CITY COMMISSION MEETING AGENDA

CITY COMMISSION  DAYTON, OHIO  MARCH 17, 2021

6:00 P.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 Hearings: N/A
12. Discussion Item: N/A
13. Comments by Citizens - Please register to speak with the Clerk of Commission
   (Non - Calendar items)  sign-up sheets at entrance of Commission Chambers
14. Comments by City Manager
15. Comments by City Commission
16. Work Session: N/A
17. Miscellaneous (See Section VI)

II. CITY MANAGER RECOMMENDATIONS (Item #8 above)

The following recommendations are offered for City Commission approval.

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

1. Purchase Orders:

   INFORMATION TECHNOLOGY
   A1. Commvault Systems, Inc. (computer software maintenance and support services)  $66,290.65
1. (Cont’d):

   A2. Comtech Computer Technologies, Inc. (temporary staffing services as needed through 12/31/21) $49,000.00
   A3. 3SG Plus LLC (renewal of software maintenance services) 18,227.20

   **POLICE**
   B1. POWERDM, Inc. (renewal of software maintenance services) 13,397.20

   **PUBLIC WORKS**
   C1. CHWR, Inc., dba CHW Mechanical Services (heating, ventilation and air conditioning (HVAC) preventative maintenance and repairs) 20,000.00

   **WATER**
   D1. Friends Service Company, Inc. dba FriendsOffice (office furniture including delivery and installation services) 17,092.60
   D2. CHWR, Inc., dba CHW Mechanical Services (heating, ventilation and air conditioning (HVAC) preventative maintenance and repairs) 15,000.00
   D3. XYLEM Water Solutions USA Inc. (one Flygt submersible pump and accessories) 83,099.26
   D4. Aramark Uniform & Career Apparel Group (work uniforms rental and related services as needed through 12/31/21) 35,000.00
   D5. Johnson Controls US Holdings LLC dba Johnson Controls Fire Protection LP (fire alarm annual maintenance services, sprinkler inspections and repairs as needed through 12/31/21) 40,000.00
   D6. Kendall Electric, Inc. (electrical parts, supplies and related items as needed through 12/31/21) 29,052.00
   -Depts. of Information Technology, Police, Public Works, and Water.
   Total: $386,068.91

2. 130 West 2nd Street, LLC – Lease Agreement – Sixth Amendment - for space located at 130 West 2nd Street – Public Works/Property Management. $221,330.28 (Thru 03/31/22)
3. **ATC Group Services, LLC – Service Agreement** – for Keowee Street Rehabilitation, Salem Avenue Reconstruction Phase 1, Wolf Creek Bike Path Improvements and Wright Dunbar Bikeway Consulting Services – Public Works/Civil Engineering.

   $20,197.00
   (Thru 12/31/23)


   $80,000.00
   (Thru 12/3/2022)

5. **Infor Public Sector, Inc. - Service Agreement** – for software services agreement – Water/WIMS.

   $300,000.00
   (Thru 12/31/2025)

6. **Xylem Vue, Inc. – Contract Modification** – First Amendment - for real time decision support system for wastewater collection system – Water/Water Engineering.

   $1,029,444.63
   (Thru 12/31/2024)

II. **LEGISLATION:**

   **Emergency Ordinances – First and Second Reading:**


    8. **No. 31874-21** Authorizing the Acceptance of an Aggregate Grant Award from the State of Ohio, Office of Criminal Justice Services in the Amount of One Hundred Thousand Dollars and Zero Cents ($100,000.00) on Behalf of the City of Dayton, and Declaring an Emergency.
III. MISCELLANEOUS:

ORDINANCE NO. 31875-21

RESOLUTION NO. 6567-21

IMPROVEMENT RESOLUTION NO. 3599-21

INFORMAL RESOLUTION NO. 986-21
City Manager’s Report

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

Date: March 17, 2021
Expense Type: Purchase Order
Total Amount: $386,068.91

2021 Purchase Orders

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

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

Description

INFORMATION TECHNOLOGY

(A1) P0210724 – COMMVAULT SYSTEMS, INC., OCEANPORT, NJ
- Computer software maintenance and support services.
- These services are required to maintain and support the City’s enterprise backup system software.
- Commvault Systems, Inc. is recommended as the Original Equipment Manufacturer (OEM) and sole source of these proprietary services; therefore, this purchase was negotiated.
- The Departments of Information Technology and Water recommend approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>General Fund</td>
<td>10000-5560-1166-65</td>
<td>$25,477.60</td>
</tr>
<tr>
<td>2021</td>
<td>Water Operating</td>
<td>53000-3421-1164-54</td>
<td>$40,813.05</td>
</tr>
</tbody>
</table>

Melissa A. Wilson,
CPPB
Division: Shannon,
Diane
City Manager

FORM NO. MS-16

Updated 06/2016
INFORMATION TECHNOLOGY (CONTINUED)

(A2) P0210614 – COMPTECH COMPUTER TECHNOLOGIES, INC., CENTERVILLE, OH
- Temporary staffing services as needed through 12/31/2021.
- These services are required to augment staff to maintain daily operations.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 18066JL with pricing through 12/31/2023.
- This amendment increases the previously authorized amount of $10,000.00 by $49,000.00 for a total not to exceed $59,000.00 and therefore requires City Commission approval.
- The Department of Information Technology recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>General Fund</td>
<td>10000-5560-1159-65</td>
<td>$49,000.00</td>
</tr>
</tbody>
</table>

(A3) P0210726 – 3SG PLUS LLC, COLUMBUS, OH
- Renewal of software maintenance services.
- These services are required to maintain and support the City’s enterprise OnBase Document Management System.
- 3SG Plus LLC is recommended based upon proven past performance to ensure consistent quality, compatibility and operational continuity; therefore, this purchase was negotiated.
- The Department of Information Technology recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>General Fund</td>
<td>10000-5560-1166-65</td>
<td>$18,227.20</td>
</tr>
</tbody>
</table>

POLICE

(B1) P0210721 – POWERDMS, INC., ORLANDO, FL
- Renewal of software maintenance services.
- These services are required for organization and management of law enforcement documents.
- PowerDMS, Inc. is recommended as the OEM and sole source of these proprietary services; therefore, this purchase was negotiated.
- The Department of Police recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>General Fund</td>
<td>10000-6210-1166-71</td>
<td>$13,397.20</td>
</tr>
</tbody>
</table>
PUBLIC WORKS – PROPERTY MANAGEMENT

(C1) P0210717 – CHWR, INC. dba CHW MECHANICAL SERVICES, SPRING VALLEY, OH
• Heating, ventilation and air conditioning (HVAC) preventative maintenance and repairs.
• These goods and services are required to maintain units at various City facilities.
• Rates are in accordance with the City of Dayton’s existing price agreement IFB 17021D with pricing through 4/30/2021.
• The Department of Public Works recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>General Fund</td>
<td>10000-6480-1172-54</td>
<td>$20,000.00</td>
</tr>
</tbody>
</table>

WATER – WATER ADMINISTRATION

(D1) P0210727 – FRIENDS SERVICE COMPANY, INC. dba FRIENDS OFFICE, MORaine, OH
• Office furniture including delivery and installation services.
• These goods and services are required to furnish two new offices for the Department of Water’s Division of Financial Services Division Manager’s office and Special Projects Administrator’s office.
• Rates are in accordance with the City of Dayton’s existing price agreement IFB 17047D with firm pricing through 9/30/2022.
• The Department of Water recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>Water Operating</td>
<td>53000-3410-1301-54</td>
<td>$17,092.60</td>
</tr>
</tbody>
</table>

WATER – WATER RECLAMATION

(D2) P0210718 – CHWR, INC. dba CHW MECHANICAL SERVICES, SPRING VALLEY, OH
• Heating, ventilation and air conditioning (HVAC) preventative maintenance and repairs.
• These goods and services are required to maintain units at various City facilities.
• Rates are in accordance with the City of Dayton’s existing price agreement IFB 17021D with pricing through 4/30/2021.
• 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>
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<tr>
<td>2021</td>
<td>Sanitary Sewer Operating</td>
<td>55000-3460-1167-54</td>
<td>$15,000.00</td>
</tr>
</tbody>
</table>
WATER – WATER RECLAMATION (CONTINUED)

(D3) P0210692 – XYLEM WATER SOLUTIONS USA, INC., MILFORD, OH
- One (1) Flygt submersible pump and accessories.
- These goods are required to have a spare submersible pump for the Westwood Pump Station.
- Xylem Water Solutions USA, Inc. is recommended as the OEM; therefore, this purchase was negotiated.
- The Department of Water recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>Sanitary Sewer Operating</td>
<td>55000-3460-1411-54</td>
<td>$83,009.26</td>
</tr>
</tbody>
</table>

WATER – WATER SUPPLY AND TREATMENT

(D4) P0210719 – ARAMARK UNIFORM & CAREER APPAREL GROUP, DAYTON, OH
- Work uniforms rental and related services as needed through 12/31/2021.
- These goods and services are required to provide work uniforms.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 14010K with pricing extended through 7/31/2021.
- The Department of Water recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<tr>
<td>2021</td>
<td>Water Operating</td>
<td>53000-3430-1301-54</td>
<td>$35,000.00</td>
</tr>
</tbody>
</table>

(D5) P0210716 – JOHNSON CONTROLS US HOLDINGS LLC dba JOHNSON CONTROLS FIRE PROTECTION LP, MILWAUKEE, WS
- Fire alarm annual maintenance services, sprinkler inspections and repairs as needed through 12/31/2021.
- These goods and services are required to maintain fire alarm and sprinkler systems for the Water Supply and Treatment plant.
- Rates are in accordance with the State of Ohio Term Schedule Contract pricing #800820 and Index #STS846.
- The Department of Water recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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</thead>
<tbody>
<tr>
<td>2021</td>
<td>Water Operating</td>
<td>53000-3430-1157-54</td>
<td>$40,000.00</td>
</tr>
</tbody>
</table>
WATER – WATER SUPPLY AND TREATMENT (CONTINUED)

(D6)  P0210720 – KENDALL ELECTRIC, INC., DAYTON, OH

• Electrical parts, supplies and related items as needed through 12/31/2021.
• These goods are required for the Busway Replacement part at the Ottawa Water Treatment Plant.
• Rates are in accordance with the City of Dayton’s existing price agreement IFB 20003N with pricing through 12/31/2023.
• Kendall Electric, Inc. qualifies as a Dayton local entity.
• The Department of Water recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>Water Operating</td>
<td>53000-3430-1301-54</td>
<td>$29,052.00</td>
</tr>
</tbody>
</table>

The aforementioned departments recommend approval of these orders.
City Manager’s Report

From 6480 - PW/Property Management
Supplier, Vendor, Company, Individual
Name 130 West 2nd Street, LLC
Address 8888 Keystone Crossing, Ste. 1000
Indianapolis, IN 46240

Date March 17, 2021
Expense Type Lease Agreement
Total Amount $221,330.28 (thru 03/31/22)

Fund Source(s) Fund Code(s) Fund Amount(s)
General Fund 10000-6480-1142-54 $221,330.28

Includes Revenue to the City ☑ No Affirmative Action Program ☑ Yes

Description

Sixth Amendment Lease Agreement for Space at 130 West 2nd Street

The Department of Public Works requests permission to enter into a Sixth Amendment Lease Agreement with 130 West 2nd Street, LLC in the amount of $221,330.28 for space located at 130 West 2nd Street. This space will continue to be occupied by the Department of Information Technology, which has been at this address since 1992. The lease cost per square foot will be at the rate of $13.27 per square foot resulting in a monthly rate of $18,444.19.

