CITY COMMISSION MEETING AGENDA

CITY COMMISSION                DAYTON, OHIO                JUNE 16, 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:

   FIRE
   AI. Stryker Medical (equipment maintenance, reconditioning and repairs).
       $25,000.00
1. (Cont’d):

WATER

B1. Rotork Controls, Inc. (Rotork parts, supplies, materials, related items and services as needed through 12/31/23) $95,000.00

B2. Rebuild-It Services Group, LLC. (replace gearbox drive unit) 280,754.00

B3. Everett J. Prescott, Inc. (plumbing and related supplies as needed through 12/31/21) 15,000.00
   - Depts. of Fire and Water.
   Total: $295,108.25

2. BI Incorporated – Service Agreement – for electronic monitoring services rendered to the Court for the Electronic Home Detention Program – The Municipal Court.
   $93,500.00
   (Thru 12/31/21)

3. Hull & Associates, LLC. – Service Agreement – for consulting services related to the remediation of the former Brinkman’s Auto property located at 3503 Riverside Drive-Dept. of Economic Development. $150,000.00
   (Thru 12/31/22)

IV. LEGISLATION:

Emergency Ordinance – First and Second Reading:


Emergency Resolution – First and Second Reading:

5. No. 6586-21 Authorizing the Acceptance of a Grant Award from the Ohio Department of Rehabilitation and Correction in the Amount of One Hundred Ninety-Six Thousand Eight Hundred Sixteen Dollars and Zero Cents ($196,816.00) for the Grant Period of July 1, 2021 to June 30, 2023, on Behalf of the City of Dayton, and Declaring and Emergency.
Ordinance – First Reading

6. No. 31895-21 Reducing the Speed Limit to 45MPH on Harshman Road – Needmore Road from 1870 Feet South of Brandt Pike to 1080 Feet Northwest of Brandt Pike.

Resolution - Second Reading

7. No. 6585-21 Declaring the Intention of the Commission to Vacate the Alley East of June Street (Tulsa Lane) from 78 Feet South of the Alley South of East Fourth Street to 25 Feet North of the Norfolk Southern Railroad Right of Way.

VI. MISCELLANEOUS:

ORDINANCE NO. 31896-21

RESOLUTION NO. 6587-21

IMPROVEMENT RESOLUTION NO. 3599-21

INFORMAL RESOLUTION NO. 990-21
City Manager’s Report

From 2730 – PMB/Procurement

Date June 16, 2021

Supplier, Vendor, Company, Individual

Expense Type Purchase Order

Total Amount $295,108.25

Name See Below

Address See Below

2021 Purchase Orders

Fund Source(s) Fund Code(s) Fund Amount(s)
See below See below See below

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

Description

FIRE

(A1) P0210963 – STRYKER MEDICAL, CHICAGO, IL

- Equipment maintenance, reconditioning and repairs.
- These services are required to maintain power load systems, power load cots, stair chairs, monitors and automated CPR devices.
- Stryker Medical is the Original Equipment Manufacturer (OEM) of the Stryker Power Load system; therefore, this purchase order was negotiated.
- The Department of Fire recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<tr>
<td>2021</td>
<td>General Fund</td>
<td>10000-6340-1166-71</td>
<td>$25,000.00</td>
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Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 06/2016
WATER – WATER RECLAMATION

(B1) P0210968 – ROTORK CONTROLS, INC., MILWAUKEE, WI
- Rotork parts, supplies, materials, related items and services as needed through 12/31/2021.
- These goods and services are required to upkeep and replace equipment around the Reclamation facility that control the conveyance of liquid and solid streams.
- Rotork Controls, Inc. is recommended as the OEM; therefore, this purchase order was negotiated.
- This amendment increases the previously authorized amount of $35,000.00 by $25,000.00 for a total not to exceed $60,000.00 and therefore requires City Commission approval.
- The Department of Water requests additional authority of $70,000.00 through 12/31/2023 which is an increase in the previously authorized amount of $105,000.00 for a total future authority not to exceed $175,000.00.
- The Department of Water recommends approval of this order.

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WATER – WATER SUPPLY AND TREATMENT

(B2) P0210966 – REBUILD-IT SERVICES GROUP LLC, WEST JORDAN, UT
- Replace gearbox drive unit.
- These goods and services are required to replace a Monorake gearbox drive unit for a Dorr-Oliver Monorake mechanism.
- Rebuild-It Services Group LLC is recommended as the sole authorized municipal distributor and service provider for Dorr-Oliver brand parts; therefore, this purchase was negotiated.
- The Department of Water recommends approval of this order.

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

(B3) P0210128 – EVERETT J PRESCOTT, INC., WEST CARROLLTON, OH

- Plumbing and related supplies as needed through 12/31/2021.
- These goods are required to replenish inventory for maintenance and repairs.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 21006N with pricing through 12/31/2021.
- This amendment increases the previously authorized amount of $25,000.00 by $15,000.00 for a total not to exceed $40,000.00 and therefore requires City Commission approval.
- The Department of Water recommends approval of this order.

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

From 2510 - Municipal Court  
Supplier, Vendor, Company, Individual  
Name BI Incorporated  
Address 6400 Lookout Dr.  
Denver, CO 80301

Date June 16, 2021  
Expense Type Service Agreement  
Total Amount $93,500.00 thru 12/31/21

Fund Source(s)  
Electronic Home Detention

Fund Code(s)  
22113-2510-1159-74

Fund Amount(s)  
$93,500.00

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

Description

**Master Agency Agreement**

The Dayton Municipal Court requests permission to enter into a Master Agency Agreement with BI Incorporated in the amount of $93,500.00 for electronic monitoring services rendered to the Court for the Electronic Home Detention Program.

BI Incorporated supplies satellite tracking equipment used for the Electronic Home Detention Program. The equipment costs are reimbursed through a Consulting Services Agreement with the Montgomery County Board of Commissioners.

The Court has previously been under contract with BI Incorporated for similar services since 2010. However, the Court did not have a Master Agency Agreement with BI Incorporated. The purpose for this new Master Agreement is to provide for all monitoring equipment used by the Electronic Home Detention Program, including the new OMNIA LOC8. The old equipment will be covered by the Agreement until it has been transitioned out.

The term for this Agreement is for one year and will commence upon execution. Thereafter, it will automatically renew on the first of January each succeeding year, unless terminated otherwise.

A Certificate of Funds for $93,500.00 is attached. This Agreement has been reviewed by the Department of Law as to form and correctness.

Signatures/Approval

**Approved by City Commission**

Clerk

Date

Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

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| Fund Code | Fund | Org | Acct | Prog | Act | Loc |
| XXXX - XXXX - XXXX - XXXX - XXXX - XXXX |

Attach additional pages for more FOAPALS

Vendor Name: BI Incorporated
Vendor Address: 6400 Lookout Dr. Denver CO 80301
Street City State Zipcode + 4
Federal ID: 84-0769926
Commodity Code: 68008
Purpose: To pay monthly monitoring invoices for the remainder of calendar year 2021.

Contact Person: Ann Marie Murray
Municipal Court / Administration
3-Jun-21
Department/Division Date
Originating Department Director’s Signature: Ann Marie Murray

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: 6/3/2021
CF Prepared by: 
Date: 6/4/2021
CF/ICT Number: CT21-2999

Finance Department
October 18, 2011
MASTER AGENCY AGREEMENT
FOR ELECTRONIC MONITORING SERVICES

This MASTER AGENCY AGREEMENT FOR ELECTRONIC MONITORING SERVICES (the “Agreement”), is entered into between BI INCORPORATED (“BI”), a Colorado corporation with its principal place of business at 6265 Gunbarrel Avenue, Suite B, Boulder, Colorado 80301, and the CITY OF DAYTON (Agency) with its principal place of business at 101 West Third Street, Dayton, OH 45402. This Agreement incorporates by reference any and all Exhibits and Schedules attached hereto. The Agreement is effective upon full execution and is effective as of the date of the last signature, and supersedes any prior written or oral agreement and understandings with respect to the subject matter herein.

In consideration of the promises contained herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto, desiring to be legally bound, hereby agree as follows:

1. GENERAL SCOPE OF AGREEMENT

BI provides electronic monitoring devices and supporting Services for persons who are required to or opt to wear such Equipment. Agency desires to purchase and use such Equipment and the supporting Services as specified in this Agreement and the attached incorporated Exhibits.

1.1 Monitoring Service.

Specific Description. Pursuant to the terms of this Agreement and orders accepted by BI, Agency may purchase, and BI shall sell to Agency certain Monitoring Services as listed in the Schedule(s) in Exhibit A, attached hereto and incorporated herein:

LOC8 XT PER UNIT/PER ACTIVE DAY – TOTAL CHARGE OF $3.65

General Description. The “Monitoring Service” as set forth in Exhibit A may include Equipment or Units, Software Applications, and/or access to BI’s central host computer system running the Software Applications. Units are issued to the customers or placed on Clients by the Agency. The Units communicate with the Software Applications through cellular telephone service or the Client’s landline telephone service, which are subject to the telco terms and conditions.

1.2 System Maintenance.

Agency acknowledges that BI must perform periodic maintenance on the host computer systems. The system may be inaccessible during the performance of such maintenance. BI will exercise commercially reasonable efforts to notify Agency via e-mail or phone in advance of any such maintenance.
2. DEFINITIONS

Capitalized terms not otherwise defined in this Agreement are those as defined in the attached Exhibit(s). Should there be a conflict between the terms in this Agreement and those of any Exhibit, the terms in the Exhibit will prevail. Capitalized terms not defined in this Agreement shall have the meanings based on their context, as commonly used within the industry.

2.1 “Active Unit” means a Unit which is assigned to a Client and activated in TotalAccess.

2.2 “Active Day” means any day, or any portion thereof, in which there is an Active Unit.

2.3 “Authorized Personnel” means those persons selected by Agency who are authorized to enroll Clients and select or adjust notification options.

2.4 “Client” means a person subject to Agency’s electronic monitoring program.

2.5 “Confidential Information” means any information which is marked, or should be reasonably understood to be, confidential, proprietary, or trade secrets of BI.

2.6 “Documentation” means user guides, reference manuals, and other documentation provided by BI in connection with the Equipment, and Software Applications used under this Agreement. The Documentation is incorporated herein by this reference and will be provided upon execution of this Agreement.

2.7 “Equipment” or “Unit” means manufactured products and third party products provided by BI, including, but not limited to, GPS tracking devices, radio frequency monitoring devices, transmitters, Drive-BI Monitors, and alcohol monitoring devices.

2.8 “GPS” means a global positioning system.

2.9 “Software Application” means software applications made available by BI for use by Agency and/or Clients under this Agreement, including, but not limited to, BI TotalAccess®, BI Analytics™, and BI SmartLINK™.

2.10 “Supplies” means straps, latches, batteries, and similar items for the Equipment.

3. BI’s SERVICES

3.1 Access. BI shall provide Agency with access to and use of BI’s service. BI’s service permits the Agency to access the System using the licensed software in order to actively or passively monitor clients with equipment via the GPS network.

3.2. Initial Training. BI will provide an initial training session at no cost to Agency regarding the operation and use of the Monitoring Services elected. Agency is required to complete training prior to the commencement of marketing or selling the Monitoring Services under this Agreement. No login ID will be activated until and unless the assigned user has successfully completed training.
3.3 BI TotalAccess Training. All BI TotalAccess training sessions shall be conducted via a remote service such as web conferencing.

3.4 Additional Training. Additional training is available subject to applicable service fees.

3.5. Agency Support. BI will make reasonable efforts to provide Agency with answers to specific Agency support requests as related to the Equipment, Monitoring Services, and overall operation of the electronic monitoring program. BI will supply Agency with an address for e-mail and a 1-800 toll free number for questions and/or feedback.

3.6 Rental Maintenance. BI shall maintain the Equipment at its expense. Maintenance will be performed at BI’s facility. Notwithstanding such obligation, unless otherwise specified in Exhibit A, Agency shall be responsible for the replacement cost of lost or missing Equipment and/or the cost of required repairs necessitated by (i) Agency’s negligence or (ii) the damage or destruction of the Equipment by parties other than BI, including but not limited to Client’s mishandling of Equipment. Shipment shall be in accordance with BI’s Return Material Authorization (RMA) Policy.

3.7 Telecommunications Service. Certain BI products require wireless telecommunications service (“Telco Service”) in order to transmit voice and/or data from the device. BI products requiring wireless telecommunications service include BI ExacuTrack One (commonly referred to as “ET1”), BI HomeGuard 206 (commonly referred to as “HG206”), BI TAD Plus Cellular (commonly referred to as “TAD Cellular”), and SL2 (commonly referred to as “SL2”). BI products requiring Telco Service may change from time to time. Agency is responsible for payment to BI of charges for Telco Service. Failure to pay these charges may result in suspension or termination of Telco Service, without which the device cannot transmit monitoring or tracking information to Agency.

