior consent in writing of the
Leasehold Mortgagee and Future Sublessee while it is a tenant.

2. Lessor shall, upon serving Lessee with any notice of default, simultaneously serve
a copy of such notice upon the holder of such Leasehold Mortgage and Future
Sublessee while it is a tenant. The Leasehold Mortgagee shall thereupon have the
same period as Lessee under this Lease, if any, after service of such notice upon it, to remedy or cause to be remedied such default, and Lessor shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Lessee. The foregoing rights and remedies of the Leasehold Mortgagee shall be available to Future Sublessee while it is a tenant if not exercised by the Leasehold Mortgagee.

3. Anything herein contained notwithstanding, if any Event of Default shall occur which, pursuant to any provision of this Lease, entitles Lessor to terminate this Lease, then the Leasehold Mortgagee shall have thirty days from the date of service of notice of that Event of Default upon such Leasehold Mortgagee, to cure such Event of Default and upon curing such Event of Default Lessor shall not be entitled to terminate this Lease and any notice of termination theretofore given shall be void and of no effect. The foregoing rights and remedies of the Leasehold Mortgagee shall be available to Future Sublessee while it is a tenant if not exercised by the Leasehold Mortgagee.

4. If Lessor shall elect to terminate this Lease by reason of any Event of Default of Lessee, the Leasehold Mortgagee shall not only have the right to nullify any notice of termination by curing such Event of Default, as stated above in paragraph 3, but shall also have the right to postpone and extend the specified date for the termination of this Lease as fixed by Lessor in its notice of termination, but only if the Leasehold Mortgagee requires possession of the Premises in order to cure any such Event of Default and the Leasehold Mortgagee undertakes in writing to cure any such Event of Default upon obtaining possession; provided that such Leasehold Mortgagee shall cure or cause to be cured any then-existing money defaults or any other defaults that do not require Leasehold Mortgagee to obtain possession of the Premises and meanwhile pay the ground rent and comply with and perform all of the other terms, conditions and provisions of this Lease on Lessee’s part to be complied with and performed, and provided further that the Leasehold Mortgagee shall forthwith take steps to assign, acquire or sell Lessee’s interest in this Lease by foreclosure of the Leasehold Mortgage or otherwise within thirty (30) days of the default notice and shall prosecute the same to completion with reasonable due diligence. The foregoing rights and remedies of the Leasehold Mortgagee shall be available to Future Sublessee while it is a tenant if not exercised by the Leasehold Mortgagee.

5. Lessor agrees that the name of the Leasehold Mortgagee may be added by Lessee to the “Loss Payable Endorsement” of any and all insurance policies required to be carried by Lessee under this Lease on condition that the insurance proceeds are to be applied in the manner specified in this Lease and that the Leasehold Mortgage or collateral document shall so provide.

6. Lessor agrees that in the event of termination of this Lease for any reason (other than an Event of Default not cured by Leasehold Mortgagee), then Lessor will enter into a new lease of the Premises with the Leasehold Mortgagee or its nominee(s),
or Future Sublessee (at its option) if the Leasehold Mortgagee elects not to enter into a new lease of the Premises, for the remainder of the Term of this Lease, effective as of the date of such termination, at the ground rent and upon the terms, provisions, covenants and agreements as herein contained and subject only to the same conditions of title as this Lease is subject to on the date of the execution hereof, and to the rights, if any, of any parties then in possession of any part of the Premises, and to any defects or encumbrances created by Lessee or anyone claiming by, through or under Lessee, provided:

a. Said Leasehold Mortgagee or its nominee(s), or Future Sublessee if applicable, shall make written request upon Lessor for such new lease within thirty (30) days after the date of such termination and such written request is accompanied by payment to Lessor of all sums then due to Lessor under this Lease;

b. Said Leasehold Mortgagee or its nominee(s), or Future Sublessee if applicable, shall pay to Lessor at the time of the execution and delivery of said new lease, any and all sums which would at the time of the execution and delivery thereof, be due pursuant to this Lease but for such termination, and in addition thereto, any expenses, including reasonable attorney’s fees, to which Lessor shall have been subjected by reason of such Event of Default;

c. Said Leasehold Mortgagee or its nominee(s), or Future Sublessee if applicable, shall perform and observe all covenants herein contained on Lessee’s part to be performed and shall further remedy any other conditions which Lessee under the terminated lease was obligated to perform under the terms of this Lease;

d. Such new lease shall be expressly made subject to the rights, if any, of Lessee under the terminated lease; and

e. The lessee under such new lease shall have only the same right, title and interest in and to the buildings and improvements on the Premises as Lessee had under the terminated lease.

7. Nothing herein contained shall require the Leasehold Mortgagee or its nominee(s), or Future Sublessee if applicable, to cure any Event of Default of Lessee.

8. Lessor shall, upon request, execute, acknowledge and deliver to the Leasehold Mortgagee, an agreement prepared at the sole cost and expense of lessee, in favor of each Leasehold Mortgagee consistent with the provisions of this Section and containing other commercially reasonable provisions requested by the Leasehold Mortgagee (or Future Sublessee if applicable). The term “Leasehold Mortgage,” whenever used herein, shall include whatever security instruments are used in Ohio, such as, without limitation, deeds of trust, security deeds and conditional deeds, as
well as financing statements, security agreements and other documentation required pursuant to the Uniform Commercial Code.

B. Title to improvements made to and upon the Premises, excluding trade fixtures, shall vest in Lessor at such time as this Lease is terminated. Title to the improvements shall be transferred to the Lessor. Upon termination of this Lease, Lessee shall surrender the Premises and the improvements thereon to Lessor in good condition subject to normal wear, tear and depreciation. Lessee’s obligation to deliver the Premises and improvements in good condition shall survive the termination of this Lease.

ARTICLE XXI – GENERAL PROVISIONS

A. The term Lessor, as used in this Lease, means the City of Dayton, Ohio and where this Lease speaks of approval and consent by Lessor, such approval is understood to be manifested by act of Lessor’s Director of Aviation, except as otherwise expressly stated in this Lease, and such consent or approval shall not be unreasonably withheld, conditioned or delayed. Where a response is required to be provided by Lessor, such response shall be provided in writing no later than thirty (30) days after the request for response.

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

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

or such other address as Lessor shall direct in writing.

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

Kevin Belt
SD Hangar Partners, LLC
19 North High Street
Akron, Ohio 44308

or such other address as Lessee shall direct in writing.

With a copy to: Lee S. Walko, Esq.
Brennan Manna Diamond
75 E. Market Street
Akron, OH 44308

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

D. Lessee and Lessor represent that each has carefully reviewed the terms and conditions of this Lease and are familiar with such terms and conditions and agrees faithfully to comply with the same to the extent to which said terms and conditions apply to its activities as authorized and required by this Lease.

E. By execution of this Lease, Lessee hereby irrevocably submits to the original jurisdiction of the courts located within the County of Montgomery, State of Ohio, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Lease.

F. Lessee (and any person claiming by or through Lessee) shall look solely to legally available Airport discretionary funds for enforcement of any liability of the Lessor under this Lease, and not any other funds or assets of the City of Dayton, Ohio whatsoever.

G. Neither Lessee nor any contractor of Lessee shall be entitled to claim any exemption from sales or use taxes or similar taxes by reason of the Lessor’s ownership of fee title to the Premises.

H. By entering into this Lease, Lessor shall in no way be deemed a partner or joint venturer with Lessee, nor shall any term or provision hereof be construed in any way to grant, convey or create any rights or interests to any person or entity not a party to this Lease, except Future Sublessee as provided in Section L below.

I. Subject to Section L below, the parties may amend or modify this Lease, at any time, provided that no such amendment or modification shall be effective unless it is reduced to a writing, which makes specific reference to this Lease, executed by a duly authorized representative of Lessor and Lessee (and by Future Sublessee while Future Sublessee is a tenant of the Facility) and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.

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

K. Notwithstanding any provision of this Lease, Lessor and Lessee acknowledge and agree that Future Sublessee shall be and is an intended third-party beneficiary of this Lease and all rights, privileges and remedies granted or reserved for Future Sublessee’s benefit herein. During the term (including any extensions or renewals) of the Sublease, this Lease shall not be amended, modified, or terminated (except in the event that the grounds for termination of this Lease are due to an uncured default by Future Sublessee under the Sublease), or any provision hereof released or waived without Future Sublessee’s prior written consent, which shall not be unreasonably withheld, conditioned or delayed. In the
event of any conflict between this Section and any other provision of this Lease, this Section shall control.

L. Lessor shall execute any reasonable recognition agreement as requested by any subtenant of Lessee to ensure that the subtenant’s leasehold interest in the Premises shall not be disturbed by Lessor in the event of any foreclosure action or deed in lieu thereof.

M. Simultaneously with the execution of this Lease, the parties shall execute and record in the real estate records of Montgomery County, Ohio, a memorandum of this Lease in the form attached hereto as Exhibit B and incorporated here by reference.

N. If, after the date of this Lease, Future Sublessee is determined, the parties agree to execute and deliver an amendment to this Lease, in form and content reasonably acceptable to Future Sublessee, which shall identify Future Sublessee and include any other changes to this Lease desired by the parties and Future Sublessee.

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

WITNESSED BY: SD HANGAR PARTNERS, LLC

By: ____________________________

Title: ____________________________

WITNESSED BY: CITY OF DAYTON, OHIO

City Manager

Date Executed: December _____, 2021

APPROVED AS TO FORM AND CORRECTNESS:

City Attorney

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

December _____, 2021

Min/Bk. ________  Pg. ________________

______________________________

Clerk of the Commission
Legal Description for 7.804 Acre Phase 1A Lease Area
Dayton International Airport
Section 5, Town 3, Range 6 East,
City of Dayton, Montgomery County, Ohio
December 06, 2021

Situated in Section 5, Town 3, Range 6 East, City of Dayton, Montgomery County, Ohio, being part of a 51.772 acres tract conveyed to the City of Dayton, recorded in Deed Book 1175, Page 158 (aka Airport Parcel 6), said tracts are part of Lot 81143 of the revised and consecutive number of lots on the plat of the City of Dayton and being more particularly described as follows;

Commencing from a 5/8" iron pin found at the intersection of the west line of the southeast quarter of said Section 5 and the centerline of Old Springfield Road, thence along said west line South 00°15'30" West, 30.50 feet to the south right-of-way line of Old Springfield Road; thence along said south right-of-way line South 79°53'28" West, 215.73 feet; thence along the southwestern lines of Phase 1 Lease the following four courses;

1) South 33°37'55" East, 372.18 feet;
2) North 56°22'10" East, 190.91 feet;
3) South 33°37'49" East, 301.07 feet;
4) North 56°24'29" East, 54.81 feet to the point of beginning of the following described tract of land;

thence along the southeastern line of Phase 1 Lease North 56°24'29" East, 419.74 feet; thence South 33°33'16" East, 810.10 feet; thence South 56°27'59" West, 419.74 feet; thence North 33°33'16" West, 809.67 feet to the point of beginning, containing 7.804 acres, subject however to all covenants, conditions, restriction, and easements contained in any instrument of record pertaining to the above-described tract of land.

Bearings are based upon Dayton International Airport Control Coordinates.

This description was prepared by Farnsworth Group, Inc., 82 Remick Blvd., Suite B, Springboro, OH, under the direct supervision of David R. Barnhart, P.S. #7646.
Legal Description for 8.138 Acre Phase 1 Lease Parcel
Dayton International Airport
Section 5, Town 3, Range 6 East,
City of Dayton, Montgomery County, Ohio
December 06, 2021

Situated in Section 5, Town 3, Range 6 East, City of Dayton, Montgomery County, Ohio, being part of a 56.00 acres tract conveyed to the City of Dayton, recorded in Deed Microfiche 77-0725B12 (aka Airport Parcel 116) and part of a 51.772 acres tract conveyed to the City of Dayton, recorded in Deed Book 1175, Page 158 (aka Airport Parcel 6), said tracts are part of Lot 81143 of the revised and consecutive number of lots on the plat of the City of Dayton and being more particularly described as follows;

Commencing from a 5/8" iron pin found at the intersection of the west line of the southeast quarter of said Section 5 and the centerline of Old Springfield Road, thence along said west line South 00°15'30" West, 30.50 feet to the south right-of-way line of Old Springfield Road and beginning the point of beginning of the following described tract of land;

thence along said right-of-way line North 79°53'28" East, 30.52 feet to the east right-of-way line of Peters Pike;
thence along said east right-of-way line South 00°12'44" West, 3.93 feet;
thence North 88°08'43" East, 994.43 feet;
thence South 01°14'28" East, 100.16 feet;
thence South 56°30'00" West, 273.53 feet;
thence North 78°30'00" West, 50.18 feet;
thence South 56°24'29" West, 515.47 feet;
thence North 33°37'49" West, 301.07 feet;
thence South 56°22'10" West, 190.91 feet;
thence North 33°37'55" West, 372.18 feet to the south right-of-way line of Old Springfield Road;
thence along said right-of-way line North 79°53'28" East, 215.73 feet to the point of beginning, containing 8.138 acres, subject however to all covenants, conditions, restriction, and easements contained in any instrument of record pertaining to the above-described tract of land.

Bearings are based upon Dayton International Airport Control Coordinates.

This description was prepared by Farnsworth Group, Inc., 82 Remick Blvd., Suite B, Springboro, OH, under the direct supervision of David R. Barnhart, P.S. #7646.
Exhibit B

Form of Memorandum of Lease

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE is made and entered into on December _____, 2021 (the “Effective Date”) by and between SD HANGAR PARTNERS, LLC, an Ohio limited liability company (the “Lessee”) and the CITY OF DAYTON, a municipal corporation of the State of Ohio, having an address for purposes hereof at 101 West Third Street, Dayton, Ohio 45402 (hereinafter referred to as “Lessor” and sometimes the “City”), who represent as follows:

1. The name and address of the Lessee is SD Hangar Partners, LLC, 19 North High Street, Akron, Ohio 44308.

2. The name and address of Lessor is the City of Dayton, 101 West Third Street, Dayton, Ohio 45402.

3. Lessee and Lessor entered into a certain Lease dated December _____, 2021 (the “Lease”) with respect to certain demised premises further described on EXHIBIT A (the “Project Site”) attached hereto and made a part hereof by this reference.

4. Certain Facility improvements (as defined in the Lease) will be constructed on the Project Site.

5. The term of the Lease with respect to the Project Site shall commence on December _____, 2021, and will expire on the date occurring forty-nine (49) years after December _____, 2021; provided, the Lease is subject to earlier termination as described therein.

6. This Memorandum of Ground Lease is executed pursuant to Section 5301.251 of the Ohio Revised Code. The Lease is hereby incorporated by reference in and made a part of this Memorandum of Ground Lease as fully as if it were set forth herein in its entirety. All parties having or acquiring an interest in the property referred to herein are hereby given notice of all provisions, covenants and obligations contained in the Ground Lease.

7. This Memorandum of Ground Lease may be executed in counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute one and the same instrument.
IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Ground Lease as of the day and year first above set forth.

GROUND LESSEE:

SD HANGAR PARTNERS, LLC

By: __________________________

Name: _________________________

Title: __________________________

STATE OF OHIO )

) SS:
COUNTY OF SUMMIT )

On this ___ day of December, 2021, personally appeared before me, a Notary Public in and for the State of Ohio, SD Hangar Partners, LLC, by ______________________, known to be the ____________________ of said City, who acknowledged that to be duly authorized to execute this Memorandum of Ground Lease and who acknowledged the signing and sealing of the said Memorandum of Ground Lease on behalf of said SD Hangar Partners, LLC to be a voluntary act and deed, and the voluntary act and deed of said SD Hangar Partners, LLC.

The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

____________________________
Notary Public

My commission expires: __________
GROUND LESSOR:

CITY OF DAYTON, OHIO

By: __________________________

Name: _________________________

Title: _________________________

APPROVED AS TO FORM
AND CORRECTNESS:

City Attorney

STATE OF OHIO )
 ) SS:
COUNTY OF MONTGOMERY )

On this ___ day of December, 2021, personally appeared before me, a Notary Public in and for the State of Ohio, City of Dayton, Ohio, by ________________________, known to be the ______________ of said City, who acknowledged that to be duly authorized to execute this Agreement and who acknowledged the signing and sealing of the said Agreement on behalf of said City to be a voluntary act and deed, and the voluntary act and deed of said City.

The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public

My commission expires: ____________

This Instrument Prepared by:

Suzanne Beck, Esq.
City of Dayton, Department of Aviation
3600 Terminal Drive, Suite 300
Vandalia, Ohio 45377-1095
GROUND LEASE
AT THE DAYTON INTERNATIONAL AIRPORT

THIS GROUND LEASE ("Lease"), is made and entered into this ___ day of December, 2021, between the City of Dayton, Ohio ("Lessor"), a municipal corporation in and of the State of Ohio, and SD Hangar Partners, LLC, an Ohio limited liability company ("Lessee").

WITNESSETH THAT:

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

WHEREAS, Lessee desires to lease certain space at the Airport for the construction of a hangar and office facilities for aviation purposes, which Lessee will sublease to an entity to be determined (such entity, "Future Sublessee"); and

WHEREAS, Lessor deems it advantageous to itself, to the operation of the Airport and in the best interest of the public to lease unto Lessee certain unimproved land upon the terms and conditions set forth herein.

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

ARTICLE I - REPRESENTATIONS

A. Lessor owns the Premises (as this term is subsequently defined) and, to the best of its knowledge and belief, the Premises are free of liens, encumbrances and other matters that would affect title.

B. Lessee acknowledges that the entire cost for development and construction of the Facility (as this term is defined in Article II) shall be borne by Lessee. To this end, Lessee represents to Lessor and Future Sublessee that it has or will secure all the financing in an amount sufficient to undertake and complete the project.

C. Lessor leases to Lessee approximately 694,433.52 square feet of unimproved real property located at the Airport, as depicted in the attached and incorporated Exhibit A-1 and Exhibit A-2 (collectively, “Premises”) for the exclusive use by the Lessee or its subtenant. Lessee accepts the Premises "as-is", and Lessor shall have no obligation to remediate, cure or correct any issues or problems with the Premises, except as necessary to cause Section D below to be accurate.

D. Lessor represents and warrants to Lessee and Future Sublessee that: (1) Lessor owns fee simple title to the Premises; (2) there are no mortgages, deeds of trust or other liens encumbering the Premises; and (3) this Lease and the lease of the Premises hereunder do not violate Lessor's Charter or Code.
ARTICLE II – LEASE AND USE OF PREMISES

A. Lessee shall have the exclusive use of the Premises for the construction and operation of an office and hangar facility ("the Facility") for Lessee’s or Lessee’s subtenant’s sole use for its aeronautical business activities, including the parking, storage, maintenance, construction, and repair of aircraft.