The term of the lease is to be extended for a one (1) year period commencing on April 1, 2021 and expiring on March 31, 2022 with one (1) additional one-year renewal option.

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

A Certificate of Funds in the amount $165,997.71 for the 2021 fiscal year is attached.

James Hope

Signatures/Approval

Approved by City Commission

Division

Thomas J. Ritchie, Jr.
Department

City Manager

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>04/01/21</td>
<td></td>
</tr>
<tr>
<td>Expiration Date</td>
<td>03/31/22</td>
<td></td>
</tr>
<tr>
<td>Original Commission Approval</td>
<td>$221,330.28</td>
<td></td>
</tr>
<tr>
<td>Initial Encumbrance</td>
<td>$165,997.71</td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$55,332.57</td>
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</tr>
</tbody>
</table>

**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

<table>
<thead>
<tr>
<th>Original CT/CF</th>
<th>Amount: $165,997.71</th>
</tr>
</thead>
<tbody>
<tr>
<td>CT16-0609</td>
<td>Fund Code 10000-6480-1142-54-XXXX-XXXX</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fund Code XXXX-XXXX-XXXX-XX-XXXX-XXXX</th>
</tr>
</thead>
</table>

**Attach additional pages for more FOAPALs**

<table>
<thead>
<tr>
<th>Vendor Name: 130 West 2nd Street LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vendor Address: 8888 Keystone Crossing, Ste 1000 Indianapolis IN 46240</td>
</tr>
<tr>
<td>Federal ID: 825215830</td>
</tr>
<tr>
<td>Commodity Code: 97199</td>
</tr>
<tr>
<td>Purpose: Annual lease payments for 130 W. Second St. (Information Technology: Suites 320 and 321)</td>
</tr>
</tbody>
</table>

**Encumbrance amount is for April - December, 2021.**

<table>
<thead>
<tr>
<th>Contact Person: Chatan Robinson</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Works/Property Management Department/Division Date: 3/2/2021</td>
</tr>
<tr>
<td>Originating Department Director’s Signature:</td>
</tr>
<tr>
<td>Finance Director Signature Date: 3-9-2021</td>
</tr>
<tr>
<td>CF Prepared by: Torri Williams Date: 3-18-2021 CF/CT Number: CT21-0609</td>
</tr>
</tbody>
</table>

SECTION II - to be completed by the Finance Department

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

Finance Director Signature Date: 3-9-2021

CF Prepared by: Torri Williams Date: 3-18-2021 CF/CT Number: CT21-0609
SIXTH AMENDMENT TO LEASE

This Sixth Amendment to Lease ("Sixth Amendment") is made this ___ day of 2021, by and between 130 WEST 2ND STREET, LLC, a Massachusetts limited liability company, successor-in-interest to Titan Loan Investment Fund, L.P., a Delaware limited partnership, successor-in-interest to TAG 130 Dayton, LLC, a Delaware limited liability company, successor-in-interest to 130 West Second Street Ltd., an Ohio limited liability company, successor-in-interest to Oakwood Associates, L.P. ("Landlord") and CITY OF DAYTON, OH, having an office at 101 West Third Street, Dayton, Ohio 45402 ("Tenant").

WITNESSETH:

WHEREAS, by a Lease made and entered into on January 23, 1992, as amended by the First Amendment to Lease dated January 25, 2002, as amended by the Second Amendment to Lease dated April 26, 2006, as amended by the Third Amendment to Lease dated April 11, 2016, and as further amended by the Fourth Amendment dated March 11, 2019, and the Fifth Amendment to Lease dated March 31, 2020 (the "Lease"), Landlord’s predecessors in interest leased to Tenant, and Tenant leased from Landlord, approximately 16,679 square feet (the "Premises") in the building located at 130 West Second Street, Dayton, Ohio 45402 (the "Building"); and

WHEREAS, Landlord and Tenant desire to amend the Lease to provide for a further extension of the term of the Lease, as more particularly provided in this Sixth Amendment.

NOW THEREFORE, in consideration of the mutual covenants contained in this Sixth Amendment and for other good and valuable consideration, Landlord and Tenant hereby agree to amend the Lease as follows:

1. Capitalized terms used in this Sixth Amendment unless otherwise defined herein have the same meaning ascribed to them in the Lease.

2. The term of the Lease is hereby extended for a one (1) year period commencing April 1, 2021 (the "Commencement Date") and expiring on March 31, 2022. This Lease may be renewed for a maximum of two (2) additional one-year periods. However, no such renewal of this Lease shall be recognized or effective unless it is reduced to writing, which makes specific reference to this Lease, and executed by a duly authorized representative of each party (the "Sixth Extended Term").

3. During the Sixth Extended Term, the Tenant’s rent shall be as follows:

<table>
<thead>
<tr>
<th>Lease Year</th>
<th>SF</th>
<th>Annually</th>
<th>Monthly</th>
<th>PSF</th>
</tr>
</thead>
<tbody>
<tr>
<td>4/1/2021-</td>
<td>16,679</td>
<td>$221,330.28</td>
<td>$18,444.19</td>
<td>$13.27</td>
</tr>
<tr>
<td>3/31/2022</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4/1/2022-</td>
<td>16,679</td>
<td>$228,001.92</td>
<td>$19,000.16</td>
<td>$13.67</td>
</tr>
<tr>
<td>3/31/2023</td>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>
4. Except as modified in this Sixth Amendment, all of the terms, covenants and conditions contained in the Lease shall remain unmodified and in full force and effect.

5. In the event of an inconsistency between the Lease and this Sixth Amendment, the terms and provisions of this Sixth Amendment shall govern.

6. This Sixth Amendment shall be binding upon the parties hereto and their respective successors and assigns.

7. Tenant represents and warrants that it has not dealt with any real estate broker except for Matt Amovitz of CBRE, Inc., representing Landlord. To Tenant’s knowledge, no other broker initiated or participated in the negotiation of this Sixth Amendment or is entitled to any commission in connection with this Sixth Amendment.

8. This Sixth Amendment and the Lease constitute the entire agreement between the parties regarding the matter provided herein. There have been no other statements, promises, or representations made by the parties that are intended to alter, modify, or complement this Sixth Amendment. This Sixth Amendment may not be changed orally, but only by an agreement in writing signed by the parties.

9. This Sixth Amendment may be executed in one or more counterparts, all of which when taken together constitute one and the same instrument. Signatures transmitted by facsimile or email will be deemed to be original signatures.

Landlord and Tenant have set their hands as of the day and year first above written.

LANDLORD:
130 WEST 2ND STREET, LLC, a Massachusetts limited liability company

By:  

Printed Name:  

Its:  

3/2/2021

TENANT:
CITY OF DAYTON, OHIO

By:  

Printed Name:  

Its:  

APPROVED AS TO FORM AND CORRECTNESS:

2/5/2021

X  John Musto for

City Attorney

Signed by: Musto, John
APPROVED BY THE COMMISSION OF
THE CITY OF DAYTON, OHIO:

__________________________, 20___

Min./Bk.______ Pg._____  

_______________________________________________

Clerk of the Commission
FIFTH AMENDMENT TO LEASE

This Fifth Amendment to Lease ("Fifth Amendment") is made this ___ day of March 2020, by and between 130 WEST 2ND STREET, LLC, a Massachusetts limited liability company, successor-in-interest to Titan Loan Investment Fund, L.P., a Delaware limited partnership, successor-in-interest to TAG 130 Dayton, LLC, a Delaware limited liability company, successor-in-interest to 130 West Second Street Ltd., an Ohio limited liability company, successor-in-interest to Oakwood Associates, L.P. ("Landlord") and CITY OF DAYTON, OH, having an office at 101 West Third Street, Dayton, Ohio 45402 ("Tenant").

WITNESSETH:

WHEREAS, by a Lease made and entered into on January 23, 1992, as amended by the First Amendment to Lease dated January 25, 2002, as amended by the Second Amendment to Lease dated April 26, 2006, as amended by the Third Amendment to Lease dated April 11, 2016, and as further amended by the Fourth Amendment dated March 11, 2019 (the "Lease"), Landlord’s predecessors in interest leased to Tenant, and Tenant leased from Landlord, approximately 16,679 square feet (the "Premises") in the building located at 130 West Second Street, Dayton, Ohio 45402 (the "Building"); and

WHEREAS, Landlord and Tenant desire to amend the Lease to provide for a further extension of the term of the Lease, as more particularly provided in this Fifth Amendment.

NOW THEREFORE, in consideration of the mutual covenants contained in this Fifth Amendment and for other good and valuable consideration, Landlord and Tenant hereby agree to amend the Lease as follows:

1. Capitalized terms used in this Fifth Amendment unless otherwise defined herein have the same meaning ascribed to them in the Lease.

2. The term of the Lease is hereby extended for a one (1) year period commencing April 1, 2020 (the "Commencement Date") and expiring on March 31, 2021. This Lease may be renewed for a maximum of two (2) additional one-year periods. However, no such renewal of this Lease shall be recognized or effective unless it is reduced to writing, which makes specific reference to this Lease, and executed by a duly authorized representative of each party (the "Fifth Extended Term").

3. During the Fifth Extended Term, the Tenant’s rent shall be as follows:

<table>
<thead>
<tr>
<th>Lease Year</th>
<th>SF</th>
<th>Annually</th>
<th>Monthly</th>
<th>PSF</th>
</tr>
</thead>
<tbody>
<tr>
<td>4/1/2020-3/31/2021</td>
<td>16,679</td>
<td>$214,825.52</td>
<td>$17,902.13</td>
<td>$12.88</td>
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<tr>
<td>4/1/2020-3/31/2021</td>
<td>16,679</td>
<td>$221,330.33</td>
<td>$18,444.19</td>
<td>$13.27</td>
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<td>16,679</td>
<td>$228,001.93</td>
<td>$19,000.16</td>
<td>$13.67</td>
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</tbody>
</table>
4. Except as modified in this Fifth Amendment, all of the terms, covenants and conditions contained in the Lease shall remain unmodified and in full force and effect.

5. In the event of an inconsistency between the Lease and this Fifth Amendment, the terms and provisions of this Fifth Amendment shall govern.

6. This Fifth Amendment shall be binding upon the parties hereto and their respective successors and assigns.

7. Tenant represents and warrants that it has not dealt with any real estate broker except for Matt Arnowitz of CBRE, Inc., representing Landlord. To Tenant’s knowledge, no other broker initiated or participated in the negotiation of this Fifth Amendment or is entitled to any commission in connection with this Fifth Amendment.

8. This Fifth Amendment and the Lease constitute the entire agreement between the parties regarding the matter provided herein. There have been no other statements, promises, or representations made by the parties that are intended to alter, modify, or complement this Fifth Amendment. This Fifth Amendment may not be changed orally, but only by an agreement in writing signed by the parties.

9. This Fifth Amendment may be executed in one or more counterparts, all of which when taken together constitute one and the same instrument. Signatures transmitted by facsimile or email will be deemed to be original signatures.

Landlord and Tenant have set their hands as of the day and year first above written.