3.8 Service Interruption. The Monitoring Services are made available to Clients when the Equipment is in operating range of the provider of such Monitoring Services. In addition, Monitoring Services may be temporarily interrupted, refused or limited at any time because of transmissions limitations caused by atmospheric and topographical factors outside of BI’s or service provider’s control, or equipment modifications, upgrades, repairs or similar other activities. Individual data transmissions may be involuntarily delayed for a variety of reasons, including the above, weak batteries, system over-capacity, and the Client’s movement outside of the service area.

4. EQUIPMENT AND UNITS

4.1 Supplied by BI. All orders for Units are subject to BI’s reasonable review and acceptance consistent with this Agreement. BI shall have no liability to Agency with respect to orders that are not accepted. Subject to availability of the Units, BI shall supply a sufficient quantity of Units to meet Agency’s need subject to notice from Agency of such need at least five (5) business days prior to shipment. Agency agrees that it shall assist BI in forecasting its Unit
needs. All Units or other Equipment supplied by BI hereunder shall be subject to all charges set forth in Exhibit A, as applicable. Agencies utilizing such BI supplied Equipment, and except as expressly set forth otherwise on Exhibit A, shall be entitled to receive, at no additional charge, a reasonable quantity of Supplies and tool kits (Unit activator, lead cutter, allen driver) to maintain Agency’s electronic monitoring program in accordance with the prices set forth on Exhibit A.

4.2 Supplied by Agency. Agency may, subject to prior written approval by BI, supply its own equipment to be utilized in connection with the Monitoring Services. Any such equipment must be compatible with BI’s host computer monitoring system. Equipment supplied by Agency will not be subject to the rental charges set forth in Section 6.1. All other charges as set forth in Section 6 are considered applicable and are payable by Agency in accordance with the terms and conditions set forth in Section 6. In no event is Agency entitled to Supplies for equipment owned or supplied by Agency.

4.3 Inspection of Equipment. Upon two (2) business days’ prior notice, BI shall have the right to enter on the premises where the Equipment may be located during normal business hours for the purpose of inspecting and observing its use, or conducting an inventory count.

4.4 Freight. BI will pay for the cost to ship Units and other Equipment, Supplies and accessories to Agency and to ship Units and other Equipment from Agency pursuant to the RMA policy below. Agency may request shipping methods other than ground delivery, in which event Agency will pay for the full cost of such alternative shipping method.

4.5 Return Material Authorization (RMA) Policy. Freight charges to and from BI’s facility for Equipment eligible for return hereunder shall be paid by BI when pre-authorized by a Return Material Authorization (RMA) number issued by BI’s Customer Business Services Department and only when BI’s pre-printed shipping labels are used. BI’s pre-printed shipping labels provide Agency with ground delivery to BI’s facility. Freight charges incurred by BI for Equipment which is returned in a manner which is inconsistent with BI’s pre-printed shipping labels, without an RMA number, or not eligible for BI rental maintenance (e.g., Client or Agency damaged the Equipment) will be charged back to Agency. BI’s Customer Business Services Department is available to the Agency Monday through Friday from 8:00 am to 5:00 PM Mountain Time by calling 1-800-241-5178.

5. AGENCY’S OBLIGATIONS

5.1 Agency represents and warrants during the Term that Agency shall:
(1) Retain complete authority and responsibility for Client selection, enrollment and alert management;
(2) Be responsible for all liaison work with the involved courts and/or agencies;
(3) Fulfill all Agency requirements to access and utilize the Monitoring Service;
(4) Perform or oversee orientation and Equipment guidelines in compliance with applicable BI policies;
(5) Ensure that applicable Equipment responsibility and use forms are acknowledged and signed by the Clients prior to receipt of Equipment;
(6) Be responsible for the proper use, management and supervision of Equipment; and
(7) Ensure that users have completed training in access and use of the Monitoring Service, including BI TotalAccess.

5.2 Agency represents and warrants during the Term that it shall:
(1) Notify its customers and Clients that Monitoring Services should only be used for the purposes and in the manner for which they were designed and supplied, and that warning notices should not be removed or obscured;
(2) Pass through all applicable Documentation provided by BI to its customers and Clients;
(3) Not remove or obscure any warning notices displayed on Equipment;
(4) Not breach any customer or Client agreement;
(5) Not mishandle or use the Monitoring Services in an unauthorized manner or authorize or promote a customer or Client to do so;
(6) Not use or promote the use of any Monitoring Services in combination with equipment, software, or other items not intended or authorized for use with the Equipment, or in an application or environment for which they were not designed, or authorize or promote a customer or Client to do so; and
(7) Not make any statements, claims, representations or warranties relating to Monitoring Services, other than as authorized or made by BI in writing.

6. COST OF SERVICES

6.1 Unit Rental Charge. If renting Units from BI, Agency shall pay to BI a daily rental rate for each Unit, or component thereof as applicable, provided by BI (the “Unit Rental Charge”). The Unit Rental Charge is as set forth on Exhibit A, and may be revised on a periodic basis upon reasonable prior written notice from BI to Agency and with prior written consent of Agency.

6.2 Service Charge. In addition to the Unit Rental Charge, every Active Unit is subject to a daily service charge for the active Monitoring Service as set forth in Exhibit A. For every Active Day, Agency shall pay to BI an amount based upon the daily service charge.

6.3 Payment Terms. BI will invoice Agency on a monthly basis for all charges incurred during the month. Payment shall be made by Agency to BI within thirty (30) days of electronic invoice date. Interest on any amount which is past due shall accrue at the rate of 1-1/2% per month, or if such rate exceeds the maximum rate allowed by law, then at such maximum rate, and shall be payable on demand.

6.4 Taxes. Except for BI’s net income, Agency will pay, as the same respectively come due, all taxes and governmental charges of any kind whatsoever together with any interest or penalties that may at any time be lawfully assessed or levied against or with respect to such item of equipment or services. In the event Agency is tax exempt, Agency agrees to supply BI with a tax exemption certificate.

6.5 Total remuneration under this Agreement for the term ending December 31, 2021 shall not exceed Ninety-Three Thousand Five Hundred Dollars and Zero Cents ($93,500.00).
7. TERM, TERMINATION, RENEWAL

7.1 Term. The term of this Agreement is for one (1) year (unless terminated as provided herein) from the effective date of this Agreement (collectively, the “Term”). This Agreement, its terms and conditions, and authorized amendments are renewed automatically for succeeding periods of one (1) year. The renewal period shall be based on the calendar year and the automatic renewal date shall be the first day of January of each succeeding year, unless the Agreement is terminated as provided below.

7.2 Termination for Convenience. This Agreement may be terminated for convenience by either party upon sixty (60) days prior written notification to the other party.

7.3 Notice. Except as otherwise expressly set forth in this Agreement, all notices with respect to this Agreement shall be in writing and signed by a duly authorized representative of the party. Notices shall be sent by certified mail, overnight international courier with tracking, or physically delivered by messenger.

7.4 Termination for Default. This Agreement may be terminated by a party upon prior written notice to the other party if the other party defaults on any responsibility and/or obligation under this Agreement, or is in breach of the Agreement, and does not remedy such default or breach within thirty (30) days following the date of receipt of such notice.

7.5 Return. Upon expiration or termination of this Agreement, Agency shall immediately return all BI property due to BI. In the event BI’s Units, unused supplies and other such property are not returned within thirty (30) days, Agency shall pay to BI ten dollars ($10.00) per Unit per day until BI has all such Units and other property in its possession. BI is entitled to full payment for services rendered and accepted by Agency whether during the Term or thereafter.

7.6 Survival. The following sections (and their subsections) shall survive the termination of this Agreement: 6, 7.3, 7.5, 7.6, 8 through 15, and all defined terms used within the foregoing.

8. LIMITATION OF LIABILITY

8.1 Agency Responsibility. Agency will be responsible for the proper use, management and supervision of the Equipment. Agency agrees that BI will not be liable for any damages caused by Agency’s failure to fulfill its responsibilities set forth in this Agreement.

8.2 Disclaimer of Warranty.
EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BI EXCLUDES ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, INCLUDING BUT NOT LIMITED TO THE MONITORING SERVICE, SOFTWARE APPLICATIONS OR EQUIPMENT. THE EXPRESS WARRANTIES IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED. BI EXPRESSLY DISCLAIMS THAT THE MONITORING SERVICE, SOFTWARE APPLICATIONS OR EQUIPMENT ARE IMPERVIOUS TO TAMPERING, COMPLETE, ACCURATE, RELIABLE, ERROR FREE OR FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS, THAT THE PRODUCTS AND SERVICES WILL BE
CONTINUOUSLY AVAILABLE, OR THAT DATA ENTERED ARE SECURE FROM UNAUTHORIZED ACCESS.

8.3 Limitation of Damages.
IN NO EVENT WILL BI BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF BI HAS KNOWLEDGE OF THE POSSIBILITY OF THE POTENTIAL LOSS OR DAMAGE, IN CONNECTION WITH OR ARISING OUT OF THE PROVIDING, PERFORMANCE, OR USE OF THE MONITORING SERVICE, SOFTWARE APPLICATIONS OR EQUIPMENT PROVIDED UNDER THIS AGREEMENT.

8.4 Acts.
IN NO EVENT DOES BI ASSUME ANY RESPONSIBILITY OR LIABILITY FOR ACTS THAT MAY BE COMMITTED BY PERSONS AND/OR CLIENTS THAT ARE SUBJECT TO AGENCY’S ELECTRONIC MONITORING PROGRAM.

8.5 Telecom. Agency recognizes and acknowledges that information is transmitted via third-party telecommunications service providers. BI makes no representations or warranties regarding carriage of information over any communications medium not directly controlled by BI, including, but not limited to, wireless and land-line telecommunications services. Further, BI shall not be liable for any interruption of service or non-transfer of information due to interruptions, temporary downage or other failure to any system that is not directly in BI’s control. BI agrees to notify Agency as soon as is practicable in the event BI Equipment is not operational due to any such interruption.

9. INDEMNIFICATION

BI shall indemnify and defend the City of Dayton and its elected officials, officers, employees and agents (collectively, "Indemnites") from and against all third-party claims, losses, damages, and expenses (including reasonable attorneys’ fees) for bodily injury or tangible personal property, to the extent that such claims, losses, damages, or expenses are caused by or arise out of the negligent acts or willful misconduct or fraud of BI and its agents, employees, contractors, sub-contractors and representatives in performing the Services; however, no indemnification will be required for any claims, losses, damages or expenses resulting from any negligence or willful misconduct of the City of Dayton or any of the other Indemnitees. Agency agrees that it will promptly notify BI in writing of any claims, lawsuits, or other actions and agrees that BI is permitted to control fully the defense and settlement of any claim, suit, or action. Agency shall have the right, at its own expense, to appear through counsel of its own choosing. BI shall have no liability for any claim or suit based on any United States copyright or patent, or the trademark, trade secret, or unfair competition rights of a third party based on any modification done to the Licensed Software by the Agency.

This Article shall survive early termination or expiration of this Agreement.
10. OWNERSHIP AND CONFIDENTIALITY/NONDISCLOSURE OBLIGATIONS

10.1 Intellectual Property. As between the parties hereto, BI shall retain all ownership interests in all parts of the Monitoring Services. All rights owned by BI that are not granted by this Agreement, including the right to derivative works, are reserved to BI. All rights, powers and privileges which arise out of this Agreement are, and shall remain at all times, the sole and exclusive property of BI. Nothing contained in this Agreement shall be deemed to convey to Agency any title or ownership interest in the Equipment or Documentation.

10.2 Confidential Information. Agency agrees to hold in confidence and not disclose to any party, other than authorized employees under similar terms of confidentiality as set forth herein, the Documentation or any confidential information or trade secrets of BI.

All information provided by Agency in the course of BI’s performance of Services shall be deemed "confidential" information to the extent that it is classified as "private" under the laws of the State of Ohio or is not independently available to the general public. To the extent permitted by law, neither party shall disclose such confidential information to any third party without the other party's written consent. Both parties shall also take all necessary steps to protect against the disclosure of confidential information disclosed by the other party. Nothing in this Section shall prohibit or limit either party's disclosure of confidential information when such disclosure is required by an order of a Court or under state or federal law, or when such disclosure is authorized in writing by the disclosing party.