B. Lessee is prohibited from using the Premises to conduct any other commercial aviation business activity, including that of a fixed based operator. The Premises shall be used only for the aeronautical purposes specified in this Lease. Except as provided in this Lease, no other use of the Premises is permitted without the consent of Lessor.

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

D. If required, Lessee shall, at its sole expense, relocate, replace and maintain the Airport Operations Area ("AOA") perimeter fence on the Premises. Lessee shall work with Lessor and Future Sublessee to create an approved security plan prior to relocation of the AOA fence.

E. Lessor grants to Lessee and its subtenants the right to grant to public entities or public service corporations, for the purpose of serving only the Premises, rights of way or easements on or over the Premises for poles or conduits or both for telephone, electricity, water, sanitary or storm sewers or both, and for other utilities and municipal or special district services, provided that they are (1) directly related to the construction, operation, maintenance and/or repair of the Facility, and (2) subject to Lessor’s prior written consent, which may be withheld in Lessor’s reasonable discretion to the extent any such rights of way or easements would extend beyond the Term or violate or cause to be violated any FAA grant assurance or federal, state, or local law or regulation.

F. Lessor grants Lessee and its subtenants the right of access, ingress, egress, and regress to and from the Premises by Lessee and its subtenants and their respective employees, contractors, suppliers, service providers, guests, patrons, and invitees. Such right of access, ingress, egress, and regress shall be exercised in conformance with the terms and conditions of this Lease. Any other grants of such rights or easements by Lessor that burden or affect the Premises must be approved by Lessee and Future Sublessee.

G. Lessee, its subtenants, and their respective employees, agents, customers, invitees, and licensees shall have exclusive use of all vehicle parking lots located on the Premises.

H. Lessor agrees that Lessee and its subtenants shall have the right (but not the obligation) to receive services from ancillary facilities located on or serving the Premises such as (without limitation) fire suppression systems (foam or otherwise) and retention pond(s). Such
ancillary facilities shall not, in any manner, impair or restrict Lessee’s or its subtenants access to the Premises or the Facility.

ARTICLE III – FEDERAL REQUIREMENTS

Lessee shall comply with the following provisions:

A. Lessor reserves the right to further develop or improve the landing area of the Airport as it sees fit, without interference or hindrance, provided that such further development or improvement do not unreasonably interfere with the construction or operation of the Facility.

B. Lessor reserves the right, but shall not be obligated to the Lessee, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of the Lessee in this regard, provided that such direction and control does not unreasonably interfere with the construction or operation of the Facility.

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

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

E. Lessor reserves unto itself, its successors and assigns and subtenants, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises herein leased. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operation on the Airport.

F. Lessee expressly agrees for itself, its successors and assigns that it will not construct, nor permit to stand, on said Premises any building, structure, poles, trees, or other object, whether natural or otherwise, of a height in excess of 14 CFR Part 77 standards and requirements regarding obstructions in navigable airspace.

G. Lessor reserves unto itself, its successors and assigns and subtenants, for the use and benefit of the public, a right of entry onto the real property herein conveyed to cut, remove, or lower any building, structure, poles, trees, or other object, whether natural or otherwise, of a height in excess of 14 CFR Part 77 standards and requirements regarding obstructions in navigable airspace. This public right shall include the right to mark or light as obstructions to air navigation, any and all buildings, structures, poles, trees, or other object that may at any time project or extend above said surfaces.
H. Lessee expressly agrees for itself, its successors and assigns, to not hereafter use, nor permit, nor suffer use of the Premises in such a manner as to create electrical interference with radio communication between the installation upon the Airport and aircraft or as to make it difficult for fliers to distinguish between airport lights and others, or as to impair visibility in the vicinity of the Airport, or as otherwise to endanger the landing, taking off, or maneuvering of aircraft.

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

ARTICLE IV - RIGHTS AND OBLIGATIONS OF LESSEE

A. Lessee shall, at its expense, provide for the complete and proper maintenance of the Premises. For purposes of this Lease, maintenance activities to be performed and completed by Lessee includes, but is not necessarily limited to, the following:

1. Vehicular parking and entrance drive snow removal, lighting repair, brooming, striping, sealing, replacement and overlay of all paved or asphalt surfaces located on the Premises;

2. Aircraft ramp snow removal, Lighting repair, brooming, striping, and replacement;

3. Mowing, planting and maintenance of grass areas and landscaping to the Premises lease line;

4. Maintenance of all utility lines serving the Facility to lease line or metering point, whichever is larger;

5. Maintenance of storm drainage structures and storm lines on the Premises and solely serving the Facility and maintenance of any oil separators in storm and sanitary sewer lines serving the Premises;

6. Maintenance, testing and service of any fire suppression system(s) and fire alarm system(s) within the Facility in accordance with all applicable codes and requirements;

7. Complete interior and exterior, including structural, maintenance; and

8. Maintenance of the AOA security fence surrounding the Premises.

B. Lessee shall, at its expense, arrange for and ensure that its employees, agents and contractors operating under this Lease are properly identified with an identification badge issued by the Airport, and that said badge is displayed at all times while such persons are in the Security Identification Display Area, as defined by the Airport’s approved security
program and Federal Aviation Regulations, Part 107, and any amendments or revisions thereto.

C. Lessee and its employees, agents and contractors shall at all times comply with the Airport Rules and Regulations in effect on the Commencement Date and any future amendments or revisions thereto. The Airport Rules and Regulations may be accessed at http://www.flydayton.com/wp-content/uploads/2018/02/DAY-Rules-and-Regulations-October-4-2017.pdf or may be obtained from Airport administration upon request.

D. Lessee shall, at its expense, obtain from all authorities having jurisdiction over the operations and activities to be conducted upon the Premises, including, but not limited to, the Federal Aviation Administration (“FAA”), Transportation Security Administration (“TSA”), Environmental Protection Agency (“EPA”), Ohio Environmental Protection Agency (“OEPA”), and state and local fire protection agencies, all licenses, certificates, permits, registrations or other authorizations which may be required for the conduct of its operations and activities (including, without limitation, construction of the Facility), and/or necessary to comply with any requirements of this Lease and/or in the exercise of any right or obligation granted in this Lease, including, but not limited to, any licenses, permits, procedures, or sampling required for Lessor to comply with the Dayton International Airport and the City’s Stormwater Pollution Prevention Plan (“SWPP”). Lessee, however, shall not be deemed to have waived any right to exhaust administrative and/or judicial remedies that may be available to Lessee regarding any dispute or contest related to any authorization required. Upon request by Lessor, Lessee shall furnish to Lessor any and all permits or certificates required under this Lease.

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

F. Lessee shall, at its expense, provide and use suitable covered receptacles for the storing of all trash, garbage and all refuse created during the conduct of Lessee’s occupation of the Premises, and shall provide for the complete and proper removal and disposal away from the Airport of same. Piling of boxes, cartons, barrels, construction debris and other similar items in an unsightly or unsafe manner on or about the Premises, which may produce substantial attractants for hazardous wildlife as described in FAA Advisory Circular 150/5200-33B (or any amendments or successors thereto), is forbidden.

G. The storage, handling, use and disposal of all Hazardous Materials, as defined by federal, state and local laws, shall be in compliance with all applicable licenses, permits, certificates or other authorizations obtained by Lessee and in compliance with all applicable federal, state and local laws governing the storage, handling, use and disposal of same.

H. Lessee, its subtenants, and their respective agents, employees, patrons, guests, invitees and suppliers of service or furnishers of materials shall have the right of ingress to and egress
from the Premises, subject to any current and future security restrictions or requirements (including those of Future Sublessee).

I. In addition to rents and fees, Lessee shall, at its expense, pay all real property taxes and assessments that are now and may be levied or imposed upon the Premises and any real, leasehold and personal properties situated or placed thereon. Lessee shall be permitted to protest or contest, in a manner specified by Lessor, the validity or amount of any such real property tax or assessment. Lessor retains the sole right and obligation to file such protest or contest with the proper taxing authority; however, Lessee shall provide all necessary information and required legal or appraisal services relating to such protest or contest to Lessor at Lessee’s sole cost and expense. Lessor shall bill Lessee and Lessee shall pay the invoiced amount to Lessor within thirty (30) days after receipt of invoice. Lessee’s right to protest or contest taxes and assessments hereunder does not relieve Lessee of the obligation to pay taxes to Lessor unless Lessor receives a waiver from the applicable taxing authority.

J. Lessee shall have all utility accounts for the Premises separately metered and placed in its name. Lessee shall pay when due all utility charges (i.e., water, sanitary sewer, natural gas and electric) directly to the utility companies or municipalities providing such utility service. Lessee shall notify Lessor immediately upon termination of any utility account. Lessor may, at its option, place such terminated account in its name. In the event Lessor, willingly or otherwise, assumes the responsibilities for providing water, sanitary sewer, natural gas or electric services to the Premises during the Lessee’s tenancy, Lessee shall pay to Lessor the higher of: i) the prevailing rates for similar type utility services offered by utility companies and/or municipalities providing utilities to similar utility users located in Dayton, Ohio or, ii) the actual cost incurred by the Lessor in providing the utility service to the Lessee. If Lessor bills Lessee for any involuntary assumption of utilities, Lessor may include a Fifteen Percent (15%) administrative charge.

K. Lessee and its subtenants shall not erect, allow or permit to be maintained on the Premises, or upon the exterior of any improvement on the Premises, any billboards or advertising signs, except those which have the prior written approval of Lessor. Lessee and Future Sublessee may maintain on the Premises, or on the exterior of the Facility (but not the roof), its name in neatly arranged electric, neon or other type sign or signs; with the size and type of sign or signs subject to Lessor’s prior approval.

L. Lessee and Future Sublessee may make minor alterations and changes to the Premises and Facility as Lessee or Future Sublessee may, at any time during the term hereof, find necessary or convenient for its use of the Premises or Facility. Any additions, alterations, demolition or changes to the Premises or Facility and improvements of a material, substantial or structural nature, shall be permitted under this Lease, with the prior written approval of Lessor.

**ARTICLE V - TERM**
The Commencement Date shall be the date of execution of this Lease by the Lessor. This Lease shall begin on the Commencement Date and shall be effective for a period of forty-nine (49) years ("Term"), unless terminated earlier in accordance with the provisions of this Lease.

**ARTICLE VI – GROUND RENT AND LANDING FEES**

A. During the term of this Lease, Lessee shall pay to Lessor the following rental for the Premises:

1. From the Commencement Date of the Lease, and continuing for a period of five years, Lessee shall pay to Lessor rent in the amount of Nine Cents ($0.09) per square foot per year on the total 694,433.52 square foot Premises. For Years 1 through 5 the annual rent shall be Sixty-Two Thousand Four Hundred Ninety-Nine Dollars and Two Cents ($62,499.02).

2. Beginning on the fifth anniversary of the Commencement Date, and every fifth year thereafter, the rent to be paid for the succeeding five (5) year period shall be increased by Two Cents ($0.02) per square foot.

B. The rental rates stated in Section A above are based on the intended use of the property as aeronautical use. In the event all or part of the Premises cease to be used for aeronautical purposes during any period of the Term of this Lease, the rental rates shall be revised to reflect the then-fair market value of the Premises based on an appraisal in accordance with FAA requirements.

C. All rents/fees due under this Lease shall be paid in equal monthly installments, due in advance on the first day of the month and without notice, and sent to Lessor at the following address:

    City of Dayton, Ohio  
P.O. Box 632094  
Cincinnati, OH 45202

    or such other address as Lessor may specify in writing.

D. Without waiving any other right or action available to Lessor in the event of default in payment of rents, fees, charges or any other financial obligation hereunder, if Lessee is delinquent for a period of thirty (30) days or more in paying to Lessor any amount(s) due and owing to Lessor pursuant to this Lease, Lessee shall pay to Lessor a late charge thereon calculated at the rate of one percent (1%) per month from the date such item was due and owing until full payment including late charges have been paid. Such late charges shall not occur with respect to disputed items being contested in good faith by Lessee.

E. **Landing Fees.** Lessee shall pay monthly to Lessor fees for Revenue Landings for the preceding month. The landing fee shall be determined in accordance with the rates and charges annually adopted by resolution of the Commission of the City of Dayton. Lessee’s landing fees shall be the product of the landing fee rate established by the City resolution
and Lessee’s total landed weight for the month. Lessee’s landed weight for the month shall be determined as the sum of the products obtained by multiplying the Maximum Gross Landed Weight of each type of landed aircraft by the number of Revenue Landings of each said aircraft during such month. “Revenue Landing” means any aircraft landing at the Airport for which Lessee or its subtenant makes a charge or for which revenue is derived by Lessee or its subtenant for the transportation by air of persons, property or mail or maintenance, repair and overhaul of the aircraft.

ARTICLE VII – RIGHTS AND OBLIGATIONS OF LESSOR

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

B. Lessor’s Director of Aviation and his duly authorized representatives shall have the right to enter the Premises for the purposes of inspecting the Premises and doing any and all things which the Lessor is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport. Except for emergencies or when required by law, Lessor agrees to provide twenty-four (24) hours’ notice to Lessee of its intent to enter the Premises, except during construction, during which period no notice is required.

Lessor and Lessee recognize that Future Sublessee’s government contracts impose specific restrictions and requirements regarding Lessor’s and Lessee’s right to entry into certain areas of the Premises, and Lessor and Lessee hereby agree to abide by such restrictions and Future Sublessee’s security requirements as set forth in the sublease between Lessee and Future Sublessee (“Sublease”). One such restriction is that in no instance shall non-United States citizens be allowed to access the Premises without the prior consent of Future Sublessee; a Future Sublessee escort may be required for access to government specified high security areas. The parties specifically agree that, notwithstanding any provision of this Lease to the contrary, the aforementioned restrictions and Future Sublessee’s security requirements shall govern all instances respecting Lessor’s, Lessee’s or any of their agents’ or employees’ right of entry (or re-entry) to the Premises wherever contained in this Lease or in any agreement, document or instrument contemplated by or related to this Lease. For purposes of this Lease, a United States citizen is a person that provides proof of American citizenship evidenced by a valid birth certificate or passport and a government issued identification card. Lessor and Lessee agree that in the event of a conflict between this Lease and Future Sublessee’s security requirements, Future Sublessee’s security requirements shall control.

C. Lessor warrants quiet enjoyment of the rights and privileges granted herein, during the term hereof, upon the performance of Lessee’s covenants contained herein and subject to Section B of this Article VII. Lessor agrees that all rules, regulations and other provisions governing the use of the Premises shall not be applied discriminately against Lessee or its subtenants and shall apply to all tenants at the Airport.
D. Nothing contained herein shall prohibit Lessor from granting easements, utility or otherwise, as long as said easements would not restrict Lessee’s use of the Premises for the purposes stated herein. All costs associated with granting said easements or executing activities for which said easements are granted shall be borne by Lessor or others; no cost shall be transferred to Lessee.

E. If Lessee fails to provide and maintain trash removal, mowing, snow removal or other required maintenance, Lessor shall have the right, but not the obligation, to provide or perform said services and to bill Lessee for the costs of said services plus a Fifteen Percent (15%) administrative fee, which Lessee agrees to pay.

ARTICLE VIII - NON-DISCRIMINATION

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

B. Lessee, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that; (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities, (2) in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21 and as said regulations as may be amended, superseded or modified.

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

ARTICLE IX - INDEMNIFICATION

A. Lessee shall defend, indemnify, save and hold harmless Lessor, its elected officials, officers, agents and employees, and Future Sublessee from and against any and all claims and actions, and all expenses incidental to the investigation and defense thereof, based
upon or arising out of any accident or damages suffered by third persons and arising from,
or in any way connected with the use or occupancy of the Premises, and/or any condition
of the Premises, fixtures, structures, equipment or other improvements thereon, and/or
Lessee’s exercise of any right granted herein, and/or Lessee’s performance for breach or
default in the performance of any obligation to be performed pursuant to this Lease, and/or
any intentional, wrongful or negligent act or omission of Lessee, its agents, contractors
and/or employees.

It is agreed that, to the extent permitted by law, no agreement or covenant by Lessee under
this Subsection A shall include liability or damages for injury to persons or damage to
property caused by or resulting from the sole negligence of Lessor, its agents or employees.

B. Lessee shall defend, indemnify, save and hold harmless Lessor and Future Sublessee, their
respective elected officials, officers, directors, agents and employees, from and against any
mechanics or other lien or order for the payment of money filed against the Premises,
Lessor or any property of Lessor, arising out of any act or omission of Lessee or anyone
claiming through or under Lessee. Lessee shall, at Lessee’s expense, cause the same to be
cancelled or discharged of record and shall save and hold harmless Lessor and Future
Sublessee from and against any and all costs, expense, claims, losses or damages including
reasonable attorney’s fees resulting therefrom or by reason thereof.

C. Lessor shall not be liable to Lessee or its subtenants, agents, representatives, contractors or
employees, for any injury to, or death of, any of them or of any other person or for any
damage to any of Lessee’s property or loss of revenue, caused by any third person in the
maintenance, construction, or operation of facilities at the Airport, or caused by any third
person using the Airport, or caused by any third person navigating any aircraft on or over
the Airport. Lessor shall not be liable to Lessee for damage to property of Lessee or any
loss of revenues to Lessee resulting from Lessor’s acts or omissions in the maintenance
and operation of the Airport or failure to operate the Airport.

D. The obligations of Lessee under this Article IX shall survive the termination of this Lease
and shall not be affected in any way by the amount of or the absence in any case of covering
insurance, or by the failure or refusal of any insurance carrier to perform any obligation on
its part under insurance policies affecting the Premises or any part thereof.

E. The Lessor’s elected officials, officers, agents and employees, shall have absolutely no
personal liability with respect to any provision of this Lease or any obligation or liability
arising from this Lease or in connection with this Lease or the Premises in the event of a
breach or default by Lessor of any of its obligations.

F. Notwithstanding any other provision of this Lease to the contrary, to the extent permitted
by law, Lessee waives any and every claim for recovery from the Lessor for any and all
loss or damage to the Premises or to the contents thereof, which loss or damage is covered
by valid and collectable physical damage insurance policies maintained by Lessee or which
would have been recoverable if the insurance required hereunder had been maintained by
Lessee, to the extent that such loss or damage is recoverable, or would have been
recoverable, as applicable, under said insurance policies. As this waiver will preclude the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), Lessee agrees to give each insurance company which has issued, or in the future may issue, its policies of physical damage insurance, written notice of the terms of this waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverage by reason of said waiver. Lessee shall require any subtenant to include similar waivers of subrogation in favor of the Lessor.