LANDLORD:

130 WEST 2ND STREET, LLC, a Massachusetts limited liability company

By: [Signature]

Printed Name: Brian Lash

Its: Manager

TENANT:

CITY OF DAYTON, OHIO

By: [Signature]

Printed Name: Joseph D. Pallette

Its: Deputy City Manager

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

_____________________________, 2020

Min./Bk. _______ Pg. _______

Clerk of the Commission
Dayton, Ohio

March 12, 2020

WHEREAS, COVID-19 is a respiratory disease that can result in serious illness or death and can be easily spread from person to person; and

WHEREAS, The Centers for Disease Control and Prevention (CDC) reported over 1,215 cases of COVID-19 in the United States, resulting in 36 deaths; and

WHEREAS, On March 9, 2020, the Ohio Department of Health announced confirmed cases of COVID-19 in the State of Ohio, creating a dangerous condition that may affect the health, safety and welfare of the citizens of Ohio, and

WHEREAS, On that same date, Governor Mike DeWine declared a state of emergency for the entire State to protect the well-being of the citizens of Ohio from the dangerous effects of COVID-19, and to assist in protecting the lives, safety, and health of the citizens of Ohio; and

WHEREAS, COVID-19 endangers the lives of the citizens of Dayton, creating an emergency to life and public safety and disrupting commerce.

Now, therefore, the Mayor and City Manager of the City of Dayton declare that a state of emergency exists in the City of Dayton and hereby invoke and declare those portions of the Ohio Revised Code which are applicable to the emergency and have caused the issuance of this proclamation to be in full force and effect in the City of Dayton for the exercise of all necessary emergency authority for protection of the lives and property of the people of Dayton and the continuation of local government with a minimum of interruption.

Reference is hereby made to all appropriate laws, charter provisions, statutes, ordinances and resolutions, and particularly to the Emergency Management provisions contained in Section 5502 of the Ohio Revised Code.

All public offices and employees of the City of Dayton are hereby directed to exercise the utmost diligence in the discharge of duties required of them for the duration of the emergency and in execution of emergency laws, regulations, and directives--state and local.

All citizens are called upon and directed to comply with necessary emergency measures, to cooperate with public officials and in executing emergency operational plans, and to obey and comply with the lawful direction of properly identified officers.

All operating forces should direct their communications and requests and new operations directly to the City Manager.

We have signed this Emergency Declaration this 12th day of March 2020, and it shall take effect immediately and shall remain in full force and effect until the emergency no longer exists, such time to be determined by the City Manager, in consultation with the Mayor.

Mayor of the City of Dayton, Ohio  City Manager of the City of Dayton, Ohio
Hello Tonika,

I have reviewed the attached commission packet. It looks good. Thank you!
Vendor: 825215830

**ADDRESS**

- **From Date**: 
- **To Date**: 
- **Address Type**: 3 Billing
- **Sequence Number**: 4
- **Street Line 1**: c/o CBRE Inc
- **Street Line 2**: Prop ID # T0001115
- **Street Line 3**: 8888 Keystone Crossing Suite 1000
- **City**: Indianapolis
- **State or Province**: IN Indiana
- **ZIP or Postal Code**: 46240-4618
- **County**: 
- **Nation**: 
- **Telephone Type**: 3 Billing

**Budget Availability Status**

- **Chart**: 8
- **Fiscal Year**: 21
- **Index**: 
- **Commit Type**: Uncommitted
- **Fund**: 10000 General Fund
- **Account**: 1142 Land and Building Rentals
- **Program**: 54 Infrastructure Maint & Dev
- **Pending Documents**: ✔

**BUDGET AVAILABILITY STATUS**

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<tr>
<th>Account</th>
<th>Title</th>
<th>Adjusted Budget</th>
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<td>1142</td>
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<tr>
<td>Account</td>
<td>Type</td>
<td>Title</td>
</tr>
<tr>
<td>---------</td>
<td>------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>1142</td>
<td>E</td>
<td>Land and Building Rentals</td>
</tr>
</tbody>
</table>
City Manager’s Report

From 6450 - PW/Civil Engineering
Supplier, Vendor, Company, Individual
Name ATC Group Services, LLC
Address 5000 Hempstead Station Drive
Dayton, Ohio 45429

Date March 17, 2021
Expense Type Service Agreement
Total Amount $20,197.00 (thru 12/31/2023)

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Keowee E 1st to E 4th St Rehab</td>
<td>41987-6450-1159-54</td>
<td>$8,195.00</td>
</tr>
<tr>
<td>Salem Ave Reconstruction PH 1</td>
<td>41484-6450-1159-54</td>
<td>$6,970.00</td>
</tr>
<tr>
<td>Wolf Creek Bike Path Improvements</td>
<td>41761-6450-1159-54</td>
<td>$2,427.00</td>
</tr>
<tr>
<td>Wright Dunbar Bikeway</td>
<td>41760-6450-1159-54</td>
<td>$2,605.00</td>
</tr>
</tbody>
</table>

Includes Revenue to the City [ ] Yes [✓] No
Affirmative Action Program [✓] Yes [ ] No [ ] N/A

Description

**KEOWEE STREET REHABILITATION, SALEM AVENUE RECONSTRUCTION PHASE 1, WOLF CREEK BIKE PATH IMPROVEMENTS, AND WRIGHT DUNBAR BIKEWAY AGREEMENT FOR CONSULTING SERVICES**

The Department of Public Works requests permission to enter into an agreement with ATC Group Services, LLC to perform the construction testing in connection with the Keowee Street Rehabilitation, Salem Avenue Reconstruction Phase 1, Wolf Creek Bike Path Improvements, and the Wright Dunbar Bikeway projects. The consultant will perform all necessary construction testing.

This construction testing is being funded by OPWC Issue I, Federal STP, and Federal TA funds. Two companies submitted proposals with ATC Group Services, LLC submitting the lowest fee of $20,197.00.

The agreement commences upon execution by the City and shall terminate on December 31, 2023. The agreement has been approved by the Law Department as to form and correctness.

A Certificate of Funds is attached.

Signatures/Approval

Approved by City Commission

Division

Department

City Manager

FORM NO. MS-16

Updated 06/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

X New Contract

Renewal Contract

Change Order

Contract Start Date: Upon Execution

Expiration Date: 12/31/23

Original Commission Approval: $ 20,197.00

Initial Encumbrance: $ 20,197.00

Remaining Commission Approval: $ -

Original CT/CF Increase Encumbrance: $ -

Decrease Encumbrance: $ -

Remaining Commission Approval: $ -

Required Documentation:

Initial City Manager's Report

Initial Certificate of Funds

Initial Agreement/Contract

Copy of City Manager's Report

Copy of Original Certificate of Funds

Amount: $ 8,195.00

Fund Code: 41987 - 6450 - 1159 - 54 - -

Fund Org Acct Prog Act Loc

Amount: $ 6,970.00

Fund Code: 41848 - 6450 - 1159 - 54 - -

Fund Org Acct Prog Act Loc

Amount: $ 2,427.00

Fund Code: 41761 - 6450 - 1159 - 54 - -

Fund Org Acct Prog Act Loc

Amount: $ 2,605.00

Fund Code: 41760 - 6450 - 1159 - 54 - -

Fund Org Acct Prog Act Loc

Attach additional pages for more FOAPALS

Vendor Name: ATC Group Services, LLC

Vendor Address: 5000 Hempstead Station Drive Dayton, Ohio 45429

Street City State Zip code + 4

Federal ID: 46-0399408

Commodity Code: 90777

Purpose: Professional Services Agreement for construction testing for the Keowee Street Rehabilitation, Salem Avenue Reconstruction Phase 1, Wolf Creek Bike Path Improvements, and Wright Dunbar Bike Path Improvements

Projects:

Contact Person: Joe Weinle

Public Works/Civil Engineering Department/Division 3/5/2021

Originating Department Director's Signature: [Signature]

Date: 3/5/2021

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's Signature: [Signature]

Date: 3-8-2021

CF Prepared by: [Signature]

Date: 3/5/2021

CF/CT Number: CT21-2943

October 18, 2011
AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT ("Agreement"), dated this ___ day of __________, 2021 is between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio ("City") ATC Group Services, LLC. ("Contractor").

WITNESSETH THAT:

WHEREAS, the City intends to perform roadway and other improvements as part the Keowee Street Rehabilitation, Salem Avenue Reconstruction Phase 1, Wolf Creek Bike Path Improvements, and the Wright Dunbar Bike Path Improvement Projects (the Project’); and,

WHEREAS, the City requires certain soil observation and concrete and asphalt testing services in connection with the Project (the “Services”); and,

WHEREAS, Contractor is a skilled, experienced and competent consulting firm with the personnel and equipment to perform the professional Services set forth hereinafter for the City’s Department of Public Works;

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

ARTICLE 1- SERVICES TO BE PERFORMED

Contractor shall perform the soil observation and concrete and asphalt testing Services for the Project as described in Exhibit A, attached hereto and incorporated as if fully rewritten herein.

All Services to be performed under this Agreement shall be in compliance with all applicable federal, state and local laws, regulations and orders and professional standards.

ARTICLE 2- COMPENSATION

The City shall pay Consultant a sum not to exceed Twenty Thousand One Hundred Ninety Seven Dollars and Zero Cents ($20,197.00) for the Services actually provided in accordance with this Agreement. Payment for the Services shall be based upon the rates for each service to be provided as set forth in the Proposal dated February 11, 2021, attached as Exhibit A. Consultant may submit invoices to City for partial payment on a monthly basis.

ARTICLE 3- TERM

This Agreement shall commence upon execution by City and shall terminate on December 31, 2023, unless extended to a later date by mutual written amendment to this agreement or terminated according to Article 4 of this Agreement.
ARTICLE 4- TERMINATION

This Agreement may be terminated by City upon written notice in the event of substantial failure by Consultant to perform in accordance with the terms of this Agreement. Consultant shall have fifteen (15) calendar days from the date of the termination notice to cure or submit a plan for cure acceptable to City. If a plan to cure is not accepted, then this Agreement will be terminated immediately and City shall pay Consultant only for those services accepted by the City.

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

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

ARTICLE 5- INDEMNIFICATION

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

This Article shall survive early termination or expiration of this Agreement

ARTICLE 6- INSURANCE

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

(1) General/Comprehensive 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

(2) Automobile liability insurance, with a combined single limit of One Million Dollars ($1,000,000) for each person and One Million Dollars ($1,000,000) for each accident; and

(3) Workers’ compensation insurance, in such amounts as required by Ohio law, and Employer’s liability insurance with a limit of Five Hundred Thousand Dollars ($500,000) for each occurrence; and

(4) Professional liability, with a minimum annual aggregate of Five Hundred Thousand Dollars ($500,000); and

(5) Errors and omissions insurance in the amount of Five Hundred Thousand Dollars ($500,000), to protect the City from any errors that Consultant or his/her employees may perpetrate in the preparation of the plans, specifications, and cost estimates and any resulting damage from said errors.
All policies of general/comprehensive liability insurance required herein shall name City, its elected officials, officers, employees, agents, and volunteers as additional insureds. All insurance policies, excluding Workers’ compensation insurance, shall contain the requirement that City be notified thirty (30) days in advance of any termination or diminution of coverage.

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

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

ARTICLE 7- STANDARD OF CARE

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

If, during the one (1) year period following the completion of the Services, it is shown there is an error in the Services cause by Consultant’s failure to meet such standards and City has notified Consultant in writing of any such error within that period, Consultant shall perform, at no additional cost to City, such Services within the original Project as may be necessary to remedy such error.