10.3 Access. BI will issue Agency a login ID and a password for use in accessing BI TotalAccess and the specific Client information for Agency. The confidentiality of the Monitoring Service and Client information is dependent upon Agency’s careful and secure control of the login ID and password. Agency agrees to maintain its password as private and confidential and to take all reasonable measures to maintain the careful control and security of the login ID and password. Agency agrees that each employee or contractor, to be authorized to work with or to have access in any way to the Documentation or trade secrets hereunder, shall agree to be bound by confidentiality, nondisclosure, use, and copying restrictions consistent with those of this Agreement. Agency agrees to notify BI immediately of the existence of any circumstances surrounding any unauthorized knowledge, possession, or use of the login ID and password or any part thereof by any person or entity. BI is not responsible for breaches in security resulting from third party access to Agency’s password or account.

10.4 Prohibited Use. Agency shall not itself and also shall not knowingly permit any of its employees, subcontractors, or sublicensees to alter, maintain, enhance, or otherwise modify any part of the Monitoring Service, other than strictly to input, access and update information relating to Clients, as permitted by this Agreement. Agency shall not reverse engineer, reverse compile, reverse assemble or do any other operation or analysis with the Monitoring Service or associated software, hardware, and technology that would reveal any of BI’s confidential information, trade secrets, or technology. Agency shall not, and shall take all reasonable actions to cause its employees, agents and subcontractors, if any, not to, during the Term or at any time thereafter, divulge, communicate or utilize, other than in the performance of Agency’s obligations under this Agreement, any Confidential Information which Agency’s or such person has acquired or
may acquire, whether technical or non-technical, relating to the business and affairs of BI, except as provided in Section 10.2 of this Agreement.

10.5 Restricted Access. Agency agrees not to make any attempt to gain any unauthorized access to any other user's account or to the systems, networks or databases of the Monitoring Service other than Agency's specific Client information as specifically permitted herein. Violations of the Monitoring Service security system are prohibited and are deemed a material breach of this Agreement and may be reported to applicable authorities. All access to Software Applications are subscription based, and the rights to access such services expire upon the expiration of the applicable order or upon Agency's failure to pay for such services (i.e., services are not perpetual).

11. INSURANCE

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

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

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

Agency represents, and BI acknowledges, that Agency is self-insured in an amount not less than $1,000,000. Upon request, the parties hereto shall furnish to the other a certificate of insurance or other evidence that the required insurance is in effect.

12. FORCE MAJEURE

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

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

13. GENERAL

13.1 Entire Agreement. The entire agreement between the parties with respect to the subject matter hereof is contained in this Agreement. This Agreement shall be binding on and inure to the benefit of the parties hereto and their representatives, successors and assigns.

13.2 Limited in Scope. This Agreement is limited in its scope to its defined purpose. It in no way implies that either party has specific knowledge or bear responsibility for the business practices of the other party. All business practices and contract compliance outside the defined conditions of this Agreement and authorized amendments are the sole responsibility of each party.

13.3 Provisions Prohibited by Law. Any provision of this Agreement which is found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement. Preprinted terms and conditions of any purchase order or other instrument issued by Agency in connection with this Agreement which are in addition to or inconsistent with the terms and conditions of this Agreement will not be binding on BI and will not apply to this Agreement and are hereby rejected by BI. The entire agreement between the parties with respect to the subject matter hereof is contained in this Agreement and the referenced attachments hereto. No prior or contemporaneous negotiations, understandings, or agreements shall be valid unless in writing and signed by authorized representatives of each party. This Agreement shall be binding on and inure to the benefit of the parties hereto and their representatives, successors and assigns.

13.4 Execution. This Agreement may be executed in any number of and by the different parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

13.5 Independent Contractor. Nothing herein shall be construed to create a joint venture or partnership between the parties hereto or an employee/employer relationship. Agency shall be an independent contractor pursuant to this Agreement. Neither party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement or undertaking with any third party. Agency acknowledges that it has not paid a franchise fee of any kind to BI to enter into
this Agreement. The parties acknowledge that there is no community of interest between Agency and BI.

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

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

13.6 Compliance with Law. Each party shall, at its sole cost and expense, comply with all applicable laws, rules, regulations, decrees, and other requirements (as each of the foregoing may be amended or modified from time to time) relating to or affecting this Agreement and Equipment.

14. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. In the event that a dispute arises with respect to any of the provisions herein contained or any other matter affecting the relationship between BI and Agency, the parties agree it shall be subject to the jurisdiction of the courts located in Montgomery County, Ohio.

15. ASSIGNMENT AND SUBCONTRACTING

This Agreement may not be transferred or assigned by Agency or by operation of law to any other person, persons, firms, or corporation without the express written consent of BI. BI shall have the right to subcontract any and all services set forth under this Agreement, so long as BI remains primarily responsible hereunder.

16. EQUAL EMPLOYMENT OPPORTUNITY

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

17. WAIVER

A waiver by the Agency or BI 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.

18. AMENDMENT

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

[The remainder of this page intentionally left blank.]
IN WITNESS WHEREOF, by signing below Agency and BI have caused this Agreement to be effective as of the latest date set forth below.

THE CITY OF DAYTON, OHIO

By: __________________________

Printed Name: ____________________

Printed Title: ______________________

Date: __________________________

BI INCORPORATED

By: __________________________

Printed Name: Danna Coaplind

Printed Title: VP Finance

Date: 6/01/21 __________________________

APPROVED AS TO FORM
AND CORRECTNESS:

5/27/2021

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
EXHIBIT A
TO THE
MASTER AGENCY AGREEMENT
FOR ELECTRONIC MONITORING SERVICES
BETWEEN
BI INCORPORATED ("BI")
AND
THE CITY OF DAYTON, OHIO

Pursuant to the attached Agreement referenced above, the specific terms and costs for the BI LOC8 XT equipment and services are below and on attached Schedule A:

1. Terms and Conditions. Except as specifically set forth herein, this Agreement is subject to the terms and conditions of the Master Agreement and which is hereby incorporated herein.

2. Term and Renewal of Agreement. The term of this Agreement and authorized Amendments shall be from the Effective Date through December 31, 2021, and thereafter shall be for one (1) calendar year, unless terminated as provided herein or in the Master Agreement (collectively, the “Term”). Starting January 1, 2022, the term of this Agreement and Amendments shall be renewed automatically for succeeding periods of one (1) year (the Renewal period). The renewal period shall be based on the calendar year and the automatic renewal date shall be the first day of January of each succeeding year (unless the Agreement is terminated as provided in the Master Agreement).

3. Equipment and Services. BI shall provide equipment and services as set forth in the Master Agreement, unless Schedule A sets forth specific provisions for equipment and services.

4. Rates and Payment. Agency shall pay the rates set forth in Schedule A, which is attached hereto and hereby made a part of this Agreement. Payment shall be in accordance with the terms and conditions of the Master Agreement, unless Schedule A sets forth specific provisions.
TO THE
ELECTRONIC MONITORING SERVICE AGREEMENT – US COMMUNITIES
Master Agency Agreement ("Agreement")
between
BI INCORPORATED ("BI")
and
THE CITY OF DAYTON OHIO ("Agency")

Pursuant to Master Agreement No. 00003588 (formerly 201844994), the cost to Agency for the services rendered by BI shall be as follows:

Service – Standard Automated

LOC8 XT SERVICE VOLUME PRICING AND ADDITIONAL SERVICES:

OPTION A: LOC8 XT WITH 1.30.W5.C0.ZX SERVICE:
LOC8 - GPS Collection Rate once 1 per minute, Data Transmission every 30 minutes, Wi-Fi Locate every 5 minutes (If GPS not found), no Cell Tower Locate (If GPS not found), with Data Transmission at Zone Crossing.

<table>
<thead>
<tr>
<th>LOC8 XT 1.30.W5.C0.ZX</th>
<th>Rental/Spare Charge Per Unit/Per Day</th>
<th>Monitoring Service Charge Per Unit/Per Active Day</th>
<th>Total Charge Per Unit/Per Active Day</th>
</tr>
</thead>
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<tr>
<td>501+</td>
<td>$2.15</td>
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</tr>
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</table>

OPTION B: LOC8 XT WITH 1.240.W5.C0.ZX SERVICE:
LOC8 - GPS Collection Rate once 1 per minute, Data Transmission every 240 minutes, Wi-Fi Locate every 5 minutes (If GPS not found), no Cell Tower Locate (If GPS not found), with Data Transmission at Zone Crossing.

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<tr>
<td>501+</td>
<td>$2.15</td>
<td>$1.10</td>
<td>$3.25</td>
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</tbody>
</table>
ADDITIONAL SERVICES:

Thirty Percent (30%) LOC8 XT Unit No-charge Spares: Each month during the term of the Agreement, Agency is entitled to keep a quantity of LOC8 XT units equal to, but not to exceed, 30% of that month's average number of active Units per day in its possession at no charge (not subject to the Rental Charge while not in use). For any inactive LOC8 XT Units in excess of the 30% allowance, Agency will incur a spare charge per unit per day based on the applicable tier charge for Rental/Spare Charge per Unit/Per Day listed in the table above. Following execution of this Agreement, Agency will be granted a sixty (60) day ramp-up period before billing of spares will commence.

No LOC8 XT Unit Loss or Damage: Agency is not entitled to a loss or damage allowance. Agency will be responsible for all costs related to lost, stolen or damaged LOC8 XT Equipment.

Replacement costs: LOC8 XT Tracking – $1,950.00 each; LOC8 XT Beacon - $250.00 each.

GENERAL TERMS:

Freight. BI will pay for the cost of shipping Units and other Equipment, Supplies and accessories to and from Agency via ground delivery. Agency may request shipping methods other than ground delivery, in which event Agency will pay for the additional cost of such alternative shipping method.
AMENDMENT NO. 4

TO THE
EXACUTRACK AT SERVICE AGREEMENT ("Agreement")
BETWEEN
BI INCORPORATED ("BI")
AND
THE CITY OF DAYTON OHIO ("Agency")

This Amendment is entered into by and between Agency and BI.

In consideration of the promises contained herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto, desiring to be legally bound, hereby agree to amend the above-referenced Agreement as follows:

This Agreement will be terminated in 2021, due to a forthcoming agreement for OMNIA LOC8 equipment and services to replace Exacutrack. In order to provide for this change, the second and third paragraphs of “6. TERM, TERMINATION, RENEWAL” are revised, and the first paragraph remains the same, as follows:

6. TERM, TERMINATION, RENEWAL

The term of this Agreement is for one (1) year (unless terminated as provided herein) from the effective date of this Agreement. This Agreement, its terms and conditions, and authorized amendments are renewed automatically for succeeding periods of one (1) year. Starting January 1, 2016, the renewal period shall be based on the calendar year and the automatic renewal date shall be the first day of January of each succeeding year, unless the Agreement is terminated as provided below.

Termination. The parties have agreed to terminate this Agreement upon the execution of an agreement for LOC8 monitoring equipment and services to replace Exacutrack. No other prior written notice of termination shall be provided to either party. All notices with respect to this Agreement shall be in writing and signed by a duly authorized representative of the party. Notices shall be sent by certified mail or delivered by messenger.

Payment and Return of Equipment. Upon termination of the Agreement, Agency shall immediately return to BI all property in its possession within seven (7) days and all property not in its possession within sixty (60) days. Agency shall provide BI with all outstanding payments due within thirty (30) days. BI is entitled to full payment for services rendered and accepted by Agency whether during the term of this Agreement or thereafter.
The changes in this Amendment shall be effective January 1, 2021.

All other terms and conditions of this Agreement, except as expressly amended herein, shall remain in full force and effect.

IN WITNESS WHEREOF, by signing below, THE CITY OF DAYTON, OHIO and BI have caused this Amendment to be effective January 1, 2021.

BI INCORPORATED

Danna Coapland

Signature

Printed Name

VP Finance

Printed Title

1/8/2021

Date

APPROVED AS TO FORM
AND CORRECTNESS:

12/21/2020

X John Musto for

City Attorney

Signed by: Musto, John

THE CITY OF DAYTON

Shelley Dickstein

Signature

Printed Name

City Manager

Printed Title

2.3.21

Date

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

January 27, 2021

Mn./Bk. 116 Pg.

Rachel L. Scherer

Clerk of the Commission
MEMORANDUM

Date: January 27, 2021

TO: Rashella Lavender, Clerk of Commission
    Shelley Dickstein, City Manager

FROM: Ann Marie Murray, Court Administrator
      Dayton Municipal Court

SUBJECT: Requests for Signature

I am requesting your signature on the attached Fourth Amendment to the Services Agreement with BI Incorporated. This Agreement provides satellite tracking equipment used for the Electronic Home Detention Program. The equipment costs are reimbursed through a Consulting Services Agreement with the Montgomery County Board of Commissioners.