ARTICLE X - INSURANCE

A. Lessee, at its sole cost and expense, shall procure and maintain, or cause to be procured and maintained, at all times during the term of this Lease commencing on the Commencement Date unless otherwise specified herein, the following insurance, with insurance companies authorized to do business in the State of Ohio and having at least an “A” rating from A. M. Best, or any successor thereto, and covering all operations under this Lease, whether performed by Lessee or by its contractors:

1. Commercial Liability Insurance (Primary and Umbrella):

   Commercial Liability Insurance with limits of not less than Ten Million Dollars ($10,000,000) per occurrence combined single limit, for bodily injury and property damage liability. Coverage extensions shall include the following: All Premises and operations, completed operations, explosion, collapse, underground, independent contractors, broad form property damage, separation of insured and contractual liability (with no limitation endorsement). The Lessor shall be named as additional insured, on a primary, non-contributory basis for any liability arising directly or indirectly from this Lease.

2. All Risk Property Insurance:

   i. Lessee shall obtain an “All Risk Property” policy, including improvements and betterments covering damage to buildings, in the amount of full replacement value of the improvements and betterments on the Premises. Lessor is to be named as a loss payee on said policy or policies of insurance.

   ii. Lessee shall be responsible for all loss or damage to personal property (including but not limited to material, equipment, tools and supplies), owned or rented by Lessee. When Lessee undertakes any improvement, construction or repair project on or to the Premises, an “All Risk Blanket Builders Risk Insurance” shall be provided by Lessee to cover at replacement cost the materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility. Coverage extensions shall include the following: right to partial occupancy, material stored off-site and in transit, earthquake, faulty workmanship or materials, extra expense, and loss of use of property. The Lessor shall be named as loss payee on said policy or policies of insurance.
3. **Automobile liability insurance:**

If vehicular access is limited to land side, then auto insurance will not be required. In the event Lessee intends in the future to use any motor vehicles (owned, non-owned and hired) in connection with this Lease, Lessee shall provide Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars ($1,000,000) per occurrence combined single limit, for bodily injury and property damage. Lessor is to be named as an additional insured on a primary, non-contributory basis on said policy or policies.

B. Original certificates of insurance evidencing the required coverage to be in force on the Commencement Date of this Lease as set forth herein, and all renewal certificates of such insurance, shall be provided to Lessor. All such policies shall name the City of Dayton, Ohio, its elected officials, officers, agents, volunteers and employees as additional insureds. At the Lessor’s request, Lessee shall furnish complete copies of all policies of insurance. The receipt of any certificate or policy does not constitute agreement by the Lessor that the insurance requirements in the Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Lease. The failure of the Lessor to obtain certificates or other insurance evidence from Lessee or its contractors shall not be deemed to be a waiver by the Lessor. Lessee or its contractors shall advise all insurers of these Lease provisions regarding insurance. Non-conforming insurance shall not relieve Lessee or its contractors of their obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Lease, and the Lessor retains the right to terminate this Lease as provided in Article XV unless proper evidence of insurance is provided. All policies of insurance, excluding the insurance required of Lessee’s contractors, shall provide for a minimum of thirty (30) days prior written notice to be given to the Lessor in the event coverage is substantially changed, canceled, or non-renewed.

C. If Lessee fails to obtain or maintain any of the insurance policies under this Lease or to pay any premium in whole or in part when due, Lessor may (without waiving or releasing any obligation or default by Lessee hereunder) obtain and maintain such insurance policies and/or take any action which Lessor deems appropriate. In such instances, reasonable attorney’s fees, court costs and expenses, shall be reimbursed by the Lessee upon demand by Lessor.

D. Lessee shall require all contractors to carry the insurance required herein, or Lessee or its contractors may provide the coverage for any or all contractors, and, if so, the evidence of insurance submitted shall so stipulate. Any and all deductibles or self-insured retentions on referenced insurance coverages shall be borne by Lessee or its contractors. Lessee and its contractors agree that insurers shall waive their rights of subrogation against the Lessor, its employees, elected official, agents, or representatives. Lessee and its contractors expressly understand and agree that any coverages and limits furnished by Lessee, or its contractors shall in no way limit the Lessee or its contractors’ liabilities and responsibilities specified within this Lease or by law. Lessee and its contractors expressly understand and agree that
any insurance or self-insurance programs maintained by the Lessor shall not contribute with insurance provided by the Lessee or its contractors under this Lease. If Lessee or its contractors desire additional coverage, higher limits of liability, or other modifications for its own protection, then Lessee or its contractors shall each be responsible for the acquisition and cost of such additional protection.

E. The insurance required hereunder shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law. The Lessor maintains the right to modify, delete, alter or change these requirements.

F. The insurance required by this Lease, at the option of Lessee or contractors, may be affected by blanket or umbrella policies issued to Lessee or contractors covering the Premises and other properties owned or leased by Lessee or contractors, provided that the policies otherwise comply with the provisions of this Lease and allocate to the Premises the specified coverage, without possibility of reduction or coinsurance by reason of, or damage to, any other premises covered therein.

G. Lessee shall maintain, at all times during the term hereof, Workers’ Compensation for its employees employed or providing service(s) upon the Premises in such amounts as prescribed under Ohio law.

ARTICLE XI – DAMAGE OR DESTRUCTION AND DISPOSITION OF THE FACILITY

A. If the Facility or any other improvements located on the Premises are damaged, in whole or in part, by fire or other casualty, Lessee shall, at Lessee’s expense and as soon as reasonably possible, repair the damage. Lessee may use insurance proceeds from insurance it carried, or caused to be carried, to pay for the work as it progresses, and the Lessor shall permit any such proceeds to be made available.

B. If any improvements to the Premises are not diligently repaired by Lessee where required, or if any space is deleted from the Premises, then the Lessor shall be entitled to all insurance proceeds payable on account of improvements in such space. Where the Lessee is obligated to repair or restore improvements, Lessee must do so notwithstanding that insurance proceeds may be insufficient.

C. Upon termination of this Lease, Lessee at its option may, with Future Sublessee’s consent while Future Sublessee is a tenant of the Facility, choose to remove the hangar and office facility and remaining improvements and return the Premises to arable land as originally tendered to Lessee. Lessee may execute this option of removal by providing written notice to the Director of Aviation (and to Future Sublessee while Future Sublessee is a tenant of the Facility) of its intention to remove the Facility and other improvements no later than six (6) months prior to the scheduled termination of this Lease.
Notwithstanding the foregoing or any other provision of this Lease, Lessee agrees, at all times while Future Sublessee is a tenant of the Facility, not to choose to remove the Facility or any portion thereof from the Premises. Additionally, notwithstanding the foregoing or any other provision of this Lease, Lessor and Lessee acknowledge and agree that all personal property and trade fixtures of Future Sublessee (including, without limitation, any rooftop communications equipment) is and shall remain the sole property of Future Sublessee.

If Lessee does not timely exercise the removal option, then upon termination of this Lease (with Future Sublessee’s consent while Future Sublessee is a tenant of the Facility and is not in default under its sublease), title and ownership of the Facility and any other improvements made on or to the Premises (but not any personal property or trade fixtures of Future Sublessee) shall revert to the Lessor free and clear of any liens, mortgage(s) or other encumbrances other than the following “Permitted Encumbrances:” (a) taxes and assessments, which are a lien on the Premises and Facility and improvements but not yet due and payable; (b) applicable zoning and other government laws, ordinances and regulations of any kind or nature; (c) easements, covenants, conditions and restrictions of record as of the Commencement Date and those created after the Commencement Date, which are approved, in advance, by the Lessor; and (d) liens and other encumbrances created by Lessor. Lessee shall take all actions and execute any and all documents necessary to transfer title and ownership of the Facility and improvements (but not any personal property or trade fixtures of Future Sublessee) to Lessor, and Lessor shall not be required to pay Lessee for such transfer of the Facility and improvements. Notwithstanding anything to the contrary, Lessee shall be entitled to remove any and all trade fixtures, equipment and other personal property of Lessee (but not any personal property or trade fixtures of Future Sublessee) situated on the Premises. Until termination of this Lease title to the Facility and improvements and all other items installed thereon and any repair, addition, alteration or replacement thereto (but not any personal property or trade fixtures of Future Sublessee) shall remain Lessee’s property.

ARTICLE XII - ASSIGNMENT AND SUBLetting

A. Except as provided directly below in Section B., Lessee is prohibited from selling, assigning or transferring this Lease without the prior written consent of Lessor, which consent shall not be unreasonably withheld, delayed or conditioned. Any sale, assignment or transfer in violation hereof shall be void.

B. Lessee may sublet the Premises to the Dayton-Montgomery County Port Authority, who will lease the same to Lessee. Lessee may sublet the Premises and any improvements thereon to Future Sublessee or any future tenant of the Facility. Additionally, Lessee may assign this Lease to a Leasehold Mortgagee (as defined below). Neither Lessee nor any of the sublessees described above may further sublease or let the Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld, delayed or conditioned; provided, however, that Future Sublessee may sublease or assign the Premises as permitted by its sublease without first obtaining the prior written consent of Lessor.
ARTICLE XIII - SUCCESSORS AND ASSIGNS BOUND BY COVENANTS

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

ARTICLE XIV - TERMINATION BY LESSEE

A. In addition to all other remedies available to the Lessee under this Lease or at law, this Lease shall be subject to termination by Lessee should any one or more of the following events occur:

1. The issuance by any court of competent jurisdiction of any injunction, order or decree preventing or restraining the use of the Airport for usual airport purposes in its entirety, or the use of any part thereof used by Lessee and necessary for Lessee’s operations on the Airport, for a period of thirty (30) consecutive days and results in material interference with Lessee’s normal business operations at and from the Premises.

2. Lessor’s default of any material term or condition of this Lease, and the failure of Lessor to cure such default or to take prompt action to cure such default, within a period of thirty (30) days after receipt of written notice to cure the default; or if by reason of the nature of such default it cannot be cured within the thirty (30) days, then Lessee shall have the right to terminate this Lease if the Lessor fails to commence the remedying of such default within the thirty (30) day period.

Notwithstanding the foregoing, in the event that Lessee shall elect to terminate this Lease under this Section A, Lessee shall provide at least sixty (60) day advance written notice of termination to Lessor and Future Sublessee.

ARTICLE XV - TERMINATION BY LESSOR

A. In addition to all other remedies available to Lessor under this Lease or at law, this Lease shall be subject to termination by Lessor should any one or more of the following events occur:

1. If a court shall take jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act.

2. If a receiver for Lessee’s assets is appointed by a court of competent jurisdiction.

3. If Lessee shall be divested of its rights, powers and privileges under this Lease by other operation of law.

4. If Lessee defaults in the payment of any amounts due to Lessor hereunder and Lessee or its subtenant fails to cure such default within thirty (30) days after Lessor notifies Lessee and its subtenant in writing of the default.
5. If Lessee defaults in the performance of any term or condition of this Lease, but excluding the payment of amounts due and owning hereunder, and Lessee or its subtenant fails to cure such default within thirty (30) days from receipt of written notice (which must also be provided to Lessee’s subtenant) to cure such default; or if by reason of the nature of such default the same cannot be remedied within said thirty (30) days, then Lessor shall have the right to terminate this Lease if the Lessee or its subtenant fails to commence the remedying of such default within the thirty (30) day period or, after having so commenced, fails thereafter to continue with due diligence the remedying thereof.

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

Notwithstanding the foregoing, neither Lessor nor Lessee will terminate this Lease without the prior written consent of any leasehold mortgagee and Future Sublessee.

ARTICLE XVI - HOLDING OVER

In the event Lessee holds over and remains in possession of the Premises and rights granted herein after termination of this Lease and without any written renewal thereof, such holding over shall not operate as a renewal or extension of this Lease but shall only create a tenancy from month to month that may be terminated at any time by Lessor or Lessee. Lessor will provide Lessee with sixty (60) days advance written notice of any increase in the rental amount due during such holdover tenancy period in excess of 1/12th the rental amount for the immediately preceding 12-month period.

ARTICLE XVII - INVALID PROVISIONS

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

ARTICLE XVIII - WAIVER

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

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

ARTICLE XIX – CONDEMNATION

A. If the entire Premises is condemned and taken for public use, this Lease shall automatically terminate on such date that the title shall vest in the condemnor. Rent and any additional fees and charges under this Lease shall be prorated as of the date of such termination; and upon termination, Lessee shall satisfy and cause to be released any mortgages, liens, or other encumbrances placed or suffered to be placed on the Premises by Lessee.

B. Any award or compensation paid on account of any taking or condemnation described herein shall be equitably divided between Lessor and Lessee, taking into consideration each party’s respective interest in the Premises.

ARTICLE XX – LEASEHOLD MORTGAGES; TITLE TO IMPROVEMENTS UPON TERMINATION

A. Lessee may, without Lessor’s consent, mortgage its interest in this Lease as collateral security, pursuant to a leasehold mortgage (“Leasehold Mortgage”). If Lessee shall mortgage this leasehold, Lessee shall send to Lessor the pertinent information/recording data with respect thereto as soon as the same is available. In any event, from and after the date Lessor receives from Lessee or the holder of such Leasehold Mortgage a true copy thereof, together with written notice specifying the name and address of the leasehold mortgagee under the Leasehold Mortgage (“Leasehold Mortgagee”), Lessor agrees that so long as any such Leasehold Mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the holder to Lessor, the following provisions shall apply:

1. There shall be no voluntary cancellation, surrender or material modification of this Lease by joint action of Lessor and Lessee without the prior consent in writing of the Leasehold Mortgagee and Future Sublessee while it is a tenant.

2. Lessor shall, upon serving Lessee with any notice of default, simultaneously serve a copy of such notice upon the holder of such Leasehold Mortgage and Future Sublessee while it is a tenant. The Leasehold Mortgagee shall thereupon have the
same period as Lessee under this Lease, if any, after service of such notice upon it, to remedy or cause to be remedied such default, and Lessor shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Lessee. The foregoing rights and remedies of the Leasehold Mortgagee shall be available to Future Sublessee while it is a tenant if not exercised by the Leasehold Mortgagee.

3. Anything herein contained notwithstanding, if any Event of Default shall occur which, pursuant to any provision of this Lease, entitles Lessor to terminate this Lease, then the Leasehold Mortgagee shall have thirty days from the date of service of notice of that Event of Default upon such Leasehold Mortgagee, to cure such Event of Default and upon curing such Event of Default Lessor shall not be entitled to terminate this Lease and any notice of termination theretofore given shall be void and of no effect. The foregoing rights and remedies of the Leasehold Mortgagee shall be available to Future Sublessee while it is a tenant if not exercised by the Leasehold Mortgagee.

4. If Lessor shall elect to terminate this Lease by reason of any Event of Default of Lessee, the Leasehold Mortgagee shall not only have the right to nullify any notice of termination by curing such Event of Default, as stated above in paragraph 3, but shall also have the right to postpone and extend the specified date for the termination of this Lease as fixed by Lessor in its notice of termination, but only if the Leasehold Mortgagee requires possession of the Premises in order to cure any such Event of Default and the Leasehold Mortgagee undertakes in writing to cure any such Event of Default upon obtaining possession; provided that such Leasehold Mortgagee shall cure or cause to be cured any then-existing money defaults or any other defaults that do not require Leasehold Mortgagee to obtain possession of the Premises and meanwhile pay the ground rent and comply with and perform all of the other terms, conditions and provisions of this Lease on Lessee’s part to be complied with and performed, and provided further that the Leasehold Mortgagee shall forthwith take steps to assign, acquire or sell Lessee’s interest in this Lease by foreclosure of the Leasehold Mortgage or otherwise within thirty (30) days of the default notice and shall prosecute the same to completion with reasonable due diligence. The foregoing rights and remedies of the Leasehold Mortgagee shall be available to Future Sublessee while it is a tenant if not exercised by the Leasehold Mortgagee.

5. Lessor agrees that the name of the Leasehold Mortgagee may be added by Lessee to the “Loss Payable Endorsement” of any and all insurance policies required to be carried by Lessee under this Lease on condition that the insurance proceeds are to be applied in the manner specified in this Lease and that the Leasehold Mortgage or collateral document shall so provide.

6. Lessor agrees that in the event of termination of this Lease for any reason (other than an Event of Default not cured by Leasehold Mortgagee), then Lessor will enter into a new lease of the Premises with the Leasehold Mortgagee or its nominee(s),
or Future Sublessee (at its option) if the Leasehold Mortgagee elects not to enter into a new lease of the Premises, for the remainder of the Term of this Lease, effective as of the date of such termination, at the ground rent and upon the terms, provisions, covenants and agreements as herein contained and subject only to the same conditions of title as this Lease is subject to on the date of the execution hereof, and to the rights, if any, of any parties then in possession of any part of the Premises, and to any defects or encumbrances created by Lessee or anyone claiming by, through or under Lessee, provided:

a. Said Leasehold Mortgagee or its nominee(s), or Future Sublessee if applicable, shall make written request upon Lessor for such new lease within thirty (30) days after the date of such termination and such written request is accompanied by payment to Lessor of all sums then due to Lessor under this Lease;

b. Said Leasehold Mortgagee or its nominee(s), or Future Sublessee if applicable, shall pay to Lessor at the time of the execution and delivery of said new lease, any and all sums which would at the time of the execution and delivery thereof, be due pursuant to this Lease but for such termination, and in addition thereto, any expenses, including reasonable attorney’s fees, to which Lessor shall have been subjected by reason of such Event of Default;

c. Said Leasehold Mortgagee or its nominee(s), or Future Sublessee if applicable, shall perform and observe all covenants herein contained on Lessee’s part to be performed and shall further remedy any other conditions which Lessee under the terminated lease was obligated to perform under the terms of this Lease;

d. Such new lease shall be expressly made subject to the rights, if any, of Lessee under the terminated lease; and

e. The lessee under such new lease shall have only the same right, title and interest in and to the buildings and improvements on the Premises as Lessee had under the terminated lease.

7. Nothing herein contained shall require the Leasehold Mortgagee or its nominee(s), or Future Sublessee if applicable, to cure any Event of Default of Lessee.

8. Lessor shall, upon request, execute, acknowledge and deliver to the Leasehold Mortgagee, an agreement prepared at the sole cost and expense of lessee, in favor of each Leasehold Mortgagee consistent with the provisions of this Section and containing other commercially reasonable provisions requested by the Leasehold Mortgagee (or Future Sublessee if applicable). The term “Leasehold Mortgage,” whenever used herein, shall include whatever security instruments are used in Ohio, such as, without limitation, deeds of trust, security deeds and conditional deeds, as
B. Title to improvements made to and upon the Premises, excluding trade fixtures, shall vest in Lessor at such time as this Lease is terminated. Title to the improvements shall be transferred to the Lessor. Upon termination of this Lease, Lessee shall surrender the Premises and the improvements thereon to Lessor in good condition subject to normal wear, tear and depreciation. Lessee’s obligation to deliver the Premises and improvements in good condition shall survive the termination of this Lease.

ARTICLE XXI – GENERAL PROVISIONS

A. The term Lessor, as used in this Lease, means the City of Dayton, Ohio and where this Lease speaks of approval and consent by Lessor, such approval is understood to be manifested by act of Lessor’s Director of Aviation, except as otherwise expressly stated in this Lease, and such consent or approval shall not be unreasonably withheld, conditioned or delayed. Where a response is required to be provided by Lessor, such response shall be provided in writing no later than thirty (30) days after the request for response.