ARTICLE 8- 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:

Consultant: ATC Group Services, LLC
5000 Hempstead Station Drive
Dayton, Ohio 45429
Attention: Jason Brothers

City: City of Dayton
Department of Public Works
101 West Third Street
Dayton, Ohio 45402
Attention: Director of Public Works

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the City and Contractor.
ARTICLE 9- NON DISCRIMINATION

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

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

ARTICLE 10- CONFIDENTIALITY

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

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

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

ARTICLE 11- OWNERSHIP OF DOCUMENTS & INTELLECTUAL PROPERTY

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

Consultant shall retain its rights in standard scripts, databases, computer software, and other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of Consultant.
ARTICLE 12 - GENERAL PROVISIONS

A. Waiver

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

B. Delay

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

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

C. Governing Law & Venue

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

D. Meetings and Evaluation

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

E. Independent Contractor

By executing this Agreement, Consultant acknowledges and agrees that Consultant will be providing all Services to City as an "independent contractor." As an independent contractor for City, Consultant will be prohibited from representing or allowing others to construe the parties' relationship in a manner inconsistent with this Article. Consultant will have no authority to assume or create any obligation on behalf of, or in the name of City, without the express prior written approval of a duly authorized representative of City.
Consultant understands and agrees that it is not a City employee, and therefore, will not be entitled to, nor will it make any claim for, any of the emoluments of employment with the City of Dayton. Further, Consultant will be solely responsible to withhold and pay all applicable local, state and federal taxes and Workers' Compensation Insurance. Contractor is not a "public employee for the purpose of Ohio Public Employees Retirement System (OPERS) membership.

F. Assignment

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

G. Third Party Rights

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

H. Amendment

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

I. Effect of Conflicting Documents

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

J. Entire Agreement/Integration

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

K. Political Contributions

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

CITY OF DAYTON, OHIO

__________________________
City Manager

ATC GROUP SERVICES, LLC

By: _______________________

Title: _____________________

APPROVED AS TO FORM
AND CORRECTNESS

________________________
City Attorney

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

__________________________, 20__

Min./Bk. _____     Pg. _____

_________________________
Clerk of the Commission
## Exhibit A

**Keowee Street Rehabilitation**

**TESTING FIRM:** ATC Group Services, LLC  
**DATE:** 2-11-2021

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Quantity</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>S-1</td>
<td>Observation and Testing Services for subgrade, and embankment material with nuclear density gauge.</td>
<td>30 Hrs</td>
<td>$33.00</td>
<td>$990.00</td>
</tr>
<tr>
<td>S-2</td>
<td>Proctor curve (moisture density modified method ASTM D-1557).</td>
<td>2 Each</td>
<td>$70.00</td>
<td>$140.00</td>
</tr>
<tr>
<td>S-3</td>
<td>Gradation analysis (includes sampling).</td>
<td>2 Each</td>
<td>$45.00</td>
<td>$90.00</td>
</tr>
<tr>
<td>S-4</td>
<td>Plant inspection, testing and all Necessary reports in conformance With ODOT Specifications</td>
<td>10 Hours</td>
<td>$35.00</td>
<td>$350.00</td>
</tr>
<tr>
<td>S-5</td>
<td>Make, cure and test concrete cylinders. Including molds, pick up and testing. Four cylinders per set. Including slump and air tests.</td>
<td>40 Sets</td>
<td>$165.00</td>
<td>$6,600.00</td>
</tr>
<tr>
<td>S-6</td>
<td>Make, cure and test concrete Beams. Including molds, pick up, and testing. Including slump and air tests.</td>
<td>25 Beams</td>
<td>$1.00</td>
<td>$25.00</td>
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**Total Bid** $8195.00
<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Quantity</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>S-1</td>
<td>Observation and Testing Services for subgrade, and embankment material with nuclear density gauge.</td>
<td>30 Hrs</td>
<td>$33.00</td>
<td>$999.00</td>
</tr>
<tr>
<td>S-2</td>
<td>Proctor curve (moisture density modified method ASTM D-1557).</td>
<td>2 Each</td>
<td>$70.00</td>
<td>$140.00</td>
</tr>
<tr>
<td>S-3</td>
<td>Gradation analysis (includes sampling).</td>
<td>4 Each</td>
<td>$45.00</td>
<td>$180.00</td>
</tr>
<tr>
<td>S-4</td>
<td>Plant inspection, testing and all Necessary reports in conformance With ODOT Specifications</td>
<td>20 Hours</td>
<td>$35.00</td>
<td>$700.00</td>
</tr>
<tr>
<td>S-5</td>
<td>Make, cure and test concrete cylinders. Including molds, pick up and testing. Four cylinders per set. Including slump and air tests.</td>
<td>30 Sets</td>
<td>$165.00</td>
<td>$4,950.00</td>
</tr>
<tr>
<td>S-6</td>
<td>Make, cure and test concrete Beams. Including molds, pick up, and testing. Including slump and air tests.</td>
<td>10 Beams</td>
<td>$1.00</td>
<td>$10.00</td>
</tr>
</tbody>
</table>

Total Bid: $6,979.00
## Exhibit A

### Wolf Creek Bike Path Improvements

**TESTING FIRM: ATC Group Services, LLC**

**DATE: 2-11-2021**

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Quantity</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>S-1</td>
<td>Observation and Testing Services for subgrade, and embankment material with nuclear density gauge.</td>
<td>20 Hrs</td>
<td>$33.00</td>
<td>$660.00</td>
</tr>
<tr>
<td>S-2</td>
<td>Proctor curve (moisture density modified method ASTM D-1557).</td>
<td>1 Each</td>
<td>$70.00</td>
<td>$70.00</td>
</tr>
<tr>
<td>S-3</td>
<td>Gradation analysis (includes sampling).</td>
<td>1 Each</td>
<td>$45.00</td>
<td>$45.00</td>
</tr>
<tr>
<td>S-5</td>
<td>Make, cure and test concrete cylinders. Including molds, pick up and testing. Four cylinders per set. Including slump and air tests.</td>
<td>10 Sets</td>
<td>$165.00</td>
<td>$1,650.00</td>
</tr>
<tr>
<td>S-6</td>
<td>Make, cure and test concrete Beams. Including molds, pick up, and testing. Including slump and air tests.</td>
<td>2 Beams</td>
<td>$1.00</td>
<td>$2.00</td>
</tr>
</tbody>
</table>

**Total Bid $2,427.00**
### Exhibit A

**Wright Dunbar Bike Path Improvements**

**TESTING FIRM: ATC Group Services, LLC**

**DATE:** 2-11-2021

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
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<tbody>
<tr>
<td>S-1</td>
<td>Observation and Testing Services for subgrade, and embankment material with nuclear density gauge.</td>
<td>20 Hrs</td>
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<td>$660.00</td>
</tr>
<tr>
<td>S-2</td>
<td>Proctor curve (moisture density modified method ASTM D-1557).</td>
<td>1 Each</td>
<td>$70.00</td>
<td>$70.00</td>
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<td>S-3</td>
<td>Gradation analysis (includes sampling).</td>
<td>1 Each</td>
<td>$45.00</td>
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<tr>
<td>S-4</td>
<td>Plant inspection, testing and all necessary reports in conformance with ODOT Specifications</td>
<td>5 Hours</td>
<td>$35.00</td>
<td>$175.00</td>
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<td>S-5</td>
<td>Make, cure and test concrete cylinders. Including molds, pick up and testing. Four cylinders per set. Including slump and air tests.</td>
<td>10 Sets</td>
<td>$165.00</td>
<td>$1,650.00</td>
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<td>S-6</td>
<td>Make, cure and test concrete Beams. Including molds, pick up, and testing. Including slump and air tests.</td>
<td>5 Beams</td>
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**Total Bid** $2,605.00
SAFETY BUILDING CHILLER REPLACEMENT RE-BID
(10% SBE PARTICIPATION GOAL/12.13% SBE PARTICIPATION ACHIEVED)

The Department of Public Works proposes Change Order No. 1 for $80,000.00 to the existing contract with CHWR Inc. dba CHW Mechanical Services for the Safety Building Chiller Replacement Re-Bid project. Change Order No. 1 is required to build-out, insulate, and provide heating and cooling to an area on the fourth floor such that certain information, materials, and/or equipment that is temperature sensitive can be properly stored. Currently the fourth floor does not have sufficient heating and cooling capabilities meeting the requirements for these items to be stored.

This project is fully funded using the 2020 Facility Safety Building Chiller Replacement Fund, the 2018 Facilities Improvement G.O. Debt Fund and the Facility Improvements Fund.

The original contract amount was $420,750.00. Change Order No. 1, which totals $80,000.00, will increase the contract amount with CHWR Inc. dba CHW Mechanical Services for the Safety Building Chiller Replacement Re-Bid project to $500,750.00.

This Change Order No. 1 has been reviewed by the Department of Law as to form and correctness.

A copy of Change Order No. 1 and the Certificate of Funds are attached.
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>Contract Start Date</th>
<th>Contract Expiration Date</th>
<th>Original Commission Approval</th>
<th>Initial Encumbrance</th>
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**Vendor Name:** CHWR Inc. dba CHW Mechanical Services
**Vendor Address:** 2405 Darnell Dr. Spring Valley, OH 45370
**Federal ID:** 454087793
**Commodity Code:** 90685
**Purpose:** Safety Building Chiller Replacement Re-Bid Project (10% SBE Participation/12.13% SBE Achieved)

**Contact Person:** Chatan Robinson
**Public Works/Property Management:** 3/8/2021

**Frederick M. Stovall**

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:** 03/09/2021

**CF Prepared by**

**Date:** 03/09/2021

**CF/CT Number:** CT20-2648

Finance Department

October 18, 2011
CHANGE ORDER NUMBER 1

This Change Order Number 1 ("Change Order"), is entered into this ____ day of __________, 2021 between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio, (hereinafter referred to as "City") and CHWR Inc dba CHW Mechanical Services (hereinafter referred to as "Contractor").

WITNESSETH THAT:

WHEREAS, the City and Contractor entered into an contract for the Safety Building Chiller Replacement Re-Bid (10% SBE Participation Goal) ("Project"), CT20-2648 dated November 25, 2020 ("Contract"), to perform HVAC chiller and pumping system improvements in the Safety Building; and,

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

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

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

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

Section 1. Under this Change Order, the Consultant shall perform the following work:

   a. Item No. 1, Installation of an HVAC system in specific areas of the fourth floor including electrical improvements, insulation, ceiling grid improvements, insurance, and bonding, as is more fully described in the drawings attached hereto as Exhibit A 1 LUMP SUM

Section 2. In consideration of Contractor's performance of the additional work described in Section 1 above, the City will pay Contractor an amount not to exceed Seventy Thousand Seven Hundred Twenty-Eight Dollars and Forty-Three Cents ($70,728.43). Payment will be made as itemized in the document attached hereto as Exhibit B.

Section 3. The City shall increase the amount encumbered under this Contract by a total of Eighty Thousand Dollars and Zero Cents ($80,000.00), of which Nine Thousand Two Hundred Seventy-One Dollars and Fifty-Seven Cents ($9,271.57) shall be contingency funds to be used at the sole discretion of the City.

Section 4. The City and Contractor agree to extend the Project completion date from April 16, 2021 to June 1, 2021.