Attached is a signed City Manager’s Report and Certificate of Revenue in the amount of $40,000.00 which was approved by the City Commission (Item #2) on January 27, 2021.

Four originals are presented for your signature.

If you have any questions, please contact me at extension 4338.
Fourth Amendment to the Services Agreement

The Dayton Municipal Court requests permission to enter into a Fourth Amendment with BI Incorporated in the amount of $40,000.00 for services rendered to the Court for the Electronic Home Detention Program.

BI Incorporated supplies satellite tracking equipment used for the Electronic Home Detention Program. The equipment costs are reimbursed through a Consulting Services Agreement with the Montgomery County Board of Commissioners.

The original contract was approved on June 23, 2010. Amendment No. 3 was executed on July 15, 2015, changing the automatic renewal from the anniversary date to the first day of the calendar year beginning January 1, 2016 and each succeeding year.

The term of this Amendment is for one year from the effective date, unless terminated prior. Dayton Municipal Court and BI Incorporated have agreed to terminate this contract upon the execution of an agreement for OMNIA LOC8 monitoring equipment and services. The new equipment will replace the current Exacutrack equipment. The Court expects to have this transition of equipment done by the end of April 2021.

A Certificate of Funds for $40,000.00 is attached.

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

Signatures/Approval

Division
Ann Marie Murray
Department
City Manager
FORM NO. MS-16

Approved by City Commission
Rachel C. Lamendora
Clerk
January 29, 2021
Date

Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
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<p>| Amount: | |
| Fund Code | XXXX - XXXX - XXXX - XXXX - XXXX - XXXX |</p>
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<th>Acct</th>
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<th>Act</th>
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</table>

Attach additional pages for more FOAPALs

Vendor Name: BI Incorporated
Vendor Address: 5400 Lookout Dr. Denver CO 80301
Street City State Zipcode + 4
Federal ID: 84-0769286
Commodity Code: 68008
Purpose: To pay monthly monitoring invoices for calendar year 2021.

Contact Person: Ann Marie Murray
Municipal Court / Administration 12-Jan-21
Department/Division Date

Originating Department Director's Signature: Ann Marie Murray

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.

Financial Director's Signature: Janice Williams
CF Prepared by: 
Date 1/19/2021
Date 11/12/21
CF/CF Number 119/92

Finance Department
City Manager’s Report

From: 2600 - Economic Development
Supplier, Vendor, Company, Individual: Hull & Associates, LLC.
Address: 4770 Duke Drive, Suite 300, Mason, Ohio 45040

Date: June 16, 2021
Expense Type: Service Agreement
Total Amount: $150,000.00 thru 12-31-2022

Fund Source(s): ODSA Brinkman Auto Gas Station Cleanup Grant
Fund Code(s): 28292-2600-1159-41
Fund Amount(s): $150,000.00

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

Description:

Professional Services Agreement

The Department of Economic Development requests approval to enter into a Professional Services Agreement (Agreement) with Hull & Associates, LLC. (Consultant) in the amount of $150,000.00.

Consultant will perform certain tasks associated with the remediation of the former Brinkman’s Auto property located at 3503 Riverside Drive. The project is funded by an Ohio Abandoned Gas Station Cleanup Program Grant, which was accepted by the City Commission on January 30, 2019 by Resolution 6395-19.

Specifically, Consultant shall provide BUSTR Tier 1 and Tier 2 reports, Ohio Voluntary Action Program (“VAP”) reporting, oversight of any necessary field work, and related project management services.

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

The Agreement is effective as of the date of execution and will expire on December 31, 2022.

A Certificate of Funds for $150,000.00 is attached.

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 8/2016

Division

Department

City Manager

FORM NO. MS-16
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

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Attach additional pages for more FOAPALs

Vendor Name: Hull & Associates, LLC
Vendor Address: 4770 Duke Drive, Suite 300 Mason Ohio 45040
Federal ID: 34-1549829
Commodity Code: 90665
Purpose: Consultant to perform tasks associated with the remediation of the former Brinkman’s Auto property located at 3503 Riverside Drive.

Contact Person: Jill Bramini
Economic Development

Originating Department Director’s Signature: [Signature]

SECTION II - to be completed by the Finance Department

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

Finance Director Signature: [Signature] Date: 6/3/2021
CF Prepared by: [Signature] Date: 6/4/2021
CT21-2998
June 3, 2021

TO: Shelley Dickstein, City Manager
    City Manager’s Office
    LaShea Lofton, Director
    Finance Department

FROM: Ford P. Weber, Director
      Department of Economic Development

SUBJECT: Professional Services Agreement for Hull & Associates, LLC

The Department of Economic Development requests approval of a Professional Services Agreement (PSA) in connection with an environmental cleanup project at the former Brinkman Auto site on Riverside Drive. Hull & Associates, LLC (Consultant) will provide project management and environmental consulting services associated with the City’s Ohio Abandoned Gas Station Grant (Grant) for the site.

The project is funded by the Ohio Abandoned Gas Station Cleanup Program and work began in 2019. The grant has been extended and this PSA will allow the project to be completed. Compensation will not exceed $150,000 and the contract will expire on December 31, 2022.

If you have any questions, please contact me at extension 3621 or Keith Klein of our staff by email.

FPW/tek
PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into between the City of Dayton, Ohio (hereinafter the "City"), a municipal corporation in and of the State of Ohio, and Hull & Associates, LLC, an Ohio corporation with offices at 4770 Duke Drive, Suite 300, Mason, Ohio 45040 (hereinafter the "Consultant").

WITNESSETH:

WHEREAS, On May 5, 1999, the Commission of the City of Dayton adopted its strategic plan, CitiPlan Dayton: The 20/20 Vision ("CitiPlan 20/20"), of which land redevelopment, reuse, and revitalization are key components; and,

WHEREAS, The United States Environmental Protection Agency ("EPA") awarded a Brownfield Assessment Grant to the City in 2016; and,

WHEREAS, The City required certain professional services related to the EPA grant, including environmental assessments of suspected or potential brownfield sites; and,

WHEREAS, The Department of Economic Development selected the Consultant to provide those services through a competitive Request for Proposal process; and,

WHEREAS, As a result of services performed by Consultant, at the direction of the City under the EPA Brownfield Assessment grant program, the City subsequently received an Ohio Abandoned Gas Station Clean Up Grant ("Grant") for the former Brinkman’s Auto site located at 3503 Riverside Drive; and,

WHEREAS, The City now requires additional professional services in order to complete the clean-up project that was contemplated in the Grant application; and,

WHEREAS, The Consultant is willing to continue performing the professional services and represents that its staff is fully qualified and available to perform the services.

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

ARTICLE 1. SERVICES TO BE PERFORMED BY THE CONSULTANT

The Consultant will perform certain tasks associated with the remediation of the former Brinkman’s Auto property located at 3503 Riverside Drive ("Site") in connection with the City’s Grant ("Project"). Specifically, Consultant shall subcontract the removal of abandoned underground storage tank(s), demolition of the remaining dilapidated structures, and final grading of the cleared Site in accordance with the City’s standard construction specifications. Consultant will also provide BUSTR Tier 1 and Tier 2 reports, Ohio Voluntary Action Program ("VAP") reporting, oversight of the field work, and related project management services. Consultant will assist with any related reporting requirements, if needed, and make every reasonable effort to obtain a “No Further Action” letter for the Site. The City’s Grant is incorporated into this Agreement by reference herein. Consultant is subject to applicable provisions of the Grant, as they relate to the successful completion of the Project.

This Project was solicited with a 0.2% Minority Owned Business Enterprise ("MBE") and 0.3% Women Owned Business Enterprise ("WBE") participation. Consultant will ensure that these goals are met and provide the City with written documentation of the MBE/WBE participation. The Project solicitation also required Consultant to use a laboratory certified under the Ohio VAP, and to have a VAP “Certified
Professional” (“CP”) as part of the Project team. Consultant agrees to use a VAP CP and a VAP-certified laboratory for any material analysis associated with the Project.

Because time is of the essence in performance of the services herein, the Consultant shall begin work as soon as possible upon written notice by the City. All services performed by the Consultant will comply with applicable Environmental Review Standards under the National Environmental Policy Act (“NEPA”) and all other applicable federal, state, and local laws, regulations, and policies.

ARTICLE 2. TERM AND TERMINATION
This Agreement is effective upon execution by the City and will expire December 31, 2022, unless extended or terminated by mutual agreement of the parties.

In the event of substantial failure by the Consultant in performance of this Agreement, or for the City’s convenience, the City may terminate this Agreement upon providing thirty (30) days written notice to the Consultant. If substantial failure is the basis for termination, then the Consultant will have fifteen (15) calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the City. If a plan for cure is not accepted, then this Agreement will terminate immediately and the City’s sole obligation to Consultant shall be to pay the Consultant for services rendered at the time of such termination. If termination is for the City’s convenience, the City shall pay the Consultant for all accepted services performed prior to termination. In either event, the Consultant shall terminate the services according to a schedule acceptable to the City.

ARTICLE 3. COMPENSATION
Total remuneration in this Agreement shall not exceed One Hundred Fifty Thousand Dollars and Zero Cents ($150,000.00) for the services provided. The City shall pay the Consultant according to the billing rate schedule attached as Exhibit A, which is incorporated herein by reference.

The Consultant will submit, not more frequently than monthly, invoices for payment of the Services provided. The invoices shall specify the invoice period, state the total amount requested, detail the work and services performed and hours dedicated to performance of same, and be accompanied by supporting information and records that substantiate the invoice amount. The City shall pay the invoices within thirty (30) days from receipt thereof, unless disputed.

ARTICLE 4. PROFESSIONAL QUALIFICATIONS, SERVICES AND STANDARDS
The Consultant represents that it is qualified and permitted by law to perform the services required hereunder and that it has, and will maintain, adequate facilities and sufficient personnel to perform the services. The Consultant represents and warrants that all personnel engaged in the performance of the services to be provided are qualified and permitted to do the work assigned. The Consultant shall furnish the City with a certified statement setting forth the technical qualifications and the general and specific experience in the area of environmental assessment and remediation, together with other substantiating information as to the Consultant and its agents’ and employees’ qualifications and experience.

The services to be performed under this Agreement, including reports, surveys, drawings and professional renderings, shall be in compliance with all applicable federal, state, and local laws, regulations or orders, and agency association standards or other standards governing the performance of the professional services to be provided hereunder. The Consultant and its employees, agents, and/or contractors performing the services under this Agreement shall exercise the same degree of care, skill, and diligence in the performance of the services as is ordinarily possessed and exercised by a professional under like or similar circumstances.
All memorandums shall be submitted to the City in draft form. The City reserves the right to request changes and/or modifications to the draft memorandums before accepting any final memorandums.

All work is to be completed in accordance with all applicable local, state, or federal regulations. Additionally, all “field” personnel must comply with OSHA Health and Safety Training requirements per 29 CFR 1910.120. A Health and Safety Plan shall be completed before commencing work, if applicable.

ARTICLE 5. LIABILITY AND INDEMNIFICATION

The Consultant shall indemnify, and hold harmless the City, and its elected officials, employees, and agents from and against all judgments, losses, damages, and expenses for bodily injury, death, and physical damage to real or tangible personal property, to the extent such judgments, losses, damages, or expenses are caused by the Consultant’s negligent acts, errors, or omissions arising out of its performance herein.

The parties hereto specifically agree, notwithstanding any other provision in this Agreement to the contrary, that the City will not, under any circumstances, be liable or responsible for any negligent acts, errors, or omissions of the Consultant, nor will the City, under any circumstances as a result of meetings and consultations and decisions resulting therefrom, be liable or responsible for any damages or additional costs incurred by the failure of the Consultant to perform its duties as set forth in this Agreement; nor will the City, by participating in meetings and consultations with the Consultant and the decisions resulting therefrom be, in any degree or to any extent, liable for technical decisions of any kind or nature, or be liable for decisions relative to design, environmental remediation, assessments, or specifications, such responsibility remains that of the Consultant.

Regardless of completion of the services, obligations, and duties provided for in this Agreement, or if this Agreement is terminated for any reason, the terms and conditions of this Article will survive.

ARTICLE 6. INSURANCE

During the performance of the services under this Agreement, the Consultant shall maintain with an insurance company authorized to conduct business in the State of Ohio and having at least an “A” rating from A.M. Best, no less than the following insurance:

1. Commercial general liability insurance, with a combined single limit of One Million Dollars ($1,000,000) per occurrence and One Million Dollars ($1,000,000) aggregate.
2. Automobile liability insurance, with a combined single limit of One Million Dollars ($1,000,000) per person and One Million Dollars ($1,000,000) per accident.
3. Workers’ compensation Insurance in such amount as required by law, and employers’ liability insurance, with a limit of Five Hundred Thousand Dollars ($500,000) per occurrence.
4. Professional liability insurance with a limit of One Million Dollars ($1,000,000) per claim and Two Million Dollars ($2,000,000) aggregate
5. Contractor’s pollution liability insurance, with a limit of One Million Dollars ($1,000,000) per claim and Two Million Dollars ($2,000,000) aggregate.