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

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

or such other address as Lessor shall direct in writing.

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

Kevin Belt
SD Hangar Partners, LLC
19 North High Street
Akron, Ohio 44308

or such other address as Lessee shall direct in writing.

With a copy to: Lee S. Walko, Esq.
Brennan Manna Diamond
75 E. Market Street
Akron, OH 44308

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

D. Lessee and Lessor represent that each has carefully reviewed the terms and conditions of this Lease and are familiar with such terms and conditions and agrees faithfully to comply with the same to the extent to which said terms and conditions apply to its activities as authorized and required by this Lease.

E. By execution of this Lease, Lessee hereby irrevocably submits to the original jurisdiction of the courts located within the County of Montgomery, State of Ohio, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Lease.

F. Lessee (and any person claiming by or through Lessee) shall look solely to legally available Airport discretionary funds for enforcement of any liability of the Lessor under this Lease, and not any other funds or assets of the City of Dayton, Ohio whatsoever.

G. Neither Lessee nor any contractor of Lessee shall be entitled to claim any exemption from sales or use taxes or similar taxes by reason of the Lessor's ownership of fee title to the Premises.

H. By entering into this Lease, Lessor shall in no way be deemed a partner or joint venturer with Lessee, nor shall any term or provision hereof be construed in any way to grant, convey or create any rights or interests to any person or entity not a party to this Lease, except Future Sublessee as provided in Section L below.

I. Subject to Section L below, the parties may amend or modify this Lease, at any time, provided that no such amendment or modification shall be effective unless it is reduced to a writing, which makes specific reference to this Lease, executed by a duly authorized representative of Lessor and Lessee (and by Future Sublessee while Future Sublessee is a tenant of the Facility) and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.

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

K. Notwithstanding any provision of this Lease, Lessor and Lessee acknowledge and agree that Future Sublessee shall be and is an intended third-party beneficiary of this Lease and all rights, privileges and remedies granted or reserved for Future Sublessee's benefit herein. During the term (including any extensions or renewals) of the Sublease, this Lease shall not be amended, modified, or terminated (except in the event that the grounds for termination of this Lease are due to an uncured default by Future Sublessee under the Sublease), or any provision hereof released or waived without Future Sublessee's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. In the
event of any conflict between this Section and any other provision of this Lease, this Section shall control.

L. Lessor shall execute any reasonable recognition agreement as requested by any subtenant of Lessee to ensure that the subtenant’s leasehold interest in the Premises shall not be disturbed by Lessor in the event of any foreclosure action or deed in lieu thereof.

M. Simultaneously with the execution of this Lease, the parties shall execute and record in the real estate records of Montgomery County, Ohio, a memorandum of this Lease in the form attached hereto as Exhibit B and incorporated here by reference.

N. If, after the date of this Lease, Future Sublessee is determined, the parties agree to execute and deliver an amendment to this Lease, in form and content reasonably acceptable to Future Sublessee, which shall identify Future Sublessee and include any other changes to this Lease desired by the parties and Future Sublessee.

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

WITNESSED BY: SD HANGAR PARTNERS, LLC

________________________________________
By: ________________________________
Title: ________________________________

WITNESSED BY: CITY OF DAYTON, OHIO

________________________________________
City Manager
Date Executed: December ____, 2021

APPROVED AS TO FORM
AND CORRECTNESS:

________________________________________
City Attorney

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

December ______, 2021

Min/Bk. _________ Pg. ________________

________________________________________
Clerk of the Commission
Legal Description for 7.804 Acre Phase 1A Lease Area
Dayton International Airport
Section 5, Town 3, Range 6 East,
City of Dayton, Montgomery County, Ohio
December 06, 2021

Situated in Section 5, Town 3, Range 6 East, City of Dayton, Montgomery County, Ohio, being part of a 51.772 acres tract conveyed to the City of Dayton, recorded in Deed Book 1175, Page 158 (aka Airport Parcel 6), said tracts are part of Lot 81143 of the revised and consecutive number of lots on the plat of the City of Dayton and being more particularly described as follows;

Commencing from a 5/8" iron pin found at the intersection of the west line of the southeast quarter of said Section 5 and the centerline of Old Springfield Road, thence along said west line South 00°15'30" West, 30.50 feet to the south right-of-way line of Old Springfield Road;
thence along said south right-of-way line South 79°53'28" West, 215.73 feet;
thence along the southwestern lines of Phase 1 Lease the following four courses;
  1)  South 33°37'55" East, 372.18 feet;
  2)  North 56°22'10" East, 190.91 feet;
  3)  South 33°37'49" East, 301.07 feet;
  4)  North 56°24'29" East, 54.81 feet to the point of beginning of the following described tract of land;
thence along the southeastern line of Phase 1 Lease North 56°24'29" East, 419.74 feet;
thence South 33°33'16" East, 810.10 feet;
thence South 56°27'59" West, 419.74 feet;
thence North 33°33'16" West, 809.67 feet to the point of beginning, containing 7.804 acres, subject however to all covenants, conditions, restriction, and easements contained in any instrument of record pertaining to the above-described tract of land.

Bearings are based upon Dayton International Airport Control Coordinates.

This description was prepared by Farnsworth Group, Inc., 82 Remick Blvd., Suite B, Springboro, OH, under the direct supervision of David R. Barnhart, P.S. #7646.
Legal Description for 8.138 Acre Phase 1 Lease Parcel
Dayton International Airport
Section 5, Town 3, Range 6 East,
City of Dayton, Montgomery County, Ohio
December 06, 2021

Situated in Section 5, Town 3, Range 6 East, City of Dayton, Montgomery County, Ohio, being part of a 56.00 acres tract conveyed to the City of Dayton, recorded in Deed Microfiche 77-0725B12 (aka Airport Parcel 116) and part of a 51.772 acres tract conveyed to the City of Dayton, recorded in Deed Book 1175, Page 158 (aka Airport Parcel 6), said tracts are part of Lot 81143 of the revised and consecutive number of lots on the plat of the City of Dayton and being more particularly described as follows;

Commencing from a 5/8" iron pin found at the intersection of the west line of the southeast quarter of said Section 5 and the centerline of Old Springfield Road, thence along said west line South 00°15'30" West, 30.50 feet to the south right-of-way line of Old Springfield Road and beginning the point of beginning of the following described tract of land;

thence along said right-of-way line North 79°53'28" East, 30.52 feet to the east right-of-way line of Peters Pike;
thence along said east right-of-way line South 00°12'44" West, 3.93 feet;
thence North 88°08'43" East, 994.43 feet;
thence South 01°14'28" East, 100.16 feet;
thence South 56°30'00" West, 273.53 feet;
thence North 78°30'00" West, 50.18 feet;
thence South 56°24'29" West, 515.47 feet;
thence North 33°37'49" West, 301.07 feet;
thence South 56°22'10" West, 190.91 feet;
thence North 33°37'55" West, 372.18 feet to the south right-of-way line of Old Springfield Road;
thence along said right-of-way line North 79°53'28" East, 215.73 feet to the point of beginning, containing 8.138 acres, subject however to all covenants, conditions, restriction, and easements contained in any instrument of record pertaining to the above-described tract of land.

Bearings are based upon Dayton International Airport Control Coordinates.

This description was prepared by Farnsworth Group, Inc., 82 Remick Blvd., Suite B, Springboro, OH, under the direct supervision of David R. Barnhart, P.S. #7646.
Exhibit B

Form of Memorandum of Lease

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE is made and entered into on December _____, 2021 (the “Effective Date”) by and between SD HANGAR PARTNERS, LLC, an Ohio limited liability company (the “Lessees”) and the CITY OF DAYTON, a municipal corporation of the State of Ohio, having an address for purposes hereof at 101 West Third Street, Dayton, Ohio 45402 (hereinafter referred to as “Lessor” and sometimes the “City”), who represent as follows:

1. The name and address of the Lessee is SD Hangar Partners, LLC, 19 North High Street, Akron, Ohio 44308.

2. The name and address of Lessor is the City of Dayton, 101 West Third Street, Dayton, Ohio 45402.

3. Lessee and Lessor entered into a certain Lease dated December _____, 2021 (the “Lease”) with respect to certain demised premises further described on EXHIBIT A (the “Project Site”) attached hereto and made a part hereof by this reference.

4. Certain Facility improvements (as defined in the Lease) will be constructed on the Project Site.

5. The term of the Lease with respect to the Project Site shall commence on December _____, 2021, and will expire on the date occurring forty-nine (49) years after December _____, 2021; provided, the Lease is subject to earlier termination as described therein.

6. This Memorandum of Ground Lease is executed pursuant to Section 5301.251 of the Ohio Revised Code. The Lease is hereby incorporated by reference in and made a part of this Memorandum of Ground Lease as fully as if it were set forth herein in its entirety. All parties having or acquiring an interest in the property referred to herein are hereby given notice of all provisions, covenants and obligations contained in the Ground Lease.

7. This Memorandum of Ground Lease may be executed in counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute one and the same instrument.
IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Ground Lease as of the day and year first above set forth.

GROUND LESSEE:

SD HANGAR PARTNERS, LLC

By: ______________________________

Name: ____________________________

Title: _____________________________

STATE OF OHIO )
 ) SS:
COUNTY OF SUMMIT )

On this ____ day of December, 2021, personally appeared before me, a Notary Public in and for the State of Ohio, SD Hangar Partners, LLC, by __________________, known to be the ______ of said City, who acknowledged that to be duly authorized to execute this Memorandum of Ground Lease and who acknowledged the signing and sealing of the said Memorandum of Ground Lease on behalf of said SD Hangar Partners, LLC to be a voluntary act and deed, and the voluntary act and deed of said SD Hangar Partners, LLC.

The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

______________________________
Notary Public

My commission expires: ___________
GROUND LESSOR:

CITY OF DAYTON, OHIO

By: ________________________________

Name: ________________________________

Title: ________________________________

APPROVED AS TO FORM
AND CORRECTNESS:

__________________________________________
City Attorney

STATE OF OHIO )
SS: )
COUNTY OF MONTGOMERY )

On this ___ day of December, 2021, personally appeared before me, a Notary Public in
and for the State of Ohio, City of Dayton, Ohio, by ____________________________, known to be
the ___________________________________ of said City, who acknowledged that to be duly authorized to
execute this Agreement and who acknowledged the signing and sealing of the said Agreement on
behalf of said City to be a voluntary act and deed, and the voluntary act and deed of said City.

The notarial act certified hereby is an acknowledgement. No oath or affirmation was
administered to the signer with regard to the notarial act certified to hereby.

__________________________________________
Notary Public

My commission expires: _____________

This Instrument Prepared by:

Suzanne Beck, Esq.
City of Dayton, Department of Aviation
3600 Terminal Drive, Suite 300
Vandalia, Ohio 45377-1095
GROUND LEASE
AT THE DAYTON INTERNATIONAL AIRPORT

THIS GROUND LEASE ("Lease"), is made and entered into this ___ day of December, 2021, between the City of Dayton, Ohio ("Lessor"), a municipal corporation in and of the State of Ohio, and SD Hangar Partners, LLC, an Ohio limited liability company ("Lessee").

WITNESSETH THAT:

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

WHEREAS, Lessee desires to lease certain space at the Airport for the construction of a hangar and office facilities for aviation purposes, which Lessee will sublease to an entity to be determined (such entity, "Future Sublessee"); and

WHEREAS, Lessor deems it advantageous to itself, to the operation of the Airport and in the best interest of the public to lease unto Lessee certain unimproved land upon the terms and conditions set forth herein.

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

ARTICLE I - REPRESENTATIONS

A. Lessor owns the Premises (as this term is subsequently defined) and, to the best of its knowledge and belief, the Premises are free of liens, encumbrances and other matters that would affect title.

B. Lessee acknowledges that the entire cost for development and construction of the Facility (as this term is defined in Article II) shall be borne by Lessee. To this end, Lessee represents to Lessor and Future Sublessee that it has or will secure all the financing in an amount sufficient to undertake and complete the project.

C. Lessor leases to Lessee approximately 694,433.52 square feet of unimproved real property located at the Airport, as depicted in the attached and incorporated Exhibit A-1 and Exhibit A-2 (collectively, "Premises") for the exclusive use by the Lessee or its subtenant. Lessee accepts the Premises "as-is", and Lessor shall have no obligation to remediate, cure or correct any issues or problems with the Premises, except as necessary to cause Section D below to be accurate.

D. Lessor represents and warrants to Lessee and Future Sublessee that: (1) Lessor owns fee simple title to the Premises; (2) there are no mortgages, deeds of trust or other liens encumbering the Premises; and (3) this Lease and the lease of the Premises hereunder do not violate Lessor’s Charter or Code.
ARTICLE II – LEASE AND USE OF PREMISES

A. Lessee shall have the exclusive use of the Premises for the construction and operation of an office and hangar facility ("the Facility") for Lessee's or Lessee's subtenant's sole use for its aeronautical business activities, including the parking, storage, maintenance, construction, and repair of aircraft.

B. Lessee is prohibited from using the Premises to conduct any other commercial aviation business activity, including that of a fixed based operator. The Premises shall be used only for the aeronautical purposes specified in this Lease. Except as provided in this Lease, no other use of the Premises is permitted without the consent of Lessor.

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

D. If required, Lessee shall, at its sole expense, relocate, replace and maintain the Airport Operations Area ("AOA") perimeter fence on the Premises. Lessee shall work with Lessor and Future Sublessee to create an approved security plan prior to relocation of the AOA fence.

E. Lessor grants to Lessee and its subtenants the right to grant to public entities or public service corporations, for the purpose of serving only the Premises, rights of way or easements on or over the Premises for poles or conduits or both for telephone, electricity, water, sanitary or storm sewers or both, and for other utilities and municipal or special district services, provided that they are (1) directly related to the construction, operation, maintenance and/or repair of the Facility, and (2) subject to Lessor's prior written consent, which may be withheld in Lessor's reasonable discretion to the extent any such rights of way or easements would extend beyond the Term or violate or cause to be violated any FAA grant assurance or federal, state, or local law or regulation.

F. Lessor grants Lessee and its subtenants the right of access, ingress, egress, and regress to and from the Premises by Lessee and its subtenants and their respective employees, contractors, suppliers, service providers, guests, patrons, and invitees. Such right of access, ingress, egress, and regress shall be exercised in conformance with the terms and conditions of this Lease. Any other grants of such rights or easements by Lessor that burden or affect the Premises must be approved by Lessee and Future Sublessee.

G. Lessee, its subtenants, and their respective employees, agents, customers, invitees, and licensees shall have exclusive use of all vehicle parking lots located on the Premises.

H. Lessor agrees that Lessee and its subtenants shall have the right (but not the obligation) to receive services from ancillary facilities located on or serving the Premises such as (without limitation) fire suppression systems (foam or otherwise) and retention pond(s). Such
ancillary facilities shall not, in any manner, impair or restrict Lessee’s or its subtenants access to the Premises or the Facility.

**ARTICLE III – FEDERAL REQUIREMENTS**

Lessee shall comply with the following provisions:

A. Lessor reserves the right to further develop or improve the landing area of the Airport as it sees fit, without interference or hindrance, provided that such further development or improvement do not unreasonably interfere with the construction or operation of the Facility.

B. Lessor reserves the right, but shall not be obligated to the Lessee, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of the Lessee in this regard, provided that such direction and control does not unreasonably interfere with the construction or operation of the Facility.

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

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

E. Lessor reserves unto itself, its successors and assigns and subtenants, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises herein leased. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operation on the Airport.

F. Lessee expressly agrees for itself, its successors and assigns that it will not construct, nor permit to stand, on said Premises any building, structure, poles, trees, or other object, whether natural or otherwise, of a height in excess of 14 CFR Part 77 standards and requirements regarding obstructions in navigable airspace.

G. Lessor reserves unto itself, its successors and assigns and subtenants, for the use and benefit of the public, a right of entry onto the real property herein conveyed to cut, remove, or lower any building, structure, poles, trees, or other object, whether natural or otherwise, of a height in excess of 14 CFR Part 77 standards and requirements regarding obstructions in navigable airspace. This public right shall include the right to mark or light as obstructions to air navigation, any and all buildings, structures, poles, trees, or other object that may at any time project or extend above said surfaces.
H. Lessee expressly agrees for itself, its successors and assigns, to not hereafter use, nor permit, nor suffer use of the Premises in such a manner as to create electrical interference with radio communication between the installation upon the Airport and aircraft or as to make it difficult for fliers to distinguish between airport lights and others, or as to impair visibility in the vicinity of the Airport, or as otherwise to endanger the landing, taking off, or maneuvering of aircraft.

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

ARTICLE IV - RIGHTS AND OBLIGATIONS OF LESSEE

A. Lessee shall, at its expense, provide for the complete and proper maintenance of the Premises. For purposes of this Lease, maintenance activities to be performed and completed by Lessee includes, but is not necessarily limited to, the following:

1. Vehicular parking and entrance drive snow removal, lighting repair, brooming, striping, sealing, replacement and overlay of all paved or asphalt surfaces located on the Premises;

2. Aircraft ramp snow removal, Lighting repair, brooming, striping, and replacement;

3. Mowing, planting and maintenance of grass areas and landscaping to the Premises lease line;

4. Maintenance of all utility lines serving the Facility to lease line or metering point, whichever is larger;

5. Maintenance of storm drainage structures and storm lines on the Premises and solely serving the Facility and maintenance of any oil separators in storm and sanitary sewer lines serving the Premises;

6. Maintenance, testing and service of any fire suppression system(s) and fire alarm system(s) within the Facility in accordance with all applicable codes and requirements;

7. Complete interior and exterior, including structural, maintenance; and

8. Maintenance of the AOA security fence surrounding the Premises.

B. Lessee shall, at its expense, arrange for and ensure that its employees, agents and contractors operating under this Lease are properly identified with an identification badge issued by the Airport, and that said badge is displayed at all times while such persons are in the Security Identification Display Area, as defined by the Airport’s approved security
program and Federal Aviation Regulations, Part 107, and any amendments or revisions thereto.

C. Lessee and its employees, agents and contractors shall at all times comply with the Airport Rules and Regulations in effect on the Commencement Date and any future amendments or revisions thereto. The Airport Rules and Regulations may be accessed at http://www.flydayton.com/wp-content/uploads/2018/02/DAY-Rules-and-Regulations-October-4-2017.pdf or may be obtained from Airport administration upon request.