Section 5. The terms and compensation provided by this Change Order constitute full compensation and complete satisfaction for all direct and indirect costs, and interest related thereto, which has been or may be incurred in connection with this change in work, including, but not limited to, any delays, inefficiencies, disruption or suspension, extended overhead, profit, interest, acceleration, and cumulative impact of this and any previously issued change orders.
Section 6. Except as modified by this Change Order, the Contract remains unchanged and in full force and effect.

IN WITNESS WHEREOF, the City and Consultant, each by a duly authorized representative, have executed this Change Order Number 1 as of the date first above written.

CITY OF DAYTON, OHIO

City Manager

APPROVED AS TO FORM AND CORRECTNESS:

City Attorney

CHW MECHANICAL SERVICES

Title: TREASURER

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

_________________________, 20__

Min./Bk. _______ Pg. ______

Clerk of the Commission
<table>
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<tr>
<th>Item Description/Division</th>
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<td>$80,000.00</td>
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INFOR SOFTWARE SERVICES AGREEMENT

The Department of Water requests permission to enter into an Agreement with Infor Public Sector, Inc. in the amount of $300,000.00 for professional services to include enhancements and customizations of Rhythm for Civics (Dayton Delivers 2.0), Infor Field Inspector (Mobile), configuration and deployment of GIS Sync tool, reconfiguring DataMiner tool set to utilize REST services, and for as needed services.

The Agreement is being funded using 2021 Water, Sanitary, and Storm Technology Funds.

The Agreement shall commence upon execution by the City and it shall expire upon expenditure of all funds provided here or on December 31, 2025.

The 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.
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

X New Contract

Renewal Contract

Change Orders

Contract Start Date 3/17/2021
Expiration Date 12/31/2025
Original Commission Approval $300,000.00
Initial Encumbrance $300,000.00
Remaining Commission Approval $-

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

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

<table>
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<tr>
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</tbody>
</table>

Attach additional pages for more FOAPALs

Vendor Name: Infor Public Sector, Inc.
Vendor Address: 641 Avenue of the Americas New York, NY 10011
Federal ID: 94-2913642
Commodity Code: 98574
Purpose: Software Services Agreement for various technological work.

Contact Person: Lisa Burton-Yates
Department/Division Water/Water Engineering
Date 3/5/2021

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's Signature

Date 3-4-2021

CF Prepared by Tonika Williams

Date 3/9/2021

CF/CT Number CT21-2944

Finance Department October 18, 2011
SOFTWARE SERVICES AGREEMENT

THIS SOFTWARE SERVICES AGREEMENT (the “Services Agreement”) is made between Infor Public Sector, Inc. (“Infor”) and City of Dayton, Ohio (“Licensee”) as of the Effective Date. The parties agree as follows:

1. Definitions.

(a) “Affiliate” means any entity, directly or indirectly, controlling, controlled by, or under common control with, Infor.

(b) “Confidential Information” means non-public information of an Affiliate or a party to this Agreement that is identified as or would be reasonably understood to be confidential and/or proprietary. Confidential Information does not include information that: (i) is or becomes known to the public without fault or breach of the Recipient; (ii) the Discloser regularly discloses to third parties without restriction on disclosure; (iii) the Recipient obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation; (iv) is independently developed by the Recipient without access to Confidential Information; or (v) subject to Ohio public record laws.

(c) “Discloser” means the party providing Confidential Information to the Recipient.

(d) “Effective Date” means the date identified on the signature page of this Services Agreement as the Effective Date.

(e) “Equipment” means the hardware and systems software configuration on which Infor supports use of the Licensed Software.

(f) “Intellectual Property Rights” means any and all rights in patents, patent applications, copyrights, copyright registrations, trade secrets, trademarks and service marks (including, where applicable, all derivative works of the foregoing).

(g) “Licensed Software” means the computer software programs licensed by Infor or its Affiliate to Licensee.

(h) “Recipient” means the party receiving Confidential Information of the Discloser.

(i) “Residual Knowledge” means ideas, concepts, know-how or techniques related to the Discloser’s technology and Confidential Information that are retained in the unaided memories of the Recipient who had rightful access to Confidential Information.

(j) “Services” means the software-related professional services that Infor will provide Licensee as contemplated under this Services Agreement and/or any Work Order.

(k) “Work Order” has the meaning ascribed to such term in Section 2(a) of this Services Agreement.

2. Services.

(a) Work Orders. Infor will provide Licensee with Services as set forth in one or more mutually agreed to and signed work order(s) which shall contain without limitation, a description of the Services, the Services rate(s) and payment terms (each a “Work Order”). The parties agree that Work Orders may not be complete statements of Services required by Licensee and additional Services may be required which would be difficult to determine as of the date of this Services Agreement or of the applicable Work Order. At Licensee’s request, the Work Order may include an estimate of charges for the Services, but such estimate shall not be binding on Infor or convert the Work Order into a fixed price contract with respect to such Services. Unless expressly stated otherwise: (i) the Services rates are for an 8-hour person-day and will not include the expenses and charges referred to in Section 3(a) of this Services Agreement; (ii) the quoted rates shall represent Infor’s current rates applicable to Licensee (i.e., the rates applicable to Licensee as of the effective date of the Work Order) for the resources specified; and (iii) to the extent that Infor raises the rates charged for Services during the course of a project, Licensee shall be required to pay Infor at the increased rates. Infor is under no obligation to perform any Services other than pursuant to a Work Order. Notwithstanding the foregoing, if Infor performs Services at the direction of Licensee and the parties have not signed a Work Order for such Services, then such Services shall be subject to all terms and conditions of this Services Agreement, and Infor’s then-current rates for such Services shall apply. Infor may provide Services through its third-party contractors (“Contractors”), but, in all such cases, Infor will remain subject to the obligations hereunder.

(b) Work Orders Process. Once Licensee identifies a need for professional service(s) for a Project, it shall notify Infor’s designated professional services representative. Such City notification, to be provided by Licensee’s Director of Water or designee, shall identify a particular Project and provide a general description of the professional services requested by Licensee. Each Work Order shall set forth a detailed scope of services, a proposed schedule for performance and estimated completion date, and the compensation at hourly labor rates for the professional services to be provided. Not later than ten (10) business days from receipt thereof, Licensee shall review the Work Order and provide comment and, as may be necessary, revisions to Infor. Once the parties mutually agree to the terms, conditions, and compensation set forth in a Work Order, Infor shall execute it and submit it to Licensee’s Director of Water for approval and execution by Licensee Manager (or designees) on behalf.
of Licensee.

(c) Conditions on Providing Services. Licensee must assign a project manager who will assume responsibility for management of the project for which the Services are provided. Licensee will establish the overall project direction, including assigning and managing the Licensee’s project personnel team. Licensee must provide Infor with such facilities, equipment and support as are reasonably necessary for Infor to provide Services, including remote access to the Equipment. Infor owns and will own all right, title and interest to the Services and any work product generated from the Services (“Work Product”), and Licensee will execute and deliver to Infor any documents reasonably necessary to vest in Infor all right, title and interest therein. Subject to the terms and conditions of this Services Agreement, Infor grants Licensee a perpetual, non-exclusive, non-transferable license (without the right to sublease or sublicense) to use and copy for use the Work Product for Licensee’s own, internal computing operations.

(d) Scheduling and Cancellation of Scheduled Services. In connection with any Work Order, Licensee should make staffing requests at least four (4) weeks in advance to increase the likelihood that the request can be filled for the date requested. While it is possible to secure staffing within this time frame (and Infor will make commercially reasonable efforts to comply with such staffing requests), the probability of obtaining the requested resources decreases the closer the request is made to the need date. The parties agree that once Licensee and Infor have scheduled a specific time during which Infor will provide Services under the terms of this Services Agreement and/or a Work Order, Licensee will be obligated to pay Infor for such Services as if Infor had performed such Services on the date scheduled and any related travel and living expenses to the extent such travel and living expenses are non-refundable, unless Licensee has notified Infor that Licensee would like to reschedule or cancel the provision of such Services at least twenty one (21) days prior to the date which Infor is scheduled to perform such Services.

3. Payment and Taxes.

(a) Payment. Unless otherwise stated in the applicable Work Order, Infor will invoice Licensee for all Services and applicable charges on a bi-weekly basis, as Infor renders the Services or Licensee incurs the charges, as applicable. Licensee will also reimburse Infor for actual travel and living expenses that Infor incurs in providing Licensee with Services under this Services Agreement, with reimbursement to be on an as-incurred basis. Licensee will also reimburse Infor for all charges incurred in connection with accessing Equipment, if any. Licensee will pay each Infor invoice within sixty (60) days of the date of invoice. Late payments are subject to a late charge equal to the lesser of: (i) one and one-half percent (1½%) per month; and (ii) the highest rate permitted by applicable law.

(a) Remuneration. The amount of total remuneration shall not exceed the sum of THREE HUNDRED THOUSAND DOLLARS AND ZERO CENTS ($300,000.00) for all professional services to be provided by Infor.

It is understood and agreed that in no event shall Licensee be required to pledge or otherwise fund this Agreement with non-water revenues or grants (e.g., Licensee’s “General Fund”).

Infor understands and agrees that payment for the actual services rendered shall be in the manner provided in Subsections C to E below.

c) Compensation for Professional Services. Licensee’s execution of a Work Order shall signify its agreement to pay Infor for the actual professional services rendered in accordance with the method of compensation set forth in the executed Work Order(s). Licensee also agrees to reimburse Infor for “non-standard costs and expenses” (as this term is defined in Subsection D below) incurred by it in the performance of the professional services set forth in an executed Work Order. Unless otherwise specified in a Work Order, Infor shall invoice Licensee, not more frequently than monthly, for payment of professional services actually rendered. Such invoices shall refer to the applicable Work Order, specify an invoice period, list the total amount requested, contain a description of the professional services actually provided during the invoice period and a detailed statement of the number of hours expended by each type of personnel involved in the performance of such services. Infor shall also submit, upon request by Licensee, such other supporting documentation and information to substantiate the invoice amount and/or to satisfy any grant of funding source, condition, or requirement.

d) Method of Determining Compensation. The compensation listed in a Work Order shall be based on hourly personnel rates (time and charges) for completion of all professional services listed in the Work Order. If an hourly rate is specified as the basis for compensation in a Work Order, Infor’s hourly rates shall be based on the rates for the performance of the professional services listed in the Work Order. For purposes of this Agreement, “standard project expenses” shall include travel to and from Licensee of Dayton.

e) Non-Standard Costs and Expenses. Licensee agrees to reimburse Infor for non-standard costs and expenses incurred in the performance of the professional services performed pursuant to an executed Work Order. For purposes of this Agreement, “non-standard costs and expenses” include, but are not necessarily limited to, costs and expenses incurred to set up and maintain a project office (only if required by Licensee and specified in an executed Work Order) and travel expenses to areas other than the City of Dayton (e.g., airfare, mileage, lodging, meals). In the event the requested professional service involves the use of electronic measuring equipment, computers, plotters, and other special equipment these items will be considered a non-standard project expense. In the event Infor is uncertain of a certain cost or expense
would be a reimbursable as non-standard cost or expense, it shall first obtain Licensee’s prior written consent for reimbursement prior to incurring the cost or expense.

Infor shall submit invoices, not more frequently than monthly, for reimbursement of non-standard costs and expenses. Such invoices shall refer to the applicable Work Order for which the expenditure was related, state the total amount of reimbursement requested, and contain a detailed listing, by category and type, of each non-standard cost and expense actually incurred.

d) Signed, legible and explanatory receipts must be submitted for all reimbursable expenses.