The Consultant shall name the City, and its elected officials, officers, employees, and agents, as an additional insured on all insurance policies furnished and maintained pursuant to items (1) and (2) above. The Consultant shall provide the City with a certificate of insurance before commencing work. The Consultant must maintain the policies in good standing for the duration of the Project. The Consultant shall provide the City certificates of insurance that include a provision that such insurance will not be canceled without at least thirty (30) days written notice to the City, demonstrating compliance with this Article. The City’s examination of, or failure to request or demand, any evidence of insurance hereunder,
will not constitute a waiver of any requirement of this Article, and the existence of any insurance will not limit the Consultant’s obligations under provisions hereof.

All project contractors are required to include the City and the Consultant as additional insureds on their commercial liability insurance policies, and are required to defend, indemnify, and hold harmless the City and the Consultant from the contractor’s negligence.

ARTICLE 7. OWNERSHIP OF WORK PRODUCT

All documents, including without limitation, all writings, drawings, blueprints, pictures, recordings, notes, data reports, computer or machine-readable data (including ground water modeling information) and all copies or reproductions thereof, or other information received or generated in the performance of this Agreement will be considered work made for hire and the sole and exclusive property of the City. The Consultant shall not use the documents now or in the future for any purpose without the prior written permission of an authorized City employee.

The Consultant shall deliver the documents to the City and shall maintain the documents as strictly confidential. The Consultant shall not disclose the documents to others, including individuals, corporations, or government agencies, either before or after the termination of this Agreement, except as expressly authorized in writing by the City or compelled by law.

ARTICLE 8. EQUAL EMPLOYMENT OPPORTUNITY

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

It is expressly agreed and understood that Section 35.14 of the Revised Code of General Ordinances of the City of Dayton constitutes a material condition of this contract as fully as if specifically rewritten herein and that failure to comply therewith will constitute a breach hereof.

ARTICLE 9. INDEPENDENT CONTRACTOR

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

Consultant, its employees and any approved sub-consultants performing the duties and responsibilities under this Agreement are not City employees, and therefore, such persons shall not be entitled to, nor will they make a claim for, any of the emoluments of employment with the City. Further, Consultant shall be responsible to withhold and pay, or cause such agents and sub-Consultants to withhold and pay, all applicable local, state and federal taxes.

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

ARTICLE 10. MISCELLANEOUS CONDITIONS AND OBLIGATIONS

All work that does not conform to all applicable local, state, or federal regulations will not be accepted. Unacceptable work, whether the result of poor workmanship, use of defective materials, damage through
carelessness, or any other cause found to exist prior to final acceptance of the work, shall be corrected or removed immediately and completed or replaced in an acceptable manner at the Consultant’s expense. If contractors are involved in any part of the services provided hereunder, a representative of the Consultant must be onsite to ensure compliance with the provisions in this Agreement. The Consultant is also responsible for any work completed that is not authorized in writing by the City.

The Consultant shall apply for and obtain all necessary permits and manifests, and file any other necessary paperwork. If applicable, the Consultant will be required to field locate all existing utilities prior to the start of work at the Project site. The Consultant will contact the Ohio Utilities Protection Service (“OUPS”) at least 72 hours (3 work days) prior to the start of work. The Consultant shall notify all other entities that might have underground utilities in the area and are non-members of OUPS.

ARTICLE 11. SITE RESPONSIBILITY

The City hereby provides a temporary Right-of-Entry for the Site to the Consultant and their sub-contractor(s) for the purpose of the Project. The presence of the Consultant’s representative will not relieve any such contractor, other professional, or consultant of its responsibility to perform its work and services in accordance with its contractual and legal obligations and in conformity with the plans and specifications for the project.

ARTICLE 12. SITE OPERATIONS

The Consultant shall only be responsible for damage or loss due to undisclosed or unknown surface or subsurface conditions on the property owned or leased by the City or third parties to the extent such damage or loss is a result of the Consultant’s negligence.

ARTICLE 13. INDIRECT DAMAGES

Each party hereby waives its rights to recover from the other party any consequential, economic, indirect or incidental damages (including, but not limited to, loss of use, income, profits, financing or reputation), arising out of, or relating to, this Agreement or the performance of the services.

ARTICLE 14. SAMPLES AND WASTES

Samples are generally consumed or altered during testing and are disposed of immediately upon completion of the tests. If the samples or wastes resulting from the services or any soils or materials contain asbestos, molds, fungi, bacteria, viruses, or any other hazardous, radioactive or toxic substances, pollutants, or their constituents, the Consultant, at the City’s direction and expense, will transport such samples, wastes, soils, or materials to an appropriate location for final disposal.

ARTICLE 15. UNANTICIPATED CONDITIONS

The City will inform the Consultant in writing of all known asbestos, molds, fungi, bacteria, viruses, or any other hazardous, radioactive, or toxic substances, pollutants, or their constituents and conditions existing on or near a project site that present a potential danger to health, the environment, or the Consultant’s equipment or personnel prior to commencement of the services. If the Consultant encounters such conditions that were not reasonably anticipated or that increase the risk or cost, or both, involved in the Consultant’s performance of the services, upon notice to the City, the Consultant, in its sole discretion, may (i) suspend the performance of the services and submit a change order request to be signed by the City prior to proceeding or (ii) discontinue the performance of the services and terminate this Agreement. If the unanticipated condition presents an immediate or potential threat to health, safety, the environment, or the Consultant’s equipment or personnel, the Consultant will immediately inform the City, so that the City can notify the appropriate government authorities.
ARTICLE 16. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and such counterparts shall constitute one and the same instrument.

ARTICLE 17. GENERAL PROVISIONS

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

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

C. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws. Any arbitration, litigation or other legal matter regarding this Agreement or performance by either party must be brought in a court of competent jurisdiction in Montgomery County, Ohio.

D. **Amendment.** The parties may amend this Agreement, provided that no such amendment shall be effective unless it is reduced to a writing, which makes specific reference to this Agreement, is executed by a duly authorized representative of each party to this Agreement and, if required or applicable, is approved by the Commission of the City of Dayton, Ohio.

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

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

G. **Communications.** Any notice, demand, or other communication required under the Agreement by one party to the other party shall be sufficiently given, if it is sent by certified U.S. mail, postage prepaid, return receipt requested or delivered personally, and addressed as follows:

```plaintext
Consultant:        Cara Henegar, PE, CP  
                   Hull & Associates, LLC  
                   4770 Duke Drive, Suite 300  
                   Mason, Ohio 45040

The City:          City of Dayton, Ohio  
                   Department of Economic Development  
                   101 W. Third Street  
                   Dayton, Ohio 45402
```

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

**ARTICLE 19. POLITICAL CONTRIBUTIONS**

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

**IN WITNESS WHEREOF**, the City and the Consultant, each by a duly authorized representative, have executed this Agreement as of the date set forth below.

**HULL & ASSOCIATES, LLC**

By: Eric Wilburn

Its: __________________________

**CITY OF DAYTON, OHIO**

________________________________________
City Manager

Date: ________________________________

**APPROVED AS TO FORM AND CORRECTNESS:**

☑ Recoverable Signature

X John Musto for

City Attorney

Signed by: Musto, John

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

_________________________________________________________________________, 2021

Min. / Bk. _______ Pg. _______

______________________________
Clerk of the Commission
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**NOTES:**
1. Overtime for time worked on a project in excess of 8 hours/day is billed at 1.5 times the standard rate.
2. Higher hourly billing rates may apply for certain services such as rapid response consulting, Ohio Certified Professional, expert witness services, etc. as agreed on a project-specific basis.
3. Standard billing rates are reviewed no less than annually and may be adjusted at those times.
4. Subcontractors and other project expenses are billed in accordance with the specific project agreement.
AN ORDINANCE

Amending Chapter 44 of the Revised Code of General Ordinances Relating to the Department of Planning and Community Development and Declaring an Emergency.

WHEREAS, Article III, Section 48 of the City of Dayton Charter grants the City Manager the power to exercise control over all City departments and divisions and to recommend to the Commission for adoption such measures as she may deem necessary or expedient; and,

WHEREAS, The City Manager has recommended a merging of the Department of Economic Development and the Department of Planning and Community Development, resulting in the creation of a new department entitled the Department of Planning, Neighborhoods & Development; and,

WHEREAS, The Department of Planning, Neighborhoods & Development will be comprised of new and existing divisions entitled: Mediation, Building Services, Housing and Inspections, Development, Community Engagement, and Planning; and,

WHEREAS, The Revised Code of General Ordinances must be amended to accurately reflect this change to the City’s organizational structure; and,

WHEREAS, The creation of a new department requires amendment of Chapter 44 of the Revised Code of General Ordinances and repeal of Chapters 40 and 42 of the Revised Code of General Ordinances; and,

WHEREAS, For the immediate preservation of the public peace, property, health and safety, and for the usual daily operations of the various departments of the City it is necessary that this Ordinance take effect immediately; now, therefore,

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

Section 1. That Chapter 44 of the Revised Code of General Ordinances of the City of Dayton is hereby amended to read as follows:

CHAPTER 44. – DEPARTMENT OF PLANNING, NEIGHBORHOODS & DEVELOPMENT

Section 2. That Section 44.01 of the Revised Code of General Ordinances of the City of Dayton is hereby amended to read as follows:
Sec. 44.01. - Department of Planning, Neighborhoods & Development.

(A) The Department of Planning, Neighborhoods & Development is created and established, which Department is organized into an Office of the Director and the following Divisions:

(1) Division of Mediation;

(2) Division of Building Services;

(3) Division of Housing and Inspections;

(4) Division of Development;

(5) Division of Community Engagement; and,

(6) Division of Planning.

(B) The Director is responsible for the department and its divisions, and shall also have the following powers and duties:

(1) The powers and duties as provided by the Charter, the ordinances of the city, and other applicable statutes and laws, but subject to the management and control of the City Manager in all matters.

(2) To serve or designate another as the secretary for the following City Commission appointed boards:

(a) City Plan Board;
(b) Community and Neighborhood Development Advisory Board;
(b) Landmark Commission; and,
(c) Board of Zoning Appeals.

(3) To maintain the records of the boards and set the filing fees for processing applications to the boards.

(4) To manage the Office of the Director.
(C) Division of Mediation. This division is responsible for providing Dayton and Montgomery county residents, organizations, and businesses with appropriate alternative approaches to addressing disputes and conflicts constructively by providing a range of conflict intervention services.

(D) Division of Building Services. This division is responsible for plan review, permitting, inspection, and protecting the health, safety, and welfare of people by creating safe buildings through enforcement of the Ohio Building Codes.

(E) Division of Housing and Inspection. This division is responsible for housing and environmental code enforcement, nuisance abatement and other related housing conservation duties, including enforcing and administering the zoning ordinance.

(F) Division of Development. This division is responsible for the administration of various economic development initiatives, housing development, and administers federal HUD programs impacting neighborhood life. These initiatives are designed to maintain and expand the city’s residential, commercial, and industrial tax base, create and retain jobs for city residents, and improve quality of life.

(G) Division of Community Engagement. This division is responsible for fostering open communication and collaboration among Dayton’s residents, business owners, stakeholders, and the City government. These responsibilities of all parties ensure transparency, collaboration, and accountability.

(H) Division of Planning. This division is responsible for comprehensive, strategic, and neighborhood planning, maintaining the zoning code and the official zoning map of the city, and providing staff support for the City Plan Board, Board of Zoning Appeals, and the Landmarks Commission.

(I) Where necessary for the efficient operation of the Department of Planning, Neighborhoods & Development, the Director may substitute, reassign, modify or expand the functions of the Department of Planning, Neighborhoods & Development, with the advice and consent of the City Manager.

Section 3. That Section 44.01 of the Revised Code of General Ordinances of the City of Dayton is hereby repealed.

Section 4. That Chapter 40 of the Revised Code of General Ordinances of the City of Dayton is hereby repealed.

Section 5. That Chapter 42 of the Revised Code of General Ordinances of the City of Dayton is hereby repealed.
Section 6. That any and all references to the “Director of Economic Development” in any Section of the Revised Code of General Ordinances shall now be understood to reference the “Director of Planning, Neighborhoods & Development.”

Section 7. That any and all reference to the “Department of Economic Development” in any Section of the Revised Code of General Ordinances shall now be understood to reference the “Department of Planning, Neighborhoods & Development.”