D. Lessee shall, at its expense, obtain from all authorities having jurisdiction over the operations and activities to be conducted upon the Premises, including, but not limited to, the Federal Aviation Administration ("FAA"), Transportation Security Administration ("TSA"), Environmental Protection Agency ("EPA"), Ohio Environmental Protection Agency ("OEPA"), and state and local fire protection agencies, all licenses, certificates, permits, registrations or other authorizations which may be required for the conduct of its operations and activities (including, without limitation, construction of the Facility), and/or necessary to comply with any requirements of this Lease and/or in the exercise of any right or obligation granted in this Lease, including, but not limited to, any licenses, permits, procedures, or sampling required for Lessor to comply with the Dayton International Airport and the City’s Stormwater Pollution Prevention Plan (“SWPP”). Lessee, however, shall not be deemed to have waived any right to exhaust administrative and/or judicial remedies that may be available to Lessee regarding any dispute or contest related to any authorization required. Upon request by Lessor, Lessee shall furnish to Lessor any and all permits or certificates required under this Lease.

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

F. Lessee shall, at its expense, provide and use suitable covered receptacles for the storing of all trash, garbage and all refuse created during the conduct of Lessee’s occupation of the Premises, and shall provide for the complete and proper removal and disposal away from the Airport of same. Piling of boxes, cartons, barrels, construction debris and other similar items in an unsightly or unsafe manner on or about the Premises, which may produce substantial attractants for hazardous wildlife as described in FAA Advisory Circular 150/5200-33B (or any amendments or successors thereto), is forbidden.

G. The storage, handling, use and disposal of all Hazardous Materials, as defined by federal, state and local laws, shall be in compliance with all applicable licenses, permits, certificates or other authorizations obtained by Lessee and in compliance with all applicable federal, state and local laws governing the storage, handling, use and disposal of same.

H. Lessee, its subtenants, and their respective agents, employees, patrons, guests, invitees and suppliers of service or furnishers of materials shall have the right of ingress to and egress
from the Premises, subject to any current and future security restrictions or requirements (including those of Future Sublessee).

I. In addition to rents and fees, Lessee shall, at its expense, pay all real property taxes and assessments that are now and may be levied or imposed upon the Premises and any real, leasehold and personal properties situated or placed thereon. Lessee shall be permitted to protest or contest, in a manner specified by Lessor, the validity or amount of any such real property tax or assessment. Lessor retains the sole right and obligation to file such protest or contest with the proper taxing authority; however, Lessee shall provide all necessary information and required legal or appraisal services relating to such protest or contest to Lessor at Lessee’s sole cost and expense. Lessor shall bill Lessee and Lessee shall pay the invoiced amount to Lessor within thirty (30) days after receipt of invoice. Lessee’s right to protest or contest taxes and assessments hereunder does not relieve Lessee of the obligation to pay taxes to Lessor unless Lessor receives a waiver from the applicable taxing authority.

J. Lessee shall have all utility accounts for the Premises separately metered and placed in its name. Lessee shall pay when due all utility charges (i.e., water, sanitary sewer, natural gas and electric) directly to the utility companies or municipalities providing such utility service. Lessee shall notify Lessor immediately upon termination of any utility account. Lessor may, at its option, place such terminated account in its name. In the event Lessor, willingly or otherwise, assumes the responsibilities for providing water, sanitary sewer, natural gas or electric services to the Premises during the Lessee’s tenancy, Lessee shall pay to Lessor the higher of: i) the prevailing rates for similar type utility services offered by utility companies and/or municipalities providing utilities to similar utility users located in Dayton, Ohio or, ii) the actual cost incurred by the Lessor in providing the utility service to the Lessee. If Lessor bills Lessee for any involuntary assumption of utilities, Lessor may include a Fifteen Percent (15%) administrative charge.

K. Lessee and its subtenants shall not erect, allow or permit to be maintained on the Premises, or upon the exterior of any improvement on the Premises, any billboards or advertising signs, except those which have the prior written approval of Lessor. Lessee and Future Sublessee may maintain on the Premises, or on the exterior of the Facility (but not the roof), its name in neatly arranged electric, neon or other type sign or signs; with the size and type of sign or signs subject to Lessor’s prior approval.

L. Lessee and Future Sublessee may make minor alterations and changes to the Premises and Facility as Lessee or Future Sublessee may, at any time during the term hereof, find necessary or convenient for its use of the Premises or Facility. Any additions, alterations, demolition or changes to the Premises or Facility and improvements of a material, substantial or structural nature, shall be permitted under this Lease, with the prior written approval of Lessor.

ARTICLE V - TERM
The Commencement Date shall be the date of execution of this Lease by the Lessor. This Lease shall begin on the Commencement Date and shall be effective for a period of forty-nine (49) years ("Term"), unless terminated earlier in accordance with the provisions of this Lease.

ARTICLE VI – GROUND RENT AND LANDING FEES

A. During the term of this Lease, Lessee shall pay to Lessor the following rental for the Premises:

1. From the Commencement Date of the Lease, and continuing for a period of five years, Lessee shall pay to Lessor rent in the amount of Nine Cents ($0.09) per square foot per year on the total 694,433.52 square foot Premises. For Years 1 through 5 the annual rent shall be Sixty-Two Thousand Four Hundred Ninety-Nine Dollars and Two Cents ($62,499.02).

2. Beginning on the fifth anniversary of the Commencement Date, and every fifth year thereafter, the rent to be paid for the succeeding five (5) year period shall be increased by Two Cents ($0.02) per square foot.

B. The rental rates stated in Section A above are based on the intended use of the property as aeronautical use. In the event all or part of the Premises cease to be used for aeronautical purposes during any period of the Term of this Lease, the rental rates shall be revised to reflect the then-fair market value of the Premises based on an appraisal in accordance with FAA requirements.

C. All rents/fees due under this Lease shall be paid in equal monthly installments, due in advance on the first day of the month and without notice, and sent to Lessor at the following address:

   City of Dayton, Ohio
   P.O. Box 632094
   Cincinnati, OH 45202

   or such other address as Lessor may specify in writing.

D. Without waiving any other right or action available to Lessor in the event of default in payment of rents, fees, charges or any other financial obligation hereunder, if Lessee is delinquent for a period of thirty (30) days or more in paying to Lessor any amount(s) due and owing to Lessor pursuant to this Lease, Lessee shall pay to Lessor a late charge thereon calculated at the rate of one percent (1%) per month from the date such item was due and owing until full payment including late charges have been paid. Such late charges shall not occur with respect to disputed items being contested in good faith by Lessee.

E. Landing Fees. Lessee shall pay monthly to Lessor fees for Revenue Landings for the preceding month. The landing fee shall be determined in accordance with the rates and charges annually adopted by resolution of the Commission of the City of Dayton. Lessee’s landing fees shall be the product of the landing fee rate established by the City resolution
and Lessee’s total landed weight for the month. Lessee’s landed weight for the month shall be determined as the sum of the products obtained by multiplying the Maximum Gross Landed Weight of each type of landed aircraft by the number of Revenue Landings of each said aircraft during such month. “Revenue Landing” means any aircraft landing at the Airport for which Lessee or its subtenant makes a charge or for which revenue is derived by Lessee or its subtenant for the transportation by air of persons, property or mail or maintenance, repair and overhaul of the aircraft.

ARTICLE VII – RIGHTS AND OBLIGATIONS OF LESSOR

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

B. Lessor’s Director of Aviation and his duly authorized representatives shall have the right to enter the Premises for the purposes of inspecting the Premises and doing any and all things which the Lessor is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport. Except for emergencies or when required by law, Lessor agrees to provide twenty-four (24) hours’ notice to Lessee of its intent to enter the Premises, except during construction, during which period no notice is required.

Lessor and Lessee recognize that Future Sublessee’s government contracts impose specific restrictions and requirements regarding Lessor’s and Lessee’s right to entry into certain areas of the Premises, and Lessor and Lessee hereby agree to abide by such restrictions and Future Sublessee’s security requirements as set forth in the sublease between Lessee and Future Sublessee (“Sublease”). One such restriction is that in no instance shall non-United States citizens be allowed to access the Premises without the prior consent of Future Sublessee; a Future Sublessee escort may be required for access to government specified high security areas. The parties specifically agree that, notwithstanding any provision of this Lease to the contrary, the aforementioned restrictions and Future Sublessee’s security requirements shall govern all instances respecting Lessor’s, Lessee’s or any of their agents’ or employees’ right of entry (or re-entry) to the Premises wherever contained in this Lease or in any agreement, document or instrument contemplated by or related to this Lease. For purposes of this Lease, a United States citizen is a person that provides proof of American citizenship evidenced by a valid birth certificate or passport and a government issued identification card. Lessor and Lessee agree that in the event of a conflict between this Lease and Future Sublessee’s security requirements, Future Sublessee’s security requirements shall control.

C. Lessor warrants quiet enjoyment of the rights and privileges granted herein, during the term hereof, upon the performance of Lessee’s covenants contained herein and subject to Section B of this Article VII. Lessor agrees that all rules, regulations and other provisions governing the use of the Premises shall not be applied discriminately against Lessee or its subtenants and shall apply to all tenants at the Airport.
D. Nothing contained herein shall prohibit Lessor from granting easements, utility or otherwise, as long as said easements would not restrict Lessee’s use of the Premises for the purposes stated herein. All costs associated with granting said easements or executing activities for which said easements are granted shall be borne by Lessor or others; no cost shall be transferred to Lessee.

E. If Lessee fails to provide and maintain trash removal, mowing, snow removal or other required maintenance, Lessor shall have the right, but not the obligation, to provide or perform said services and to bill Lessee for the costs of said services plus a Fifteen Percent (15%) administrative fee, which Lessee agrees to pay.

ARTICLE VIII - NON-DISCRIMINATION

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

B. Lessee, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities, (2) in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21 and as said regulations as may be amended, superseded or modified.

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

ARTICLE IX - INDEMNIFICATION

A. Lessee shall defend, indemnify, save and hold harmless Lessor, its elected officials, officers, agents and employees, and Future Sublessee from and against any and all claims and actions, and all expenses incidental to the investigation and defense thereof, based
upon or arising out of any accident or damages suffered by third persons and arising from,
or in any way connected with the use or occupancy of the Premises, and/or any condition
of the Premises, fixtures, structures, equipment or other improvements thereon, and/or
Lessee’s exercise of any right granted herein, and/or Lessee’s performance for breach or
default in the performance of any obligation to be performed pursuant to this Lease, and/or
any intentional, wrongful or negligent act or omission of Lessee, its agents, contractors
and/or employees.

It is agreed that, to the extent permitted by law, no agreement or covenant by Lessee under
this Subsection A shall include liability or damages for injury to persons or damage to
property caused by or resulting from the sole negligence of Lessor, its agents or employees.

B. Lessee shall defend, indemnify, save and hold harmless Lessor and Future Sublessee, their
respective elected officials, officers, directors, agents and employees, from and against any
mechanics or other lien or order for the payment of money filed against the Premises,
Lessor or any property of Lessor, arising out of any act or omission of Lessee or anyone
claiming through or under Lessee. Lessee shall, at Lessee’s expense, cause the same to be
cancelled or discharged of record and shall save and hold harmless Lessor and Future
Sublessee from and against any and all costs, expense, claims, losses or damages including
reasonable attorney’s fees resulting therefrom or by reason thereof.

C. Lessor shall not be liable to Lessee or its subtenants, agents, representatives, contractors or
employees, for any injury to, or death of, any of them or of any other person or for any
damage to any of Lessee’s property or loss of revenue, caused by any third person in the
maintenance, construction, or operation of facilities at the Airport, or caused by any third
person using the Airport, or caused by any third person navigating any aircraft on or over
the Airport. Lessor shall not be liable to Lessee for damage to property of Lessee or any
loss of revenues to Lessee resulting from Lessor’s acts or omissions in the maintenance
and operation of the Airport or failure to operate the Airport.

D. The obligations of Lessee under this Article IX shall survive the termination of this Lease
and shall not be affected in any way by the amount of or the absence in any case of covering
insurance, or by the failure or refusal of any insurance carrier to perform any obligation on
its part under insurance policies affecting the Premises or any part thereof.

E. The Lessor’s elected officials, officers, agents and employees, shall have absolutely no
personal liability with respect to any provision of this Lease or any obligation or liability
arising from this Lease or in connection with this Lease or the Premises in the event of a
breach or default by Lessor of any of its obligations.

F. Notwithstanding any other provision of this Lease to the contrary, to the extent permitted
by law, Lessee waives any and every claim for recovery from the Lessor for any and all
loss or damage to the Premises or to the contents thereof, which loss or damage is covered
by valid and collectable physical damage insurance policies maintained by Lessee or which
would have been recoverable if the insurance required hereunder had been maintained by
Lessee, to the extent that such loss or damage is recoverable, or would have been
recoverable, as applicable, under said insurance policies. As this waiver will preclude the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), Lessee agrees to give each insurance company which has issued, or in the future may issue, its policies of physical damage insurance, written notice of the terms of this waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverage by reason of said waiver. Lessee shall require any subtenant to include similar waivers of subrogation in favor of the Lessor.

ARTICLE X - INSURANCE

A. Lessee, at its sole cost and expense, shall procure and maintain, or cause to be procured and maintained, at all times during the term of this Lease commencing on the Commencement Date unless otherwise specified herein, the following insurance, with insurance companies authorized to do business in the State of Ohio and having at least an “A” rating from A. M. Best, or any successor thereto, and covering all operations under this Lease, whether performed by Lessee or by its contractors:

1. Commercial Liability Insurance (Primary and Umbrella):

Commercial Liability Insurance with limits of not less than Ten Million Dollars ($10,000,000) per occurrence combined single limit, for bodily injury and property damage liability. Coverage extensions shall include the following: All Premises and operations, completed operations, explosion, collapse, underground, independent contractors, broad form property damage, separation of insured and contractual liability (with no limitation endorsement). The Lessor shall be named as additional insured, on a primary, non-contributory basis for any liability arising directly or indirectly from this Lease.

2. All Risk Property Insurance:

i. Lessee shall obtain an “All Risk Property” policy, including improvements and betterments covering damage to buildings, in the amount of full replacement value of the improvements and betterments on the Premises. Lessor is to be named as a loss payee on said policy or policies of insurance.

ii. Lessee shall be responsible for all loss or damage to personal property (including but not limited to material, equipment, tools and supplies), owned or rented by Lessee. When Lessee undertakes any improvement, construction or repair project on or to the Premises, an “All Risk Blanket Builders Risk Insurance” shall be provided by Lessee to cover at replacement cost the materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility. Coverage extensions shall include the following: right to partial occupancy, material stored off-site and in transit, earthquake, faulty workmanship or materials, extra expense, and loss of use of property. The Lessor shall be named as loss payee on said policy or policies of insurance.
3. **Automobile liability insurance:**

If vehicular access is limited to land side, then auto insurance will not be required. In the event Lessee intends in the future to use any motor vehicles (owned, non-owned and hired) in connection with this Lease, Lessee shall provide Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars ($1,000,000) per occurrence combined single limit, for bodily injury and property damage. Lessor is to be named as an additional insured on a primary, non-contributory basis on said policy or policies.

B. Original certificates of insurance evidencing the required coverage to be in force on the Commencement Date of this Lease as set forth herein, and all renewal certificates of such insurance, shall be provided to Lessor. All such policies shall name the City of Dayton, Ohio, its elected officials, officers, agents, volunteers and employees as additional insureds. At the Lessor’s request, Lessee shall furnish complete copies of all policies of insurance. The receipt of any certificate or policy does not constitute agreement by the Lessor that the insurance requirements in the Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Lease. The failure of the Lessor to obtain certificates or other insurance evidence from Lessee or its contractors shall not be deemed to be a waiver by the Lessor. Lessee or its contractors shall advise all insurers of these Lease provisions regarding insurance. Non-conforming insurance shall not relieve Lessee or its contractors of their obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Lease, and the Lessor retains the right to terminate this Lease as provided in Article XV unless proper evidence of insurance is provided. All policies of insurance, excluding the insurance required of Lessee’s contractors, shall provide for a minimum of thirty (30) days prior written notice to be given to the Lessor in the event coverage is substantially changed, canceled, or non-renewed.

C. If Lessee fails to obtain or maintain any of the insurance policies under this Lease or to pay any premium in whole or in part when due, Lessor may (without waiving or releasing any obligation or default by Lessee hereunder) obtain and maintain such insurance policies and/or take any action which Lessor deems appropriate. In such instances, reasonable attorney’s fees, court costs and expenses, shall be reimbursed by the Lessee upon demand by Lessor.

D. Lessee shall require all contractors to carry the insurance required herein, or Lessee or its contractors may provide the coverage for any or all contractors, and, if so, the evidence of insurance submitted shall so stipulate. Any and all deductibles or self-insured retentions on referenced insurance coverages shall be borne by Lessee or its contractors. Lessee and its contractors agree that insurers shall waive their rights of subrogation against the Lessor, its employees, elected official, agents, or representatives. Lessee and its contractors expressly understand and agree that any coverages and limits furnished by Lessee, or its contractors shall in no way limit the Lessee or its contractors’ liabilities and responsibilities specified within this Lease or by law. Lessee and its contractors expressly understand and agree that
any insurance or self-insurance programs maintained by the Lessor shall not contribute with insurance provided by the Lessee or its contractors under this Lease. If Lessee or its contractors desire additional coverage, higher limits of liability, or other modifications for its own protection, then Lessee or its contractors shall each be responsible for the acquisition and cost of such additional protection.

E. The insurance required hereunder shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law. The Lessor maintains the right to modify, delete, alter or change these requirements.

F. The insurance required by this Lease, at the option of Lessee or contractors, may be affected by blanket or umbrella policies issued to Lessee or contractors covering the Premises and other properties owned or leased by Lessee or contractors, provided that the policies otherwise comply with the provisions of this Lease and allocate to the Premises the specified coverage, without possibility of reduction or coinsurance by reason of, or damage to, any other premises covered therein.

G. Lessee shall maintain, at all times during the term hereof, Workers’ Compensation for its employees employed or providing service(s) upon the Premises in such amounts as prescribed under Ohio law.

ARTICLE XI – DAMAGE OR DESTRUCTION AND DISPOSITION OF THE FACILITY

A. If the Facility or any other improvements located on the Premises are damaged, in whole or in part, by fire or other casualty, Lessee shall, at Lessee’s expense and as soon as reasonably possible, repair the damage. Lessee may use insurance proceeds from insurance it carried, or caused to be carried, to pay for the work as it progresses, and the Lessor shall permit any such proceeds to be made available.

B. If any improvements to the Premises are not diligently repaired by Lessee where required, or if any space is deleted from the Premises, then the Lessor shall be entitled to all insurance proceeds payable on account of improvements in such space. Where the Lessee is obligated to repair or restore improvements, Lessee must do so notwithstanding that insurance proceeds may be insufficient.