(h) Taxes. Licensee is responsible for paying all taxes (except for taxes based on Infor’s net income or capital stock) relating to this Services Agreement, and any Services provided and payments made hereunder. Applicable tax amounts (if any) are not included in the fees set forth in this Services Agreement and any Work Order. In each instance, Infor will invoice Licensee for applicable tax amounts and such invoices are due upon Licensee’s receipt thereof.

4. Limited Warranty and Disclaimer of Warranties.

(a) Limited Services Warranty and Remedy For Breach. Infor warrants to Licensee that, for the period beginning on the specific date of the applicable Work Order and continuing for ninety (90) days after the completion of Services pursuant to that Work Order, Infor will render all Services under such Work Order with reasonable care and skill. If Licensee notifies Infor within the warranty period of a breach of the foregoing warranty, Infor will re-perform such Services in compliance with the foregoing warranty. If despite its reasonable efforts, Infor is unable to provide Licensee with Services in compliance with the foregoing warranty, then, subject to the limitations set forth in Section 12 of this Services Agreement, Licensee may pursue its remedy at law to recover direct damages resulting from the breach of this limited warranty. These remedies are exclusive and are in lieu of all other remedies, and Infor’s sole obligations for breach of this limited warranty are contained in this Section 4(a).

(b) Disclaimer of Warranty. The limited warranty in Section 4(a) is made to Licensee exclusively and is in lieu of all other warranties. INFOR MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO ANY SERVICES PROVIDED UNDER THIS SERVICES AGREEMENT AND/OR ANY WORK ORDER, IN WHOLE OR IN PART. INFOR EXPRESSLY DISCLAIMS ALL WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. INFOR EXPRESSLY DOES NOT WARRANT THAT THE SERVICES WILL MEET LICENSEE’S REQUIREMENTS.

(c) FAILURE OF ESSENTIAL PURPOSE. THE PARTIES HAVE AGREED THAT THE LIMITATIONS SPECIFIED IN SECTIONS 4 AND 12 WILL SURVIVE AND APPLY EVEN IF ANY REMEDY SPECIFIED IN THIS SERVICES AGREEMENT IS FOUND TO HAVE FAILED
OF ITS ESSENTIAL PURPOSE, AND REGARDLESS OF WHETHER LICENSEE HAS ACCEPTED ANY SERVICE UNDER THIS SERVICES AGREEMENT.

5. Confidential Information. Except as otherwise permitted under this Services Agreement, and unless required by law, the Recipient will not disclose to any third party, or make any use of the Discloser's Confidential Information. The Recipient will use at least the same standard of care to maintain the confidentiality of the Discloser’s Confidential Information that it uses to maintain the confidentiality of its own Confidential Information, but in no event less than reasonable care. Except in connection with the Licensed Software and any software provided with the Licensed Software, the non-disclosure and non-use obligations of this Services Agreement will remain in full force with respect to each item of Confidential Information for a period of ten (10) years after Recipient's receipt of that item. However, Licensee’s obligations to maintain both the Licensed Software and any software provided with the Licensed Software as confidential will survive in perpetuity. Notwithstanding the foregoing, this Section is not intended to prevent a Recipient from using Residual Knowledge, subject to any Intellectual Property Rights of the Discloser.

6. Term and Termination.

(a) Term. This Agreement shall commence upon approval by the Commission of Licensee of Dayton and execution by a duly authorized representative of Licensee. This Agreement shall remain effective until December 31, 2025 or until all funds are expended or until terminated in accordance with this Agreement. In the event Licensee is advised by Infor that the professional services set forth in an executed Work Order for a particular Project cannot be completed prior to the expiration date of this Agreement, Licensee shall have the option to extend the term of this Agreement for a period not to exceed the time necessary to complete the executed Work Order. However, no such extension 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.

(b) Right of Termination. If either party materially breaches any material obligation in this Services Agreement or a Work Order (including, without limitation, any obligation to pay fees), and fails to remedy such breach (if such breach can be remedied) within thirty (30) days of receipt of written notice of such breach, the other party may terminate this Services Agreement (including all Work Orders hereunder). Notwithstanding the foregoing, to the extent such material breach cannot be remedied through efforts of the breaching party, the other party has the right to terminate this Services Agreement (including all Work Orders hereunder) on less than thirty days' written notice. Notice to Infor of an alleged breach of warranty will not constitute a notice of termination of this Agreement. Licensee shall also have the right to terminate this Agreement at any time with 60 days written notice to Infor.

(c) Effect of Termination. Upon termination of this Services Agreement by either party, Infor will discontinue the provision of all Services and Licensee will promptly pay Infor for all Services rendered through the effective date of such termination. Termination of this Services Agreement will not release either party from making payments which may be owing to the other party under the terms of this Services Agreement.
(d) **Survival of Obligations.** All obligations relating to non-use and non-disclosure of Confidential Information, limitation of liability, and such other terms which by their nature survive termination, will survive termination of this Services Agreement.

(e) **Termination Without Prejudice to Other Rights and Remedies.** Termination of this Services Agreement will be without prejudice to the terminating party’s other rights and remedies pursuant to this Services Agreement.

7. **Amendment.**
   a) This Agreement may be amended by mutual agreement between the City and Infor, provided that no amendment shall be effective unless it is reduced to a writing, which makes specific reference to this Agreement, approved by the Director of the Department of Water, executed by a duly authorized representative of each party and, if applicable or required, approved by the Commission of the City of Dayton, Ohio.

   b) On or before January 31st of each year that this Agreement is effective, the parties will negotiate an addendum to this Agreement, which shall cover the following:

   1. The amount of remuneration that may be available for the professional services to be during the next calendar year;

   2. An updated listing of Projects at WATER that Licensee may request Infor to provide professional services under this Agreement, as required under Section 2(b); and

   3. No such addendum shall be effective unless it is reduced to a writing that shall: (a) reference this Agreement and, in particular, this Section 7; (b) include, at a minimum, the forgoing information/documentation set forth in 1-2 above; (c) be approved by the Director of Water; (d) be executed by a duly authorized representative of each party; and (e) be approved by the Commission of the City of Dayton, Ohio. The City shall not be obligated to enter into an addendum to this Agreement or declared to be in breach of this Agreement for failure to execute an addendum, if the City determines such action to be in the best interest of Licensee and it notifies Infor in writing not later than January 31st of its intention not to execute an addendum.

8. **Notices.** All notices and other communications required or permitted under this Services Agreement or required by law must be in writing and will be deemed given when: delivered personally; sent by registered or certified mail, return receipt requested; transmitted by facsimile confirmed by first class mail; or sent by overnight courier. Notices must be sent to a party at its address shown on the signature page of this Services Agreement, or to such other place as the party may subsequently designate for its receipt of notices in accordance with this Section. Licensee must promptly send copies of any notice of material breach and/or termination of this Services Agreement to Infor, Attention: General Counsel, 40 General Warren Blvd Suite # 110, Malvern, PA 19355,
USA, FAX number 678-319-8949, or to such other place as Infor may subsequently designate for its receipt of notices.

9. **Force Majeure.** Except with respect to the payment of fees under this Services Agreement or a Work Order, neither party will be liable to the other for any failure or delay in performance under this Services Agreement due to circumstances beyond its reasonable control, including Acts of God, acts of war, terrorist acts, natural disasters, accident, labor disruption, acts, omissions and defaults of third parties and official, governmental and judicial action not the fault of the party failing or delaying in performance, or the threat of any of the foregoing.

10. **Assignment.** Licensee may not assign or transfer any of its rights or obligations under this Services Agreement, whether by law or otherwise, and any attempt at such assignment will be void without the prior written consent of Infor. For purposes of this Services Agreement, “assignment” shall include use of the Licensed Software for benefit of any third party to a merger, acquisition and/or other consolidation by, with, or of Licensee, including any new or surviving entity that results from such merger, acquisition and/or other consolidation.

11. **No Waiver.** A party’s failure to enforce its rights with respect to any single or continuing breach of this Services Agreement will not act as a waiver of the right of that party to later enforce any such rights or to enforce any other or any subsequent breach.

12. **Choice of Law; Severability.** This Services Agreement shall be governed by and construed under the laws of the State of Ohio, as applicable to agreements executed and wholly performed therein, but without regard to the choice of law provisions thereof. This Services Agreement is originally written in the English language and the English language version shall control over any translations. If any provision of this Services Agreement is illegal or unenforceable, it will be deemed stricken from the Services Agreement and the remaining provisions of the Services Agreement will remain in full force and effect. The United Nations Convention on the International Sale of Goods (CISG) shall not apply to the interpretation or enforcement of this Agreement.

13. **LIMITATIONS OF LIABILITY.**

(a) **LIMITED LIABILITY OF INFOR.** THE TOTAL LIABILITY OF INFOR, ITS AFFILIATES AND CONTRACTORS IN CONNECTION WITH THE SERVICES, OR ANY OTHER MATTER RELATING TO THIS SERVICES AGREEMENT (WHATEVER THE BASIS FOR THE CAUSE OF ACTION) SHALL NOT EXCEED THE FEE THAT LICENSEE ACTUALLY PAID TO INFOR FOR THE SERVICES GIVING RISE TO THE LIABILITY UNDER THE APPLICABLE WORK ORDER.

(b) **EXCLUSION OF DAMAGES.** IN NO EVENT SHALL INFOR, ITS AFFILIATES OR CONTRACTORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND REGARDLESS OF WHETHER INFOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. **Compliance With Laws.** Licensee will comply with all laws, rules and regulations applicable to the use of the Services and the Work Product.

15. **Non-Solicitation of Employees.** During the period that Infor is providing Services pursuant to this Services Agreement and for a period of one (1) year following the completion of such Services, neither Infor nor Licensee will offer to hire, hire, Solicit for employment or retain as an independent contractor, or in any way employ any Resource of the other party without the prior written consent of the other party. “Solicit” as used in this Section does not include general solicitations, such as advertisements in newspapers, trade publications or on the internet. “Resource” for purposes of this Section means:

(a) employees or independent contractors of the non-hiring party who directly worked on the Services project (the “Project”), and

(b) former employees of the non-hiring party who directly worked on the Project and whose employment with that party ended less than six (6) months prior to the date of such offer to hire, hire, Solicitation, or employment.

16. **Non-discrimination.** Infor 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 Licensee 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 Licensee to terminate this Agreement at its option.

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

Infor, its employees and any persons retained or hired by Infor 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 Licensee of Dayton. Further, Infor 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.

Infor acknowledges its employees are not public employees for purposes of Ohio Public Employees Retirement System (“OPERS”) membership.

18. **Political Contributions.** Infor affirms and certifies that it complies with Ohio Revised Code § 3517.13 limiting
political contributions.

19. Entire Agreement. This Services Agreement contains the entire understanding of the parties with respect to its subject matter and supersedes and extinguishes all prior oral and written communications between the parties about its subject matter. Any purchase order or similar document, which may be issued by Licensee in connection with this Services Agreement does not modify this Services Agreement. No modification of this Services Agreement will be effective unless it is in writing, is signed by each party, and expressly provides

THE PARTIES have executed this Services Agreement through the signatures of their respective authorized representatives.

Effective Date: ______  

Infor Public Sector, Inc.