Section 8. That any and all references to the “Director of Building Services” in any Section of the Revised Code of General Ordinances shall now be understood to reference the “Director of Planning, Neighborhoods & Development.”

Section 9. That any and all reference to the “Department of Building Services” in any Section of the Revised Code of General Ordinances shall now be understood to reference the “Department of Planning, Neighborhoods & Development.”

Section 10. That any and all references to the “Director of Planning,” the “Director of Community Development,” and the “Director of Planning and Community Development,” and the “Director of Planning & Community Development” in any Section of the Revised Code of General Ordinances shall understood to reference the “Director of Planning, Neighborhoods & Development” and all previous responsibilities of the previous title shall be imbued into this new title.

Section 11. That any and all reference to the “Department of Planning and Community Development” in any Section of the Revised Code of General Ordinances shall now be understood to reference the “Department of Planning, Neighborhoods & Development.”

Section 12. That the changes outlined herein shall be retroactive effective January 1, 2021 for purposes of budgetary presentation and financial reporting.
Section 13. That 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
June 9, 2021

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

FROM: Todd M. Kinskey, Director  
    Department of Planning and Community Development

SUBJECT: Departmental Reorganizational Emergency Ordinance

Attached for your review and placement on the June 16, 2021, City Commission Calendar is an Emergency Ordinance amending Chapter 44 of the Revised Code of General Ordinances, whereas the City Manager has recommended a merging of the Department of Economic Development and the Department of Planning and Community Development, resulting in the creation of a new department entitled the Department of Planning, Neighborhoods, & Development.

Please read the Ordinance twice at one meeting.

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

Thank you.

Attachments

Cc: LaShea Lofton  
    Joe Parlette
A RESOLUTION

Authorizing the Acceptance of a Grant Award from the Ohio Department of Rehabilitation and Correction in the Amount of One Hundred Ninety-Six Thousand Eight Hundred Sixteen Dollars and Zero Cents ($196,816.00) for the Grant Period of July 1, 2021 to June 30, 2023, on Behalf of the City of Dayton, and Declaring an Emergency.

WHEREAS, The Ohio Department of Rehabilitation and Correction ("ODRC") administers a Community-Based Corrections grant program; and

WHEREAS, Dayton Municipal Court administers the Stopping the Violence Program, which provides intensive programming and supervision to domestic violence offenders; and

WHEREAS, ODRC will award the City a Community-Based Corrections grant to provide funds for the Stopping the Violence Program, pursuant to the terms of the Subsidy Grant Agreement as attached to this Resolution; and

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

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

Section 1. That the Commission hereby accepts a Community-Based Corrections grant award from the Ohio Department of Rehabilitation and Correction, in the amount of One Hundred Ninety-Six Thousand Eight Hundred Sixteen Dollars and Zero Cents ($196,816.00) for the period of July 1, 2021 to June 30, 2023, to provide funds for the Stopping the Violence Program.

Section 2. That the City Manager, or her designee, is hereby authorized to execute the Subsidy Grant Agreement as attached to this Resolution and to take all other actions necessary to receive grant funds thereunder.
Section 3. That for the reasons stated in the preamble hereof, the 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 the Commission

Approved as to form:

City Attorney
Date: June 7, 2021

TO: Shelley Dickstein, City Manager

FROM: Ann Marie Murray, Court Administrator
       Dayton Municipal Court

SUBJECT: Acceptance of Resolution
         Subsidy Grant Agreement

The Court received an Award from the Ohio Department of Rehabilitation and Correction Subsidy Grant Agreement for 408 Community-Based Non-Residential Corrections Programs in the amount of $196,816.00.

The Stopping the Violence Program, funded by the Community Corrections Act since 1996, has enabled the Court to provide an intensive 24 or 26 week education and supervision to offenders of domestic violence offenses. The grant funds two probation officer positions that have specialized domestic violence training.

This award is for two years effective July 1, 2021 through June 30, 2023.

No cash match is required from the City of Dayton.

Attached is a copy of the Agreement, one original and one copy of the Resolution, which were approved by the Law Department for immediate acceptance at the City Commission meeting scheduled for June 16, 2021. The Court is requesting two readings at one meeting.

If you have any questions, please contact me at extension 4338.
OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

SUBSIDY GRANT AGREEMENT FOR 408
COMMUNITY-BASED NON-RESIDENTIAL
CORRECTIONS PROGRAMS

THIS SUBSIDY GRANT AGREEMENT FOR COMMUNITY-BASED CORRECTIONS PROGRAMS NON-RESIDENTIAL PROGRAMS (hereinafter referred to as this Agreement) pursuant to authority in Sections 5149.30 to 5149.36 of the Ohio Revised Code (hereinafter referred to as RC) is made and entered into by and between the Ohio Department of Rehabilitation and Correction, Division of Parole and Community Services, Bureau of Community Sanctions, (hereinafter referred to as Grantor), located at 4545 Fisher Road Suite D, Columbus, Ohio 43228 and The City Of Dayton (hereinafter referred to as Grantee), located at 335 West Third St., Room 362, Dayton, Ohio, 45402. The Grantor and the Grantee are collectively known as the Parties and separately known as the Party.

WHEREAS, the Grantee has submitted a grant application to the Grantor, and

WHEREAS, the Grantor is authorized, pursuant to RC 5149.31, RC 5149.32, and RC 5149.36 to determine and award grant funds to assist local governments in community-based corrections program services that are designed to reduce or divert the number of persons committed to state penal institutions and/or detained in and/or committed to local corrections agencies.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements set forth herein, the Parties hereto agree as follows:

1. Funds: The Grantor awards to the Grantee the sum of up to One Hundred and Ninety-Six Thousand Eight Hundred and Sixteen dollars ($196,816.00) (hereinafter referred to as Funds), to be paid in eight equal installments of $24,602.00, for the initial term as set forth in paragraph number two of this Agreement. The Grantor will make payments of Funds by electronic fund transfer to the Grantee's designee. Such payments will be made during the first month of each quarter of the Grantor's fiscal year until the Funds have been expended. The program's tax identification number is 31-6000175. Grantee's total expenditures shall not exceed the Funds. This Agreement is for the following programs:

<table>
<thead>
<tr>
<th>Program Name</th>
<th>Application Identifier</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic Violence</td>
<td>408-DV-2022/23-App-DaytMuniAPD-00160</td>
<td>$196,816</td>
</tr>
</tbody>
</table>
If Pre-Sentence Investigation (PSI) services are applicable, then the following requirements apply to PSI services:

A. The Funds can be used to hire an employee(s) or independent contractor(s) to conduct PSI reports that meet the requirements of RC 2951.03. The employee(s) or independent contractor(s) shall only perform duties for the Grantee related to the completion of PSI reports and shall receive training and be certified for using the Ohio Risk Assessment System (ORAS).

B. All completed PSI reports must be emailed, within 30 days, of the sentencing/disposition date, to the email account provided by the Grantor for uploading into the Grantor's PSI portal. An ORAS shall be completed for each PSI offender and placed into the ORAS.

2. **Term:** This Agreement is effective as of the date indicated on the "Community Based Correction Act Program Grant Approval" letter which is incorporated herein by reference. As the current Ohio General Assembly cannot commit a future General Assembly to expenditure, this Agreement shall expire on June 30, 2023. Prior to the expiration of the initial term or any renewed term, Grantor may give written notice to the Grantee that this Agreement is being renewed and amended under the same term and conditions subject to an award of grant funds pursuant to Grantee's next grant cycle application in response to Grantor's Community Correction Act Grant. Such renewal shall begin upon the expiration of the initial term or any renewed term, as applicable, and expire as set forth in an amendment to this Agreement.

3. **Appropriation:** The Funds are subject to Ohio General Assembly appropriation of the Grantor's proposed Community based Non-Residential Felony Programs subsidy (408) budget amount for Fiscal Years 2022 and 2023. The Parties agree that the Grantor may modify the Funds if such appropriation is less than the Grantor's application. The modified Funds shall be determined within the Grantor's sole discretion.

4. **Program Services:** During the term of this Agreement, the Grantee shall implement and be responsible for the program services as set forth in Grantee's application (hereinafter referred to as Program Services) in response to Grantor's Community Correction Act Grant which are incorporated herein by reference, in order to obtain Funds available through the Community Non-Residential Programs Subsidy. The Grantor's comprehensive plan is incorporated herein by reference. Any significant change or reduction in Program Services requires the prior written approval of the Grantor. In the event such change, or such reduction is approved, the Grantor may make appropriate changes in the Funds.

5. **Termination:** If the Grantee desires to terminate the Program Services or its participation in this Agreement, the Grantee may do so upon sending written notice to the Grantor, including a resolution to that effect. In such event and in compliance with paragraph (F) of rule 5120:1-5-07 of the Ohio Administrative Code (OAC), the Grantee shall refund to the Grantor the Funds paid to the Grantee which represents funding for Program Services not yet rendered and return equipment, supplies, or other tangible property, as determined by a financial close-out audit completed by the Grantor.
6. **Staffing:** The Program Services' positions, salaries, and fringe benefits shall be as stated in the said application. None of the persons who will staff and operate the Program Services, including those who are receiving some or all of their salaries out of the Funds are employees or to be considered as employees of the Department of Rehabilitation and Correction.

7. **Dispute Resolution:** The Grantor's Bureau of Community Sanctions shall monitor Program Services during the term of this Agreement. The Grantee and the Chief of the Bureau of Community Sanctions will attempt to settle any dispute which arises out of or relates to this Agreement, or any breach of this Agreement. If not settled, the Grantee may engage the Grantor's Deputy Director of Parole and Community Services for dispute resolution.

8. **Grant Manual:** The Grantee agrees to manage and account for Funds in accordance with the Grantor's "Community Corrections Act Program Grant Manual" which is incorporated herein by reference. The Grantee's Director of Program Services or designee shall be the fiscal agent to act on behalf of the Grantee and be responsible for fiscal oversight including monitoring and reviewing the expenditures of Funds each quarter. Purchases made with the Funds shall be in accordance with county/state/municipal competitive solicitation requirements.

9. **Local Funds:** RC 5149.33 prohibits a Grantee from reducing local funds it expends for Program Services. Grant funding shall be expended for Program Services in excess of those being made from local funds. Grant funding shall not be used to make capital improvements. If Grantee violates this paragraph, the Grantor may discontinue Funds to the Grantee, pursuant to the process set forth in paragraph (D) of OAC rule 5120:1-5-07.

10. **Program Evaluation:** Pursuant to RC 5149.31, the Grantor shall evaluate the Program Services and establish means of measuring their effectiveness. Therefore, the Grantee shall prepare and submit to the Grantor the following reports:

    A. Statistical records in the format and frequency as established by the Grantor. To determine if the Program Services are achieving its stated goal and objectives, the Grantee agrees to submit, within fourteen calendar days, to the Grantor intake, and termination data for each offender placed into its Program Services. The Grantee shall maintain internet access for data collection, reporting, and transmission into the Grantor’s management information systems. The Grantee shall make available all necessary records for validation and audit of this data. It is agreed that the Grantee shall be provided with the results of the Grantor’s review of the intake, termination, and reassessment data at time intervals determined by the Grantor. This section does not apply to PSI services, if applicable.

    B. Quarterly Financial Reports and a Year-end Financial report. The quarterly reports shall include financial information for expenditures that relate to Program Services as set forth in paragraph (C) of OAC rule 5120:1-5-05 and be submitted thirty (30) days after the end of each quarter. The year-end report shall describe the achievements of the Program Services and is due by September 30th, 2023 (FY '22-23).
C. Four (4) performance reports shall be completed by the Grantee according to the below schedule which indicate the Grantee's performance of Program Services specific to established outcome goals. The Grantee's level of achievement of those goals at the end of each performance period is a factor in determining if the Grantor will renew this Agreement in the next grant cycle.

a. Period One - July 1, 2021 to December 31, 2021 Due Date - January 31, 2022
b. Period Two - January 1, 2022 to June 30, 2022 Due Date - July 31, 2022
c. Period Three - July 1, 2022 to December 31, 2022 Due Date - January 31, 2023
d. Period Four - January 1, 2023 to March 31, 2023 Due Date - April 30, 2023

The Grantee shall cooperate with and provide any additional information as may be required by the Grantor in carrying out an evaluation of the Program Services. Failure to comply with any of these report requirements or other instructions for relevant information by the Grantor may result in the withholding of Funds until such time as Grantee so complies.