C. Upon termination of this Lease, Lessee at its option may, with Future Sublessee’s consent while Future Sublessee is a tenant of the Facility, choose to remove the hangar and office facility and remaining improvements and return the Premises to arable land as originally tendered to Lessee. Lessee may execute this option of removal by providing written notice to the Director of Aviation (and to Future Sublessee while Future Sublessee is a tenant of the Facility) of its intention to remove the Facility and other improvements no later than six (6) months prior to the scheduled termination of this Lease.
Notwithstanding the foregoing or any other provision of this Lease, Lessee agrees, at all times while Future Sublessee is a tenant of the Facility, not to choose to remove the Facility or any portion thereof from the Premises. Additionally, notwithstanding the foregoing or any other provision of this Lease, Lessor and Lessee acknowledge and agree that all personal property and trade fixtures of Future Sublessee (including, without limitation, any rooftop communications equipment) is and shall remain the sole property of Future Sublessee.

If Lessee does not timely exercise the removal option, then upon termination of this Lease (with Future Sublessee’s consent while Future Sublessee is a tenant of the Facility and is not in default under its sublease), title and ownership of the Facility and any other improvements made on or to the Premises (but not any personal property or trade fixtures of Future Sublessee) shall revert to the Lessor free and clear of any liens, mortgage(s) or other encumbrances other than the following “Permitted Encumbrances:” (a) taxes and assessments, which are a lien on the Premises and Facility and improvements but not yet due and payable; (b) applicable zoning and other government laws, ordinances and regulations of any kind or nature; (c) easements, covenants, conditions and restrictions of record as of the Commencement Date and those created after the Commencement Date, which are approved, in advance, by the Lessor; and (d) liens and other encumbrances created by Lessor. Lessee shall take all actions and execute any and all documents necessary to transfer title and ownership of the Facility and improvements (but not any personal property or trade fixtures of Future Sublessee) to Lessor, and Lessor shall not be required to pay Lessee for such transfer of the Facility and improvements. Notwithstanding anything to the contrary, Lessee shall be entitled to remove any and all trade fixtures, equipment and other personal property of Lessee (but not any personal property or trade fixtures of Future Sublessee) situated on the Premises. Until termination of this Lease title to the Facility and improvements and all other items installed thereon and any repair, addition, alteration or replacement thereto (but not any personal property or trade fixtures of Future Sublessee) shall remain Lessee’s property.

**ARTICLE XII - ASSIGNMENT AND SUBLETTING**

A. Except as provided directly below in Section B., Lessee is prohibited from selling, assigning or transferring this Lease without the prior written consent of Lessor, which consent shall not be unreasonably withheld, delayed or conditioned. Any sale, assignment or transfer in violation hereof shall be void.

B. Lessee may sublet the Premises to the Dayton-Montgomery County Port Authority, who will lease the same to Lessee. Lessee may sublet the Premises and any improvements thereon to Future Sublessee or any future tenant of the Facility. Additionally, Lessee may assign this Lease to a Leasehold Mortgagee (as defined below). Neither Lessee nor any of the sublessees described above may further sublease or let the Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld, delayed or conditioned; provided, however, that Future Sublessee may sublease or assign the Premises as permitted by its sublease without first obtaining the prior written consent of Lessor.
ARTICLE XIII - SUCCESSORS AND ASSIGNS BOUND BY COVENANTS

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

ARTICLE XIV - TERMINATION BY LESSEE

A. In addition to all other remedies available to the Lessee under this Lease or at law, this Lease shall be subject to termination by Lessee should any one or more of the following events occur:

1. The issuance by any court of competent jurisdiction of any injunction, order or decree preventing or restraining the use of the Airport for usual airport purposes in its entirety, or the use of any part thereof used by Lessee and necessary for Lessee’s operations on the Airport, for a period of thirty (30) consecutive days and results in material interference with Lessee’s normal business operations at and from the Premises.

2. Lessor’s default of any material term or condition of this Lease, and the failure of Lessor to cure such default or to take prompt action to cure such default, within a period of thirty (30) days after receipt of written notice to cure the default; or if by reason of the nature of such default it cannot be cured within the thirty (30) days, then Lessee shall have the right to terminate this Lease if the Lessor fails to commence the remedying of such default within the thirty (30) day period.

Notwithstanding the foregoing, in the event that Lessee shall elect to terminate this Lease under this Section A, Lessee shall provide at least sixty (60) day advance written notice of termination to Lessor and Future Sublessee.

ARTICLE XV - TERMINATION BY LESSOR

A. In addition to all other remedies available to Lessor under this Lease or at law, this Lease shall be subject to termination by Lessor should any one or more of the following events occur:

1. If a court shall take jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act.

2. If a receiver for Lessee’s assets is appointed by a court of competent jurisdiction.

3. If Lessee shall be divested of its rights, powers and privileges under this Lease by other operation of law.

4. If Lessee defaults in the payment of any amounts due to Lessor hereunder and Lessee or its subtenant fails to cure such default within thirty (30) days after Lessor notifies Lessee and its subtenant in writing of the default.
5. If Lessee defaults in the performance of any term or condition of this Lease, but excluding the payment of amounts due and owning hereunder, and Lessee or its subtenant fails to cure such default within thirty (30) days from receipt of written notice (which must also be provided to Lessee’s subtenant) to cure such default; or if by reason of the nature of such default the same cannot be remedied within said thirty (30) days, then Lessor shall have the right to terminate this Lease if the Lessee or its subtenant fails to commence the remedying of such default within the thirty (30) day period or, after having so commenced, fails thereafter to continue with due diligence the remedying thereof.

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

Notwithstanding the foregoing, neither Lessor nor Lessee will terminate this Lease without the prior written consent of any leasehold mortgagee and Future Sublessee.

ARTICLE XVI - HOLDING OVER

In the event Lessee holds over and remains in possession of the Premises and rights granted herein after termination of this Lease and without any written renewal thereof, such holding over shall not operate as a renewal or extension of this Lease but shall only create a tenancy from month to month that may be terminated at any time by Lessor or Lessee. Lessor will provide Lessee with sixty (60) days advance written notice of any increase in the rental amount due during such holdover tenancy period in excess of 1/12th the rental amount for the immediately preceding 12-month period.

ARTICLE XVII - INVALID PROVISIONS

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

ARTICLE XVIII - WAIVER

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

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

ARTICLE XIX – CONDEMNATION

A. If the entire Premises is condemned and taken for public use, this Lease shall automatically
terminate on such date that the title shall vest in the condemnor. Rent and any additional
fees and charges under this Lease shall be prorated as of the date of such termination; and
upon termination, Lessee shall satisfy and cause to be released any mortgages, liens, or
other encumbrances placed or suffered to be placed on the Premises by Lessee.

B. Any award or compensation paid on account of any taking or condemnation described
herein shall be equitably divided between Lessor and Lessee, taking into consideration
each party’s respective interest in the Premises.

ARTICLE XX – LEASEHOLD MORTGAGES;
TITLE TO IMPROVEMENTS UPON TERMINATION

A. Lessee may, without Lessor’s consent, mortgage its interest in this Lease as collateral
security, pursuant to a leasehold mortgage (“Leasehold Mortgage”). If Lessee shall
mortgage this leasehold, Lessee shall send to Lessor the pertinent information/recording
data with respect thereto as soon as the same is available. In any event, from and after the
date Lessor receives from Lessee or the holder of such Leasehold Mortgage a true copy
thereof, together with written notice specifying the name and address of the leasehold
mortgagee under the Leasehold Mortgage (“Leasehold Mortgagee”), Lessor agrees that so
long as any such Leasehold Mortgage shall remain unsatisfied of record or until written
notice of satisfaction is given by the holder to Lessor, the following provisions shall apply:

1. There shall be no voluntary cancellation, surrender or material modification of this
Lease by joint action of Lessor and Lessee without the prior consent in writing of the
Leasehold Mortgagee and Future Sublessee while it is a tenant.

2. Lessor shall, upon serving Lessee with any notice of default, simultaneously serve
a copy of such notice upon the holder of such Leasehold Mortgage and Future
Sublessee while it is a tenant. The Leasehold Mortgagee shall thereupon have the
same period as Lessee under this Lease, if any, after service of such notice upon it, to remedy or cause to be remedied such default, and Lessor shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Lessee. The foregoing rights and remedies of the Leasehold Mortgagee shall be available to Future Sublessee while it is a tenant if not exercised by the Leasehold Mortgagee.

3. Anything herein contained notwithstanding, if any Event of Default shall occur which, pursuant to any provision of this Lease, entitles Lessor to terminate this Lease, then the Leasehold Mortgagee shall have thirty days from the date of service of notice of that Event of Default upon such Leasehold Mortgagee, to cure such Event of Default and upon curing such Event of Default Lessor shall not be entitled to terminate this Lease and any notice of termination theretofore given shall be void and of no effect. The foregoing rights and remedies of the Leasehold Mortgagee shall be available to Future Sublessee while it is a tenant if not exercised by the Leasehold Mortgagee.

4. If Lessor shall elect to terminate this Lease by reason of any Event of Default of Lessee, the Leasehold Mortgagee shall not only have the right to nullify any notice of termination by curing such Event of Default, as stated above in paragraph 3, but shall also have the right to postpone and extend the specified date for the termination of this Lease as fixed by Lessor in its notice of termination, but only if the Leasehold Mortgagee requires possession of the Premises in order to cure any such Event of Default and the Leasehold Mortgagee undertakes in writing to cure any such Event of Default upon obtaining possession; provided that such Leasehold Mortgagee shall cure or cause to be cured any then-existing money defaults or any other defaults that do not require Leasehold Mortgagee to obtain possession of the Premises and meanwhile pay the ground rent and comply with and perform all of the other terms, conditions and provisions of this Lease on Lessee’s part to be complied with and performed, and provided further that the Leasehold Mortgagee shall forthwith take steps to assign, acquire or sell Lessee’s interest in this Lease by foreclosure of the Leasehold Mortgage or otherwise within thirty (30) days of the default notice and shall prosecute the same to completion with reasonable due diligence. The foregoing rights and remedies of the Leasehold Mortgagee shall be available to Future Sublessee while it is a tenant if not exercised by the Leasehold Mortgagee.

5. Lessor agrees that the name of the Leasehold Mortgagee may be added by Lessee to the “Loss Payable Endorsement” of any and all insurance policies required to be carried by Lessee under this Lease on condition that the insurance proceeds are to be applied in the manner specified in this Lease and that the Leasehold Mortgage or collateral document shall so provide.

6. Lessor agrees that in the event of termination of this Lease for any reason (other than an Event of Default not cured by Leasehold Mortgagee), then Lessor will enter into a new lease of the Premises with the Leasehold Mortgagee or its nominee(s),
or Future Sublessee (at its option) if the Leasehold Mortgagee elects not to enter into a new lease of the Premises, for the remainder of the Term of this Lease, effective as of the date of such termination, at the ground rent and upon the terms, provisions, covenants and agreements as herein contained and subject only to the same conditions of title as this Lease is subject to on the date of the execution hereof, and to the rights, if any, of any parties then in possession of any part of the Premises, and to any defects or encumbrances created by Lessee or anyone claiming by, through or under Lessee, provided:

a. Said Leasehold Mortgagee or its nominee(s), or Future Sublessee if applicable, shall make written request upon Lessor for such new lease within thirty (30) days after the date of such termination and such written request is accompanied by payment to Lessor of all sums then due to Lessor under this Lease;

b. Said Leasehold Mortgagee or its nominee(s), or Future Sublessee if applicable, shall pay to Lessor at the time of the execution and delivery of said new lease, any and all sums which would at the time of the execution and delivery thereof, be due pursuant to this Lease but for such termination, and in addition thereto, any expenses, including reasonable attorney’s fees, to which Lessor shall have been subjected by reason of such Event of Default;

c. Said Leasehold Mortgagee or its nominee(s), or Future Sublessee if applicable, shall perform and observe all covenants herein contained on Lessee’s part to be performed and shall further remedy any other conditions which Lessee under the terminated lease was obligated to perform under the terms of this Lease;

d. Such new lease shall be expressly made subject to the rights, if any, of Lessee under the terminated lease; and

e. The lessee under such new lease shall have only the same right, title and interest in and to the buildings and improvements on the Premises as Lessee had under the terminated lease.

7. Nothing herein contained shall require the Leasehold Mortgagee or its nominee(s), or Future Sublessee if applicable, to cure any Event of Default of Lessee.

8. Lessor shall, upon request, execute, acknowledge and deliver to the Leasehold Mortgagee, an agreement prepared at the sole cost and expense of lessee, in favor of each Leasehold Mortgagee consistent with the provisions of this Section and containing other commercially reasonable provisions requested by the Leasehold Mortgagee (or Future Sublessee if applicable). The term “Leasehold Mortgage,” whenever used herein, shall include whatever security instruments are used in Ohio, such as, without limitation, deeds of trust, security deeds and conditional deeds, as
well as financing statements, security agreements and other documentation required pursuant to the Uniform Commercial Code.

B. Title to improvements made to and upon the Premises, excluding trade fixtures, shall vest in Lessor at such time as this Lease is terminated. Title to the improvements shall be transferred to the Lessor. Upon termination of this Lease, Lessee shall surrender the Premises and the improvements thereon to Lessor in good condition subject to normal wear, tear and depreciation. Lessee’s obligation to deliver the Premises and improvements in good condition shall survive the termination of this Lease.

ARTICLE XXI – GENERAL PROVISIONS

A. The term Lessor, as used in this Lease, means the City of Dayton, Ohio and where this Lease speaks of approval and consent by Lessor, such approval is understood to be manifested by act of Lessor’s Director of Aviation, except as otherwise expressly stated in this Lease, and such consent or approval shall not be unreasonably withheld, conditioned or delayed. Where a response is required to be provided by Lessor, such response shall be provided in writing no later than thirty (30) days after the request for response.

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

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

   or such other address as Lessor shall direct in writing.

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

   Kevin Belt  
   SD Hangar Partners, LLC  
   19 North High Street  
   Akron, Ohio 44308

   or such other address as Lessee shall direct in writing.

   With a copy to:  
   Lee S. Walko, Esq.  
   Brennan Manna Diamond  
   75 E. Market Street  
   Akron, OH 44308

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

D. Lessee and Lessor represent that each has carefully reviewed the terms and conditions of this Lease and are familiar with such terms and conditions and agrees faithfully to comply with the same to the extent to which said terms and conditions apply to its activities as authorized and required by this Lease.

E. By execution of this Lease, Lessee hereby irrevocably submits to the original jurisdiction of the courts located within the County of Montgomery, State of Ohio, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Lease.

F. Lessee (and any person claiming by or through Lessee) shall look solely to legally available Airport discretionary funds for enforcement of any liability of the Lessor under this Lease, and not any other funds or assets of the City of Dayton, Ohio whatsoever.

G. Neither Lessee nor any contractor of Lessee shall be entitled to claim any exemption from sales or use taxes or similar taxes by reason of the Lessor’s ownership of fee title to the Premises.

H. By entering into this Lease, Lessor shall in no way be deemed a partner or joint venturer with Lessee, nor shall any term or provision hereof be construed in any way to grant, convey or create any rights or interests to any person or entity not a party to this Lease, except Future Sublessee as provided in Section L below.

I. Subject to Section L below, the parties may amend or modify this Lease, at any time, provided that no such amendment or modification shall be effective unless it is reduced to a writing, which makes specific reference to this Lease, executed by a duly authorized representative of Lessor and Lessee (and by Future Sublessee while Future Sublessee is a tenant of the Facility) and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.

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

K. Notwithstanding any provision of this Lease, Lessor and Lessee acknowledge and agree that Future Sublessee shall be and is an intended third-party beneficiary of this Lease and all rights, privileges and remedies granted or reserved for Future Sublessee’s benefit herein. During the term (including any extensions or renewals) of the Sublease, this Lease shall not be amended, modified, or terminated (except in the event that the grounds for termination of this Lease are due to an uncured default by Future Sublessee under the Sublease), or any provision hereof released or waived without Future Sublessee’s prior written consent, which shall not be unreasonably withheld, conditioned or delayed. In the
event of any conflict between this Section and any other provision of this Lease, this Section shall control.

L. Lessor shall execute any reasonable recognition agreement as requested by any subtenant of Lessee to ensure that the subtenant’s leasehold interest in the Premises shall not be disturbed by Lessor in the event of any foreclosure action or deed in lieu thereof.

M. Simultaneously with the execution of this Lease, the parties shall execute and record in the real estate records of Montgomery County, Ohio, a memorandum of this Lease in the form attached hereto as Exhibit B and incorporated here by reference.

N. If, after the date of this Lease, Future Sublessee is determined, the parties agree to execute and deliver an amendment to this Lease, in form and content reasonably acceptable to Future Sublessee, which shall identify Future Sublessee and include any other changes to this Lease desired by the parties and Future Sublessee.

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

WITNESSED BY: SD HANGAR PARTNERS, LLC

__________________________________________

By: _______________________________________

Title: ________________________________

WITNESSED BY: CITY OF DAYTON, OHIO

__________________________________________

City Manager

Date Executed: December ____, 2021

APPROVED AS TO FORM AND CORRECTNESS:

__________________________________________

City Attorney

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

December ____, 2021

Min/Bk. _________ Pg. ___________________

__________________________________________

Clerk of the Commission
Exhibit A-2

Legal Description for 7.804 Acre Phase 1A Lease Area
Dayton International Airport
Section 5, Town 3, Range 6 East,
City of Dayton, Montgomery County, Ohio
December 06, 2021

Situated in Section 5, Town 3, Range 6 East, City of Dayton, Montgomery County, Ohio, being part of a 51.772 acres tract conveyed to the City of Dayton, recorded in Deed Book 1175, Page 158 (aka Airport Parcel 6), said tracts are part of Lot 81143 of the revised and consecutive number of lots on the plat of the City of Dayton and being particularly described as follows:

Commencing from a 5/8" iron pin found at the intersection of the west line of the southeast quarter of said Section 5 and the centerline of Old Springfield Road, thence along said west line South 00°15'30" West, 30.50 feet to the south right-of-way line of Old Springfield Road;

thence along said south right-of-way line South 79°53'28" West, 215.73 feet;

thence along the southwestern lines of Phase 1 Lease the following four courses;

1) South 33°37'55" East, 372.18 feet;
2) North 56°22'10" East, 190.91 feet;
3) South 33°37'49" East, 301.07 feet;
4) North 56°24'29" East, 54.81 feet to the point of beginning of the following described tract of land;

thence along the southeastern line of Phase 1 Lease North 56°24'29" East, 419.74 feet;

thence South 33°33'16" East, 810.10 feet;
thence South 56°27'59" West, 419.74 feet;
thence North 33°33'16" West, 809.67 feet to the point of beginning, containing 7.804 acres, subject however to all covenants, conditions, restriction, and easements contained in any instrument of record pertaining to the above-described tract of land.

Bearings are based upon Dayton International Airport Control Coordinates.