Signature: ____________________________

Printed Name: Lindsay Pritchard
Title: Associate General Counsel
Address: 380 St. Peter Street
Address: St. Paul, MN 55102
Signature Date: March 4, 2021

CITY OF DAYTON, OHIO

City Manager

APPROVED AS TO FORM
AND CORRECTNESS:

2/26/2021

x  Amelia N. Blankenship for

City Attorney
Signed by: Blankenship, Amelia

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

______________________________, 2021

Min./Bk.: ______ Page: ____________

______________________________  Clerk of the Commission
City Manager's Report

From 3420- Water/Water Engineering
Supplier, Vendor, Company, Individual
Xylem Vue, Inc.
Address 121 South Niles Avenue, Suite 22
South Bend, Indiana 46617

Date March 17, 2021
Expense Type Contract Modification
Total Amount $1,029,444.63 (thru 12/31/2024)

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

Description
MAINTENANCE AND SUPPORT SERVICES FOR THE REAL TIME DECISION SUPPORT SYSTEM FOR THE WASTEWATER COLLECTION SYSTEM FIRST AMENDMENT

The Department of Water requests permission to enter into a First Amendment with Xylem Vue, Inc. in the amount of $1,029,444.63 to cover additional services/work needed for Maintenance and Support Services for the Real Time Decision Support System for the Wastewater Collection System. This contract consists of maintenance and support of existing sanitary flow meters, reconfiguration of the flow meter network as necessary, data analysis, and hydraulic modeling. This First Amendment also addresses the merging of EmNet LLC (Original Agreement) with Xylem Vue Inc. to improve business processes.

The original Agreement was approved on March 8, 2017 in the amount of $1,647,860.53. This First Amendment will increase the contract amount to $2,677,305.16 and extend the term to December 31, 2024.

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

A Certificate of Funds in the amount of $129,444.63 for Fiscal Year 2021, and a copy of the Agreement are attached.

Signatures/Approval

Approved by City Commission

Division
Aaron S. Zolin

Department
City Manager

FORM NO. MS-16

Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

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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: $129,444.63

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</table>

Vendor Name: Xylem Vue, Inc.

Vendor Address: 121 South Niles Avenue, Suite 22, South Bend, Indiana 46617

Federal ID: 85-1368169

Commodity Code: 30200

Purpose: Amendment No.1 for Professional Services for continued support in real time metering/monitoring of the wastewater collection system.

Contact Person: Lisa Burton-Yates

Water/Water Engineering Department/Division 3/5/2021

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:

CF Prepared by:

Finance Department

October 18, 2011
FIRST AMENDMENT TO THE
AGREEMENT FOR ENGINEERING SERVICES

This First Amendment is dated this ______ day of _____________, 2021, between the City of Dayton, Ohio (“City”) and Xylem Vue Inc., (hereinafter referred to as the “Engineer”), who previously conducted business as EmNet LLC.

WHEREAS, On March 8, 2017 the Commission of the City of Dayton, Ohio, approved an Agreement for Engineering Services, CT17-1663, (“Agreement”) between the City and Engineer; and

WHEREAS, EmNet LLC is merging with Xylem Vue Inc. to improve business processes; and

WHEREAS, The City desires additional support services for the wastewater collection system real time monitoring network; and,

NOW THEREFORE, the parties hereby agree to amend the Agreement as follows:

1. All instances of EmNet, LLC, within the Agreement, shall be deleted in their entirety and replaced with Xylem Vue Inc.
2. Article 1, Term is deleted in its entirety and replaced with the following:

ARTICLE 1 - TERM
The Agreement shall commence upon execution by the City and it shall expire upon expenditure of all funds provided herein or on December 31, 2024 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.

3. Article 2, Services To Be Performed By Engineer shall be amended to include the following:

ARTICLE 2 – SERVICES TO BE PERFORMED BY ENGINEER
Engineer shall provide all professional services necessary to complete the Services that are described in Attachment A (REVISED 02/05/2021), Scope of Services, which is incorporated herein by reference.

4. Article 3, Compensation, Section A. Renumeration and Section B. Travel Expenses, are deleted in their entirety and replaced with the following:

ARTICLE 3 - COMPENSATION
A. Remuneration.
The total remuneration in this Agreement shall not exceed TWO MILLION SIX HUNDRED SEVenty SEVEN THOUSAND THREE HUNDRED FIVE DOLLARS AND SIXTEEN CENTS ($2,677,305.16) and shall be paid according to Attachment B (REVISED 02/05/2021), which is incorporated herein by reference, inclusive of non-standard costs and travel expenses. Engineer shall submit invoices, not more frequently than monthly, for payment of the Services actually provided. Such invoices shall state the invoice period, total amount requested, and Services provided during the invoice period. The City will, unless disputed, remit payment of all undisputed amounts of invoices within thirty (30) days from receipt thereof.

B. Travel Expenses.
The City agrees to reimburse Engineer for travel expenses incurred in the performance of the professional services performed pursuant to an executed Work Authorization in an amount not to exceed SEVEN THOUSAND DOLLARS AND ZERO CENTS ($7,000.00) during the term of this Agreement.
4. The City and Engineer hereby agree that Attachment A (REVISED 02/05/2021) and Attachment B (REVISED 02/05/2021), which are attached hereto, shall be a part of the Agreement and incorporated as if fully rewritten therein.

5. 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 Engineer 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

__________________________
City Manager

Date:__________________________

XYLEM VUE INC.

By: __________________________

Luis Montestruque, Ph.D.
VP Client Development

Title: __________________________

APPROVED AS TO FORM AND CORRECTNESS:

2/22/2021

X Amelia N. Blankenship for

City Attorney

Signed by: Blankenship, Amelia

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

__________________________ 2021

Min./Bk.:_________ Page:_________

Clerk of the Commission
ATTACHMENT A (REVISED 02/05/2021)

TO

AGREEMENT FOR ENGINEERING SERVICES

City: City of Dayton, Ohio
Project: Maintenance and Support Services for the Real Time Decision Support System for the Wastewater Collection System
Engineer: Xylem Vue Inc.

SCOPE OF SERVICES

Task A – Current Monitoring System Redeployment and Adjustments
The City currently has in place a real time monitoring system throughout its collection system consisting of 48 flow meters, four rain gauges, and one weather station. These units have been collecting data which has been used to track localized I/I in a single neighborhood, monitor bottlenecks within the system, compare against the current hydraulic and hydrologic model, and several other analyses. These meters have been redeployed to new locations as directed by the City, and will continue to collect data in support of the project tasks.

The Engineer shall continue to manage the overall project and maintain the flow meters to collect data that will enable to City to achieve the following goals:

- Quantify overflow volume after SSO activations and the potential extent of homes with water in basements.
- Provide early warning for potential SSOs at chronic locations (to trigger preventative maintenance of the collection system).
- Determine I/I conditions on a regional sub-basin level to quantify the extent of I/I reductions achieved through the lining program (required to quantify benefit of existing lining work and prioritize areas for lining in the future)
- Analyze conditions at any known or suspected hydraulic deficiencies within the collection system.
- Quantify flows from the County Montgomery County Service Area into the City (to quantify I/I from the County)

The Engineer shall coordinate with the City project manager to ensure tasks are completed according the authorized scope and budget ensuring achievement of the aforementioned goals.

Task A Deliverables
- Overall project oversight and management.
- Monthly project video conference with City project manager

Task B – Monitoring System Expansion, Improvements, and Long Term Operations
The updated monitoring plan was implemented and adjusted as approved by the City.

The existing monitoring system is deployed and in service at the time of this contract amendment. The Engineer shall continue to operate and maintain the hardware, software, and related services to ensure the attainment of the goals stated in Task A. The Engineer shall continue to utilize the BLU-X™ platform to host the sensor data in a cloud environment and enable system visualizations for the City. This agreement may include the acquisition and installation of additional equipment for the monitoring system if further expansion is requested and authorized by the City. The contract price includes continued maintenance of the 48 flow meters, 4 rain gauges, and 1 weather station including on-site maintenance, data QA/QC, cellular services, and data hosting services required for operation of the system. To add additional
monitoring sites at the request of the City, the Engineer shall provide an estimate for the hardware and work to be performed. The City will authorize the work to be performed.

**Task B Deliverables**
- Operation and maintenance, data hosting, monthly QAQC, and cellular services for all existing and new meters.

**Task C – Operational Improvements Analysis**

The Engineer has characterized the I/I at various locations in the system previously. The first analysis sought to identify the I/I reductions achieved after implementing sewer rehabilitation. The pre- and post-analysis of sewer rehabilitation was planned to occur on three occasions. Only one instance has been completed to date. I/I analysis was also performed to quantify the I/I contribution from county service areas. The method to characterize I/I utilized SSOAP, a USEPA tool developed for generating RTK coefficients which involves fitting three separate triangular hydrographs to an actual hydrograph observed at a flow meter. This method creates an R-value for each rain event and does not fully account for the impacts of antecedent moisture conditions and recovery between rain events. R-values can easily range 20% at a single location which makes identifying and prioritizing the potential for I/I or pre- and post-comparisons challenging.

Historically, developing a singular R-value required the development and calibration of a model such as SWMM to a continuous dataset. The model parameters would be adjusted to properly account for the wetting and drying of the watershed separate from the measure of rainfall that actually enters the sewer network through pipe defects and such. Today, the SWMM model may be replaced using machine learning techniques and training a node using the same continuous rainfall pattern. This model is called Cognitive Hydraulic Response System or CHRS (pronounced Kris). CHRS nodes are both faster to train (or calibrate) and typically generate better model to observed data fitness (R² or Nash-Sutcliffe) than SWMM.

Developing a single R-value will improve the correlation analysis in Task E by removing the variability created using the SSOAP approach. Creating a CHRS node also makes it possible to create flow predictions at flow meter sites in Task F.

The Engineer shall evaluate and demonstrate the application of a new process for determining a more absolute value of R that removes the variability introduced by antecedent moisture conditions. The approach shall include training a CHRS node for three existing flow meter sites (one lining ROI site and two county inflow sites) that were evaluated previously using SSOAP. The CHRS node may then be simulated using different rain events or design storms to characterize the R-value. As an additional step and confirmation, the observed data shall be evaluated to identify back to back storms and an R-value shall be created for the second event. This confirmation step is intended to minimize the impacts of antecedent moisture conditions assuming the first storm saturated the watershed. The results shall be presented in a workshop with City representatives.

Upon review and acceptance of the CHRS node method of determining R-values, the Engineer shall update previous analysis using the revised methodology. This shall include the additional 10 sites that evaluate Montgomery County I/I, and the additional 13 sites for pre-/post- I/I analysis for sewer rehabilitation.

The updated analysis shall quantify I/I conditions from areas throughout the City, County, and satellite areas, determining the ROI for the lining program, and the net flow reduction to the WWTP during a 5 year, 6 hour storm event based on the improvements (sanitary sewer liners) completed since 2013.

- Analyze the existing and new data to quantify the severity, concentration, type, and location of I/I within the collection system. Data from the monitoring locations identified above will be
analyzed.

- Determine the reduction of inflow to the WWTP for a 5 year, 6 hour storm event based on inflow data to the plant for the years prior to the lining program and the inflows to the Water Reclamation Facility in 2014 and 2015 (after the lining program was underway).
- Determine the ROI for the lining work that has been completed, based upon I/I reduction in those areas.

The work for Task C shall include two workshops. The second workshop shall present the analysis of the full R-Value update and analysis.