11. Compliance: All expenditures of Funds made by the Grantee shall be governed by the laws of the State of Ohio, particularly RC 5149.31, RC 5149.32, RC 5149.33, and RC 5149.36. The Grantee shall comply with the rules of OAC Chapter 5120:1-5 (Community Based Corrections Program) which are applicable under this Agreement. If Grantee fails to so comply, the Grantor shall give the Grantee a reasonable period of time to come into such compliance. Grantee's failure to timely comply may be cause for the Grantor to terminate this Agreement or reduce Funds.

Furthermore, the Funds may be reduced, or this Agreement terminated by the Grantor if either of the following circumstances applies:

A. The quality and extent of the Program Services has been materially reduced from the level proposed in the Grantee's grant application; or

B. There is a financial or fiscal audit disclosure involving misuse of Funds.

The Grantor's reason(s) for the intent to terminate this Agreement or reduce Funds shall be given, in writing, to the Grantee, no later than sixty (60) days, prior to the said termination or said reduction. The Grantee shall have thirty (30) days following the receipt of said notice to present a petition for reconsideration to the Grantor's Deputy Director of Court and Community Services. Within thirty (30) days of receipt of that petition, the said Director shall respond, in writing, either approving the petition by continuing Funds or disapproving the petition and stating the reason(s) for the disapproval.

12. Conflicts of Interest and Ethics Compliance: No personnel of Grantee or member of the governing body of any locality or other public official or employee of any such locality in which, or relating to which, the work under this Agreement is being carried out, and who exercise any functions or responsibilities in connection with the review or approval of this Agreement or carrying out of any such work, shall, prior to the completion of said work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of said work.
Any such person who acquires an incompatible or conflicting personal interest, on or after the effective date of this Agreement, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to Grantor in writing. Thereafter, he or she shall not participate in any action affecting the work under this Agreement, unless Grantor shall determine in its sole discretion that, in the light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

Grantee certifies that by executing this Agreement, it has reviewed, knows and understands the State of Ohio’s ethics and conflict of interest laws. Grantee further agrees that it will not engage in any action(s) inconsistent with Ohio ethics laws or any Executive Orders.

13. **Contract:** All contracts by the Grantee for Program Services must be in writing, contain performance criteria, have itemized service costs, indicate responsibilities of parties’ involved, state conditions for termination of the contract and be approved by the appropriate county officials before their implementation. A copy of such contract(s) shall be forwarded to the Chief of the Bureau of Community Sanctions.

14. **Finding for Recovery:** The Grantee warrants that it is not subject to an “unresolved” finding for recovery under RC 9.24. If the warranty is deemed to be false, this Agreement is void ab initio and the Grantee must immediately repay any Funds to the Ohio Department of Rehabilitation and Correction, or the Ohio Attorney General if the collection is so referred.

15. **Standards:** The Grantee shall comply with the laws and rules for subsidy awards to municipal corporations and counties as set forth in RC 5149.31, RC 5149.36, and OAC rule 5120:1-5-06. In accordance with paragraphs (C) and (D) of OAC rule 5120:1-5-06, the intensive supervision, probation deviation cap shall be ten percent during the term of this Agreement, and if said cap is impermissibly exceeded then Funds shall be reduced.

16. **Certification of Funds:** It is expressly understood and agreed by the Parties that none of the rights, duties, and obligations described in this Agreement shall be binding on either Party until all relevant statutory provisions of the Ohio Revised Code, including, but not limited to, RC 126.07, have been complied with, and until such time as all necessary Funds are available or encumbered and, when required, such expenditure of Funds is approved by the Controlling Board of the State of Ohio, and further, until such time that Grantor gives Grantee the “Community Based Correction Act Program Grant Approval” letter that such Funds are available to Grantee.

17. **Compliance with Laws:** Grantee, in the execution of duties and obligations under this Agreement, agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances.

18. **Drug Free Workplace:** Grantee agrees to comply with all applicable federal, state and local laws regarding smoke-free and drug-free work places and shall make a good faith effort to ensure that none of its employees or permitted subcontractors engaged in the work being performed hereunder purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs in any way.

19. **Campaign Contributions:** Grantee hereby certifies that all applicable parties listed in Divisions (I) (3) or (J) (3) of RC 3517.13 are in full compliance with Divisions (I) (1) and (J) (1) of RC 3517.13.
20. **Entire Agreement or Waiver:** This Agreement contains the entire agreement between the Parties and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the Parties hereto. This Agreement supersedes any and all previous agreements, whether written or oral, between the Parties. A waiver by any Party of any breach or default by the other Party under this Agreement shall not constitute a continuing waiver by such Party of any subsequent act in breach of or in default hereunder.

21. **Notices:** All notices, consents, and communications hereunder shall be given in writing, shall be deemed to be given upon receipt thereof, and shall be sent to the addresses first set forth above.

22. **Headings:** The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.

23. **Severability:** The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.

24. **Controlling Law:** This Agreement and the rights of the Parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio and only Ohio courts shall have jurisdiction over any action or proceeding concerning this Agreement and/or performance hereunder.

25. **Successors and Assigns:** Neither this Agreement nor any rights, duties, or obligations hereunder may be assigned or transferred in whole or in part by Grantee, without the prior written consent of Grantor.

26. **Prison Rape Elimination Act:** If the Program Services are residential services, the Grantee shall adopt and comply with the Prison Rape Elimination Act, National Standards to Prevent, Detect, and Respond to Prison Rape (28 C.F.R. Part 115). The Grantor shall monitor Grantee to ensure such compliance. The Grantor shall ensure that Grantee has been trained on their responsibilities under Grantor’s Policy on sexual abuse and sexual harassment prevention, detection and response.

27. **Extension of Expenditure Period:** ODRC may extend the expenditure period if a large amount of funds remain unspent at the end of the fiscal year due to unforeseeable circumstances. Unforeseeable circumstances include, but is not limited to, insurrection, riots, statewide health emergencies or depleted work force that is not caused by either party. Extension of the expenditure period will be communicated in a manner determined by ODRC.

28. **Execution:** This Agreement is not binding upon Grantor unless executed in full.
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers, as of the day and year first written above.

FOR THE GRANTOR:

Christopher Galli
Christopher Galli, Chief
Bureau of Community Sanctions

Cynthia Mausser
Deputy Director of Parole & Community Services

FOR THE GRANTEE (Commissioners, County Executive or Mayor/City Manager):

County Commissioner  Date

County Commissioner  Date

County Commissioner  Date

Mayor/City Manager  Date
GRANT APPLICATION APPROVAL FORM

Date: May 28, 2021

Department/Division
Submitting Application: Municipal Court

Project Title: SFY2022/23 Community Corrections Based Grant - Stopping the Violence

CFDA Title and Number:

(CFDA = Catalog of Federal Domestic Assistance. This information is required by the Department of Finance if the original source of the money if from the federal government, even if the application is going to a state or local authority.)

Brief Description of Project:
The Stopping the Violence Program, funded by the Community Corrections Act since 1996, has enabled the Court to provide intensive programming and supervision to offenders of domestic violence offenses. An integral part of the intervention includes a 24 or 26 week group module, with intensive supervised probation, which positively impacts domestic violence offenders. The offenders are referred to the program by Judges and Magistrates of the Court. The grant application is budgeted for two years July 1, 2021 through June 30, 2023.

Name and phone of staff person to be called when signed application is ready: Ann Marie Murray

Name of staff person responsible for this grant: Joel Zeugner

Deadline for submission to funding agency: April 29, 2021

When will grant award decision be made? (Estimate if necessary) June 2021

<table>
<thead>
<tr>
<th>LEVEL</th>
<th>AGENCY/FUNDING SOURCE</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fed</td>
<td></td>
<td>$ 0.00</td>
</tr>
<tr>
<td>State</td>
<td>Ohio Dept. of Rehabilitation and Corrections-Community Based Corrections Grant</td>
<td>$ 196,816.00</td>
</tr>
<tr>
<td>City of Dayton</td>
<td></td>
<td>$ 0.00</td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td>$ 0.00</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>$ 196,816.00</td>
</tr>
</tbody>
</table>

(Note: City of Dayton funds committed to a grant must be accompanied by a Certificate of Funds.)

I have reviewed this material and believe it to be correctly completed and believe the project proposed is appropriate for the City of Dayton.

Director's Signature: ___________ Ann Marie Murray ___________ Date 5/28/2021

Review and Approval

We have reviewed this material and believe it to be correctly completed and believe the project proposed is appropriate for the City of Dayton.

Director, Office of Management & Budget: ___________ Dione S. Phifer ___________ Date 6-2-2021

Director of Finance (IF CASH MATCH IS REQUIRED): ___________ ___________ Date

City Manager’s Office: ___________ Shelley Dickstein ___________ Date 6-3-2021
AN ORDINANCE

Reducing the Speed Limit to 45 MPH on Harshman Road – Needmore Road from 1870 Feet South of Brandt Pike to 1080 Feet Northwest of Brandt Pike.

WHEREAS, The City of Dayton Bureau of Traffic Engineering conducted a Speed Zone Study following the procedure set forth in the Ohio Department of Transportation’s Traffic Engineering Manual; and,

WHEREAS, The study results recommended a reduction in the speed limit from 50 MPH to 45 MPH; and,

WHEREAS, The 45 MPH Speed Zone will be established from the Corporation Limit 1870 Feet south of Brandt Pike to the Corporation Limit 1080 feet northwest of Brandt Pike; and,

WHEREAS, The Ohio Revised Code section 4511.21 (J) allows the City of Dayton to establish the speed limit based on the recommendation of the Speed Zone Study and City Ordinance; and,

WHEREAS, The speed limit will be consistent with the 45 MPH speed limit in the adjacent sections of Harshman Road – Needmore Road in the City of Riverside; and,

WHEREAS, The 45 MPH speed limit will be effective only after the City of Dayton Department of Public Works has posted conspicuous official regulatory speed limit signs in this section of Harshman Road – Needmore Road; now, therefore,

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

Section 1. That the speed limit will be reduced to 45 MPH for this section of Harshman Road – Needmore Road.
Section 2. That this Ordinance shall take effect and be in force from and after the earliest date allowed by law.

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
May 27, 2021

TO: Shelley Dickstein  
City Manager

FROM: Frederick M. Stovall, Director  
Department of Public Works

SUBJECT: Harshman Road – Needmore Road Speed Zone Ordinance

The Department of Public Works, Division of Civil Engineering conducted a speed zone study to evaluate the speed limit on a portion of Harshman Road – Needmore Road adjacent to Brandt Pike. The Ordinance reduces the speed limit as recommended by the study.

This study was recommended by the Ohio Department of Transportation in conjunction with their upcoming safety upgrade of the traffic signal at Brandt, Harshman and Needmore. We are requesting the Ordinance be placed on the June 16 calendar for City Commission approval.

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

If you have any questions, please contact Joe Brzozowski at x4088.

Attachments

Cc: J. Brzozowski
**Ohio Department of Transportation**

**SPEED ZONE EVALUATION SHEET**

FOR NON-FREeways and NON-EXPRESSWAY HIGHWAYS

<table>
<thead>
<tr>
<th>ROUTE NAME:</th>
<th>Harshman Road / Needmore Road</th>
<th>ROUTE NUMBER:</th>
<th>CR-74</th>
</tr>
</thead>
<tbody>
<tr>
<td>BEGIN STUDY AT:</td>
<td>Corp limit 100' northwest of S.R. 201</td>
<td>BEGIN LOGPOINT:</td>
<td>9.32</td>
</tr>
<tr>
<td>END STUDY AT:</td>
<td>Corp limit 1800' south of S.R. 201</td>
<td>END LOGPOINT:</td>
<td>9.85</td>
</tr>
<tr>
<td>AVERAGE DAILY TRAFFIC [ADT]:</td>
<td>24500</td>
<td>EXISTING SPEED LIMIT (MPH):</td>
<td>50</td>
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<tr>
<td>LENGTH (MILE):</td>
<td>0.53</td>
<td>DIVIDED HIGHWAY:</td>
<td>No</td>
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<tr>
<td>COUNTY:</td>
<td>Montgomery</td>
<td>TOWNSHIP:</td>
<td>Urban</td>
</tr>
<tr>
<td>MUNICIPALITY:</td>
<td>Dayton</td>
<td>JURISDICTION:</td>
<td>City of Dayton</td>
</tr>
</tbody>
</table>