This description was prepared by Farnsworth Group, Inc., 82 Remick Blvd., Suite B, Springboro, OH, under the direct supervision of David R. Barnhart, P.S. #7646.
Legal Description for 8.138 Acre Phase 1 Lease Parcel
Dayton International Airport
Section 5, Town 3, Range 6 East,
City of Dayton, Montgomery County, Ohio
December 06, 2021

Situated in Section 5, Town 3, Range 6 East, City of Dayton, Montgomery County, Ohio, being part of a
56.00 acres tract conveyed to the City of Dayton, recorded in Deed Microfiche 77-0725B12 (aka Airport
Parcel 116) and part of a 51.772 acres tract conveyed to the City of Dayton, recorded in Deed Book 1175,
Page 158 (aka Airport Parcel 6), said tracts are part of Lot 81143 of the revised and consecutive number
of lots on the plat of the City of Dayton and being more particularly described as follows;

Commencing from a 5/8" iron pin found at the intersection of the west line of the southeast quarter of said
Section 5 and the centerline of Old Springfield Road, thence along said west line South 00°15’30" West,
30.50 feet to the south right-of-way line of Old Springfield Road and beginning the point of beginning of
the following described tract of land;

thence along said right-of-way line North 79°53’28" East, 30.52 feet to the east right-of-way line of Peters
Pike;
thence along said east right-of-way line South 00°12’44" West, 3.93 feet;
thence North 88°08’43" East, 994.43 feet;
thence South 01°14’28" East, 100.16 feet;
thence South 56°30’00" West, 273.53 feet;
thence North 78°30’00" West, 50.18 feet;
thence South 56°24’29" West, 515.47 feet;
thence North 33°37’49" West, 301.07 feet;
thence South 56°22’10" West, 190.91 feet;
thence North 33°37’55" West, 372.18 feet to the south right-of-way line of Old Springfield Road;
thence along said right-of-way line North 79°53’28" East, 215.73 feet to the point of beginning, containing 8.138 acres, subject however to all covenants, conditions, restriction, and easements
contained in any instrument of record pertaining to the above-described tract of land.

Bearings are based upon Dayton International Airport Control Coordinates.

This description was prepared by Farnsworth Group, Inc., 82 Remick Blvd., Suite B, Springboro, OH,
under the direct supervision of David R. Barnhart, P.S. #7646.
Exhibit B

Form of Memorandum of Lease

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE is made and entered into on December ______, 2021 (the “Effective Date”) by and between SD HANGAR PARTNERS, LLC, an Ohio limited liability company (the “Lessee”) and the CITY OF DAYTON, a municipal corporation of the State of Ohio, having an address for purposes hereof at 101 West Third Street, Dayton, Ohio 45402 (hereinafter referred to as “Lessor” and sometimes the “City”), who represent as follows:

1. The name and address of the Lessee is SD Hangar Partners, LLC, 19 North High Street, Akron, Ohio 44308.

2. The name and address of Lessor is the City of Dayton, 101 West Third Street, Dayton, Ohio 45402.

3. Lessee and Lessor entered into a certain Lease dated December ______, 2021 (the “Lease”) with respect to certain demised premises further described on EXHIBIT A (the “Project Site”) attached hereto and made a part hereof by this reference.

4. Certain Facility improvements (as defined in the Lease) will be constructed on the Project Site.

5. The term of the Lease with respect to the Project Site shall commence on December ______, 2021, and will expire on the date occurring forty-nine (49) years after December ______, 2021; provided, the Lease is subject to earlier termination as described therein.

6. This Memorandum of Ground Lease is executed pursuant to Section 5301.251 of the Ohio Revised Code. The Lease is hereby incorporated by reference in and made a part of this Memorandum of Ground Lease as fully as if it were set forth herein in its entirety. All parties having or acquiring an interest in the property referred to herein are hereby given notice of all provisions, covenants and obligations contained in the Ground Lease.

7. This Memorandum of Ground Lease may be executed in counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute one and the same instrument.
IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Ground Lease as of the day and year first above set forth.

GROUND LESSEE:

SD HANGAR PARTNERS, LLC

By: ______________________________

Name: ____________________________

Title: _____________________________

STATE OF OHIO

) SS:

COUNTY OF SUMMIT

On this ___ day of December, 2021, personally appeared before me, a Notary Public in and for the State of Ohio, SD Hangar Partners, LLC, by ______________________, known to be the __________________ of said City, who acknowledged that to be duly authorized to execute this Memorandum of Ground Lease and who acknowledged the signing and sealing of the said Memorandum of Ground Lease on behalf of said SD Hangar Partners, LLC to be a voluntary act and deed, and the voluntary act and deed of said SD Hangar Partners, LLC.

The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

______________________________
Notary Public

My commission expires: _____________
GROUND LESSOR:

CITY OF DAYTON, OHIO

By: ________________________________

Name: ________________________________

Title: ________________________________

APPROVED AS TO FORM
AND CORRECTNESS:

____________________________________
City Attorney

STATE OF OHIO )
 ) SS:
COUNTY OF MONTGOMERY )

On this ____ day of December, 2021, personally appeared before me, a Notary Public in
and for the State of Ohio, City of Dayton, Ohio, by __________________________, known to be
the __________________________ of said City, who acknowledged that to be duly authorized to
execute this Agreement and who acknowledged the signing and sealing of the said Agreement on
behalf of said City to be a voluntary act and deed, and the voluntary act and deed of said City.

The notarial act certified hereby is an acknowledgement. No oath or affirmation was
administered to the signer with regard to the notarial act certified to hereby.

____________________________________
Notary Public

My commission expires: ____________

This Instrument Prepared by:

Suzanne Beck, Esq.
City of Dayton, Department of Aviation
3600 Terminal Drive, Suite 300
Vandalia, Ohio 45377-1095
AN ORDINANCE

Amending Sections 34.40-34.53 of the Revised Code of General Ordinances Relating to the Community Appeals Board, and Declaring an Emergency.

WHEREAS, On June 18, 2020, Dayton City Commission announced a police reform working structure to drive positive changes for the police department in Dayton; and

WHEREAS, Five reform groups were formed, comprised of community members and Dayton police representatives along with city staff; and

WHEREAS, The Oversight reform group, led by Commissioner Matt Joseph and Montgomery County Recorder Brandon McClain provided numerous recommendations to City Commission, including a March 16, 2021 recommendation to revise Sections 34.40-34.53 of the R.C.G.O concerning the Community Appeals Board; and

WHEREAS, The Commission accepted the recommendations to revised Sections 34.40-34.53 of the R.C.G.O. and said changes are set forth herein; and

WHEREAS, For the immediate preservation of the public peace, property, health and safety, and for the usual daily operations of the various departments of the City it is necessary that this Ordinance take effect immediately; now, therefore,

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

Section 1. That Section 34.40-34.53 of the R.C.G.O. be, and hereby are, amended to read as follows:

DIVISION 3. - Community Appeals Board

Sec. 34.40. - Membership of the Community Appeals Board.

(A) The Community Appeals Board shall be constituted of seven voting members who shall be appointed by the City Commission. Open board positions shall be publicized within the community. Members of the Board shall be citizens of the city and of notable knowledge, experience and upstanding community standing. Prior to sitting on the Board, each member shall receive all necessary training by city staff including the Law department, Human Resources department, and Human Relations Council. All members shall serve without compensation. One member shall be a member or former member of the legal community. A second member shall be a former City of Dayton police officer with at least ten years of
experience. One member shall be a member of an organization dedicated to promoting minority rights and well-being. One member shall be an immigrant or a representative from an organization dedicated to promoting immigrant rights and well-being. The remaining three members shall be selected from among members of the community. The seven voting members of the Board shall fairly represent the racial mix of the city, shall have a balanced gender representation, and shall also reflect a fair representation of the various geographical areas of the city.

(B) Additionally, the Executive Director of the Human Relations Council, the City Manager or a designee, the Independent Accountability Auditor, a designee from human resources, and the Director and Chief of Police or his or her designee shall serve as ex-officio nonvoting members of the Board.

Sec. 34.41. - Term of office.

The voting members of the Community Appeals Board shall serve for terms of three years. Members of the board serving at the time of amendment to this section shall serve until expiration of the terms for which they were appointed. All voting members of the board shall continue to serve until their successors have been appointed. Voting members of the board may be re-appointed by the Commission to serve an additional term. However, no such member may serve more than two consecutive terms.

Sec. 34.42. - Removals and vacancies.

(A) Any voting member of the Community Appeals Board may be removed for incompetence, neglect of duty, misconduct or malfeasance, by the Commission, either of its own initiative and/or at its discretion upon recommendation of a majority of voting members of the board.

(B) Voting members of the board may be removed from office for missing two consecutive meetings of the board without appropriate excuses delivered to the chair of the board within 48 hours of the meeting. Any vacancy occasioned by resignation, death, or removal of a member shall be filled for the unexpired term by appointment by the Commission. Any such replacement shall be appointed within 30 days of the date when the vacancy occurred.

Sec. 34.43. - Chairmanship of the Board.

At the first meeting of the Community Appeals Board, the members thereof shall elect a chairperson and vice-chair from among themselves. Thereafter, a new chairperson shall be elected every three years at the meeting of the Board falling closest to the previous chairperson's election date. The chairperson may serve up to two terms. The chairperson shall communicate all of the business of the Board directly to the Commission.

Sec. 34.44. - Quorum.

Four members present shall constitute a quorum for purposes of conducting the business of the Community Appeals Board. No discussion shall occur without a quorum present and a majority vote of seven voting members, to-wit: four votes, is required for any action to be taken.
Sec. 34.45. - Conflicts of interest.
Should a matter come before the Community Appeals Board in which a member of
the Board feels that his or her personal interests may influence his or her ability to hear
an issue or case in an impartial manner, that member shall abstain from participating
therein, including hearing and/or discussing the particular matter. The Board member
shall indicate to the chairperson the existence and nature of the conflict, and thereafter
that Board member will be excused from hearing and/or participating in the matter.

Sec. 34.46. - Meetings of the Board.
(A) The Community Appeals Board shall meet once monthly at a regularly scheduled
time and place as business requires, with more frequent meetings to be scheduled
at the request of the chairperson and/or Commission if necessary to carry on the
Board's business. The meetings shall be for the purpose of conducting hearings
and/or to conduct any other business necessary to the operation of the Board. The
Board may also meet outside their monthly meetings in order to conduct training,
discuss policies or procedures, and review evidence in cases before testimony is
presented during the formal hearing(s). Quarterly meetings will include briefings
by the Professional Standards Bureau. The Board may have access to the entire
Professional Standards Bureau file(s) in any case on which the Board is being
briefed by the Professional Standards Bureau and/or any case that is pending
before the Board on an appeal. Subject to Ohio Revised Code §149.43, the Board
also may have access to any closed files reviewed by the Professional Standards
Bureau for the purpose of examining the nature, types, and dispositions of
complaints made by citizens and also for the purpose of conducting quality
assurance.

(B) The meetings of the Board shall be open to the public in accordance with Ohio
Open Meetings laws. The Board may utilize executive sessions as permitted by
law.

(C) Members of the Board shall respect the confidential nature of the Board's
proceedings and shall not disclose any matter discussed during the meetings with
any individual outside the Board membership, except as authorized by ordinance.

Sec. 34.47. - Function of the Board.
(A) The Community Appeals Board shall have four basic functions: to hear appeals;
to hear, on a quarterly basis, reports from the Dayton Police Department and
Professional Standards Bureau regarding cases under investigation; to request the
Independent Accountability Auditor review cases that the Board identifies as in
need of audit, and to review policies and procedures and make recommendations
as directed by the City Manager, City Commission, or the Director and Chief of
Police.

(B) The Board, with the assistance of staff, may adopt procedures, policies and rules
governing its operations, not inconsistent with ordinance, with the approval of
the Commission.
Sec. 34.48. - What can be appealed.

(A) Citizens who are dissatisfied with the findings of the Dayton Police Department investigation, whether they relate to sworn or unsworn personnel, may appeal their complaint to the Community Appeals Board.

(B) Because discipline is a personnel matter which lies within the sole discretion of the Director and Chief of Police, the nature of the disciplinary action received by an employee is not appealable to the Board. The Board shall make policy recommendations if, during an appeal, investigation discovers violations of existing policy.

(C) Prior to a hearing, the Board, acting through its Chair, and with the assistance of staff, may also refuse to hear an appeal if in its sound judgment the appeal is without sufficient grounds. Such decision shall be communicated to the complainant within a reasonable time.

Sec. 34.49. - Legal advisor.

The Community Appeals Board shall be adequately funded and served by a legal advisor for each appeal, furnished from a pool of advisors retained on contract to provide this service. The function of the advisor shall be to review the facts of the case, and to assist the Board in reaching fact-based conclusions in accordance with law, rules of evidence and contractual obligations. The Legal Advisor shall only advise the Board with regard to the cases pending before the Board. All other legal advice shall be given by the City Attorney’s office. The Legal Advisor shall work with Board members to draft a final report and recommendations. The standard of review to be used by the Board shall be by a preponderance of evidence.

Sec. 34.50. - Review appeal process.

(A) Appeals shall be made in writing on forms provided by the Community Appeals Board. The forms will be available at, but not limited to, the Human Relations Council, the Professional Standards Bureau, the Safety Building, the City of Dayton website, and the City Manager's office. The Human Relations Council shall provide appeal forms and intake training to community organizations. An appeal form will also be mailed with the letter which informs the complainants of the findings of the investigation of the original complaint. The Complainant shall submit the form within 30 days of the date on the Dayton Police Department’s letter of findings, although reasonable exceptions may be granted by the Board.

(B) The appeals forms will be reviewed for sufficiency and completeness. Complainants filing insufficient appeals will be notified by the Board’s chair within ten days after the next regular meeting of the Board. The complainant shall be permitted to amend the appeal form within ten days after being notified that the appeal is insufficient.

(C) Hearings shall be scheduled during the Board's regular monthly meetings, or at another time agreed upon by the Board or as directed by the Commission. The complainant will be notified within 10 days of the Board's meeting time when the appeal is scheduled and may elect to furnish testimony to the Board. Prior to
furnishing testimony to the Board, the complainant will be offered the opportunity to work with a staff person at the Dayton Mediation Center to prepare for the hearing. The staff person shall not represent the complainant before the Board or advocate for the complainant. Testimony shall be given under oath. Board hearings shall be tape-recorded or video-recorded and tapes shall be maintained at the Human Relations Council.

(D) The employees of the Department of Police against whom the complaint is made will be invited to give voluntary testimony to the Board during the appeal hearing. If the Dayton Police Department employee decides to not provide voluntary testimony, which is within his or her rights and permitted by law, that employee’s report of the alleged incident may be read into the record upon the Board’s request. A representative from the Professional Standards Bureau shall be made available upon request for questions related to investigations and policies. The Board is hereby empowered to, and may at its sole discretion, issue subpoenas for non-Dayton Police Department witnesses to the incident.

(E) After an appeal is filed, the Dayton Police Department and Professional Standards Bureau shall turn over a copy of the investigative file to the Board, the Human Relations Council, and the Legal Advisor. Such documents to be shared include, but are not limited to: the complaint, reports from the investigation, interview notes and recordings, pictures, videos, cruiser footage, body-worn cameras, the policies applicable to the situation, the letter of findings, and any other evidence used to make a determination. The complainant may request a copy of the investigative file by notifying the Human Relations Council of such request.

(F) In making its determinations, the Board may or may not concur with the findings of the Dayton Police Department. If the Board does not concur, it may do so with a finding that the complaint should have been sustained, not sustained, exonerated, or unfounded.

(G) A complaint is sustained when the investigation discloses evidence indicating the accused employee has committed all or part of the alleged act(s), and that the alleged acts were not justified, lawful, or proper. A complaint is not sustained when the investigation discloses insufficient evidence to clearly prove or disprove the allegations made. A complaint is exonerated when the investigation indicates that the act described in the complaint did occur, however, the investigation revealed the act was lawful and in accordance with established department policy and procedure. A complaint is unfounded when the investigation establishes that the alleged act did not occur; or the accused officer did not commit the act; or there is no credible evidence to support the complaint.

(H) No action of the Board may affect discipline given as a result of the Dayton Police Department findings in the original complaint. However, while reviewing any appeal before the formal hearing, the Board may make recommendations and request additional information or investigation by the Dayton Police Department and Independent Accountability Auditor.

Sec. 34.51. - Decisions of the Board.
The decisions of the Community Appeals Board shall be presented in writing to the
Commission. The Board Chair may be asked to speak at Commission meetings regarding cases and operations. The decisions shall contain the Board's findings in each matter considered, along with a summary of the Board's reasoning of the decisions made, and recommendations. Those reports shall be a matter of public record. The City Commission shall issue a response to the recommendations within fourteen days and may make a referral to the City Manager and Independent Accountability Auditor for proper policy changes and potential remedy, as defined by city policy and procedure. If such referral is made, the City Manager shall provide a response to City Commission within fourteen days. The Board shall also submit an annual report of its operations to the Commission, which report shall include any recommendations(s) for improving the functions of the Board or any related operations.

Sec. 34.52. - Communication with the complainants.

Decisions of the Community Appeals Board shall be mailed to the complainants within thirty days.

Sec. 34.53 - Responsibilities of the Executive Director of the Human Relations Council.

The authority and responsibility for the execution of the policies of the Community Appeals Board is hereby conferred upon the Executive Director of the Human Relations Council. The Executive Director shall be responsible, subject to § 32.19, for the recruitment, selection, training, and supervision of the professional and clerical staff that provide support to the Board. The Executive Director shall be provided a budget for the Board and is responsible for providing a comprehensive training program to Board members.

**Section 2.** The existing Sections 34.40-34.53 of the Revised Code of General Ordinances of the City of Dayton are hereby repealed.

**Section 3.** For a reason outlined in the preamble hereof, the Commission declares this Ordinance to be an emergency measure which shall take effect immediately upon its passage.

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

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

Mayor of the City of Dayton, Ohio

Attest:

Clerk of the Commission

Approved as to form:

City Attorney
AN ORDINANCE

Enacting Sections 34.54 through 34.61 of the Revised Code of General Ordinances to Create a Use of Force Committee, and Declaring an Emergency.

WHEREAS, On June 18, 2020, Dayton City Commission announced a police reform working structure to drive positive changes for the police department in Dayton; and

WHEREAS, Five reform groups were formed, comprised of community members and Dayton police representatives along with city staff; and

WHEREAS, The Use of Force reform group, led by Commissioner Jeffrey J. Mims, Jr. and State Representative Willis Blackshear, Jr. provided numerous recommendations to the City Commission, including an April 1, 2021 recommendation that a Use of Force committee be created to continue to review the use of force policy; and

WHEREAS, The Use of Force reform group also provided a September 2, 2020 recommendation for an annual Use of Force report; and

WHEREAS, The Commission accepted the recommendations and said changes are set forth herein; and

WHEREAS, For the immediate preservation of the public peace, property, health and safety, and for the usual daily operations of the various departments of the City it is necessary that this Ordinance take effect immediately; now, therefore,

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

Section 1. That Sections 34.54 through 34.61 of the Revised Code of General Ordinances be enacted to read as follows:

Sec. 34.54. Use of Force Committee Established

A Use of Force Committee is established.