**Task C Deliverables**

- Workshop and presentation file summarizing the three site R-Value comparative analysis.
- Workshop and presentation file that:
  - Quantifies I/I throughout the collection system.
  - Quantifies inflow reduction to the WWTP for the 5-year, 6-hour storm event due to the lining work to date.
  - Determine the ROI for the lining work.
- Two in-person workshops.

**Task D – As-Needed Services for Hydraulic Modeling of the Wastewater Collection System**

Engineer shall provide as-needed modeling services as identified by the City. The City shall submit a scope for the Engineer. The Engineer shall provide an estimate for the work to be performed. The City will authorize the work to be performed.

**Task E – Water Consumption**

The City does not currently employ district metering within the water distribution network. The work associated with this task is to overlay existing sewer sheds and the real time monitoring system to determine if correlation exists with portions of the water distribution network. If correlation does exist between the existing real time monitoring network and the water distribution network, Engineer will use this correlation to approximate water consumption of each area. If correlation does not exist, Engineer will determine if relocating portions of the real time monitoring network could assist in being able to establish good correlation. The goal of this task is to confirm if the real time monitoring system can assist the City in determining water consumption throughout the water distribution network.

**Task E Deliverables**

- One in-person or virtual meeting to discuss task and determine milestones, goals, and schedule
- Technical memorandum outlining correlation and recommended action
- One in-person or virtual workshop to review technical memorandum and develop next steps
- Redeployment of up to 20 monitoring sites.
- Technical memorandum outlining overall results of correlation and confirmation of water consumption

**Task F – Real Time Decision Support Enhancements and Configurations**

If Authorized, the Engineer shall co-design, develop, configure, and add new features to the City’s current BLU-X implementation. This task shall be conducted in a collaborative manner with the goal of addressing staff pain points with decision support applications that is utilized by the selected user group. Previous analysis performed by the Engineer has evaluated operational logic the City can implement to enhance system performance. This task may include the development of operator in the loop, real time decision support dashboards for the City; assisting the City with the development of logic to implement within existing SCADA infrastructure, developing collection system flow forecasts with NOAA weather ensemble forecasts, and creating system visualizations such as sewer profiles or event analytics.
The City shall submit a scope for the Engineer. The Engineer shall provide an estimate for the work to be performed. The City will authorize the work to be performed.
ATTACHMENT B (REVISED 02/05/2021)
TO
AGREEMENT FOR ENGINEERING SERVICES

City: City of Dayton, Ohio
Project: Maintenance and Support Services for the Real Time Decision Support System for the Wastewater Collection System
Engineer: Xylem Vue Inc.

COMPENSATION

1. The total “Not-To-Exceed” fee for performance of the Scope of Services, as outlined in Attachment A to this Agreement, is $2,677,305.16. This amount includes all direct and indirect labor charges, material cost, overheads, and profits plus all other fees and charges including expenses, plus a supplemental services allowance in the amount of $243,391.38. Such direct expenses include:
   a. Travel, subsistence, and incidental costs.
   b. Use of motor vehicles on a monthly rental basis for assigned vehicles and on a mileage basis or rental cost basis for vehicles used for short periods.
   c. Telegraph costs, long distance telephone costs, and Project “onsite” telephone costs.
   d. Reproduction of reports.
   e. Postage and shipping charges for Project-related materials.
   f. Computer time charges, including program use charges.
   g. Rental charges for use of equipment, including equipment owned by the Engineer.

The “Not-To-Exceed” fee of $2,677,305.16 broken down as follows:

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<td>Task E – Water Consumption (NTE)</td>
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<td>Task F- Real Time Decision Support Enhancement and Configurations</td>
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<td></td>
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<td><strong>$2,677,305.16</strong></td>
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The City reserves the right to add supplemental services covered under section 3 and any charges applicable to the supplemental services allowance must be approved in writing by the City and Engineer. The total “billing limits” shall not exceed $2,677,305.16 without further written authorization from the City.

2. The following are expenses that are not included in the lump sum fee set forth in Section 1:
   a. Charges of special consultants requested or authorized by the City.
   b. Special insurance coverage required by the City, including the cost of naming the City as an additional insured.
   c. Local taxes or fees applicable to the consulting work or payment therefore.
   d. Cost of acquiring any other materials or services specifically for and applicable to only this Project.

3. Supplemental Services. A lump sum amount shall be determined for each supplemental service. Each item of supplemental services shall be specifically authorized by the City, and a maximum billing limit shall be established before the work is started. The amount billed for each item of supplemental services shall not exceed the amount established for it without further written authorization by City. Additional amounts for supplemental services may be authorized by City, if necessary, as the work progresses.

4. The City shall remit payment to Engineer within thirty (30) days from receipt of a monthly invoice detailing the Services rendered and the percent complete of the scope of services described in Attachment A. All invoices for non-lump sum, reimbursable type payments shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers or other accounting documents pertaining in who or in part to the performance of the Services and shall be clearly identified and readily accessible to City. However, Engineer does not have to furnish such supporting documentation with its invoice, unless requested by the City.

5. Engineer shall keep its records related to the matters covered by this Agreement in compliance and conformity with generally accepted accounting practices. At any time during normal business hours and as often as the City may deem necessary, Engineer shall make available to the City all of its records with respect to all matters covered herein, and will permit the City, at its expense, to audit, examine, and make excerpts or transcripts from such records and to have audits made of all contracts, invoices, materials, payrolls, records of personnel, conditions or employment and other data pertaining in whole or part to matters covered within this Agreement. In performing any independent audit, Engineer shall require the auditor to reasonably comply with all applicable City rules and regulations governing such procedures.
AN ORDINANCE


WHEREAS, The City Commission of the City of Dayton ("Commission") passed Ordinance No. 25147 ("Ordinance") on August 18, 1976 which established the Exhibition Center Fund and directed all funds collected under Revised Code of General Ordinances ("R.C.G.O.") Sections 36.130 through 36.142 to be placed in the Exhibition Center Fund; and,

WHEREAS, The Ordinance also required that not less than fifty percent (50%) of the funds be used for the promotion and marketing of the City as a location for conventions, trade shows, and similar events; and,

WHEREAS, The Montgomery County Convention Facilities Authority ("CFA") was created in 2020 pursuant to Ohio Revised Code Chapter 351, and pursuant to an agreement between the City and the CFA, the CFA will take over the ownership and operation of the Dayton Convention Center; and,

WHEREAS, As a result of the CFA’s operations of the Dayton Convention Center, the funds that would be allocated to the Exhibition Center Funds will now be transferred to the CFA and the City wishes to amend Section 36.143 of the R.C.G.O. to reflect such change; and,

WHEREAS, Sections 36.135 and 36.137 include some outdated processes which should be updated; and,

WHEREAS, This Commission finds it in the best interest of the City to amend Sections 36.135, 36.137, and 36.143 of the R.C.G.O.; and,

WHEREAS, To provide for the immediate preservation of the public peace, property and health or safety, it is necessary for this Ordinance to take effect immediately upon its passage; now, therefore,

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

Section 1. That Sections 36.135, 36.137, and 36.143 of the R.C.G.O. be, and hereby are, amended to read as follows:

Sec. 36.135. - Registration.

(A) On or before October 1, 1976, or within 30 days after commencing business, whichever is later, each operator shall register with the Superintendent upon forms provided by the Superintendent. Such registration shall include the following:

(1) The name and addresses of the hotel.

(2) The name, residence address, and telephone number of the operator.

(3) The name, residence address, and telephone number of the owner of the hotel if different from the operator.
(4) Any additional information required by the Superintendent.

Sec. 36.137. - Reporting and remitting.

(A) Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter or longer reporting period which may be established by the Superintendent, make a return to the Superintendent, on forms provided by him or her, of the total rents charged, and the amount of tax due. All claims for exemption from tax filed by occupants with the operator during the reporting period shall be filed with the report.

(B) At the time the return is filed, the full amount of the tax due shall be remitted to the Superintendent.

(C) The Superintendent may establish shorter or longer reporting periods for any operator if he deems it necessary in order to insure collection of the tax. The Superintendent may require further information in the return if such information is pertinent to the collection of the tax. Returns and payments are due immediately upon cessation of business for any reason.

(D) All of the tax collected by any operator shall be remitted to the City.

(E) All returns and payments submitted by an operator shall be treated as confidential by the Superintendent, and shall not be released by him or her except upon order of a court of competent jurisdiction.

(F) Any person divulging such information shall, upon conviction thereof, be deemed guilty of a misdemeanor of the third degree.

Sec. 36.143. – Allocation of funds.

There is established a special projects special revenue fund in the 22000 fund series to be known as the Montgomery County Convention Facilities Authority Fund. The funds collected under the provisions of §§ 36.130 through 36.142 shall be placed in the Montgomery County Convention Facilities Authority Fund of the city, and the city shall transfer all such funds to the Montgomery County Convention Facility Authority no less frequently than quarterly. In the event the Montgomery County Convention Facility Authority ceases to exist or ceases to operate the Dayton Convention Center, the city shall retain all such funds collected under the provisions of §§ 36.130 through 36.142 and shall no longer be obligated to transfer the funds to the CFA. Notwithstanding any of the forgoing, the city shall reserve the right to retain any and all funds collected to pay off outstanding debt, as necessary.
Section 2. For the reasons stated in the preamble hereof, this Ordinance is declared to be an emergency measure and shall take effect immediately upon its passage.

PASSED BY THE COMMISSION.........................., 2021
SIGNED BY THE MAYOR................................., 2021

Mayor of the City of Dayton, Ohio

Attest:

__________________________
Clerk of the Commission

Approved as to form:

__________________________
City Attorney
A RESOLUTION

Authorizing the Acceptance of an Aggregate Grant Award from the State of Ohio, Office of Criminal Justice Services in the Amount of One Hundred Thousand Dollars and Zero Cents ($100,000.00) on Behalf of the City of Dayton, and Declaring an Emergency.

WHEREAS, The State of Ohio, Office of Criminal Justice Services (Ohio OCJS) received a grant under the U.S. Department of Justice Emergency Federal Law Enforcement Assistance (EFLEA) program to mitigate the effects of emergency situations in the aggregated states and local jurisdictions; and

WHEREAS, The City of Dayton (City) experienced a mass shooting incident on August 4, 2019 and qualifies to receive program funding; and

WHEREAS, Pursuant to Section 36.10 of the Revised Code of General Ordinances of the City of Dayton, the City Manager submitted a grant application to the State requesting reimbursement for some or all personnel costs on behalf of the City of Dayton; and

WHEREAS, The Ohio OCJS awarded a grant to the City and County under the BJA FY 19 Solicited – Emergency Federal Law Enforcement Assistance to reimburse up to One Hundred Thousand Dollars and Zero Cents ($100,000.00); and

WHEREAS, To provide for the timely completion of the grant and for the immediate preservation of the public peace, property, health and safety, it is necessary that this resolution take effect at the earliest possible date; now, therefore,

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

Section 1. The City Manager or designee is authorized to accept the award of funds from the Ohio OCJS and is directed to execute any and all documents and agreements on behalf of the City of Dayton which are necessary to accept the grant from the United States Department of Justice.
Section 2. That for the reasons set forth in the preamble hereof, the Dayton City Commission declares this resolution to be an emergency measure which shall take effect immediately upon its adoption.

ADOPTED BY THE COMMISSION........................., 2021

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

Mayor of the City of Dayton, Ohio

Attest:

Clerk of Commission

Approved as to Form:

City Attorney