### Calculations

- **Calculated Speed**: 44 MPH
- **Requested Speed**: 45 MPH

**For further guidance in completing this form, see the Traffic Engineering Manual, section 1203.**

<table>
<thead>
<tr>
<th>No. of Houses or Farms</th>
<th>(Hold Cursor Here for More Info)</th>
<th>2</th>
<th>Must have direct access to the roadway being studied.</th>
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<tbody>
<tr>
<td>No. of Small Businesses, Apts./Condos</td>
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<tr>
<td>No. of Minor Street Intersections</td>
<td>(Hold Cursor Here for More Info)</td>
<td>0</td>
<td>Subdivision, Residential, or Other streets that mainly serve the residents of that street.</td>
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<tr>
<td>No. of Major Street Intersections</td>
<td>(Hold Cursor Here for More Info)</td>
<td>0</td>
<td>Streets which serve both the residents and commuters of the area.</td>
</tr>
<tr>
<td>No. of Signalized Intersections</td>
<td>(Hold Cursor Here for More Info)</td>
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<td>Do not include intersections at the beginning or end of the section.</td>
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<tr>
<td>No. of Interchange Ramps</td>
<td>(Hold Cursor Here for More Info)</td>
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<td>Do not include loop ramps at the beginning or end of the section.</td>
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<tr>
<td>Lane Width</td>
<td>(Round down to nearest foot)</td>
<td>12</td>
<td>Average lane width of through traffic lanes.</td>
</tr>
<tr>
<td>Shoulder Width</td>
<td>(Round down to nearest foot)</td>
<td>0</td>
<td>General width of paved and/or non-paved shoulder throughout the section.</td>
</tr>
<tr>
<td>Crashes</td>
<td>(Latest three years of data)</td>
<td>66</td>
<td>Only include crashes within the section, excluding animal and side street crashes.</td>
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<tr>
<td>85thile Speed of Traffic</td>
<td></td>
<td>49</td>
<td>Average of the 85th speed at all locations where speed samples were taken.</td>
</tr>
<tr>
<td>10-mph Pace Speed of Traffic</td>
<td>40 to 49</td>
<td>Average of the Pace speed at all locations where speed samples were taken.</td>
<td></td>
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**Roadway Characteristics**

- Category: A2
- C:  
- B3:  
- B2:  
- B1:  
- A3:  
- A2:  
- A1:  
- DIV:  

Additional considerations and comments:

**STUDY BY:** Joe Brzozowski  
**DATE:** March 24, 2021

**CHECKED BY:**  
**TEST RUN SPEED:**  
**APPROVED SPEED:**
<table>
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Location: City of Dayton, Harshman Road, near south Corp. limit approximately 1500’ south of S.R. 201
Date: 3/3/2021  Day: Wednesday  County: Montgomery
Observer: Joe Brzozowski  Pavement: Concrete  Dry: X  Wet: 
Weather: Clear  Condition: Good  Temperature: 62 degrees F
Width: 65 feet
Total vehicles recorded in file = 120
Lowest recorded speed = 31
Average speed = 42.89
Highest recorded speed = 61

10 Mph pace speed = 38 - 47
Percent under pace speed = 8.3
Percent in pace speed = 80.8
Percent over pace speed = 10.8

15th percentile = 38
50th percentile = 43
85th percentile = 47
95th percentile = 50

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Total vehicles recorded in file = 120
Lowest recorded speed = 33
Average speed = 43.65
Highest recorded speed = 58

10 Mph pace speed = 39 - 48
Percent under pace speed = 13.3
Percent in pace speed = 71.7
Percent over pace speed = 15.0

15th percentile = 39
50th percentile = 44
85th percentile = 48
95th percentile = 52

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Law Enforcement Concurrency Sheet
Speed Zones and Parking Restrictions

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<td>Route</td>
<td>Harshman Road / Needmore Road</td>
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<td>The corporation limit 1870 feet south of Brandt Pike</td>
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<td>To</td>
<td>The corporation limit 1080 feet northwest of Brandt Pike</td>
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</table>

I have reviewed the studied zone and concur with the findings.

Name: MATT CARRE<br>Signature: [Signature]<br>Date: 4/12/21

I have reviewed the studied zone and DO NOT concur with the findings.

Reasons for not concurring:

Name: [Name]<br>Title: [Title]<br>Signature: [Signature]<br>Date: [Date]

Please return to Joe Brzozowski, Chief Engineer, Bureau of Traffic Engineering

Revised January 30, 2013
A RESOLUTION

Declaring the Intention of the Commission to Vacate the Alley East of June Street (Tulsa Lane) from 78 Feet South of the Alley South of East Fourth Street to 25 Feet North of the Norfolk Southern Railroad Right of Way.

WHEREAS. The vacation of the alley east of June Street (Tulsa Lane) from 78 feet south of the alley south of East Fourth Street to 25 feet north of the Norfolk Southern Railroad Right of Way as described herein will enable the abutting property owners to develop this property; and

WHEREAS. The City Plan Board has recommended the vacation; now, therefore,

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

Section 1. That the intention of the Commission is hereby declared to vacate the alley east of June Street (Tulsa Lane) from 78 feet south of the alley south of East Fourth Street to 25 feet north of the Norfolk Southern Railroad Right of Way more particularly bounded and described in as follows:

Being all of the 15-foot alley east of June Street (Tulsa Lane) from 78 feet south of the 12-foot alley south of East Fourth Street to 25 feet north of the 40-foot Norfolk Southern Railroad Right of Way

The vacation shall be subject to the following conditions:

A. The area shall be marked in a manner acceptable to the Division of Civil Engineering to indicate that it is not public right-of-way.

B. A turn around shall be constructed and dedicated at the southern end of the proposed vacation. The improvement plan shall be submitted to the Division of Civil Engineering for review and approval.

C. AES Ohio shall retain an easement over, under, and through the vacated area for its existing facilities. With written consent from AES Ohio these facilities may be relocated or abandoned at the expense of the applicant.

D. AT&T shall retain an easement over, under, and through the vacated area for its existing aerial facilities. With written consent from AT&T these facilities may be relocated or abandoned at the expense of the applicant.
E. Vectren shall retain an easement over, under, and through the vacated area for its existing aerial facilities. With written consent from Vectren these facilities may be relocated or abandoned at the expense of the applicant.

F. The City of Dayton Department of Water shall retain an easement over, under, and through the vacated area for its existing six inch water main. With written consent from City of Dayton Department of Water these facilities may be relocated or abandoned at the expense of the applicant.

Adopted by the Commission .................................................., 2021

Signed by the Mayor ................................................................., 2021

______________________________
Mayor, City of Dayton, Ohio

Attest:

______________________________
Clerk of the Commission

Approved as to form:

______________________________
City Attorney
June 1, 2021

TO: Shelley Dickstein
   City Manager

FROM: Joseph Weinel, Chief Engineer
       Division of Civil Engineering

SUBJECT: The Vacation of Alley East of June Street (Tulsa Lane) from 78 Feet South of the Alley South of East Fourth Street to 25 Feet North of the Norfolk Southern Railroad Right of Way

Attached is the Resolution of Intent, the check of petition to vacate the subject alley, a letter from the City Plan Board recommending the vacation, and the original petition. Please present the resolution to the City Commission for their action.

Petition No. 21566 requesting the vacation was received from Doliboia Construction Inc. on May 20, 2021. The vacation will enable the abutting property owners to develop this property.

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

JRW

Attachments

cc: Mr. Parlette
    Ms. Lofton
    Mr. Stovall
    Department of Planning
    Department of Law
    Clerk of Commission
    Secretary / Board of Revision of Assessments
CHECK OF PETITION

Alley East of June Street (Tulsa Lane) from 78 Feet South of the Alley South of East Fourth Street to 25 Feet North of the Norfolk Southern Railroad Right of Way

Checked 5/24/2021 by Joseph Weinel

<table>
<thead>
<tr>
<th>Total Frontage</th>
<th>131.00</th>
<th>lin. ft.</th>
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<td>Frontage signed</td>
<td>131.00</td>
<td>lin. ft.</td>
</tr>
<tr>
<td>Frontage not signed</td>
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<td>lin. ft.</td>
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<tr>
<td>Percentage signed</td>
<td>100.0%</td>
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<tr>
<th>Name of Owner</th>
<th>Lot No.</th>
<th>Frontage</th>
<th>B.P.I.</th>
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<tr>
<td>Doliboa Construction Inc</td>
<td>9063</td>
<td>61.0</td>
<td>12-8-14</td>
</tr>
<tr>
<td>Dayton Area Lift LTD</td>
<td>2833</td>
<td>21.24</td>
<td>12-8-44</td>
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<td>2834</td>
<td>33.0</td>
<td>12-8-43</td>
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<tr>
<td></td>
<td>2835</td>
<td>15.76</td>
<td>12-8-40</td>
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May 18, 2021

Dayton Area Lift LLC
c/o Seth Diliboa
10 Juanita Court
Springboro, OH 45066

Re: PLN2021-00085 – Public Way Vaction: Tulsa Lane/ 141 Ringgold St

Meeting Date: May 11, 2021
Decision: Established Conditions

The City Plan Board found the proposed vacation met the criteria cited in R.C.G.O. Section 150.445(B) and therefore established the following conditions:

1. The correct title for the vacation is: Alley east of June Street (AKA Tulsa Lane) from 78’ south of the alley south of E Fourth Street to 25’ north of the Norfolk Southern north property line.

2. The area shall be marked in a manner acceptable to the Division of Civil Engineering to indicate that it is not public right-of-way.

3. All work for the turnaround shall be completed within 90 days of the vacation and to City of Dayton standards.

4. Establish the entire area to be vacated as an easement for AT&T, DP&L, Vectren, and City water utilities, both underground and aerial. See submitted drawing for dimensions. No structures shall be built within this easement.

The next step toward the completion of the vacation is to pursue the request through the petition process. Please contact Joe Weinel, Chief Engineer, at (937) 333-4218 or Joe.Weinel@daytonohio.gov to obtain the petition. If you have any questions, he will be your new contact for the remainder of the vacation process.

Sincerely,

Tony Kroeger, Secretary
City Plan Board

c: Decision Memorandum Distribution List
PAY IN ORDER

Department/Division  City Commission Office  Pay in No. 01-19
Total Pay In Amount  $150.00  Date: May 20, 2021

From/Purpose

Petition for Vacation –
Alley East of June Street (Tulsa Lane)
Alley East of June Street from 78’ South of the Alley South of East
Fourth Street to 25’ North of the Norfolk Southern Right of Way Line

Doliboa Construction Inc
8678 Bunnell Hill Road
Springboro OH 45066

Seth Doliboa
937-623-3631

Amount(s)

$150.00

Account Distribution(s)

1000-1200-29324-52

Amount(s)

150.00

Preparer's Signature:  

FOR FINANCE USE ONLY:
Original signature
Must be on PINK copy
______________________________  Per: Accounting & Treasury Manager

WHITE:
Finance Dept. Copy

YELLOW:
Department Receipt

PINK:
City Treasury Copy

GOLD:
Preparer’s Record
Petition for Vacation

To the Commission of the City of Dayton:

We, the undersigned, owners of property abutting on

Alley East of June Street (Tulsa Lane)

do hereby petition the Commission of the City of Dayton to vacate

Alley East of June Street (Tulsa Lane) from

78’ South of the Alley South of East Fourth Street to

25’ North of the Norfolk Southern Right of Way Line

and each petitioner for himself, his heirs and assigns hereby waives any and all claims for damages, costs and expenses which he may have at any time against the City of Dayton, Ohio, or any of its officers or employees on account of, caused by, growing out of, or incident to the vacation aforesaid made pursuant to this petition; and each signor hereof does hereby consent to and accept such vacation, after having carefully read and fully understood the language, purport and conditions hereof.

1. NAME OF OWNER Seth Dalby
   TITLE Owner
   SIGNATURE
   MAIL ADDRESS 10 Jamar Ct
   LOT NUMBER R72 0128 0037

2. NAME OF OWNER
   TITLE
   SIGNATURE
   MAIL ADDRESS
   LOT NUMBER

3. NAME OF OWNER
   TITLE
   SIGNATURE
   MAIL ADDRESS
   LOT NUMBER

4. NAME OF OWNER
   TITLE
   SIGNATURE
   MAIL ADDRESS
   LOT NUMBER
5. NAME OF OWNER 
SIGNATURE
MAIL ADDRESS

6. NAME OF OWNER 
SIGNATURE
MAIL ADDRESS

7. NAME OF OWNER 
SIGNATURE
MAIL ADDRESS

8. NAME OF OWNER 
SIGNATURE
MAIL ADDRESS

LOT NUMBER

LOT NUMBER

LOT NUMBER
PAY TO THE ORDER OF City of Dayton

One hundred and fifty ½ DOLLARS

MEMO: Illegal alien petition

14933

CIVISTA BANK

66-163/412

$150.50
MEMO

Authorized Signature

Amount

$150.00

One hundred and fifty dollars

Pay to the order of City of Dayton

SPRINGBORO, OH 45066
8679 BURNT MILL ROAD
14933

DOLBOA CONSTRUCTION, INC.