Sec. 34.55. Membership of the Committee

A. Voting Members

The Use of Force Committee shall be constituted of seven voting members who shall be appointed by the City Commission. Open Committee positions shall be publicized within the community. Members of the Committee shall be citizens of the City or shall work in the City and of notable knowledge, experience and upstanding community standing. Prior to sitting on the Committee, each member shall receive all necessary training by city staff including the Law department and Dayton Police Department. All members shall serve without compensation. One member shall be a
current or former licensed attorney. A second member shall be a former police officer. One member shall be a member of an organization dedicated to promoting minority rights and well-being. One member shall be a representative from a neighborhood association. The remaining three members shall be selected from among members of the community. The seven voting members of the Committee shall fairly represent the racial mix of the city, shall have a balanced gender representation, and shall also reflect a fair representation of the various geographical areas of the city.

B. Non-Voting Members

The City Attorney, or a designee, the City Manager, or a designee, the Independent Accountability Auditor, a representative from the Fraternal Order of Police, and the Director and Chief of Police or his/her designee shall serve as ex-officio nonvoting members of the Committee.

Sec. 34.56 Term of office.

The voting members of the Use of Force Committee shall serve for terms of three years. No voting member may serve more than two consecutive terms. The initial terms of the voting members shall be staggered and the Commission shall choose three of the voting members to have an initial term of 2 years and four of the members to have an initial term of three years.

Sec. 34.57 Removals and vacancies.

(A) Any voting member of the Use of Force Committee may be removed for incompetence, neglect of duty, misconduct or malfeasance, by the Commission, either of its own initiative and/or at its discretion upon recommendation of a majority of voting members of the Committee.

(B) Voting members of the Committee may be removed from office for missing two consecutive meetings of the Committee without appropriate excuses delivered to the Chair of the Committee within 48 hours of the meeting. Any vacancy occasioned by resignation, death, or removal of a member shall be filled for the unexpired term by appointment by the Commission. Any such replacement shall be appointed within 60 (Sixty) days of the date when the vacancy occurred.

Sec. 34.58 Organization of Committee,

At the first meeting of the Use of Force Committee, the members thereof shall elect a Chairperson and Vice-Chairperson from among themselves. Thereafter, a Chairperson and Vice-Chairperson shall be elected every calendar year at the meeting occurring in January or the closest meeting thereafter. The chairperson may serve up to two one (1) year terms. The Chairperson shall communicate all of the business of the Committee directly to the Commission.

Sec. 34.59 Quorum and Meetings of the Committee

(A) Four members present shall constitute a quorum for purposes of conducting the business of the Use of Force Committee. No discussion shall occur without a quorum present and a majority vote of seven voting members, to-wit: four votes, is required for any action to be taken.

(B) The Use of Force Committee shall meet once quarterly at a regularly scheduled time and place as business requires, with more frequent meetings to be scheduled at the request of the Chairperson and/or Commission if necessary to carry on the
Committee’s business. The meetings shall be for the purpose of reviewing use of force data as supplied by Dayton Police, assisting in the preparation of the annual use of force report, discussing best practices in use of force policy, or trends in Dayton Police uses of force.

(C) The meetings of the Committee shall be open to the public in accordance with Ohio Open Meetings laws. The Committee may utilize executive sessions as permitted by law.

(D) Members of the Committee shall respect the confidential nature of the Committee’s proceedings and shall not disclose any matter discussed during the meetings with any individual outside the Committee membership, except as authorized by ordinance.

Sec. 34.60 Function of the Committee

(A) The Use of Force Committee shall have basic functions: regularly review use of force data from Dayton Police to assess changes or trends; discuss changes to the Use of Force policy proposed by Dayton Police; assist in the preparation of the annual Use of Force report; review best practices in Use of Force policies around the country; and make recommendations to the City Commission for changes in Dayton Police use of force policy.

(B) The Committee, with the assistance of staff, may adopt procedures, policies and rules governing its operations, not inconsistent with ordinance, with the approval of the Commission.

Sec. 34.61 Recommendations of the Committee

The recommendations of the Use of Force Committee shall be presented in writing to the Commission. The recommendations shall be a matter of public record. The City Commission shall issue a response to the recommendations within thirty days and may make a referral to the City Manager for proper policy changes, as defined by city policy and procedure. The Committee Chair may be asked to speak at Commission meetings regarding policy recommendations or data trends.

Responsibilities of the Executive Assistant to the Commission

The authority and responsibility for the execution of the policies of the Use of Force Committee is hereby conferred upon the Executive Assistant to the Commission.
Section 2. That for the reasons set forth in the preamble hereof, the Dayton City Commission declares the Ordinance to be an emergency measure, which shall take effect immediately upon its passage.

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

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

____________________________
Mayor of the City of Dayton, Ohio

ATTEST:

____________________________
Clerk of the Commission

APPROVED AS TO FORM:

____________________________
City Attorney
AN ORDINANCE

Establishing the Position and Responsibilities of an Independent Accountability Auditor, and Declaring an Emergency.

WHEREAS, On June 18, 2020, Dayton City Commission announced a police reform working group structure to drive positive changes for the police department in Dayton; and

WHEREAS, Five reform groups were formed, comprised of community members and Dayton police representatives along with city staff; and

WHEREAS, The Oversight reform group, led by Commissioner Matt Joseph and Montgomery County Recorder Brandon McClain provided numerous recommendations to City Commission, including a January 27, 2021 recommendation to hire an Independent Accountability Auditor (“IAA”); and

WHEREAS, The Commission accepted the recommendation to hire an IAA and will set forth the IAA’s role and responsibilities herein; and

WHEREAS, The Commission finds that transparency, oversight, and accountability measures will further protect civil rights and civil liberties of all Dayton citizens as well as strengthen the relationship between the community and the Dayton Police Department; and

WHEREAS, To provide for the immediate preservation of the public peace, property, health and safety, it is necessary that this Ordinance take effect at the earliest possible date; now, therefore,

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

Section 1. The office of Independent Accountability Auditor (“IAA”) is hereby created. The IAA will report to both City Manager and City Commission. The IAA should report on day to day matters to the City Manager. The Dayton City Commission and the City Manager shall assure operational independence of the independent accountability auditor - allowing the IAA to provide services with impartiality - by notimpeding the independent accountability auditor’s ability to audit any cases when the Dayton Police Department is handling an investigation involving their officers. The IAA shall be an independent contractor. Any contractual agreement for the IAA position must include authority for the City Commission to terminate the IAA for unsatisfactory performance. City Commission may repeal this ordinance by a majority vote if terms included herein need altered, are ineffective, or otherwise fail to align with the recommendation given by the Oversight Committee.
Section 2. The IAA’s duties will preliminarily be defined to include the roles and responsibilities delineated herein. The City Manager and Chief of Police will report in writing to City Commission if the terms of this ordinance require revision. The IAA’s preliminary role and responsibility will include the following:

a) The ability to review and audit the DPD’s complaint routing process and recommend to DPD revisiting the routing decision.
b) Access to the investigation while in-process through observation of interviews and review of reports, forms, or other paperwork related to the investigation. This access is not intended to disrupt or otherwise impede the investigation in any way. If the IAA does not receive access to requested materials in a timely manner, they shall elevate this concern in writing to the City Manager.
c) Providing recommendations to the Professional Standards Bureau and has authority to immediately elevate concerns to leadership within Professional Standards Bureau. Unresolved concerns can be elevated in writing to the City Manager, Mayor, and Commission.
d) Provides oversight, but is not directly involved in an investigation and does not have organizational authority over Professional Standards Bureau personnel. Should a complaint escalate into a criminal investigation, the IAA will no longer be able to participate or provide oversight to the investigation.
e) Once an investigation has been completed, DPD will make available to the IAA the final evaluation or report. The IAA will audit the speed of the responses to complaints to ensure that they have all the information needed to file an appeal within the 30-day window.
f) The ability to observe and review both internally generated investigations as well as those initiated by a citizen.
g) Audit investigation records looking for patterns of misconduct or other areas for improvement.
h) Provide an audit report to the City Commission during a regular City Commission Meeting on the first Wednesday of both March and September. The report will contain a number of data points including but not limited to: the overall number of cases further identified as internally and externally generated, the number of cases audited, and the outcome of those cases. It is the goal of the IAA to review a variety of cases to ensure quality in all types of investigations and allow for the detection of patterns. This can be revisited by the City Commission at any time.
i) Sit on the Policy Review Committee as an ex officio member.
jj) Sit on the Community Appeals Board as an ex officio member.
k) Provide support to the Use of Force Committee as needed.
Section 3. That for the reasons set forth in the preamble hereof, the Dayton Commission declares this Ordinance to be an emergency measure, which 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
A RESOLUTION

Establishing the Fiscal Year 2022 Rates, Fees and Charges for the James M. Cox Dayton International Airport, and Declaring an Emergency.

WHEREAS, The City of Dayton owns, operates, and maintains the James M. Cox Dayton International Airport ("Airport"); and

WHEREAS, The City, as a recipient of federal grant funding, is required to set reasonable and non-discriminatory rates and charges for use of its facilities and services that will make the Airport as self-sustaining as possible; and

WHEREAS, Commercial scheduled air carriers, charter air carriers (collectively, the "Airline(s)") and other commercial general aviation operators use Airport facilities and services; and

WHEREAS, A number of Airlines lease facilities at the Airport and operate air passenger services from the Airport under and pursuant to the terms of an Airport Operating and Terminal Building Occupancy Permit ("Permit"), which requires the payment of the rates, fees and charges set by the City; and

WHEREAS, In accordance with the methodology required under the Permit, the City has calculated the Fiscal Year 2022 rates, fees and charges for use of Airport facilities and services; and

WHEREAS, For the immediate preservation of the public peace, property, health and safety, and to provide for the usual daily operation of the Department of Aviation, it is necessary that this Resolution take effect immediately upon adoption; now, therefore,

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

Section 1. That the Fiscal Year 2022 (being the period of January 1, 2022 to December 31, 2022) Landing Fee Rate and Terminal Rental Rate to be charged to and paid by the Airlines at the Airport are as follows:

(A) Landing Fee Rate – The Landing Fee Rate is $3.96 per 1,000 pounds of Maximum Certificated Gross Landed Weight ("MCGLW"), with a fifty percent (50%) surcharge for all charter air carriers and for any Airline that has not executed a Permit.
(B) **Terminal Rental Rate** – The Terminal Rental Rate is $71.30 per square foot per year with a twenty-five percent (25%) surcharge for any Airline that has not executed a Permit.

All Airlines shall pay $71.30 per square foot for the baggage stem space which includes the baggage claim and the inline baggage screening system, which rate is charged on a monthly prorata basis and based on a monthly percentage allocation of enplaned passengers.

In the event the Landing Fee Rate and/or the Terminal Rental Rate set forth above are insufficient to cover the actual Airfield and/or Terminal financial costs, expenses and reserve requirements ("net requirement"), this Commission authorizes the City Manager, after consultation with the Director of Aviation, to adjust the Landing Fee Rate and/or the Terminal Rental Rate to amounts necessary to meet the Fiscal Year 2022 net requirements without need for further Commission approval or authorization.

**Section 2.** That the Fiscal Year 2022 (being the period of January 1, 2022 to December 31, 2022) Landing Fee for all non-scheduled commercial air carriers not based at the Airport, which do not use the Passenger Terminal Building, such as chartered freight carriers, shall be the following amounts, based on the weight of the aircraft:

- For aircraft weighing 12,500 pounds or less - $25.00/per landing
- For aircraft weighing 12,501 to 25,000 pounds - $35.00/per landing
- For aircraft weighing 25,001 to 50,000 pounds - $60.00/per landing
- For aircraft weighing 50,001 to 75,000 pounds - $100.00/per landing
- For aircraft weighing in excess of 75,000 pounds - $5.94 per 1,000# MCGLW

**Section 3.** That the Fiscal Year 2021 (being the period of January 1, 2021 to December 31, 2021) fees for City-owned gates and parking of aircraft at the Airport shall be as follows:

(A) **Gate Use Fee** - Any Airline that uses a City-owned (non-assigned) gate with a loading bridge shall pay the City a Gate Use Fee of $251.45 per Use. A “Use” is considered a single arrival and/or departure by the same aircraft within a twelve-hour time frame and involving the enplaning and/or deplaning of passengers. Air Transportation Companies (as defined in the Permit) that use a City-owned loading bridge at a City-owned gate and agree to maintain said loading bridge, shall be entitled to a reduction in the Gate Use Fee of $25.00 per Use. Any Airline with less than 35 regularly scheduled weekly flights may use a City-owned gate at the above price. Once an Airline achieves a weekly schedule of 35 flights or more, the Airline must rent its own gate and ticket counter space.

(B) **Aircraft Parking Fees** - Any Airline that parks an aircraft at a City-owned gate (with parking understood as not involving the enplaning or deplaning of passengers or any actions that would be considered a Use as provided in (A)
above) or at a City-designated location at the Airport shall be charged an Aircraft Parking Fee of $251.45 per 24-hour period or portion thereof.

Section 4. That, notwithstanding the rates and charges and fees specified in Sections 1 and 3 of this Resolution, the Director of Aviation, subject to the approval of the City Manager, may grant incentives to eligible Airlines in accordance with the terms of Ordinance Number 30655-07 approved by this Commission on June 20, 2007.

Section 5. That for the reasons set forth in the preamble, this Resolution is declared to be an emergency and shall take effect immediately upon adoption.

ADOPTED BY THE COMMISSION.........................., 2021

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

Mayor Nan Whaley, City of Dayton, Ohio

ATTEST:

Clerk of the Commission

APPROVED AS TO FORM:

City Attorney
December 14, 2021

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

FROM: Gilbert B. Turner, Director
       Department of Aviation

SUBJECT: A Resolution Establishing the Fiscal Year 2022 Rates, Fees and Charges for the James M. Cox Dayton International Airport, and Declaring an Emergency

The rates, fees and charges paid by the Airlines serving the Dayton International Airport are set by Resolution. An Emergency is being declared because the attached Resolution establishes the rates, fees and charges that will be effective on January 1, 2022. The Landing Fee Rate is $3.96 per 1,000 pounds of Maximum Certified Gross Landed Weight (MCGLW). The Terminal Rental Rate is $71.30 per square foot per year. Additional charges are described in the attached Resolution.

The Department of Aviation’s enplanement forecast for 2022 continues to be adversely impacted by the ongoing COVID pandemic. Enplanements are expected to reach 770K by the end of 2022, which represents a 48% increase from 2021 forecasted traffic levels but remains 13.7% below 2019 enplanements. Based on this traffic level, the airline revenue forecast in the 2022 department budget is $8.8 million, broken out as $3.5 million for landing fees and $5.3 million for terminal space rent.

If you have any question or need additional information, please call 454-8202.

Attachment(s)

Cc: Ms. Lofton
    Mr. Parlette
    Mr. Turner
    Ms. Kitchens
A RESOLUTION

Repealing the Community Police Council, and Declaring an Emergency.

WHEREAS, On June 18, 2020, Dayton City Commission announced a police reform working structure to drive positive changes for the police department in Dayton; and

WHEREAS, Five reform groups were formed, comprised of community members and Dayton police representatives along with city staff; and

WHEREAS, The Oversight reform group, led by Commissioner Matt Joseph and Montgomery County Recorder Brandon McClain provided numerous recommendations to City Commission, including reform efforts to replace the functions of the Community Police Council ("CPC"); and

WHEREAS, This Commission, through the passage of Resolution Number 6165-16 on February 3, 2016, established the CPC; and

WHEREAS, The Commission concluded that repeal of Resolution Number 6165-16 is necessary to enact the Oversight reform group’s recommendations that improve police and community relations; and

WHEREAS, For the immediate preservation of the public peace, property, health and safety, and for the usual daily operations of the various departments of the City it is necessary that this Ordinance take effect immediately; now, therefore,

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

Section 1. That Resolution Number 6165-16 of the City of Dayton is hereby repealed.
Section 2. For reasons stated in the preamble hereof, this resolution is declared to be an emergency measure and shall take effect immediately upon its passage.

ADOPTED BY THE COMMISSION.................., 2021

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

MAYOR OF THE CITY OF DAYTON, OHIO

ATTEST:

Clerk of Commission

APPROVED AS TO FORM:

City Attorney
AN ORDINANCE

Enacting R.C.G.O. Section 137.20
Regarding the Ban of Fireworks in the City of Dayton on Account of the Passage of House Bill 172 into Law.

WHEREAS, Over the last several years, especially during the COVID-19 pandemic, the City of Dayton has experienced a proliferation of fireworks use in its neighborhoods; and

WHEREAS, With the passage of House Bill 172 into law, the discharge of fireworks on some holidays will now be legal, however with the discretion of cities within the state of Ohio to determine their own laws for the benefit of their citizens; and

WHEREAS, The unsafe and illegal discharge of fireworks poses a significant danger to the public and can cause serious injuries as well as significant property damage; and

WHEREAS, The City of Dayton receives numerous complaints every year from citizens regarding illegal firework use on the grounds of noise and nuisance; and

WHEREAS, The use of fireworks disturbs the peace, tranquility, and wellbeing of residents in the City of Dayton and their pets; and

WHEREAS, The Commission, in order to preserve the peace, tranquility, and wellbeing of its residents and communities, wishes to maintain the prohibition on the discharge, ignition, or explosion of fireworks within the City’s territorial limits, and;

WHEREAS, The Revised Code of General Ordinances must be amended to include the aforementioned prohibition of the discharge, ignition, or explosion of fireworks within the City’s territorial limits; now, therefore,

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

Section 1. That this Commission hereby prohibits the discharge, ignition, or explosion of fireworks pursuant to its home rule authority and per Section 3743.45 of the Ohio Revised Code.

Section 2. That Section 137.20 of the Revised Code of General Ordinances of the City of Dayton is hereby enacted to read as follows:

(A) No person shall discharge, ignite, or explode fireworks within the territorial limits of the City.

(B) This prohibition is intended to operate to the furthest extent possible pursuant to Ohio Revised Code Section 3743.45.
(C) As used herein, the term “fireworks” has the same meaning as “1.4G fireworks” as defined in R.C. 3743.01. This definition shall not include “novelties and trick noisemakers” or “wire sparklers” as those terms are defined in R.C. 3743.01.

(D) The prohibition described in subsection (A) shall not apply to a licensed fireworks exhibitor in the exhibition of a public fireworks display approved by the City.

ADOPTED BY THE COMMISSION.................., 2021

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

ATTEST:

Mayor of the City of Dayton, Ohio

Clerk of Commission

APPROVED AS TO FORM:

City Attorney